1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

SAIRAH BUDHWANI
310.929.5455 Direct
Sairah.Budhwani@capstonelawyers.com

November 19, 2024

VIA ONLINE SUBMISSION

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

Subject: *Anselmo Plancarte v. Prometheus Real Estate Group, Inc.*

Dear PAGA Administrator:

This office represents Anselmo Plancarte in connection with his claims under the California Labor Code. Mr. Plancarte was an employee of PROMETHEUS REAL ESTATE GROUP, INC. ("PROMETHEUS").

The employer may be contacted directly at the address below:

PROMETHEUS REAL ESTATE GROUP, INC.
1 NORTH B STREET SUITE 4000
SAN MATEO, CA 94401

Mr. Plancarte 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.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Plancarte seeks relief on behalf of himself, the State of California, and other persons who are or were employed by PROMETHEUS as a non-exempt, hourly paid employee in California 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.

PROMETHEUS employed Mr. Plancarte as an hourly paid, non-exempt employee from approximately February 2021 to January 2024. Mr. Plancarte worked for PROMETHEUS as a Neighborhood Service Manager at the Parker Palo Alto Apartments community in Palo Alto, California. During his employment, Mr. Plancarte typically worked eight (8) hours or more per day, and five (5) days per week. At the time Mr. Plancarte's employment with PROMETHEUS ended, he earned approximately $42.60 per hour. His job duties included, without limitation, reviewing and assisting with residents' maintenance requests, reviewing pool maintenance logs, scheduling third-party contractors, and assigning tasks to maintenance crews.

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

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

PROMETHEUS REAL ESTATE GROUP, INC. is a California corporation. PROMETHEUS owns and manages multifamily properties in California, Oregon, and Washington. Upon information and belief, PROMETHEUS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Mateo, California, for all non-exempt, hourly paid employees working for PROMETHEUS in California, including Mr. Plancarte and other aggrieved employees. At all relevant times, PROMETHEUS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Plancarte and other aggrieved employees, regardless of their location or position.

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

Violation of California Labor Code §§ 510 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 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.

PROMETHEUS willfully failed to pay all overtime wages owed to Mr. Plancarte and other aggrieved employees. During the relevant time period, Mr. Plancarte 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 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.

[1] These facts, theories, and claims are based on Mr. Plancarte's experience and counsel's review of those records currently available relating to Mr. Plancarte'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. Plancarte 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.

First, during the relevant period, PROMETHEUS had a company-wide "on-call" policy, whereby it required Mr. Plancarte and other aggrieved employees to work "on-call" or on standby. During an "on-call" shift, Mr. Plancarte and other aggrieved employees had to be available to work overnight shifts, such as from 6:00 p.m. to 9:00 a.m. for two (2) weeks at a time, or 24 hours per day, seven (7) days per week. While working an "on-call" shift, Mr. Plancarte and other aggrieved employees were required to respond to calls from residents within 20 minutes, and if necessary, report to the jobsite to address the maintenance issue in person. When scheduled to be "on-call," Mr. Plancarte and other aggrieved employees were, in essence, on controlled standby for PROMETHEUS because they could not use that time freely for their own purposes and were forced to put their lives on hold. For example, Mr. Plancarte was restricted from traveling and from having alcoholic beverages while "on-call" because he knew that he had to drop whatever he was doing at a moment's notice if he received a call. On information and belief, PROMETHEUS paid Mr. Plancarte and other aggrieved employees two (2) hours for "standby time" each day they were on call, plus time they spent traveling to and from residents' locations and responding to issues in-person. However, PROMETHEUS failed to pay Mr. Plancarte and other aggrieved employees for *all* of the time they spent waiting for a call from PROMETHEUS and were unable to use their time for their own purposes.

