ESTELLE & KENNEDY
A PROFESSIONAL LAW CORPORATION

Mail To Upland Office: 367 N. 2nd Avenue• Upland, CA 91786 • Phone (909) 608-0466
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Fax To: (909) 608-0477
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July 10, 2024

SENT VIA ONLINE SUBMISSION
AND CERTIFIED MAIL - RETURN RECEIPT REQUESTED TO:

California Labor and Workforce Development Agency (LWDA)
800 Capitol Mall, Suite 5000
Sacramento, CA 95814

RE **:Notice of Labor Code Violations and Intent to File a PAGA Claim**

EMPLOYER : Scorpion Services, Inc., & Verena Bauer & Ariel Talledos as individuals

OUR CLIENT : Omar Ramirez, Jr.

Dear California Labor and Workforce Development Agency Official:

I hope this correspondence finds you well.

Please see the following document enclosed with this correspondence:

1. Client Demand To Scorpion Services, Inc. (hereinafter "Employer" or "Company") dated dated June 6, 2024.

On behalf of our client, Omar Ramirez Jr. ("Client"), please note that Estelle & Kennedy, A Professional Law Corporation, is submitting this Notice of Labor Code Violations pursuant to the California Labor Code Private Attorneys General Act (PAGA), California Labor Code §§ 2698 et seq..

1. Employer Information:

The Client was employed by Scorpion Services, Inc.("Employer"), located at 3255 Cahuenga Boulevard West, #200 in Hollywood, CA 90068.

2. Description of Violations:

The Client alleges that Employer committed the following violations of the California Labor Code:

- **Please see attached correspondence dated June 6, 2024 incorporated herein by reference.**

3. Requested Remedies:

The Aggrieved Employees seek the following remedies:

- Civil Penalties under PAGA
- Unpaid Wages
- Other Damages
- Statutory Penalties
- Interest
- Attorneys' Fees
- Costs of Suit

4. Request for Investigation:

Pursuant to California Labor Code § 2699.3, we request that the LWDA investigate these serious violations. Should the LWDA decide not to investigate, or if no action is taken within the statutory period, the Client will proceed with a civil action under PAGA.

5. Contact Information:

Please direct any inquiries or correspondence regarding this matter to our office at the contact information provided above.

Thank you for your attention to this very important matter. We look forward to your response.

Respectfully,

Estelle & Kennedy, A Professional Law Corporation

Paul Suppa Esq.

cc: Clients; File

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VIA US MAIL WITH TRACKING #9405511206204113187727

June 6, 2024

Scorpion Security, Inc.
3255 Cahuenga Boulevard West, #200
Hollywood, CA 90068

Re: Omar N. Ramirez, Jr. v. Scorpion Security, Inc., Verena Bauer, an individual, Ariel Talledos, an individual
Our File Ref.: Omar N. Ramirez, Jr.

Dear Scorpion Security, Inc. Official:

Please allow this letter to serve as Plaintiff, Omar N. Ramirez, Jr., ("Plaintiff")'s demand for settlement. At all relevant times, Plaintiff was employed by Defendant Scorpion Security, Inc. as a nonexempt employee in the "Professional, Technical, Clerical, Mechanical and Similar Occupations," as defined by Wage Order 4, Section 2(O). Plaintiff was supervised or otherwise primarily interacted with individuals, Ms. Verena Bauer and Mr. Ariel Talledos. Scorpion Security, Inc., Ms. Bauer and Mr. Talledos will hereafter be referred to inclusively as "Defendants".

I. Factual Background

Plaintiff asserts that he was employed January 28, 2021, to the present date. Plaintiff was hired full time for a starting rate of $15.50 per hour working generally 8 hour shifts 5 days a week with two days off per week. Plaintiff received a $0.50 raise to $16.00 on August 16,2021. He received another raise to $17.00 on September 1, 2022, and then another $0.50 raise to $17.50 on January 1, 2023. During employment, Plaintiff maintains that he was often times required to be on duty during his lunch and other breaks and that there was no access to water, shade, or functional restrooms.

