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VIA ONLINE SUBMISSION

Stewart Knox, Secretary
California Labor & Workforce
Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

VIA CERTIFIED MAIL

Engineered Products, A Papé Company
Attn: Legal Department
9800 40th Ave. S
Seattle, WA 98118

Engineered Products, A Papé Company dba
Overhead Door Company of Santa Clara Valley, Inc.
Attn: Legal Department
1266 Lawrence Station Road
Sunnyvale, CA 94089

Overhead Door Company of Santa Clara Valley, Inc.
Overhead Door Company of Salinas, Inc.
Attn: Legal Department
733 Sanborn Place
Salinas, CA 93901

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE SECTION 2698, *ET SEQ.*

To: The California Labor and Workforce Development Agency; On Time Heating & Air Conditioning LLC dba Overhead Door

From: Andre Roper, on behalf of himself and all other current and former hourly nonexempt employees for violations of the California Labor Code

To Whom It May Concern:

Abramson Labor Group has been retained by former employee Andre Roper ("Mr. Roper") to seek compensation and all other available relief, including civil penalties on his behalf and on the behalf of all those similarly aggrieved (collectively with Mr. Roper, "Claimants") who have been injured by Engineered Products, A Papé Company; Overhead Door Company of Santa Clara Valley, Inc.; and Overhead Door Company of Salinas, Inc. (collectively, "Overhead Door") violations of the California Labor Code. Mr. Roper, on behalf of himself and all other similarly aggrieved current and former hourly nonexempt employees of Overhead Door, intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 ("PAGA").

Factual Statement:

Overhead Door sells and installs commercial and residential garage doors throughout California.

Claimant Mr. Roper worked for Overhead Door as an hourly, nonexempt employee in the position of Commercial Door Installer/Driver, earning $28.00 per hour from approximately October 2021 through approximately September 7, 2023. Mr. Roper, on behalf of himself and all other similarly aggrieved current and former employees in California in various positions, are or were engaged in selling and installing garage doors to commercial and residential customers. As part of their employment with Overhead Door, Claimant and other hourly, nonexempt employees, collectively, "hourly nonexempt employees," are or were assigned to and required to suffer and permitted to work without pay, while performing tasks collectively including, but not limited to, calling customers to ensure their availability for installation, reviewing instructions related to garage door installation before leaving Overhead Door's facility, loading the company truck with new garage doors, driving that truck to customer locations, removing customers' old garage doors, installing new garage doors, hauling the old garage doors back to Overhead Door's facility.

Claimant Mr. Roper regularly worked five (5) days per week for 8 hours or more hours per day. During the entire course of his employment, Overhead Door failed to provide Mr. Roper and continues to fail to provide those similarly aggrieved with some overtime pay and compliant meal periods and rest breaks. Overhead Door has also failed to pay minimum wages to Mr. Roper and other hourly, nonexempt employees in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and section 4 of IWC Wage Order No. 4-2001. As a consequence, Overhead Door has failed to comply with Labor Code sections 226.7, 510, and 512, and sections 3, 11, and 12 of all applicable Industrial Welfare Commission ("IWC") Wage Orders, including but not limited to, IWC Wage Order No. 4-2001. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, Overhead Door has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

Overhead Door has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, Overhead Door has failed and continues to fail to provide timely, accurate wage statements to Mr. Roper and other aggrieved persons in violation of Labor Code section 226(a). With regard to those no longer employed by Overhead Door, including Mr. Roper, Overhead Door has violated Labor Code section 203 by failing to pay all wages due upon separation. Overhead Door has failed and continues to fail to fully reimburse Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for the costs incurred for the cell phone expenses and for the purchase of tools (e.g., hammer, bits, and grinder), in violation of Labor Code section 2802. Separately, Overhead Door has violated Labor Code section 221 by unlawfully deducting wages from Mr. Roper and Claimants for a uniform deposit and, upon separation, a uniform charge for unreturned uniforms. Mr. Roper is informed and believes that such violations are ongoing, systematic, and continuous. Mr. Roper intends to bring an action against Overhead Door under the Private Attorneys General Act ("PAGA") to recover wages and penalties as provided by California law.[1]

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[1] Without limitation, Mr. Roper, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

> The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A,

Theories of Labor Code Violations and Remedies:

Claimant Mr. Roper was employed by Overhead Door from approximately October 2021 through approximately September 7, 2023 as an Commercial Door Installer/Driver. In additional to the job description provided earlier, Mr. Roper also opens the facility by performing the following tasks before clocking in for his shift: disarming the alarm system and then turning on the facility's lights. For a period of at least four (4) years prior to August 2024, but for our purposes here, one (1) year prior, Overhead Door has violated and continues to violate the California Labor Code sections as detailed below.

Claimants also were at all times entitled to payment of **minimum wages**. Overhead Door has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and section 4 of IWC Wage Order No. 4-2001. First, Defendant Claimants worked a substantial amount of time while off-the-clock—meaning they were not punched in for work—and therefore, those working hours were not recorded and then compensated. This off-the-clock time primarily occurred because Claimants (1) were required to clock in at the Overhead Door facilities after performing compensable work like disarming the alarm and turning on lights, (2) doffed uniforms at the end of their shifts after clocking out, and (3) performed corrective work at a job site completed the same day after issues arose after Claimants arrived back at Overhead Door's facility that required Claimants to return to the customer's site. Claimants' off-the-clock time was never subsequently added and, therefore, uncompensated. Accordingly, Claimants were not paid for that time spent working off the clock. Second, Defendant enforces practices that effectively require Claimants to perform work during their meal periods, the effects of which Defendant could have mitigated by adjusting customer expectations and/or by adding more staff to reduce the expected workload. However, Defendant instead chose to instruct Claimants to work through their meal periods on particularly demanding days and to rarely if ever take rest breaks. In effect, these policies and practices cause Claimants to remain on-duty during meal periods and rest breaks, and therefore, constitute a failure on Overhead Door's part to provide compliant meal periods and rest breaks. With that, Overhead Door's corresponding failure to provide premium pay at the correct regular rate, if any premiums were paid at all, in lieu of compliant meal periods and rest breaks constitutes Overhead Door's failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. Overhead Door's failure to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in further detail below, also constitutes a failure to pay minimum wages to Claimants. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and section 20 of IWC Wage Order No. 4-2001.

