



November 18, 2024

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: Brian Michael Sylvester Beltran v. Liberty Bell Equipment Corporation, et al.

To Whom It May Concern:

Please be advised that this law firm represents Brian Michael Sylvester Beltran (“Mr. Beltran”) in claims for Labor Code violations arising from his employment with Liberty Bell Equipment Corporation; ORS Nasco, LLC; Essendant Management Services LLC; Essendant Industrial LLC dba ORS Nasco; CPO Commerce, LLC; and DOES 1 through 100 (collectively referred to herein as “Employers”). Mr. Beltran is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Employers’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

For purposes of this letter, the “aggrieved employees” whom Mr. Beltran seeks to represent are the other non-exempt employees of Employers who performed work in California at any time during the one year preceding the date of this letter through the present.

Mr. Beltran worked for Employers from approximately December 17, 2020 to March 13, 2024. Employers are in the automotive and warehousing industries. Mr. Beltran worked for Employers as a picker, packer and receiver of tools, as a warehouse associate or distribution associate 2 and for approximately 2 to 3 months in inventory control. Mr. Beltran was generally scheduled to work 5 or 6 days per week from Monday through Friday and every other Saturday unless he was in school. For a couple of months out of each year, he was generally scheduled to work every Saturday. Mr. Beltran was generally scheduled to work from 8:00 a.m. to 4:30 p.m., but he often worked longer until 5:30 p.m. or up to 6:30 p.m. During the peak season in approximately October and/or November of each year, Mr. Beltran worked 12 hours per day also 5 to 6 days per week.

Throughout the duration of Mr. Beltran’s employment with Employers, Mr. Beltran and other aggrieved employees were not paid for all hours worked as Employers would not accurately keep track of their actual hours worked. Upon information and belief, the time

records maintained by Employers were not reflective of the actual number of hours that Mr. Beltran and other aggrieved employees actually worked. Mr. Beltran and other aggrieved employees generally clocked in to work with a badge on a computer screen in the break room. Employers instructed Mr. Beltran and other aggrieved employees to arrive 10 minutes prior to clocking in. Additionally, Mr. Beltran and other aggrieved employees spent at least 2 to 4 minutes in line waiting to clock in. Employers did not pay Mr. Beltran and other aggrieved employees for the time they spent waiting prior to clocking in. Overall, Mr. Beltran estimates that he and other aggrieved employees spent at least approximately 50 minutes each week working off the clock.

When Mr. Beltran and other aggrieved employees worked overtime, they were not always compensated at the correct regular rate. Mr. Beltran and other aggrieved employees worked overtime hours, but did not receive overtime compensation equal to one and one-half times their regular rates of pay for all overtime hours worked. Upon information and belief, Employers systematically applied the incorrect overtime rate. Even though Mr. Beltran and other aggrieved employees qualified for approximately \$50 to \$300 of bonus pay approximately every 3 months, Employers did not incorporate bonus pay issued to Mr. Beltran and other aggrieved employees into their regular rates. Also, sometimes, Employers paid overtime to Mr. Beltran and other aggrieved employees at the straight rate. For example, check number 17069 with a pay date of May 13, 2022 reflects that Mr. Beltran was paid at the straight rate of \$17.59 for approximately 2.08 hours of overtime worked. As a result, Employers failed to ensure that Mr. Beltran and other aggrieved employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Mr. Beltran and other aggrieved employees received proper overtime wages for all overtime hours worked, in compliance with the Wage Orders.

Employers also did not provide Mr. Beltran and other aggrieved employees with all legally compliant first meal periods when they worked shifts in excess of 5.0 hours and generally did not provide a legally compliant second meal period when they worked shifts longer than 10 hours. Mr. Beltran and other aggrieved employees missed their first meal period approximately at least once per year when instructed to help other employees. Even though Mr. Beltran and other aggrieved employees sometimes worked more than 10 hours each day for at least one month out of each year, Employers did not generally provide Mr. Beltran and other aggrieved employees with a second meal period. Despite Employers' failure to provide Mr. Beltran and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, Employers did not provide Mr. Beltran and other aggrieved employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, Employers maintained no payroll code or another mechanism for the payment of meal period premiums in the event Mr. Beltran and other aggrieved employees were not authorized to take lawful meal periods.

Mr. Beltran and other aggrieved employees were not authorized to take all legally required first, second and third rest periods. Approximately once per year, Mr. Beltran and other aggrieved employees missed their first and/or second rest periods due to helping other

employees with work tasks such as locating items. On the days when Mr. Beltran and other aggrieved employees worked approximately 12 hours, Employers generally did not provide them with a third rest period. Despite Employers' failure to authorize and permit Mr. Beltran and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, Employers never provided Mr. Beltran and other aggrieved employees with an hour of pay at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, Employers maintained no payroll code or another mechanism for the payment of rest period premiums in the event Mr. Beltran and other aggrieved employees were not authorized to take lawful rest periods.

