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August 1, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(https://dir.govfa.net/308)

Subject: *Gregory Fernandez v. Performance Systems Integration, Inc. f/k/a Statcomm Inc.*

Dear PAGA Administrator:

This office represents Gregory Fernandez in connection with his claims under the California Labor Code. Mr. Fernandez was an employee of STATCOMM INC and/or PERFORMANCE SYSTEMS INTEGRATION, INC. f/k/a STATCOMM INC. ("STATCOMM").

The employer may be contacted directly at the address below:

PERFORMANCE SYSTEMS INTEGRATION, INC.
7324 SW DURHAM RD
PORTLAND, OR 97224

Mr. Fernandez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Fernandez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by STATCOMM in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

STATCOMM employed Mr. Fernandez as a non-exempt employee from approximately November 2016 to August 2023. Mr. Fernandez worked for STATCOMM as a Service Technician and Lead Fire Alarm Installation Technician out of its facility located in Mountain View, California. During his employment, Mr. Fernandez typically worked ten (10) hours or more per day and four (4) days per week. By the end of his employment, Mr. Fernandez was compensated approximately $52.00 per hour. Mr. Fernandez's job duties included, without limitation, managing projects, tracing wires, installing and replacing devices, completing data entry, troubleshooting, and retrofitting and programming new fire alarm systems.

STATCOMM has committed each of the following Labor Code violations against Mr. Fernandez, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1):[1]

STATCOMM's Company-Wide and Uniform Payroll and HR Practices

PERFORMANCE SYSTEMS INTEGRATION, INC. is a California corporation that is a leading provider of fire and life safety services in the Northwestern United States. Upon information and belief, STATCOMM maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Portland, Oregon, for all non-exempt, hourly paid employees working for STATCOMM in California, including Mr. Fernandez and other aggrieved employees. At all relevant times, STATCOMM issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Fernandez and other aggrieved employees, regardless of their location or position.

Upon information and belief, STATCOMM maintains a centralized Payroll department at its corporate headquarters in Portland, Oregon, which processes payroll for all non-exempt, hourly paid employees working for STATCOMM in California, including Mr. Fernandez and other aggrieved employees. Further, STATCOMM issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Fernandez and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, STATCOMM utilized the same methods and formulas when calculating wages due to Mr. Fernandez and other aggrieved employees in California.

Violation of California Labor Code §§ 510, 511, and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

California Labor Code section 511 and the applicable IWC Wage Order allow employers, with the employees' approval, to offer an alternative workweek schedule that authorizes employees to work no more than ten (10) hours per day and forty (40) hours per week without receiving overtime compensation. An alternative workweek schedule must pay the employees overtime at one and one-half times their regular hourly rate for work in excess of ten (10) hours per day or forty (40) hours per week. Overtime must be paid at twice the employees' regular hourly rate for work in excess of

[1] These facts, theories, and claims are based on Mr. Fernandez's experience and counsel's review of those records currently available relating to Mr. Fernandez's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Fernandez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

twelve (12) hours a day. Labor Code 511 and the applicable IWC Wage Order further provide that an employer may not implement an alternative workweek schedule unless at least two-thirds of the affected employees approve the schedule through a secret ballot election, and the results must be reported to the California Division of Labor Standards Enforcement within 30 days after the results are final.

STATCOMM willfully failed to pay all overtime wages owed to Mr. Fernandez and other aggrieved employees. During the relevant time period, Mr. Fernandez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of ten (10) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, on information and belief, STATCOMM had a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out times in its timekeeping system to the nearest quarter (0.25) of an hour. STATCOMM's rounding policy resulted in the failure to compensate Mr. Fernandez and other aggrieved employees fully for all hours worked, causing Mr. Fernandez and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. STATCOMM's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Mr. Fernandez and other aggrieved employees. To the extent STATCOMM's rounding policy has taken away time worked that was eligible for overtime, Mr. Fernandez and other aggrieved employees were denied overtime pay for all hours worked.

Second, during the relevant time period, STATCOMM had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Fernandez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing jobsites strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with STATCOMM's practices of understaffing and assigning heavy workloads (*see infra*), led Mr. Fernandez and other aggrieved employees to work off-the-clock before and after their scheduled shift times. For example, approximately for one (1) hour per week, Mr. Fernandez was required to communicate with STATCOMM's management over the phone and outside of his scheduled shift times about work-related matters, time for which he was not paid. Further, STATCOMM required Mr. Fernandez and other aggrieved employees to take classes and complete courses to maintain certain certifications, such as The Blue Card Incident Command Training and Certification, which were required for employees who performed field work, but did not compensate them for this time. This off-the-clock work could have been recorded by STATCOMM, but it refused to do so to avoid payment of additional wages to Mr. Fernandez and other aggrieved employees.