The following sections and calculations therein are based on the pay records provided to our office by Scorpion Security, Inc. Attached, please note pay record dated September 10, 2021, showing regular time calculated in excess of 15.25 hours over the standard 80 hour pay period.

This sample document is provided to show the basis for which the calculations below, in each instance, were consistent across the total documents received and the total preliminary violations we observed.

II. Defendants Failed To Properly Compensate Plaintiff 's Wages In Violation Of Labor Code 210 And IWC Orders 1-16

California minimum wage laws require employers to pay non-exempt employees for all hours worked. Hours worked, as defined by the Industrial Welfare Commission, include all time an employee is subject to the employer's control and all time the employee is suffered or permitted to work, regardless of whether the employee is required to work or not. IWC Orders 1-16: Section 2(g). An employer must count all hours worked no matter where the work is performed.

IWC Orders 1-16: Section 6 states:

"(A) Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including the following:
(1) The employee's full name, home address, occupation, and social security number. The employee's date of birth, if under 18 years of age, and designation as a minor. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
(2) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
(3) Total hours worked during the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer."

Plaintiff alleges there were constant errors in the pay documents issued by Defendants. The personnel responsible for reporting and issuing pay documents were non-responsive to inquiries regarding corrections. They also took an extensive amount of time to issue pay that was erroneously withheld.

Labor Code 210 states that:

"(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:
(1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

1st violation x $100.00 = $100.00
167 subsequent violations x $200 = $33,400
Interest: $33,500.00 x 25% = $8,375.00

Total: $41,875.00

III. Defendants Failed To Properly Compensate Plaintiff Overtime Wage In Violation Of Labor Code Sections 510 And 1194 And Wage Order 7

Defendants maintained a policy and practice which required Plaintiff to work in excess of 8 hours per day and/or 40 hours per week. Pursuant to Labor Code Sections 510 and 1194 and Wage Order 7, Defendants were required to pay Plaintiff one and one-half (1 ½) times Plaintiff's regular rate of pay for all hours worked in excess of 8 hours in a day and/or 40 hours per week. On page 18 of the Employee Handbook provided to Plaintiff, the last section requires Plaintiff to sign in agreement to an "Alternative Workweek" schedule that required Plaintiff to work overtime at a regular pay rate.

The handbook indicates it is not in violation of the Labor Code; however, IWC Orders 4: Section 3(c) states that there is an election process Defendants are required to perform in order to instate an alternative workweek as follows:

"(C) Election Procedures
Election procedures for the adoption and repeal of alternative workweek schedules require the following:
(1) Each proposal for an alternative workweek schedule shall be in the form of a written agreement proposed by the employer. The proposed agreement must designate a regularly scheduled alternative workweek in which the specified number of workdays and work hours are regularly recurring. The actual days worked within that alternative workweek schedule need not be specified. The employer may propose a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another.
(2) In order to be valid, the proposed alternative workweek schedule must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held during regular working hours at the employees' work site. For purposes of this subsection, affected employees in the work unitl may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection are met.

Plaintiff was a non-exempt employee of Defendants in California who did not receive proper protections and benefits of the laws governing payment of overtime and double-time wages. At all relevant times, Defendants regularly and consistently maintained a corporate policy and practice of refusing to pay Plaintiff any overtime wages and double-time wages. Pursuant to Labor Code section 510 and Wage Order 7, Defendants were required to pay Plaintiff overtime wages at one-and-one-half (1 ½) times Plaintiff's regular rate of pay for all hours that he worked in excess of eight (8) hours up to and including 12 hours in any workday and/or forty (40) hours in a workweek.

Plaintiff regularly worked in excess of eight hours in a workday and/or forty hours in a workweek. Labor Code Section 1194, subdivision (a) provides that any employee receiving less than the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the amount of this overtime compensation, including interest thereon, reasonable attorneys' fees, and cost of suit, which Plaintiff seeks. Additionally, under Labor Code Section 558, subdivision (a), civil penalties can be assessed against all individuals acting on behalf of Defendants for violations of Labor Code.