Second, on information and belief, PROMETHEUS's timekeeping system (a mobile application provided by ADP) is programmed with a geolocation-based fencing function that prevents employees from being able to clock in or clock out when they are outside of a designated area. This resulted in Mr. Plancarte and other aggrieved employees performing some of their duties off-the-clock, especially when assigned to work an on-call shift. For example, because Mr. Plancarte was restricted from clocking in on the ADP application unless he was physically located within PROMETHEUS's designated virtual perimeter near the apartment complex that he was assigned to, he was unable to record the time he spent traveling to his assigned apartment until he was within the designated perimeter; and, he was unable to clock in when called to attend to an issue at any location other than his assigned apartment complex. Thus, PROMETHEUS failed to track this time spent working, and Mr. Plancarte and other aggrieved employees received no compensation for this time.

Third, during the relevant time period, on information and belief, PROMETHEUS had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Plancarte 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. Specifically, PROMETHEUS's management pressured Mr. Plancarte and other aggrieved employees to record their scheduled shift start-times and shift end-times, instead of their actual hours worked to limit overtime hours employees were eligible to be compensated for. Because PROMETHEUS discouraged overtime accrual, Mr. Plancarte and other aggrieved employees were required to complete assigned tasks outside of their scheduled shifts without being compensated for the time they worked. For example, approximately once every 3 months, Mr. Plancarte's manager required him to arrive 20 minutes earlier than his scheduled shift start time to conduct a walkthrough of the property in preparation for regional managers' visits. As a further example, Mr. Plancarte's manager required him to complete tasks after he had clocked out, such as posting notices on the community bulletin board, time for which he was not paid. Thus, PROMETHEUS failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Plancarte and other aggrieved employees received no compensation for this time.

Fourth, PROMETHEUS maintained and implemented a company-wide on-premises meal period policy, which effectively required Mr. Plancarte and other aggrieved employees to remain on or near the work premises during their meal periods. Because Mr. Plancarte and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Moreover, PROMETHEUS had, and continues to have, a policy and/or practice of requiring that Mr. Plancarte and other aggrieved employees carry a company-issued radio/mobile device and/or their personal cellular phones and respond at all times, including during meal periods. For example, Mr. Plancarte would frequently have his meal periods interrupted because he was required to answer calls from PROMETHEUS's management. Thus, PROMETHEUS effectively maintained control over Mr. Plancarte and other aggrieved employees during unpaid meal periods. PROMETHEUS knew or should have known that Mr. Plancarte and other aggrieved employees were performing work while off-the-clock in order to meet PROMETHEUS's expectations, but failed to compensate them for this time.

PROMETHEUS knew or should have known that as a result of these company-wide practices and/or policies, Mr. Plancarte 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. Plancarte and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Plancarte and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

PROMETHEUS's failure to pay Mr. Plancarte and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Plancarte and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PROMETHEUS into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, 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. 5-2001 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, § 11050(2)(L) (defining "Hours Worked").

First, as stated above, PROMETHEUS systematically, and on a company-wide basis, required Mr. Plancarte and other aggrieved employees to work "on-call" shifts during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Mr. Plancarte and other aggrieved employees were subject to PROMETHEUS's control during "on-call" shifts, PROMETHEUS did not pay Mr. Plancarte and other aggrieved employees at least minimum wages for all hours that they were suffered or permitted to work.

Second, as set forth above, PROMETHEUS's mobile timekeeping system prevented employees from accurately recording their hours worked due to geofencing restrictions. As a result, Mr. Plancarte and other aggrieved employees performed work off-the-clock, such as traveling to assigned apartment complexes and resolving maintenance issues.

Third, due to PROMETHEUS's policies of limiting the amount of overtime employees could accrue and pressuring employees to record only their scheduled hours in the timekeeping system rather than hours actually worked, PROMETHEUS systematically failed to pay Mr. Plancarte and other aggrieved employees for actual hours worked during on-call shifts, and before and after their scheduled shifts, because these hours were not accurately recorded. Because PROMETHEUS discouraged and impeded Mr. Plancarte and other aggrieved employees from recording hours worked that were outside of their scheduled shifts and/or during their on-call shifts, Mr. Plancarte and other aggrieved employees were required to perform work off-the-clock, including conducting walkthroughs of the property and posting notices on community bulletin boards.

