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VIA CERTIFIED U.S. MAIL – Return Receipt Requested

July 01, 2024

Labor and Workforce Development Agency
(via online submission)

Vandenberghe Properties, Inc.
Attn: Mark C. Vandenberghe
525 Sycamore Valley Rd,
Danville, California 94526

Vandenberghe Construction, Inc.
Attn: Mark C. Vandenberghe
525 Sycamore Valley Rd,
Danville, California 94526

Re: Labor Code §§ 2699 and 2810.3 Notice by Aggrieved Employee Hector Espitia

This constitutes statutory notice pursuant to Labor Code § 2699.3(a)(1) for purposes of bringing a claim under the Private Attorneys General Act, Cal. Labor Code § 2699, et seq. (“PAGA”). Please consider this a request for the California Labor & Workforce Development Agency (“LWDA” or “Agency”) to take action against VANDENBERGHE PROPERTIES, INC. (a California Corporation), and VANDENBERGHE CONSTRUCTION, INC. (a California Corporation) (collectively, “DEFENDANTS”), and their agents, managers and supervisors (collectively “Defendants”), for violations of the California Labor Code described below. I am writing on behalf of HECTOR ESPITIA, an aggrieved employee represented by this law firm (hereinafter “Aggrieved Plaintiff”) who seeks to assert a PAGA claim on behalf of the State of California and all other similarly situated current or former employees who have been employed



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by DEFENDANTS in California during the relevant time period. Specifically, this notice is given on behalf of the following category of aggrieved employees:

All non-exempt employees of VANDENBERGHE PROPERTIES, INC. (a California Corporation), and VANDENBERGHE CONSTRUCTION, INC. (a California Corporation) (collectively, "DEFENDANTS") who performed work in California for DEFENDANTS during the relevant time period.

PLEASE TAKE NOTICE THAT THIS IS ALSO A GENERAL LITIGATION PRESERVATION NOTICE to preserve all documents relating to all employees, including but not limited to all timekeeping and payroll records in paper form, native electronic form, and any other format in which they are generated and maintained in the regular course of business; all databases and computer or electronic systems that are used for timekeeping and payroll; all records and evidence in any way related to the facts and claims asserted in this letter; all records and evidence in any way related to the claims of the Aggrieved Plaintiff, the state and other current or former employees under the California Labor Code Private Attorney General (including underlying Labor Code and IWC orders), the California Government Code, and the Equal Employment Opportunity Act. These documents include but are not limited to all schedules (both current and former) all timekeeping records, all rest and meal period records, all duty and responsibility records, all records of customers of the facilities that include employee signatures or initials, all payroll records, all state or federal withholding records, all personnel files and other employment records, all records concerning the payment or nonpayment of wages, or provision or non-provision of state mandated Labor Code protections, as well as all documents pertaining to harassment or discrimination against employees, all communications relating to these records and documents, and all emails relating to these records and documents.

Further, pursuant to California Labor Code §§ 210, 558, 1197.1, and other provisions of the Labor Code, please consider this a notice to DEFENDANTS' owners, supervisors, managers, agents and all other persons acting on behalf of DEFENDANTS and the employer who caused to be violated any provision of the California Labor Code or Wage Orders governing hours and days of work. As used herein, "DEFENDANTS" refers to all liable persons and entities, including owners, supervisors, managers, agents, and any other person acting on behalf of DEFENDANTS who "caused" the violations at issue.

VANDENBERGHE CONSTRUCTION, INC. operates as a labor contractor who contracted with VANDENBERGHE PROPERTIES, INC., to provide employees to perform construction and maintenance services on properties owned or leased by VANDENBERGHE PROPERTIES, INC., in San Luis Obispo County, Solano County, Tulare County, and Kern County among others. In so doing, DEFENDANTS directly and or jointly employed Aggrieved



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Plaintiff and similarly situated aggrieved employees. Aggrieved Plaintiff worked for DEFENDANTS providing construction services to properties operated, owned, or leased by VANDENBERGHE PROPERTIES, INC., among other services Aggrieved Plaintiff has worked for DEFENDANTS since on or about 2013.

This investigation request and notice of California Labor Code violations concerns the systematic failure by DEFENDANTS to pay current and former California non-exempt employees in compliance with provisions set out in the California Labor Code and in Wage Orders promulgated by the Industrial Welfare Commission. At the core of DEFENDANTS' violations is a policy of: systematically failing to pay all wages earned, systematically failing to pay overtime wages for all hours worked by employees in excess of eight hours in a work day and/or 40 hours in a workweek; systematically refusing to provide rest periods or to provide premium wages in lieu thereof; systematically refusing to provide meal periods or to provide premium wages in lieu thereof; systematically failing to provide accurate wage statements and systematically failing to pay all wages owed upon separation from employment. These violations are a uniform policy applied to all non-exempt employees who performed work for DEFENDANTS.

