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Case Number CVRI2501262 0000121375441 - Jason B. Galkin, Executive Officer/Clerk of the Court By Janelle Blackwell, Clerk

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Attorney for Plaintiff HUGO JIMENEZ VALENZUELA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

HUGO JIMENEZ VALENZUELA, an individual;

Plaintiff,

vs.

HAL HAYS CONSTRUCTION, INC., a California Corporation; HAL A. HAYS, an individual; KIRBY S. HAYS, an individual; and DOES 1 through 20, inclusive;

Defendants.

Case Number: CVRI2501262

COMPLAINT FOR:

1. **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE § 2698 *et seq*. ("PAGA");**

(UNLIMITED CIVIL)
(DEMAND EXCEEDS $35,000)

COMES NOW, Plaintiff HUGO JIMENEZ VALENZUELA ("Plaintiff") hereby complains against Defendants HAL HAYS CONSTRUCTION, INC., HAL A. HAYS, KIRBY S. HAYS, and DOES 1 through 20, inclusive, (collectively "Defendants") and each of them, and alleges as follows:

JURISDICTION

1. This Court has personal jurisdiction over Defendants because Defendants engaged in wrongful conduct in the State of California, which caused harm to Plaintiff in this state.

2. Venue is proper in this Court, because Defendants employ persons in this county, employed Plaintiff in this county, and thus a substantial portion of the occurrences related to this action occurred in this county. *Cal. Civ. Proc. Code§ 395*.

PARTIES

3. Plaintiff HUGO JIMENEZ VALENZUELA is an individual and a resident of the County of Riverside and citizen of the State of California.

4. Plaintiff is informed and believes, and based thereon alleges that Defendant HAL HAYS CONSTRUCTION, INC. is a California Corporation, organized and existing to do business under the laws of the State of California, with its principal place of business located in Riverside County, California.

5. Plaintiff is informed and believes, and based thereon alleges that Defendant HAL A. HAYS is an individual and a resident of the County of Riverside and citizen of the State of California.

6. Plaintiff is informed and believes, and based thereon alleges that Defendant KIRBY S. HAYS is an individual and a resident of the County of Riverside and citizen of the State of California.

7. Plaintiff is informed and believes, and based thereon alleges that at all times herein mentioned Defendants and DOES 1 through 20, are and were individuals, sole proprietorships, corporations, business entities, persons, and partnerships, licensed to do business and/or actually doing business in the State of California.

8. Plaintiff is unaware of the true names and capacities, whether informed and believes and thereon alleges that at all times herein mentioned Defendants and DOES 1 through 20, are and were individual, corporate, associate, or otherwise, of the Defendants sued as DOES 1 through 20, inclusive. They are unknown to Plaintiff and therefore Plaintiff issues them by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when they become known to Plaintiff. Plaintiff is informed and believes, and based thereon alleges, that DOES 1 through 20, inclusive, are indebted to Plaintiff as hereinafter alleged, and that Plaintiff's rights against such fictitiously named Defendants arise from such indebtedness.

9. Plaintiff is informed and believes, and based thereon alleges that each Defendant sued in this action, including each Defendant sued by the fictitious names DOES 1 through 20, inclusive, is responsible and liable in some manner for the occurrences, controversies and damages alleged below.

10. All references to "Defendants," "Defendants," "company," "company's," "employer" or any similar language, whether singular or plural, shall mean "Defendants, and each of them" when used

throughout this complaint.

11. At all times herein mentioned, Defendants participated in the doing of the acts and omissions herein alleged, were acting within the purpose, course and scope of said agency and/or employment to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, managing agents, servants, employees, alter-egos, co-conspirators, joint-venturers, partners, successors in interest and predecessors in interest of each of the other Defendants.

12. At all times herein mentioned, Defendants were acting within the purpose, course and scope of said agency and/or employment so as to invoke vicarious liability and *respondeat superior* liability among other theories of liability to hold Defendants liable and responsible for the injuries and damages to Plaintiff.