Fourth, as also stated, PROMETHEUS had a company-wide policy and/or practice of requiring that Mr. Plancarte and other aggrieved employees effectively stay on the work premises during unpaid meal periods and carry a company-issued radio/mobile device and/or personal cellular phone and to respond to requests at all times, including during meal periods. As a result, Mr. Plancarte 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.

PROMETHEUS did not pay at least minimum wages for all hours worked by Mr. Plancarte and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, PROMETHEUS 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, PROMETHEUS regularly failed to pay at least minimum wages to Mr. Plancarte 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. Plancarte and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PROMETHEUS into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, 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.

As stated, on information and belief, during the relevant time period, PROMETHEUS maintained and implemented a company-wide on-premises meal period policy for employees, which effectively required that Mr. Plancarte and other aggrieved employees remain on or near the work premises during the meal periods. Because Mr. Plancarte and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Moreover, as stated, PROMETHEUS had a company-wide policy and/or practice of requiring that Mr. Plancarte and other aggrieved employees carry a company-issued radio/mobile device and/or personal cellular phone and to respond to requests at all times, including during meal periods. Thus, PROMETHEUS effectively maintained control over Mr. Plancarte and other aggrieved employees during meal periods.

As a result, Mr. Plancarte 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, Mr. Plancarte's meal periods were frequently interrupted by calls from management to discuss emergency service requests and other work-related matters. Mr. Plancarte 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 herein mentioned, PROMETHEUS knew or should have known that, as a result of these policies, Mr. Plancarte and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. PROMETHEUS further knew or should have known that PROMETHEUS did not pay Mr. Plancarte and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Moreover, PROMETHEUS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Plancarte and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that PROMETHEUS did pay Mr. Plancarte and other aggrieved employees premium pay for missed, late, and interrupted meal periods, PROMETHEUS did not pay Mr. Plancarte and other aggrieved employees at the correct rate of pay because PROMETHEUS systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. For example, PROMETHEUS paid Mr. Plancarte and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Mr. Plancarte's and other aggrieved employees' wage statements as "Leaserenewincen." During pay periods that Mr. Plancarte and other aggrieved employees were paid premium pay for missed, late, and interrupted meal periods, PROMETHEUS did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Plancarte's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay meal premiums. Specifically, PROMETHEUS paid Mr. Plancarte and other aggrieved employees meal period premiums at their straight hourly rate of pay instead of at their regular rate of pay..

Accordingly, PROMETHEUS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Plancarte and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PROMETHEUS into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, 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, PROMETHEUS regularly failed to authorize and permit Mr. Plancarte and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. PROMETHEUS's company-wide practices, including understaffing and assigning heavy workloads, and its requirement that employees carry a company-issued radio/mobile device and/or personal cellular phone at all times, including during rest periods, prevented Mr. Plancarte and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, PROMETHEUS failed to schedule rest periods, which, coupled with PROMETHEUS's failure to provide adequate rest period coverage, further led to Mr. Plancarte and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, PROMETHEUS maintained and implemented a company-wide on-premises rest period policy, which effectively required that Mr. Plancarte and other aggrieved employees remain on the work premises during their rest periods. The policy states, in relevant part: "[b]ecause employees receive compensation for rest breaks, managers can require employees to remain on the premises during their rest breaks." Because Mr. Plancarte and 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, PROMETHEUS maintained control over Mr. Plancarte and other aggrieved employees during rest periods.

As a result of PROMETHEUS's practices and policies, Mr. Plancarte 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. Plancarte had to forgo his rest periods altogether due to the lack of rest period coverage.

