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November 20, 2024

LABOR & WORKFORCE DEVELOPMENT AGENCY
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Oakland, CA 94612

Interior Logic Group Holdings IV, LLC
15822 Bernardo Center Drive Ste. 102
San Diego, CA 92127
Certified Mail No: 9589 0710 5270 1148 9629 29

Re: Gilberto Morales v. Interior Logic Group Holdings IV, LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Gilberto Morales (“Plaintiff”) and a proposed group of current and former employees working for Interior Logic Group Holdings IV, LLC (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as a non-exempt employee by Interior Logic Group Holdings IV, LLC, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the *regular rate of pay* for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the *regular rate of pay*. California law also requires that any compensation, including commission pay must be included in the regular rate of pay for the purposes of determining correct overtime rates.

Here, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. As piece rate employees, Plaintiff and the aggrieved employees only earn compensation when they are producing. Plaintiff and other aggrieved employees were

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

November 20, 2024

Page 2 of 5

overtime hours, but were not properly compensated for all hours worked over eight (8) hours in one day or forty (40) hours in one week because they were paid only by the piece installed. Further, Plaintiff and the aggrieved employees were not properly compensated for overtime because when they were paid by the “piece,” the piece rate pay was not blended into their regular rate of pay for the purpose of calculating the overtime rate. As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated §§ 510, 1194, 1194.2 and 1199 with respect to Plaintiff and all aggrieved employees.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Likewise, the Wage Orders (16-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, 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. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendant has had a consistent policy of: (1) failing to provide Plaintiff and the aggrieved employees with a compliant meal break that occurred after the first five hours of each shift; and (2) failed to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that the first meal period was not provided within the first (5) hours of the shift or that a second meal period was not provided. Plaintiff and the aggrieved employees rarely received meal breaks, and only received breaks when traveling to and from a job site back to Defendant’s yard. Additionally, Defendant has had a consistent policy of adding a meal break on Plaintiff and the aggrieved employees’ time sheets, even if Plaintiff and the aggrieved employees did not take a meal break. As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated §§ 226.7 and 512 with respect to Plaintiff and all aggrieved employees.

On July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an Employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. Here, Defendant has had a consistent policy of failing to pay meal period premiums in compliance with California law.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

November 20, 2024

Page 3 of 5

Pursuant to Labor Code § 226.7 and Wage Order 16-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff and the aggrieved employees with a second rest period despite regularly requiring Plaintiff and the aggrieved employees to work over six (6) hours. As Such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7.

As piece rate employees, Plaintiff and the aggrieved employees only earn compensation when they are producing. As such, if an employee took a ten-minute rest period, this time would not be compensated. Defendant does not provide a paid rest period to Plaintiff and the aggrieved employees as required by law. Any rest period Defendant argues it offered or provided to Plaintiff and the aggrieved employees would be an uncompensated (and thus non-compliant) rest period. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each rest period not provided as required by labor Code § 226.7. As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated § 226.7 with respect to Plaintiff and all aggrieved employees.

As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Defendants have had a consistent policy of failing to pay rest premiums in violation of Labor Code § 226.7.

As a result of the claims alleged above, Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period, the piece rate units paid, and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code §226(a)(2) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not include the total hours worked by the employee. As such, Plaintiff is an aggrieved employee within the meaning PAGA and Defendants has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Labor Code §226(a)(3) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the number of piece-rate units earned and any applicable piece rate if the employee is

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

November 20, 2024

Page 4 of 5

paid on a piece-rate basis. Defendants issue Plaintiff and the aggrieved employees wage statements that do not include number of piece-rate units earned and any applicable piece rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Also, Defendant issued to Plaintiff and the aggrieved employees itemized wage statements that did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226(a)(9). The itemized wage statements provided to Plaintiff and the aggrieved employees did not include the hours worked at each hourly rate.

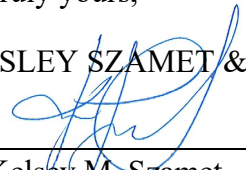
Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203. As such, Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §§201, 202, and 203. (See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754, reh’g denied (June 13, 2018), review denied (Aug. 8, 2018), allowing named Plaintiff to pursue PAGA penalties for violations not personally suffered.

Further, under Labor Code § 2699.3(c)(2)(A), Defendant may cure the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, and 1199, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY SZAMET & LY

By: 
Kelsey M. Szamet

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

November 20, 2024

Page **5** of **5**

[KMS/tg]

Cc: 1. Abramson Labor Group, 11846 Ventura Blvd., Suite 100, , Studio City, CA91604