13. At all times herein mentioned, Defendants were members of and engaged in a joint venture, partnership and common enterprise, and acting within the purpose, course and scope of, and in pursuit of, said joint venture, partnership and common enterprise.

14. At all times herein mentioned, the acts and omissions of various Defendants contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged.

15. At all times herein mentioned, Defendants, including Defendants' managing agents, officers and directors, had advanced knowledge of and/or ratified each and every act or omission complained throughout this complaint. At all times relevant herein, Defendants and/or their managing agents, officers or directors committed and/or participated in the wrongful acts and omissions complained of throughout this complaint or ratified such acts and omissions. At all times herein mentioned, the Defendants aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

16. Plaintiff is informed and believes, and based thereon alleges that there exists such a unity of interest and ownership between Defendants that the individuality and separateness of Defendants have ceased to exist.

17. The business affairs of Defendants are, and at all times relevant hereto were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in inextricable

confusion.

18. The recognition of the separate existence of any Defendants would not promote injustice, in that it would permit that Defendants to wrongfully insulate itself from liability to Plaintiff.

19. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased.

20. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by it.

21. Plaintiff is informed and believes, and based thereon alleges that Defendants are alter egos of each other.

22. Additionally, per *Labor Code 558.1*, each individual Defendant and DOES 1 through 20 are liable for their direct causation of wage and hour violations against Plaintiff and other aggrieved employees.

GENERAL FACTS AND ALLEGATIONS

23. This is an action brought by Plaintiff HUGO JIMENEZ VALENZUELA ("Plaintiff") pursuant to California statutory, decisional, and regulatory laws. Plaintiff was an employee of Defendants. Plaintiff was at all times relevant to this complaint, employed by Defendants.

24. At all relevant times set forth herein, Defendants, jointly and severally, employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California, including the County of Riverside.

25. Plaintiff is informed, believes and thereon alleges that Defendants HAL HAYS CONSTRUCTION, INC. is a construction business operating in California. Individual Defendants HAL A. HAYS and KIRBY S. HAYS are owners/operators, officers, and/or managing agents of the business, and are liable jointly and severally for damages pursuant to Labor Code §558.1.

26. Plaintiff alleges that Defendants were in charge of managing, supervising, and controlling Plaintiff's and other employees' wages, work hours, pay, and work conditions, along with managing the day-to-day operations for the business. Therefore, Defendants controlled Plaintiff's (and other

aggrieved employees') employment.

27. Defendants employed Plaintiff as a construction worker for from approximately May 2023 through approximately December 5, 2024.

28. Plaintiff alleges that the Defendants failed to keep track of Plaintiff's and other employees' actual hours worked. Employees' pay was rounded and inaccurate. This is in violation of the "Records" section of Wage Orders 2, 4, 16, 17 and other wage orders. For example, Plaintiff would be required to present (often in employer-provided transportation) to various job sites in California, but would not be paid for his commute.

29. Meal and rest breaks were not afforded. And most others' breaks were often short, late, interrupted, or nonexistent due to business demands (e.g. construction deadlines). Meal breaks were also delayed because Defendants incorrectly deemed employees' start times as beginning when they arrived at job sites, improperly excluding commute time.

30. Defendants failed to reimburse Plaintiff and others for work-related cell phone, travel, tools, and other expenses. For example, Plaintiff would be required to present to various job sites in California, often with his personal vehicle, and was not paid for mileage or gas.

31. Defendants failed to provide Plaintiff's timely and complete final pay upon separation and said final pay was incomplete.

32. Defendants misclassified workers as independent contractors in violation of Labor Code 226.8.

33. Plaintiff alleges that California statutory, decisional, and regulatory laws prohibit the conduct by Defendants herein alleged, and therefore Plaintiff has an entitlement to monetary relief on the basis that Defendants violated such statutes, decisional law, and regulations.

34. Plaintiff alleges that Defendants failed to compensate Plaintiff for all hours worked, missed, short, late, and/or interrupted meal periods and/or rest breaks.