Period of: 08/16/2021 to 01/31/2022 Wage rate of: $16.00/hr for 22 weeks

Paid: $24.06 x 6.25 = $150.38
Earned: $24.06 x 70.5 = $1,696.23
Owed: $1,545.85

Period of: 02/01/2022 to 12/3/2022 Wage rate of: $17.00/hr for 48 weeks

Paid: $25.50 x 118 = $3,009.00
Earned: $25.50 x 178.25 = $4,545.38
Owed: $1,536.38

Period of: 01/01/2023 to 06/15/2023 Wage rate of: $17.50/hr for 22 weeks

Paid: $26.25 x 22 = $577.50
Earned: $26.25 x 54.5 = $1,430.63
Owed: $853.13

Total: $3,935.36 Plus an additional amount to be determined.

IV. Defendants Failed To Provide Meal Breaks In Violation Of Labor Code Sections 226.7 And 512, And Section 11 Of Wage Order 5

Plaintiff maintains that he was required to be on duty and answer the phone while on meal breaks. On Page 16 of the Employee Handbook provided to Plaintiff requires Plaintiff to be available during all meal breaks. This section provides for restarting breaks if Plaintiff is interrupted but Plaintiff maintains that this system was not well implemented as activity levels are high while on duty therefore Plaintiff would often go without being able to make up the break time lost.

At all times relevant to this correspondence, Plaintiff was a non-exempt employee of Defendants in California and covered by California Labor Code sections 226.7 and 512, and Wage Order 5.

At all times relevant to this correspondence, Plaintiff was a non-exempt employee of Defendants in California and covered by California Labor Code sections 226.7 and 512, and Wage Order 5.

Labor Code Section 226.7, subdivision (a) provides,

> "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

Labor Code Section 512, subdivision (a) provides, in relevant part:

> "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer must not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

In addition, an employer may not employ an employee for a work period of more than 15 hours per day without providing the employee with a third meal period of not less than 30 minutes before the end of the fifteenth hour of work.

At all times, Plaintiff regularly worked sufficient hours in a workday that entitled him to one, two or three thirty-minute, duty-free meal breaks. At all relevant times, Defendants failed to authorize and permit Plaintiff to take a thirty-minute, duty-free meal break. Plaintiff routinely worked without a meal break or had his meal breaks interrupted with Defendants' knowledge and acquiescence.

By virtue of denying Plaintiff a meal break, Defendants further failed to pay Plaintiff at his regular rate of compensation for each meal break violation. By their action in requiring Plaintiff to work through meal periods and/or their failure to relieve Plaintiff of his duties for off-duty meal breaks, Defendants violated Labor Code Section 226.7 and Section 11 of Wage Order 5 and are liable to Plaintiff. As a result of the unlawful acts of Defendants, Plaintiff was deprived of timely off-duty meal breaks and/or the requisite number of meal breaks, and is entitled to recover under Labor Code Section 226.7, subdivision (b) and Section 11 of Wage Order 5, in the amount of one additional hour of pay at his regular rate of compensation for each workday that he was deprived of a thirty minute, duty-free meal break.

Period of: 02/01/2021 to 08/15/2021 Wage rate of: $15.50/hr for 26 weeks

Owed: $15.50/hr x 5 days/wk x 26 wks = $2,015.00

Period of: 08/15/2021 to 01/31/2022 Wage rate of: $16.00/hr for 22 weeks

Owed: $16.00/hr x 5 days/wk x 22 wks = $1,760.00

Period of: 02/01/2022 to 12/31/2022 Wage rate of: $17.00/hr for 48 weeks

Owed: $17.00/hr x 5 days/wk x 48 wks = $4,080.00

Period of: 01/01/2023 to 06/15/2023 Wage rate of: $17.50/hr for 22 weeks

Owed: $17.50/hr x 5 days/wk x 22 wks = $1,925.00

Total: $9,780.00

V. Defendants Failed To Provide Rest Breaks In Violation Of Labor Code Section 226.7 And Section 12(a) Of Wage Order 5

Plaintiff maintains that he was not given any rest periods during the days he was employed. Labor Code Section 226.7, subdivision (a) provides,

> "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

Section 12(a) of Wage Order 5 provides, in relevant part:

> "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) net rest time per four hours or major fraction thereof. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

Under California law, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." (Brinker v. Superior Court (2012) 53 Cal.4th 1004, 1029; Lab. Code §226.7; Wage Order 5, subd. 12.) Rest periods must be in the middle of each work period. (Wage Order 5, subd. 12.)

