STANSBURY BROWN
LAW PC

July 3, 2024

<u>VIA LWDA WEBSITE</u>

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Arturo Perez and Rhoda Villanueva v. Sares Regis Operating Company, L.P., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Arturo Perez ("Mr. Perez") and Rhoda Villanueva ("Ms. Villanueva") (collectively "Employees") in claims for Labor Code violations arising from their employment with Sares Regis Operating Company, L.P. ("SROC"); SRG Ventures, LLC ("SRG"); Sares Company dba Sares Regis Group (SC); and DOES 1 through 100 (collectively "Employers"). Mr. Perez and Ms. Villanueva are each "aggrieved employees" as defined by Labor Code Section 2698 *et seq*., due to Employers' numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency ("LWDA") of the specific provisions of the Labor Code allegedly violated.

For purposes of this letter, the "aggrieved employees" whom Mr. Perez and Ms. Villanueva seek to represent are the other aggrieved employees of Employers who performed work for Employers in California at any time during the one year preceding the date of this letter through the present.

Mr. Perez worked for Employers as a maintenance technician between approximately September 28, 2023 and approximately October 13, 2023. Employers are in the business of real estate development, investment and management of multi-family residential, commercial and industrial properties. Mr. Perez's job responsibilities included maintenance of fans and air conditioning units, changing light bulbs, cleaning hallways, installing items such as cabinets and building items such as cabinet stands. Mr. Perez was generally scheduled to work five days per week, from Saturday to Wednesday from approximately 9:00 a.m. until approximately 6:00 p.m. However, he could be called early in the morning to start work on the same day as early as 7:45 a.m.

Ms. Villanueva worked for Employers as a leasing consultant from on or about April 12, 2023 and will continue her employment through approximately July 10, 2024 when another property management company replaces Employers. Ms. Villanueva's job responsibilities include screening applicants, providing apartment tours, following up with prospects, processing resident complaints and spiffing or dusting units. Ms. Villanueva is also generally scheduled to work five days per week, from Sunday to Wednesday, from approximately 8:00 a.m. to 5:00 p.m.

Throughout the duration of each of each Plaintiff's employment with Employers, Plaintiff and other aggrieved employees were not paid for all hours worked as Employers would not accurately keep track of their hours worked. Upon information and belief, the time records maintained by Employers were not reflective of the actual number of hours that Mr. Perez, Ms. Villanueva and other aggrieved employees actually worked. Mr. Perez and Ms. Villanueva were instructed to clock in and out each work day on a computer at the workplace using the program "Dayforce." However, for almost the entirety of Mr. Perez's employment, the Dayforce program was unavailable to Mr. Perez and Employers instructed Mr. Perez to notify his supervisor of the times that he started and ended each work day and required that his supervisor notify the manager so that the manager would record Mr. Perez's hours worked. Employers required Mr. Perez, Ms. Villanueva and other aggrieved employees to perform work for approximately fifteen (15) minutes prior to clocking in each work day. During this time, Ms. Villanueva had to perform work such as viewing Employers' training classes or checking emails. During this time, Mr. Perez was required to be present on the premises. Additionally, Employers required Ms. Villanueva to check emails after clocking out at least approximately 2 or 3 times per month for 20 minutes each time. Mr. Perez and Ms. Villanueva estimate that they each spent at least 75 minutes per week working off the clock. Further, even though Mr. Perez complained that he never received his first paycheck and Employers claimed that they would mail him his first paycheck, to date, Mr. Perez has not received his first paycheck.

Furthermore, Mr. Perez, Ms. Villanueva and other aggrieved employees worked overtime hours, but did not receive overtime compensation equal to one and one-half times their regular rates of pay for all overtime hours worked. Upon information and belief, Employers systematically failed to pay overtime compensation due to Mr. Perez, Ms. Villanueva and other aggrieved employees when they worked off the clock. Further, when Mr. Perez, Ms. Villanueva and other aggrieved employees worked overtime, they were not always compensated at the correct regular rate. For example, approximately once per month, Ms. Villanueva received a bonus for leasing an apartment. Upon information and belief, this bonus was not calculated into her regular rate. As a result, Employers failed to ensure that Plaintiff and other aggrieved employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Plaintiff and other aggrieved employees received proper overtime wages for all overtime hours worked.