PROMETHEUS has also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Plancarte and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that BOARDWALK did pay other Mr. Plancarte and aggrieved employees one (1) additional hour of premium pay for missed rest periods, BOARDWALK did not pay Mr. Plancarte and other aggrieved employees at the correct rate of pay for premiums because BOARDWALK failed to include all compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, PROMETHEUS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Plancarte and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PROMETHEUS into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, 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. 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, PROMETHEUS has knowingly and intentionally provided Mr. Plancarte and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PROMETHEUS issued uniform wage statements to Mr. Plancarte 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, meal and rest period premiums, and/or paid sick leave and the corresponding number of hours worked at each hourly rate. Specifically, PROMETHEUS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because PROMETHEUS did not record the time Mr. Plancarte and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted (and therefore time for which they should have been paid), PROMETHEUS did not list the correct amount of gross wages and net wages earned by Mr. Plancarte and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, PROMETHEUS failed to accurately list the total number of hours worked by Mr. Plancarte 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).

Second, because PROMETHEUS did not calculate other Mr. Plancarte's and aggrieved employees' regular rate of pay correctly for purposes of paying meal and rest period premiums and paid sick leave, PROMETHEUS did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). PROMETHEUS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for meal and rest period premiums and paid sick leave, 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 hours 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), PROMETHEUS willfully failed to maintain accurate payroll records for Mr. Plancarte 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.

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, PROMETHEUS 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. Plancarte and other aggrieved employees, in violation of section 1198.

Because PROMETHEUS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Plancarte 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. Plancarte 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. Plancarte and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PROMETHEUS into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, 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, PROMETHEUS failed to pay Mr. Plancarte and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

Mr. Plancarte and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PROMETHEUS into compliance with Labor Code section 204, 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.

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

Mr. Plancarte and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PROMETHEUS into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. California Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, PROMETHEUS did not pay Mr. Plancarte and other aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, PROMETHEUS paid Mr. Plancarte and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, PROMETHEUS failed to incorporate all remunerations, including incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when Mr. Plancarte and other aggrieved employees took sick leave and received these other forms of pay, PROMETHEUS failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, PROMETHEUS paid Mr. Plancarte and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

PROMETHEUS's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Plancarte and other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

Mr. Plancarte and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PROMETHEUS into compliance with Labor Code section 246, pursuant to Labor Code sections 248.5 and/or 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." PROMETHEUS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Plancarte's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Plancarte 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 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Plancarte acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against PROMETHEUS for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

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

Pre-Litigation Demand

This notice shall further serve as Mr. Plancarte's reasonable attempt to settle his dispute with PROMETHEUS prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform PROMETHEUS of Mr. Plancarte's aforementioned grievances and the proposed remedies as detailed below, while affording PROMETHEUS a reasonable opportunity to satisfy Mr. Plancarte's demands.

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

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

2. PROMETHEUS 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 and provided lawful meal and rest periods.

3. PROMETHEUS shall conduct a survey or interview all current and former aggrieved employees in California who worked for PROMETHEUS 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 and the number of rest periods which were not authorized and permitted, with the investigation to be completed within 60 days.

4. PROMETHEUS shall pay Mr. Plancarte and 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. PROMETHEUS also shall pay Mr. Plancarte and 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. PROMETHEUS shall pay accrued legal interest to Mr. Plancarte and all aggrieved employees at the rate of 10% per annum for said unpaid wages.

6. PROMETHEUS shall provide Mr. Plancarte and all aggrieved employees employed by PROMETHEUS 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).

7. PROMETHEUS 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.

8. PROMETHEUS shall properly calculate aggrieved employees' rates of pay for meal and rest period premiums, and/or paid sick leave based on all remuneration paid, pursuant to Labor Code sections 226.7, 510, and 246(l).

9. PROMETHEUS 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, 248.5, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 5-2001, 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:

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

Best Regards,

Sairah Budhwani

Copy: PROMETHEUS REAL ESTATE GROUP, INC. (via U.S. Certified Mail)

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

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ESTATE GROUP, INC.
1 NORTH B STREET SUITE 4000
SAN MATEO, CA 94401

PROMETHEUS REAL
ESTATE GROUP, INC.
1 NORTH B STREET SUITE 4000
SAN MATEO, CA 94401

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- Print your name and address on the reverse so that we can return the card to you.

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