Also, Section 12(b) of Wage Order 5 provides, in relevant part:

> "If an employer fails to provide an employee with a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee on (1)

hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

As alleged herein, Defendants failed to authorize and permit rest breaks and/or the requisite number of rest breaks. Plaintiff regularly worked through rest periods at the direction of Defendants and/or with Defendants' knowledge and acquiescence. Defendants failed to pay Plaintiff at his regular rate of compensation for each rest break violation. By their action in requiring Plaintiff to work through rest periods and/or their failure to provide the requisite number of rest breaks, Defendants violated Section 12 of Wage Order 5-2001 and Labor Code Section 226.7 and are liable to Plaintiff.

As a direct and proximate result of Defendants' unlawful action, Plaintiff was deprived of timely rest breaks and/or requisite number of rest breaks, and is entitled to recovery under Labor Code Section 226.7, subdivision (b) in the amount of one additional hour of pay at Plaintiff's regular rate of compensation for each workday that he was denied a timely rest break and/or requisite number of rest breaks.

Period of: 02/01/2021 to 08/15/2021 Wage rate of: $15.50/hr for 26 weeks

Owed: $15.50/hr x 5 days/wk x 26 wks = $2,015.00

Period of: 08/15/2021 to 01/31/2022 Wage rate of: $16.00/hr for 22 weeks

Owed: $16.00/hr x 5 days/wk x 22 wks = $1,760.00

Period of: 02/01/2022 to 12/31/2022 Wage rate of: $17.00/hr for 48 weeks

Owed: $17.00/hr x 5 days/wk x 48 wks = $4,080.00

Period of: 01/01/2023 to 06/15/2023 Wage rate of: $17.50/hr for 22 weeks

Owed: $17.50/hr x 5 days/wk x 22 wks = $1,925.00

Total: $9,780.00

VI. Defendants Are Liable To Plaintiff For Liquidated Damages Pursuant To Labor Code Section 1194.2

Pursuant to Labor Code Section 1194.2(a), in relevant part,

"In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

118 weeks worked between 02/01/2021 to 06/15/2023

Paid: $53,422.86
Interest: $53,422.86 x 25% = $13,355.72
Owed: $66.778.58 Plus an additional amount to be determined.

VII. Working Conditions

Pursuant to Labor Code Section 10(c) of Wage Order 16 states in relevant part,

"In all places of employment, the employer shall provide an adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing."

Labor code Section 10(d) states that unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to and complies with Labor Code Section 512.

Plaintiff alleges that Defendants provided unsanitary bathrooms, no access to water, extreme day time heat with no shade and inadequate personal protective gear for nighttime shifts. Defendants also required Plaintiff to be on duty during all breaks.

Defendants violated Section 10 of the Labor code and Plaintiff is entitled to one (1) hour of pay at the employee's regular rate of compensation for each workday that the break period is not provided.

Period of: 02/01/2021 to 08/15/2021 Wage rate of: $15.50/hr for 26 weeks

Owed: $15.50/hr x 5 days/wk x 26 wks = $2,015.00

Period of: 08/15/2021 to 01/31/2022 Wage rate of: $16.00/hr for 22 weeks

Owed: $16.00/hr x 5 days/wk x 22 wks = $1,760.00

Period of: 02/01/2022 to 12/31/2022 Wage rate of: $17.00/hr for 48 weeks

Owed: $17.00/hr x 5 days/wk x 48 wks = $4,080.00

Period of: 01/01/2023 to 06/15/2023 Wage rate of: $17.50/hr for 22 weeks

Owed: $17.50/hr x 5 days/wk x 22 wks = $1,925.00

Total: $9,780.00

VIII. Waiting Time Penalties

If an employer willfully fails to pay, in accordance with Labor Code Section 201, any wages of an employee who is discharged, the wages of the employee continue as a penalty from their due date at the same rate until paid, up to a maximum of 30 days.