Additionally, STATCOMM had, and continues to have, a company-wide practice of forcing Mr. Fernandez and other aggrieved employees to work off-the-clock before their scheduled shift times, because STATCOMM implemented a timekeeping system that did not accurately record time worked before scheduled shifts. For example, after reporting to work, Mr. Fernandez would spend approximately 30 minutes preparing his company vehicle for the day. Upon information and belief, Mr. Fernandez clocked in to record this time spent working, but STATCOMM set up its timekeeping system to not count any time prior to scheduled shift start time as compensable. Alternatively, upon information and belief, STATCOMM's management would alter and/or falsify time records to shave off the time Mr. Fernandez spent working before and/or after his scheduled shift start and/or end time. Thus, STATCOMM failed to track all of the time that employees spent performing work-related tasks before and after their shifts, and Mr. Fernandez and other aggrieved employees received no compensation for this time.

Third, as stated, on information and belief, STATCOMM had, and continues to have, a company-wide policy and/or practice of strictly staffing its jobsites based on the labor hours allocated by each location's labor or payroll budget set by the corporate office. STATCOMM's uniform use of labor budgeting resulted in chronic understaffing, such there were too few employees on duty to handle the workload, which included pressuring employees to meet productivity expectations that they complete a certain number of installations per day. STATCOMM also had a practice of failing to schedule meal periods, which further caused Mr. Fernandez and/or other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Fernandez's meal periods were interrupted because he had to answer phone calls from management regarding work related issues. However, STATCOMM did not compensate Mr. Fernandez and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Fourth, on information and belief, STATCOMM had, and continues to have, a policy and/or practice of requiring that Mr. Fernandez and other aggrieved employees carry company-issued cellular phones and respond to calls at all times. As a result, STATCOMM's management sometimes contacted Mr. Fernandez and other aggrieved employees on the cellular phones during unpaid meal periods to discuss work-related matters. STATCOMM knew or should have known that Mr. Fernandez and other aggrieved employees were performing work while off-the-clock in order to meet STATCOMM's expectations, but failed to compensate them for this time.

Fifth, upon information and belief, STATCOMM had, and continues to have, a company-wide policy and/or practice of failing to pay proper overtime when they required Mr. Fernandez and other aggrieved employees to work outside of their regularly scheduled alternative workweek schedule and failed to pay all applicable overtime and/or double-time compensation owed for such hours of work. In addition, to the extent STATCOMM implemented an alternative workweek schedule, as to Mr. Fernandez and other aggrieved employees, STATCOMM failed to comply with all requirements for implementing an alternative workweek schedule, including, but not limited to, holding proper workweek elections for the employees working alternative workweeks. Accordingly, STATCOMM owes Mr. Fernandez and other aggrieved employees unpaid overtime wages.

Further, on information and belief, because STATCOMM frowned upon employees accruing meal period penalties, STATCOMM's management pressured employees to clock out for meal periods to reflect compliant meal periods, on threat of discipline, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by STATCOMM. Thus, STATCOMM did not record all hours worked during meal periods, and Mr. Fernandez and other aggrieved employees performed work during meal periods for which they were not paid.

STATCOMM knew or should have known that as a result of these company-wide practices and/or policies, Mr. Fernandez and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Fernandez and other aggrieved employees worked shifts of eight (8) hours a day and/or shifts of ten (10) hours or more, or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Fernandez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

STATCOMM's failure to pay Mr. Fernandez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510, 511, and 1198. Mr. Fernandez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

First, as stated above, STATCOMM had a company-wide policy and/or practice of rounding Mr. Fernandez's and other aggrieved employees' clock-in and clock-out times in its timekeeping system to the nearest quarter (0.25) of an hour, resulting in the failure to compensate Mr. Fernandez and other aggrieved employees fully for all hours worked.

Second, as stated, a result of STATCOMM's policy of limiting the amount of overtime employees could accrue, STATCOMM required Mr. Fernandez and other aggrieved employees to perform work off-the-clock before and after their scheduled start and end times, such as communicating with management regarding work related issues, completing courses to maintain certifications, and preparing their company vehicles for the day. Additionally, as stated, STATCOMM's timekeeping system prevented Mr. Fernandez and other aggrieved employees from accurately recording time worked prior to the start of their scheduled shifts because count time worked before scheduled shifts as compensable time. Alternatively, due to STATCOMM's practices of management altering and/or falsifying time records, Mr. Fernandez and other aggrieved employees were not paid for the entire time worked outside of their scheduled shifts.