35. Defendants had the authority to hire and terminate Plaintiff, to set work rules and conditions governing Plaintiff's employment, and to supervise her daily employment activities.

36. Defendants directly hired and paid wages to Plaintiff.

37. Plaintiff alleges that at all relevant times, Defendants were each an "employer" of Plaintiff within the meaning of all applicable California state laws and statutes.

38. At all times herein mentioned, Defendants ratified each and every act or omission complained herein.

Wage and Hour Allegations:

39. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a uniform policy of wage abuse against their hourly-paid or non-exempt employees within the State of California. This uniform policy involved, inter alia, failing to pay them for all hours worked, missed, short, late, and/or interrupted meal periods, rest breaks, etc. in violation of California law.

40. Plaintiff is informed and believes, and based thereon alleges, that at all material times set forth herein, Defendants were advised by skilled lawyers and other professionals, employees, and advisors knowledgeable about California and federal labor and wage law and employment and personnel practices, and about the requirements of California and federal law.

41. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff was entitled to receive certain wages for overtime compensation and that Plaintiff was not receiving wages for overtime compensation.

42. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to provide Plaintiff the required rest and meal periods during the relevant time period as required under the Industrial Welfare Commission Wage Orders and thus Plaintiff was entitled to any and all applicable penalties.

43. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff was entitled to receive all meal periods or payment of one additional hour of pay at Plaintiff's regular rate of pay when a meal period was missed, and Plaintiff did not receive all meal periods or payment of one additional hour of pay at Plaintiff's regular rate of pay when a meal period was missed.

44. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff was entitled to receive all rest periods or payment of one additional hour of pay at Plaintiff's regular rate of pay when a rest period was missed, and Plaintiff did not receive all rest periods or payment of one additional hour of pay at Plaintiff's regular rate of pay when a rest period was missed.

45. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff was entitled to receive all wages owed to him upon discharge or resignation, including overtime, minimum wages, meal and rest period premiums, and Plaintiff did not, in fact, receive all such wages owed to him at the time of his discharge or resignation.

46. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff was entitled to receive all wages owed to him during his employment. Plaintiff did not receive payment of all wages, including overtime and minimum wages and meal and rest period premiums, within any time permissible under California Labor Code section 204.

47. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff was entitled to receive complete and accurate wage statements in accordance with California law, however Plaintiff did not receive complete and accurate wage statements from Defendants. The deficiencies included, inter alia, the failure to include the total number of hours worked by Plaintiff.

48. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Defendants had to keep complete and accurate payroll records for Plaintiff in accordance with California law, but, in fact, did not keep complete and accurate payroll records.

49. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that they had a duty to compensate Plaintiff pursuant to California law, and that Defendant had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff that Plaintiff was properly denied wages, all in order to increase Defendant's profits.

50. Plaintiff alleges that during the time of his employment, these Defendants acted negligently, recklessly, and/or intentionally to routinely deprive Plaintiff of statutorily mandated rest breaks during work shifts of four (4) hours or greater. Defendants also intentionally failed to compensate Plaintiff for those missed rest breaks over the entire period of her employment with Defendants.

51. Plaintiff was not properly compensated for his overtime hours and Defendants failed to keep accurate records of Plaintiff's overtime hours and compensation.

52. Defendants, and each of them, violated other provisions of the laws of the State of California,

including Employment Laws and Regulations which provide for a civil penalty to be assessed and collected by the California Labor and Workforce Development Agency or its various departments, divisions, commissions, boards, agencies, or employees.

53. In addition to any other remedies which may be available at law or equity, or as may otherwise asserted herein, Plaintiff seeks payment of overtime wages and other compensation owed to him, plus all benefits required pursuant to the laws of the State of California, including Employment Laws and Regulations, based on the sums withheld from Plaintiff. Plaintiff also seeks recovery of penalties, attorney's fees, and costs as provided by statute.