Owed: $17.50/hr x 8 hrs/day x 30 days = $4,200.00

IX. Plaintiff Is Entitled To Pursue An Alter Ego Claim

Labor Code Section 558.1 provides a basis for individual liability against Ariel Talledos and Verena Bauer. More specifically, Labor Code Section 558 provides in relevant part:

"558.1. (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term other person acting on behalf of an employer is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term managing agent has the same meaning as in subdivision (b) of Section 3294 of the Civil Code."

Plaintiff maintains that at all times relevant, Ariel Talledos and Verena Bauer held executive positions or other positions with Scorpion Security, Inc. and acted on behalf of the corporate entity which included decision-making responsibility for, and establishment of illegal payroll practices for Scorpion Security, Inc., as well as possessing operational control of said company and its employees. Pursuant to Labor Code Section 558.1, Ariel Talledos and Verena Bauer will be sought as party defendants because they exercised substantial discretionary authority over decisions that determined Scorpion Security, Inc.'s policies and Plaintiff's wages.

X. Potential Resolution

By this correspondence, Plaintiff wishes to reach out to Defendants to explore the possibility of an early resolution to this matter. The opportunity to potentially resolve this case is not indicative of Plaintiff or his counsel's belief in the strength of this case, but rather a good faith attempt to resolve this matter early on and without the need for protracted litigation. Plaintiff's demands for settlement of the above claims is a lump-sum payment of $146,128.94.

If Defendants are interested in discussing the possibility of an early resolution to this matter, please contact or transmit a response to my office within 30 days of receipt of this correspondence. My telephone number is (800) 265-4280.

Please be informed by this correspondence that if Defendants fail to provide our office with a response within the required time frame, our office intends to file claims with the Labor

Commissioner's Office and pursue a private legal action to enforce our Clients' rights under the above referenced sections of the California Labor Code.

XI. Additional Records

As you are likely aware, employees have the right to access and inspect certain employment records under various provisions of the California Labor Code. Accordingly, our office respectfully demands, pursuant to California Labor Code Section 226(c), that Defendants, within twenty (21) calendar days, forward the following to our office:

1. Pay Stubs per California Labor Code Section 226(a) for the last six (6) months;
2. Time Clock Records per California Labor Code Section 226(b) for the last six (6) months; and,
3. And Daily Activity Logs per the general right to inspect employment records.

Please be informed by this correspondence that if Defendants fail to provide our office with these records within the required time frame, our office intends to file claims with the Labor Commissioner's Office and pursue a private legal action to enforce our Clients' rights under the above referenced sections of the California Labor Code.

Please note while I circulate this correspondence to clients and co-counsel(s), I must reserve the right to modify.

Thank you for your prompt attention to this very important matter.

Sincerely,

ESTELLE & KENNEDY, A Professional Law Corporation

Paul Suppa, Esq.
Attorney For Omar Ramirez, Jr.

cc: File; Client

Scorpion Services Inc.
3255 Cahuenga Blvd W
Suite 200
Hollywood, CA 90068

Omar Ramirez
[redacted]

Direct Deposit

Employee Pay Stub Check number: DD4412 Pay Period: 08/16/2021 - 08/31/2021 Pay Date: 09/10/2021

Employee
Omar Ramirez, [redacted]

SSN
[redacted]

Earnings and Hours	Qty	Rate	Current	YTD Amount
Hourly	95.25	16.00	1,524.00	14,230.19
OT-Hourly	8.25	24.00	198.00	395.62
Holiday				186.00
	103.50		1,722.00	14,811.81

Taxes	Current	YTD Amount
Medicare Employee Addl Tax	0.00	0.00
Federal Withholding	-136.00	-792.00
Social Security Employee	-106.76	-918.33
Medicare Employee	-24.97	-214.77
CA - Withholding	-46.86	-239.41
CA - Disability Employee	-20.66	-177.74
	-335.25	-2,342.25

Adjustments to Net Pay	Current	YTD Amount
CALSAV	-86.10	-285.86

Net Pay	**1,300.65**	**12,183.70**

Direct Deposit	Amount
[redacted]	1,300.65

Sick Time	Accrued	Used	Available
Current	3.15	0.00	30.24
YTD	1.32	24.00	

Memo
Direct Deposit