The facts and theories giving rise to these violations include, without limitation the following:

- DEFENDANTS subjected Aggrieved Plaintiff to employer control, or knowingly suffering or permitting them to work shifts of eight or more hours a day and/or forty hours in a workweek while requiring Aggrieved Plaintiff to carry his own tools without compensating Aggrieved Plaintiff double minimum wages earned, in violation of Cal. Labor Code §§ 201, 202, 221, 226.2, 1194 and 558, and the Wage Orders, by failing to pay the required minimum and overtime wages by law.
- DEFENDANTS systematically underpaid Aggrieved Plaintiff and other employees for all hours worked as DEFENDANTS did not account for compensation of off-the-clock work performed. For example, Aggrieved Plaintiff was required to travel to alternative worksites outside his normal commute while carrying his own tools, but DEFENDANTS did not compensate Aggrieved Plaintiff for the difference in time.
- DEFENDANTS failed to pay failed to reimburse employees for equipment necessary for work and business expenses incurred in violation of Labor Code § 2802. For example, Aggrieved Plaintiff was required to travel to alternative worksites outside his normal commute, but DEFENDANTS did not compensate



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Aggrieved Plaintiff for all miles incurred from the alternative worksite to his home at the end of the workday.

- DEFENDANTS failed to authorize and permit Aggrieved Plaintiff and other workers to take timely full and complete off-duty meal breaks. As a result of the workload, Aggrieved Plaintiff suffered short, late, or missed meal periods.
- As a result of the foregoing violations, DEFENDANTS failed to pay all wages due and owed, and therefore failed to issue accurate itemized wage statements, as such statements failed to reflect wages earned for overtime and minimum wages and the off-the-clock-work described herein, as well as premium wages for meal break violations.
- DEFENDANTS retaliated and/or took adverse employment against Aggrieved Plaintiff for complaining about DEFENDANTS' wage and hour violations in violation of California Labor Codes §§ 98.6, 98.7, 226, and 1102.5 and entitles recovery of penalties under California Labor Code § 2699(f).
- In addition, as a result of the wage payment violations described above, DEFENDANTS failed to timely pay all wages upon termination to those employees who separated from DEFENDANTS' employ.

Liability under the PAGA may be based on a wide variety of Labor Code predicate provisions, including but not limited to sections 98.6, 98.7, 201, 203, 210, 216, 218, 218.6, 223, 225, 226, 226.2, 226.7, 510, 512, 2810.5, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1199, and 2802, 2810.3. Industrial Welfare Commission Wage Orders, sections 2699 et seq. and all of the provisions listed in Labor Code section 2699.5 (including the penalty provisions related to these predicate provisions), among others. Any violation of these or any other Labor Code provisions serve as the basis for a PAGA claim by an aggrieved employee on behalf of themselves and other current and former employees.

The above provisions do not include all of the derivative penalties associated with the above provisions, which are listed throughout the Labor Code. If no action is taken within 65 days, we will assume that we may pursue this action under the theories described above against described entities above and their managers, agents, owners and other liable persons and entities (pursuant to sections 210, 558 and 1197.1 (and other provisions)).



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PLEASE TAKE NOTICE THAT IS ALSO statutory notice to VANDENBERGHE PROPERTIES, INC., pursuant to Labor Code section 2810.3(d) for purposes of bringing a civil action against a client employer for violations covered by Labor Code section 2810.3(b). Pursuant to Labor Code section 2810.3(1)(A) a “client employer” is a business entity regardless of its form, that obtains or is provided workers to perform labor within its usual course of business from a labor contractor. Accordingly, pursuant to Labor Code section 2810.3(b) VANDENBERGHE PROPERTIES, INC. is a client employer who shares with VANDENBERGHE CONSTRUCTION, INC. for all civil legal responsibility and civil liability for all workers supplied to VANDENBERGHE PROPERTIES, INC. by VANDENBERGHE CONSTRUCTION, INC. for the payment of wages. As defined in Labor Code section 2810.3(a)(4) and pursuant to California Code of Regulations section 13830, “wages” includes:

- a. Any minimum, regular, overtime, or other premium wages that are due to the worker, including but not limited to any wages due under Labor Code section 226.2, 226.7, 227.3, 246, and 2802;
- b. Any damages or penalties that are due to the worker or the state based upon any failure to pay wages, as provided by law, including but not limited to those set forth under Labor Code sections 203, 203.1, 210, 225.5, 226, 226.3, 248.5, 558, 1194.2, and 1197.1;
- c. Any applicable interest due for any sum described in this section.

A client employer cannot shift to the labor contractor any legal duties or liabilities under Division 5 (commencing with Section 6300) with respect to workers supplied by a labor contractor. (See Cal. Labor Code 2810.3(c)) As such, VANDENBERGHE PROPERTIES, INC., is liable for VANDENBERGHE CONSTRUCTION, INC. wage and hour violations, regardless of the extent to which VANDENBERGHE CONSTRUCTION, INC. may have created such violations. The violations for which VANDENBERGHE PROPERTIES, INC., shares liability with VANDENBERGHE CONSTRUCTION INC. are noted in this letter above.

Aggrieved Plaintiff Hector Espitia may be contacted through our office: Mallison & Martinez Attorneys at Law, 1939 Harrison Street, Suite 730, Oakland, California 94612.

Sincerely,

Gonzalo Quezada, Esq.