54. Plaintiff seeks restitution and disgorgement of all sums wrongfully obtained by Defendants through their unfair business practices in violation of California Business & Professions Code Section 17200 et seq., to prevent Defendants from benefitting from their ongoing unfair practices, and which sums recovered under the Unfair Competition Act and Unfair Businesses Act are equitable in nature and are not to be considered damages. Plaintiff is also entitled to costs, attorney's fees, interest and penalties as provided for by the California Labor Code and California Business & Professions Code.

55. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or her] under this article."

56. WHEREFORE, Plaintiff requests relief as hereinafter provided.

PRIVATE ATTORNEY GENERAL ACT ("PAGA")

(Cal. Lab. Code section 2698 *et seq.*)

57. In 2003, California's Legislature declared that, "staffing levels for state labor law enforcement agencies have, in general, declined over the last decade and are likely to fail to keep up with the growth of the labor market in the future. It is therefore in the public interest to provide that civil penalties for violations of the Labor Code may also be assessed and collected by aggrieved employees acting as private attorneys general, while also ensuring that state labor law enforcement agencies' enforcement actions have primacy over any private enforcement efforts undertaken pursuant to this act." *Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330, 337-338, citing Stats. 2003. Ch. 906 § 1.

58. In response, California's Legislature passed the Private Attorney General Act of 2004

("PAGA"), which "was adopted to empower aggrieved employees, acting as private attorneys general, to seek civil penalties for Labor Code violations, penalties which previously could be assessed only by state agencies." *Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330, 336. "Thus, PAGA empowers or deputizes an aggrieved employee to sue for civil penalties 'on behalf of himself or herself and other current or former employees' as an alternative to enforcement by the LWDA." Id. At 337 citing to Cal. Lab. Code 2699(a). Class action requirements do not apply to representative actions brought by one employee on behalf of other current or former employees under the PAGA. *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 984.

59. Prior to bringing the action, the aggrieved employee shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation. *Cal. Lab. Code* 2699.3 (c)(1). The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

60. The aggrieved employee is entitled to keep 25% of the civil penalties recovered in the PAGA action and the remaining 75% goes to the Labor and Workforce Development Agency. *Cal. Lab. Code* 2699(i).

61. On December 16, 2024, Plaintiff HUGO JIMENEZ VALENZUELA filed its PAGA Notice Letter with the Labor and Workforce Development Agency ("LWDA"), and served written notice by certified mail to the employers (Defendants), of the specific conditions of the codes alleged to have been violated, including the facts and theories to support the alleged violations. Attached hereto as "**EXHIBIT A**", is a true and correct copy of Plaintiff's PAGA Notice Letter.

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FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Violation of the Private Attorneys General Act, California Labor Code § 2698 *et seq*.)

62. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

63. Plaintiff seeks civil penalties for the above acts, which violate the California Labor Code, under the Private Attorneys General Act ("PAGA"), Cal. Labor Code § 2698 *et seq.*

64. Plaintiff is "aggrieved employees" under PAGA, as he was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and former aggrieved employees of Defendants, the civil penalties provided by PAGA, plus reasonable attorneys' fees and costs.

65. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the *California Supreme Court in Arias v. Superior Court*, (2009) 46 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

66. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

a. failure to provide prompt payment of wages to employees upon termination and resignation in violation of Labor Code § 201, 202, 203;

b. failure to provide itemized wage statements to employees in violation of Labor Code §§ 226(a), 1174, and 1174.5;

c. failure to provide meal and rest periods in violation of all applicable IWC wage orders and Labor Code §§ 1174 and 1174.5;

d. failure to pay overtime wages in violation of all applicable IWC wage orders and Labor Code §§ 510, 558, 1194;

e. failure to provide unpaid balance of full amount of overtime compensation in violation of Labor Code section 1194 and 2698 *et seq.*;

f. failure to pay minimum wage in violation of all applicable IWC wage orders and Labor Code §§ 1182.12, 1194, and 1197;