Third, as also stated above, due to STATCOMM's policies and/or practices of understaffing its jobsites while assigning heavy workloads, failing to schedule meal periods, and/or requiring employees to respond to phone communications, Mr. Fernandez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, STATCOMM's management pressured Mr. Fernandez and other aggrieved employees to record compliant meal periods, even when meal periods were missed, short, and/or interrupted. Thus, STATCOMM systematically failed to pay Mr. Fernandez and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, STATCOMM did not pay minimum wages for all hours worked by Mr. Fernandez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, STATCOMM did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, STATCOMM regularly failed to pay at least minimum wages to Mr. Fernandez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Fernandez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

During the relevant period, as stated, STATCOMM had, and continues to have, a company-wide policy and/or practice of strictly staffing its jobsites based on the labor hours allocated by each location's labor or payroll budget set by the corporate office. STATCOMM's use of labor budgets resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workload and provide uninterrupted meal period coverage, and prevented Mr. Fernandez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, as stated, STATCOMM maintained and implemented a company-wide practice of failing to schedule meal periods, which further caused Mr. Fernandez and other aggrieved employees to not be relieved of their duties for compliant meal periods.

Second, as stated, STATCOMM had, and continues to have, a company-wide policy and/or practice of requiring that Mr. Fernandez and other aggrieved employees respond to requests on company-issued cellular phones, including during meal periods. As a result, Mr. Fernandez and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, STATCOMM's management sometimes interrupted Mr. Fernandez's meal periods because they called him to discuss work related issues. Additionally, Mr. Fernandez frequently took his meal periods late, after the fifth hour of work, due to the heavy workload.

Third, as also stated, on information and belief, because STATCOMM frowned upon employees accruing meal period penalties, STATCOMM's management pressured Mr. Fernandez and other aggrieved employees, on threat of discipline, to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period.

Fourth, Mr. Fernandez and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. For example, during his employment, Mr. Fernandez regularly worked shifts in excess of ten (10) or more hours per day, but was not provided a second 30-minute meal period. Mr. Fernandez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, STATCOMM knew or should have known that as a result of its policies, Mr. Fernandez and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. STATCOMM further knew or should have known that it did not pay Mr. Fernandez and other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, and/or missed. Further, to the extent that STATCOMM's rounding policy reported that Mr. Fernandez and other aggrieved employees were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of work or were less than 30 minutes, Mr. Fernandez and other aggrieved employees did not receive meal period premiums for these improperly rounded meal periods.

Furthermore, STATCOMM engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Fernandez and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

Accordingly, STATCOMM failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Fernandez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, STATCOMM regularly failed to authorize and permit Mr. Fernandez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, STATCOMM's company-wide policies and/or practices of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads, prevented Mr. Fernandez and other aggrieved employees from being relieved of all duty to take their rest periods. STATCOMM also failed to schedule rest periods, which, coupled with STATCOMM's failure to provide adequate rest period coverage, further led to Mr. Fernandez and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, upon information and belief, during the relevant time period, STATCOMM maintained a company-wide on-premises rest period policy, which effectively required that Mr. Fernandez and/or other aggrieved employees remain on the work premises during their rest periods. Because Mr. Fernandez and/or other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, STATCOMM effectively maintained control over Mr. Fernandez and/or other aggrieved employees during rest periods.

As a result of STATCOMM's practices and policies, Mr. Fernandez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Mr. Fernandez had to forgo all of his third rest periods because of STATCOMM's failure to schedule rest periods for employees.

STATCOMM has also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Fernandez and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, STATCOMM failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Fernandez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. STATCOMM has not provided Mr. Fernandez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed $4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, STATCOMM has knowingly and intentionally provided Mr. Fernandez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, STATCOMM issued uniform wage statements to Mr. Fernandez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of hours worked at each hourly rate. Specifically, STATCOMM violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because STATCOMM did not accurately record the time Mr. Fernandez and other aggrieved employees spent working off-the-clock, improperly rounded their total hours worked, and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), STATCOMM did not list the correct amount of gross wages and net wages earned by Mr. Fernandez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, STATCOMM failed to accurately list the total number of hours worked by Mr. Fernandez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list 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; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments . . . ." Labor Code section 1174.5 provides that employers are subject to a $500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), STATCOMM willfully failed to maintain accurate payroll records for Mr. Fernandez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Mr. Fernandez's and other aggrieved employees' total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, STATCOMM engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Fernandez and other aggrieved employees, in violation of section 1198. Furthermore, in light of STATCOMM's failure to provide Mr. Fernandez and other aggrieved employees with second 30-minute meal periods to which they were entitled, STATCOMM kept no records of meal start and end times for second meal periods.