Mr. Perez, Ms. Villanueva and other aggrieved employees were not authorized to take their full legally required 10-minute rest periods. Employers regularly required Mr.

Perez, Ms. Villanueva and other aggrieved employees to read and respond to company text messages or other communications sent after Mr. Perez, Ms. Villanueva and other aggrieved employees began their rest periods. Mr. Perez estimates that his rest periods were interrupted almost every day of his employment. Ms. Villanueva estimates that either she did not receive a rest period because she was required to provide tours or respond to emails or her rest period was interrupted at least 2 or 3 days per week. Employers never provided Mr. Perez, Ms. Villanueva and other aggrieved employees with an hour of pay at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, Employers maintained no payroll code or another mechanism for the payment of rest period premiums in the event Mr. Perez, Ms. Villanueva and other aggrieved employees were not authorized to take lawful rest periods.

Employers also did not provide Mr. Perez, Ms. Villanueva and other aggrieved employees with a legally compliant first meal period when they worked shifts in excess of 5.0 hours or a legally compliant second meal period when they worked shifts longer than 10 hours. On a near-daily basis, Employers interrupted Mr. Perez's meal period with text messages that required immediate responses or with tours for prospective tenants. Ms. Villanueva estimates that her meal periods were interrupted approximately at least once per month with questions from residents or management or other communications from Employers. Employers did not provide Mr. Perez, Ms. Villanueva and other aggrieved employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7.

Furthermore, Employers failed to adequately reimburse Mr. Perez, Ms. Villanueva and other aggrieved employees for all reasonable and necessary work expenditures, including but not limited to, requiring Mr. Perez, Ms. Villanueva and other aggrieved employees to utilize their personal cell phones and their personal vehicles. Mr. Perez and Ms. Villanueva were never provided any reimbursement for the use of their personal vehicles and were not provided sufficient reimbursement for the use of their personal cell phones.

Employers failed to issue to Mr. Perez, Ms. Villanueva and other aggrieved employees accurate itemized statements in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Employers have maintained inaccurate payroll records, failed to timely pay all wages owed to employees, and failed to timely pay separating employees at the time of their separation, and issued inaccurate wage statements. This is in part a result of Employers' failure to accurately compensate Mr. Perez, Ms. Villanueva and other aggrieved employees for all minimum and overtime wages, and failure to pay premium pay for failing to provide all required meal periods and authorize all required rest periods.

Finally, Employers failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Mr. Perez, Ms. Villanueva and other aggrieved employees written notices, in the language normally used to communicate employment related information to the employees, containing information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the employer; v) the address of the legal entity that is the employer; vi) the telephone number of the employer; vii) identifying information for the employer's workers' compensation insurance carrier; and viii) information informing the employee of their right to accrue and use paid sick leave. Despite maintaining an obligation to provide these disclosures to Mr. Perez, Ms. Villanueva and other aggrieved employees, Employers failed to do so, in violation of Labor Code § 2810.5.

As described above, Employers committed the following violations of the Labor Code, and the Industrial Welfare Commission Wage Order 4:

<u>Minimum Wage Violations</u>

Employers were required to pay Mr. Perez, Ms. Villanueva and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. See Labor Code §§ 1182.12, 1194; 1194.2, 1197; and the Industrial Welfare Commission Wage Order 4, § 4. As alleged above, Employers maintained and maintain timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Perez, Ms. Villanueva and other aggrieved employees. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Perez, Ms. Villanueva and other aggrieved employees were deprived of all required minimum wages.

<u>Overtime Wage Violations</u>

Employers were required to pay Mr. Perez, Ms. Villanueva and other aggrieved employees overtime wages for all overtime hours worked. *See* Labor Code §§ 1194(a) and 1198; and the Industrial Welfare Commission Wage Order 4, § 3. The Industrial Welfare Commission Wage Order 4, § 3 require an employer to pay overtime wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth in the Industrial Welfare Commission Wage Order 4. At all times relevant herein, Employers caused Mr. Perez, Ms. Villanueva and other aggrieved employees to work overtime hours but did not compensate Mr. Perez, Ms. Villanueva and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