g. Violation of Labor Code section 1199 (a) and (c) and 2699.5 *et seq.*;

h. failure to reimburse employees for all reasonably necessary expenditures and losses incurred by employees in direct consequence of the discharge of their duties and other work-related expenses, in violation of Labor Code section 2802;

i. failure to provide itemized wage statements to employees in violation of Labor Code section 226(a); and

j. Violation of Labor Code 226.8 by misclassifying its employees as independent contractors;

k. Violation of Labor Code section 204 for Payment of wages; frequency;

l. Violations of California Labor Code sections 201; 202; 203; 204, 226 *et seq.*; 226.8; 432.5; 450; 226.7; 510, 558, 512; 1174; 1174.5; 2802; and all applicable IWC wage orders.

67. On December 16, 2024, Plaintiff HUGO JIMENEZ VALENZUELA filed its PAGA Notice Letter with the Labor and Workforce Development Agency ("LWDA"), and served written notice by certified mail to the employers (Defendants), of the specific conditions of the codes alleged to have been violated, including the facts and theories to support the alleged violations. Attached hereto as "**EXHIBIT A**", is a true and correct copy of Plaintiff's PAGA Notice Letter.

68. The LWDA did not provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the postmark date of the notice sent by Plaintiff. *See* Cal. Labor Code section 2699.3(a)(2)(A).

69. With respect to violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars ($250) per aggrieved employee for the first violation, and one thousand dollars ($1,000) per aggrieved employee for each subsequent violation of Labor Code section 226(a).

70. With respect to violations of Labor Code sections 510, 512, Labor Code section 558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars ($50) for initial violations for each unpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages, and one hundred dollars ($100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

71. Moreover, Plaintiff seeks civil penalties in the amount of unpaid wages owed to aggrieved

employees pursuant to Labor Code section 558(a)(3).

72. With respect to violations of Labor Code section 1174, Labor Code section 1174.5 imposes a civil penalty of $500.

73. Labor Code section 2699 *et seq.* imposes a civil penalty of one hundred dollars ($100) per pay period, per aggrieved employee for initial violations, and two hundred dollars ($200) pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided, including Labor Code sections 226.7, 226.8, 1174, 1182.12, 1194, 1197, 1198, and 2802.

74. WHEREFORE, Plaintiff requests relief as hereafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against all Defendants as follows:

1. For general and special damages, according to proof, on all causes of action for which such damages are available, in an amount not less than $5,000,000;
2. For additional compensatory damages for Plaintiff's emotional pain and suffering, in an amount to be proven at trial, in an amount not less than $50,000;
3. That Defendants are found to have violated the above-referenced provisions of the Labor Code and IWC Wage Orders;
4. That Defendants' actions are found to be willful and/or in bad faith to the extent necessary under Sections 201, 202 and 203 of the Labor Code for failure to pay all compensation owed at the time of separation, as to Section 226 of the Labor Code for willful failure to provide the required accurate and itemized wage statements;
5. An award of statutory penalties because of Defendants' failure to provide Plaintiff with itemized wage statements that comply with the requirements of Labor Code § 226 and because of Defendants' failure to pay all wages due upon the date of his termination, subject to proof at trial;
6. For Statutory penalties under Labor Code Section 226.8;
7. For prejudgment interest at the legal rate pursuant to California Labor Code section 218.6 and other applicable sections;

8. For lost earnings;

9. For liquidated damages in an amount to be ascertained at trial;

10. For all other penalties as required by law;

11. For costs of suit incurred herein;

12. For Labor Code penalties pursuant to pursuant to Business & Professions Code § 17202;

13. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and (g);