Because STATCOMM failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Fernandez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Fernandez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Fernandez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, STATCOMM failed to pay Mr. Fernandez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Fernandez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

STATCOMM willfully failed to pay Mr. Fernandez and other aggrieved employees who are no longer employed by STATCOMM the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving STATCOMM's employ.

Mr. Fernandez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." IWC Wage Order No. 4-2001 further provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

First, during the relevant time period, STATCOMM required Mr. Fernandez and other aggrieved employees to wear uniforms bearing the company logo, including shirts. Due to the nature of fire alarm systems installation, Mr. Fernandez's uniform items would become very dusty such that he was unable to mix these clothes in with other laundry. As a result, he had to wash his uniform items separately from his regular clothing, thus incurring additional utility and laundry expenses for the upkeep of his uniforms. Thus, STATCOMM failed to maintain uniforms they required Mr. Fernandez and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Second, during the relevant time period, STATCOMM, on a company-wide basis, required Mr. Fernandez and other aggrieved employees to wear special safety shoes such as voltage protection boots, which they were required to wear while at work and necessary for the completion of their work-related duties. However, Defendants did not provide these safety shoes to employees. Instead, Mr. Fernandez and other aggrieved employees were required to purchase safety shoes, such as voltage protection boots, in order to perform their work duties, and were not reimbursed for this cost.

STATCOMM could have provided Mr. Fernandez and other aggrieved employees with the actual equipment for use on the job, such as company voltage protection boots as well as access to laundering services; or STATCOMM could have reimbursed employees for the costs of their boot and laundering expenses or provided a uniform maintenance allowance. Instead, STATCOMM passed these operating costs off onto Mr. Fernandez and other aggrieved employees.

Thus, STATCOMM had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Fernandez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

STATCOMM failed to provide Mr. Fernandez and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). STATCOMM's failure to provide Mr. Fernandez and other aggrieved employees with written notice of basic information regarding their employment with STATCOMM is in violation of Labor Code section 2810.5.

Mr. Fernandez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid . . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid . . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." STATCOMM, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Fernandez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Fernandez seeks the remedies set forth in Labor Code section 558 for himself, 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) and 2699.3(c), 2699.5, and 558, Mr. Fernandez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against STATCOMM for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 511, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Fernandez seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Fernandez's reasonable attempt to settle his dispute with STATCOMM prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553

(2004), this notice serves to inform STATCOMM of Mr. Fernandez's aforementioned grievances and the proposed remedies as detailed below, while affording STATCOMM a reasonable opportunity to satisfy Mr. Fernandez's demands.

Demand is hereby made that STATCOMM shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. STATCOMM shall pay Mr. Fernandez and all other aggrieved employees employed by STATCOMM at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.

2. STATCOMM shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid all reporting time pay.

3. STATCOMM shall conduct a survey or interview all current and former aggrieved employees in California who worked for STATCOMM in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for uniform maintenance costs; safety boots; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. STATCOMM shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. STATCOMM also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.

5. STATCOMM shall reimburse Mr. Fernandez and all aggrieved employees who were required to pay for any business expenses incurred for STATCOMM's benefit, including, but not limited to, uniform maintenance costs and safety boots, as required by Labor Code section 2802.

6. STATCOMM shall pay accrued legal interest to Mr. Fernandez and all aggrieved employees at the rate of 10% per annum for said unpaid wages.

7. STATCOMM shall provide Mr. Fernandez and all aggrieved employees employed by STATCOMM at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).

8. STATCOMM shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

9. STATCOMM shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.

10. STATCOMM shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq*., including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 4-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Ninel Kocharyan
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

Ninel

Ninel Kocharyan

Copy: PERFORMANCE SYSTEMS INTEGRATION, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

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Fernandez v. Performance

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INTEGRATION, INC.
7324 SW DURHAM RD
PORTLAND, OR 97224

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

PERFORMANCE SYSTEMS
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PORTLAND, OR 97224

9590 9402 8803 4005 5749 89

2. Article Number (Transfer from service label)
7022 2410 0000 2264 9995

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
- [ ] Agent
- [ ] Addressee

B. Received by (Printed Name)
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
- [ ] Adult Signature
- [ ] Adult Signature Restricted Delivery
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- [ ] Certified Mail Restricted Delivery
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