Meal Period Violations

As alleged above, Employers failed to provide Mr. Perez, Ms. Villanueva and other aggrieved employees with all required and compliant meal periods due to Employers' meal period policies/practices that often fail to provide full, 30 minute off-duty first meal periods before the end of the fifth hour of work or a second meal period for shifts worked in excess of ten (10) hours. *See* Labor Code §§ 226.7 and 512; the Industrial Welfare Commission Wage Order 4, § 11. As a result, Mr. Perez, Ms. Villanueva and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with … [an] order of the Industrial Welfare Commission … the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

Rest Period Violations

As alleged above, Employers also failed to authorize and permit Mr. Perez, Ms. Villanueva and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; the Industrial Welfare Commission Wage Order 4, § 12. As a result, Mr. Perez, Ms. Villanueva and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required paid rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Failure to Reimburse Necessary Business Expense

Employers were subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." Employers were subject to Labor Code § 2804, which states that "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State." As alleged herein, due to Employers' unlawful reimbursement practices, Employers failed to indemnify Mr. Perez, Ms. Villanueva and other aggrieved employees for all necessary business expenses incurred, in the performance of their work duties, including but not limited to utilization of their personal cell phones and personal vehicles. Mr. Perez, Ms. Villanueva and other aggrieved employees were not ever provided any reimbursement for this necessary use.

Wage Statement Violations

As described above, Employers were required to furnish Mr. Perez, Ms. Villanueva and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); the Industrial Welfare Commission Wage Order 4, § 7. As a result of Employers' failure to pay all overtime wages, minimum wages, and failure to pay all required meal and rest period premium wages, Employers maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Perez, Ms. Villanueva and other aggrieved employees in violation of Labor Code § 226.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Employers failed to timely pay Mr. Perez, Ms. Villanueva and other aggrieved employees all of their final wages at the time of separation, which included all overtime and minimum wages, and all meal and rest period premium wages at the time of aggrieved employees' separation of employment. Pursuant to Labor Code § 203, Employers' failure to pay all final wages due to Mr. Perez, Ms. Villanueva and other aggrieved employees was willful and, consequently, entitles Mr. Perez, Ms. Villanueva and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Employers failed to pay their final wages after their separation from employment, up to a maximum of thirty days.

As an "aggrieved employee," Mr. Perez and Ms. Villanueva will initiate a civil action on behalf of themselves and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on the investigations of Mr. Perez and Ms. Villanueva and on information and belief, Employers committed and continue to commit the following Labor Code violations:

a. Employers violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Perez, Ms. Villanueva and other aggrieved employees the statutory minimum wage for all hours worked;

b. Employers violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Perez, Ms. Villanueva and other aggrieved employees all overtime compensation earned;

c. Employers violated Labor Code §§ 226.7, 512, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Perez, Ms. Villanueva and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;

d. Employers violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Perez, Ms. Villanueva and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Perez, Ms. Villanueva and other aggrieved employees at their respective regular rates of compensation;

e. Employers violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Perez, Ms. Villanueva and other aggrieved employees for all work-related expenses incurred;

f. Employers violated Labor Code § 226 by failing to furnish Mr. Perez, Ms. Villanueva and other aggrieved employees with accurate and compliant itemized wage statements;

g. Employers violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Mr. Perez, Ms. Villanueva and other aggrieved employees;

h. Employers violated Labor Code § 204 by failing to pay Mr. Perez, Ms. Villanueva and other aggrieved employees all wages earned at least twice during each calendar month;

i. Employers violated Labor Code §§ 245.5, 246, & 248.5 et seq by failing to permit and authorize Mr. Perez, Ms. Villanueva and other aggrieved employees to exercise the use of their accrued paid sick leave days or pay sick leave pay at the proper regular rate of pay;

j. Employers violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Perez, Ms. Villanueva and other aggrieved employees;

k. Employers violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Perez, Ms. Villanueva and other aggrieved employees; and

l. Employers violated Labor Code §§ 204 and 221-223 by failing to pay Mr. Perez, Ms. Villanueva and other aggrieved employees all agreed-upon wages including bonus wages accrued.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Employers if the LWDA intends to investigate the alleged violations of the Labor Code stated herein. Please contact me should you require additional information.

Very truly yours,
STANSBURY BROWN LAW, PC

Jess Flores

Jessica R. Flores, Esq.

cc: Sares Regis Operating Company, L.P.
SRG Ventures, LLC
Sares Company dba Sares Regis Group