14. For injunctive relief pursuant to California Labor Code sections 2699(e) (1) & (k) (1);

15. For reasonable attorney's fees pursuant to California Labor Code section 218.5 and other applicable sections; and

16. For such further relief as is appropriate in the interest of justice.

DATED: February 28, 2025

SIRMABEKIAN LAW FIRM, PC

By: _____

Sarkis Sirmabekian, Esq.
Attorney for Plaintiff

EXHIBIT A

SIRMABEKIAN
LAW FIRM

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December 16, 2024

Hal Hays Construction, Inc.
4181 Latham St
Riverside, CA 92501

via U.S. Certified Mail

Kirby S. Hays
4181 Latham St
Riverside, CA 92501

via U.S. Certified Mail

Hal A Hays
4181 Latham St
Riverside, CA 92501

via U.S. Certified Mail

Labor and Workforce Development Agency
("LWDA")
Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

filed/served online at:
http://www.dir.ca.gov

RE: Hugo Jimenez Valenzuela's Notice of Labor Code Violations Pursuant to California Labor Code Section 2699 *et seq.* ("PAGA")

Dear Sir or Madam:

Please be advised that HUGO JIMENEZ VALENZUELA (hereinafter "Plaintiff") have retained the Sirmabekian Law Firm, PC to represent him and other aggrieved employees for various California Labor Code violations including wage and hour claims against HAL HAYS CONSTRUCTION, INC., KIRBY S. HAYS and HAL A HAYS (hereafter referred to as "Employer," "Defendants," or "You" and/or referred to with "Your" and "Yours", and "EMPLOYER" or "DEFENDANTS").

EMPLOYER is hereby on notice that Plaintiff seeks compensation and all other available relief. Pursuant to the procedures specified in California Labor Code *Section 2699.3*, Plaintiff claims that EMPLOYER has violated, and/or caused to be violated, several Labor Code provisions, and is therefore liable for civil penalties under California Labor Code *§ 2698 et seq.*

The scope of this PAGA letter is intended to include Plaintiff and all other aggrieved employees of all positions against whom the below labor law violations have been committed. The scope includes each employee of each employer named above, whether or not such employee was also employed by any of the remaining employers. Plaintiff and other aggrieved

employees engaged in working as construction workers, laborers and other positions for Defendants.

Defendant HAL HAYS CONSTRUCTION, INC is a CONSTRUCTION business operating in California. Defendants KIRBY S. HAYS and HAL A HAYS are owners/operators, officers, and/or managing agents of the business and are liable jointly and severally for damages pursuant to Labor Code §558.1.

Plaintiff alleges that Defendants were in charge of managing, supervising, and controlling Plaintiff's and other employees' wages, work hours, pay, and work conditions, along with managing the day-to-day operations of the business. Therefore, Defendants controlled the employment of Plaintiff and other aggrieved employees.

Defendants employed Plaintiff as a construction worker for from approximately May 2023 and approximately December 5, 2024. Below are facts supporting allegations of Defendants' labor code violations against Plaintiff and other employees:

- Defendants failed to keep track of Plaintiff's and other employees' actual hours worked. Employees' pay was rounded and inaccurate. This is in violation of the "Records" section of Wage Orders 2, 4, 16, 17 and other wage orders. For example, Plaintiff would be required to present (often in employer-provided transportation) to various job sites in California, but would not be paid for his commute.

- Meal and rest breaks were not afforded. And most others' breaks were often short, late, interrupted, or nonexistent due to business demands (e.g. construction deadlines). Meal breaks were also delayed because Defendants incorrectly deemed employees' start times as beginning when they arrived at job sites, improperly excluding commute time.

- Defendants failed to reimburse Plaintiff and others for work-related cell phone, travel, tools, and other expenses. For example, Plaintiff would be required to present to various job sites in California, often with his personal vehicle, and was not paid for mileage or gas.

- Defendants failed to provide Plaintiff's timely and complete final pay upon separation and said final pay was incomplete.

- Defendants misclassified workers as independent contractors in violation of Labor Code 226.8.

- Defendants violated these and other labor laws as described throughout this letter.

The term "aggrieved employees" is broadly defined as all employees of either Defendant, regardless of exempt or non-exempt status, and regardless of whether such employee was also employed by the remaining Defendants. This definition includes all employees, not just those in the Plaintiff's position.