Claimants were at all times entitled to unpaid off-duty, uninterrupted **meal periods**. As explained in the preceding paragraph, Overhead Door failed to authorize and permit full-length meal periods for Mr. Roper and all other similarly aggrieved employees as required by Labor Code sections 226.7 and 512 and section 11 of IWC Wage Order No. 4-2001. Mr. Roper and all similarly aggrieved persons were required to perform work during their meal periods in the form of continuing to perform their assigned services that

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230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

cut into their 30-minute meal periods, largely because of time constraints in completing all scheduled jobs during their shifts. Claimants did not record (did not clock out and back in for) their meal periods. Despite that, Overhead Door did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant meal periods for each workday on which they occurred. Accordingly, since Overhead Door required Mr. Roper and others similarly situated to work during their meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code sections 558, section 20 of IWC Wage Order No. 4-2001, and 2699(f).

Claimants were at all times entitled to take paid, off duty 10-minute **rest breaks**. However, for the same reasons cited in the preceding paragraph regarding meal periods, Overhead Door likewise failed to authorize and permit Mr. Roper and all other similarly aggrieved employees to take any full-length, off-duty rest breaks as required by Labor Code sections 226.7 and section 12 of IWC Wage Order No. 4-2001. Claimants were not able to take their requisite number of 10-minutes rest breaks based on their shift duration; Claimants regularly worked through their rest breaks. Overhead Door did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant rest breaks for each workday on which they occurred. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and section 20 of IWC Wage Order No. 4-2001. Furthermore, since Overhead Door required their hourly nonexempt employees to perform work during rest periods in violation of Labor Code section 226.7(b), Claimants seek all available penalties set forth in Labor Code sections 558 and 2699.

At all times relevant herein, Claimants were entitled to the payment of **overtime**. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, Overhead Door was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Mr. Roper and Claimants regularly worked overtime hours. Overhead Door has failed to and continues to fail to pay Claimants overtime wages owed for off-the-clock time worked that should have been compensated as overtime, yet regularly required them to work these overtime hours without premium pay under Labor Code section 1194. In short, during the entire course of their employment, Overhead Door failed to provide Mr. Roper and continues to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 4-2001, section 3.

Pursuant to Labor Code sections 201–203, Claimants who have since separated from Overhead Door, including Mr. Roper, were entitled to be paid all **wages owed upon separation** within the statutorily allotted time—immediately (resignation with notice and termination) or within seventy-two (72) hours (resignation without notice). Claimants, including Mr. Roper, did not receive all wages owed upon separation based on Overhead Door's prior failings to pay all wages owed every pay period, including but not limited to meal and rest premiums wed and for all hours worked, as explained above.

Claimants were at all times entitled to be provided timely and accurate **wage statements** from Overhead Door pursuant to Labor Code section 226. Because Overhead Door failed to pay Claimants all of their meal period and rest break premiums for noncompliant meal periods and rest breaks and failed to pay Claimants minimum wages for all hours worked before, during, and after their shifts and for all overtime wages due, Claimants' wage statements were inaccurate in reflecting meal period and rest break premiums owed, overtime and minimum wages, and all hours worked every pay period. As a consequence, Claimants' wage statements also do not reflect the accurate amount of net and gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Finally, Claimants were entitled to be reimbursed by Overhead Door for all necessary, **business-related expenses** they incurred in executing their duties for Overhead Door. California Labor Code section 2802 provides that "An employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." Overhead Door, however, has failed to fully reimburse Mr. Roper and Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for the expenses for the use of their personal cell phones (prior to when Overhead Door provided cell phones) and for the purchase of needed tools (e.g., grinder, hammer, and bits). Accordingly, Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802.

California Labor Code section 221 provides that, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Lincoln has deducted amounts from Mr. Roper and other drivers' compensation for costs associated with a uniform deposit/uniform charge associated with the uniforms Overhead Door required Claimants to wear while working. Therefore, Claimants are entitled to recover amounts Lincoln deducted from their wages pursuant to Labor Code section 221.

Overhead Door's uniform failure to pay minimum and overtime wages, failure to authorize and permit full-length, off-duty meal periods and rest breaks or pay Claimants adequate premium compensation in lieu thereof, failure to keep accurate time records, failure to furnish timely and accurate wage statements, failure to reimburse all necessary, business-related expenses, failure to pay all wages owed upon separation, and unlawfully deducting amounts from wages violate Labor Code sections 201, 202, 203, 204, 221, 226(a), 226.7, 510, 512, 1182.12, 1194, 1197, and 2802, and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys' fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Roper, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Overhead Door for violations of California Labor Code sections 201, 202, 203, 204, 221, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 2802.

Should you require any additional information, please feel free to contact me.

Sincerely,

ABRAMSON LABOR GROUP

Cheryl Kenner

Cheryl A. Kenner