Employers have maintained inaccurate payroll records, failed to timely pay all wages owed to employees, and failed to timely pay separating employees at the time of their separation, and issued inaccurate wage statements. This is in part a result of Employers' failure to accurately compensate Mr. Beltran and other aggrieved employees for all minimum and overtime wages, and failure to pay premium pay for failing to provide all required meal periods and authorize all rest periods.

Employers failed to issue to Mr. Beltran and other aggrieved employees accurate itemized statements in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) 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, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Finally, Employers failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Mr. Beltran and other aggrieved employees written notices, in the language normally used to communicate employment related information to the employees, containing information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the employer; v) the address of the legal entity that is the employer; vi) the telephone number of the employer; vii) identifying information for the employer's workers' compensation insurance carrier; and viii) information informing the employee of their right to accrue and use paid sick leave. Despite maintaining an obligation to provide these disclosures to Mr. Beltran and other aggrieved employees, Employers failed to do so, in violation of Labor Code § 2810.5.

As described above, Employers committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Orders ("the Wage Orders"):

Minimum Wage Violations

Employers were required to pay Mr. Beltran and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. See Labor Code §§ 1182.12, 1194; 1194.2, 1197; the Wage Orders. As alleged above, Employers maintained and maintain timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Beltran and other aggrieved employees. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Beltran and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

Employers were required to pay Mr. Beltran and other aggrieved employees overtime wages for all overtime hours worked. See Labor Code §§ 1194(a) and 1198; the Wage Orders. The Wage Orders require an employer to pay overtime wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth in the Wage Order. At all times relevant herein, Employers caused Mr. Beltran and other aggrieved employees to work overtime hours but did not compensate Mr. Beltran and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

Meal Period Violations

As alleged above, Employers failed to provide Mr. Beltran and other aggrieved employees with all required and compliant meal periods due to Employers' meal period policies/practices that often fail to provide full, 30 minute off-duty first meal periods before the end of the fifth hour of work or a second meal period for shifts worked in excess of ten (10) hours. See Labor Code §§ 226.7 and 512; the Wage Orders. As a result, Mr. Beltran and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. See Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

Rest Period Violations

As alleged above, Employers also failed to authorize and permit Mr. Beltran and other aggrieved employees to take all required paid rest periods. See Labor Code §§ 226.7 and 516; the Wage Orders. As a result, Mr. Beltran and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required paid rest periods. See Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or

rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Failure to Reimburse Necessary Business Expense

Employers were subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." Employers were subject to Labor Code § 2804, which states that "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State." As alleged herein, due to Employers' unlawful reimbursement practices, Employers failed to indemnify Mr. Beltran and other aggrieved employees for all necessary business expenses incurred. Mr. Beltran and other aggrieved employees were not ever provided any reimbursement for these necessary business expenses.

Wage Statement Violations

As described above, Employers were required to furnish Mr. Beltran and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); the Wage Orders. As a result of Employers' failure to pay all overtime wages, minimum wages, and failure to pay all required meal and rest period premium wages, Employers maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Beltran and other aggrieved employees in violation of Labor Code § 226.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Employers failed to timely pay Mr. Beltran and other aggrieved employees all of their final wages at the time of separation, which included all overtime and minimum wages, and all meal and rest period premium wages at the time of aggrieved employees' separation of employment. Pursuant to Labor Code § 203, Employers' failure to pay all final wages due to Mr. Beltran and other aggrieved employees was willful and, consequently, entitles Mr. Beltran and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Employers failed to pay their final wages after their separation from employment, up to a maximum of thirty days.

As an "aggrieved employee," Mr. Beltran will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil

penalties resulting from the wage and hour violations alleged herein. Based on Mr. Beltran's own investigation, and on information and belief, Employers committed and continue to commit the following Labor Code violations:

- a. Employers violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Beltran and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Employers violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Beltran and other aggrieved employees all overtime compensation earned;
- c. Employers violated Labor Code §§ 226.7, 512, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Beltran and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. Employers violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Beltran and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Beltran and other aggrieved employees at their respective regular rates of compensation;
- e. Employers violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Beltran and other aggrieved employees for all work-related expenses incurred;
- f. Employers violated Labor Code § 226 by failing to furnish Mr. Beltran and other aggrieved employees with accurate and compliant itemized wage statements;
- g. Employers violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Mr. Beltran and other aggrieved employees;
- h. Employers violated Labor Code § 204 by failing to pay Mr. Beltran and other aggrieved employees all wages earned at least twice during each calendar month;
- i. Employers violated Labor Code § 245.5 by failing to permit and authorize Mr. Beltran and other aggrieved employees to exercise the use of their accrued paid sick leave days;
- j. Employers violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Beltran and other aggrieved employees; and

- k. Employers violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Beltran and other aggrieved employees.
- l. Employers violated Labor Code §§ 204 and 221-223 by failing to pay Mr. Beltran and other aggrieved employees all agreed-upon wages including bonus wages accrued.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Employers if the LWDA intends to investigate the alleged violations of the Labor Code stated herein. Please contact me should you require additional information.

Very truly yours,
STANSBURY BROWN LAW, PC



Jessica Flores

cc: Liberty Bell Equipment Corporation (via certified mail)
ORS Nasco, LLC (via certified mail)
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