EMPLOYER deprived Plaintiff and other aggrieved employees of certain protections of the Industrial Welfare Commission Orders, including overtime pay, minimum wage, meal and rest periods, and sick pay and failure to reimburse under Labor Code 2802, among numerous other California Labor Code violations. Many other aggrieved employees were also treated as exempt from those protections.

Plaintiff and other aggrieved employees primarily engage(d) in duties that failed to meet the requirements of the various exemptions. They lacked the requisite discretion and independent

judgment required by the labor code and the IWC Orders (without limitation) to qualify as exempt from various labor law protections. By misclassifying aggrieved employees, EMPLOYER deprived them of many protections.

Unlawful Failure to Pay Overtime

EMPLOYER fails to maintain a policy that compensates Plaintiff and other employees for all hours worked, including overtime. Specifically, EMPLOYER only pays employees for the majority of time that they spend at work. Many employees, including Plaintiff, routinely worked work over eight (8) hours per day and/or forty (40) hours per week but are not paid one and one-half their regular rate of pay for overtime work. As a result of violations of California Labor Code §§ 510, 1194, and applicable Industrial Welfare Commission Wage Orders for failure to pay overtime, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Provide Unpaid Balance of Full Amount of Overtime Compensation

As described above, EMPLOYER has required employees to work hours in excess of eight hours in a day and forty hours in a week as a result of working their regular shifts, but EMPLOYER has not paid these employees overtime compensation. Here, Defendants failed to keep track of Plaintiff's and other employees' actual hours worked. Employees' pay was rounded and inaccurate. This is in violation of the "Records" section of Wage Order 5 and other wage orders. As a result, Plaintiff and other employees have been denied "the unpaid balance of the full amount of this ... overtime compensation" as required by California Labor Code § 1194, and EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Unlawful Failure to Pay Minimum Wage

EMPLOYER has failed to maintain a policy that compensates Plaintiff and other employees an amount equal to or greater than the minimum wage for all hours worked, as required by California Labor Code §§ 1194, 1197, 1197.1 and applicable Industrial Welfare Commission Wage Orders. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation. EMPLOYER did not compensate Plaintiff and other employees for time spent working off the clock. Here, Defendants failed to keep track of Plaintiff's and other employees' actual hours worked. Employees' pay was rounded and inaccurate. This is in violation of the "Records" section of Wage Order 2, 4, 5, 16, 17 and other wage orders. As a result of violations of California Labor Code §§ 1194, 1197,1197.1 and applicable Industrial Welfare Commission Wage Orders, for failure to pay minimum wage, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558, 1197.1, and 2698 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods

EMPLOYER has failed to maintain a policy that provides Plaintiff and other employees with off-duty meal periods as required by California law. Plaintiff and similarly situated employees regularly worked in excess of five (5) hours a day without being provided at least half-hour meal periods in which they were relieved of all duties, as required by Labor Code §§ 226.7,512, and applicable Industrial Welfare Commission Wage Orders. EMPLOYER failed to pay Plaintiff and other employees the premium compensation mandated by Labor Code§ 226.7(b) for these missed meal periods. Some employees were also due a second meal break as they worked in excess of ten (10) hours. They would be required to work through their meal

breaks, or take short meal breaks, and no premium compensation was provided. They would be required to work through their meal breaks, or take short meal breaks, and no premium compensation was provided. Many employees, including Plaintiff, were forced to skip or take untimely breaks without appropriate compensation. Here, Defendants afforded employees no compliant meal and rest breaks. As a result of violations of California Labor Code§§ 226.7 and 512 and applicable Industrial Welfare Commission Wage Orders, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq*.

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods

EMPLOYER has failed to maintain a policy that provides Plaintiff and other employees with off-duty rest periods as required by California law. Plaintiff and other employees regularly worked in excess of 3.5 hours or major fraction thereof during work days without being provided at least a ten-minute rest period in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512 and applicable Wage Orders. EMPLOYER failed to pay Plaintiff and other employees the premium compensation mandated by Labor Code § 226.7(b) for these missed rest periods. Many employees, including Plaintiff, were forced to skip or take untimely rest breaks without appropriate compensation. Here, Defendants afforded employees no compliant meal and rest breaks. As a result of violations of California Labor Code §§ 226.7, 512 and applicable Industrial Welfare Commission Wage Orders, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Reimburse Expenses

EMPLOYER has failed to indemnify Plaintiff and other employees for all necessary expenditures or losses incurred by Plaintiff. Here, Defendants failed to reimburse their employees for reasonable business expenses. California Labor Code § 2802 requires the employer to indemnify employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge their duties. As a result of violations of California Labor Code§ 2802, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558, 2802 and 2698 *et seq.*

Unlawful Failure to Furnish Wage Statements

EMPLOYER has violated California Labor Code § 226(a) by willfully failing to furnish Plaintiff and other employees with required wage statement information. As a result of violations of California Labor Code § 226(a), EMPLOYER is liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of her or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 the last four digits of her 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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Here, Defendants' wage statements were inaccurate. Further, Defendants unfair rounding of employees' hours resulted in an underpayment of wages to their employees. As a result of violations of California Labor Code § 226(a), EMPLOYER is liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Unlawful Failure to Keep Accurate Payroll Records of Daily Hours Worked

EMPLOYER has failed to keep payroll records showing total hours worked and wages paid to Plaintiff and other employees. Under California Labor Code § 1174(d), employers must keep "payroll records showing the hours worked daily by and the wages paid to ... employees". Because EMPLOYER did not keep complete and accurate time records reflecting hours worked for Plaintiff and other employees, including, but not limited to, beginning work prior to the start of their shifts, working after the end of their shifts, and missed/short/late rest and meal breaks, it is liable for civil penalties pursuant to California Labor Code §2698 *et seq.* Section 6 or 7 of the applicable wage order requires the recording of this time. EMPLOYER would not keep track of action time. Instead, Defendants unfairly rounded employees' hours, which resulted in underpayment of wages to their employees. To the extent that EMPLOYER's failure to keep accurate payroll records was willful, it is liable for civil penalties under California Labor Code § 1174.5.

Unlawful Violation of California Labor Code § 1199

Under California Labor Code §§ 1199(a) and (c) and 2699.5 *et seq.,* an employer who "requires or causes any employee to work for longer hours than those fixed" or "violates or refuses or neglects to comply with any provision of' the Labor Code regarding employees' wages, hours, and working conditions, is subject to PAGA penalties. As described above, EMPLOYER has required Plaintiff and other employees to work hours in excess of eight (8) in a day and forty (40) in a week (thereby violating § 1199(a)), failed to provide adequate rest and meal breaks, failed to pay minimum wage and has violated numerous provisions of the Labor Code pertaining to employee wages and hours (thereby violating § 1199(b)). Accordingly, EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Misclassification of Employees

It unlawful for any person or employer to willfully misclassify an individual as an independent contractor. Cal. Lab. Code § 226.8(a)(1). This permits Plaintiff to recover a civil penalty from five thousand dollars ($5,000) to twenty-five thousand dollars ($25,000) for each violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code § 226.8(b)-(c). Here, Defendants misclassified Plaintiff and others as independent contractors, sometimes paying them outside of payroll or partially in cash. Defendants paid certain employees in cash

and outside of payroll, as independent contractors, thereby depriving employees of wage statements and other labor law protections. As such, Defendants violated California Labor Code § 226.8 and numerous other Labor Code sections. Plaintiff and others were always employees as evidenced by the following facts: Plaintiff's position required her to work for EMPLOYER, among many other duties which were directly related to the services provided by EMPLOYER. EMPLOYER supplied the instrumentalities, tools, and the place for the employees to do their work (all work was done under EMPLOYER's supervision; the employees' investment in the equipment or materials required were limited or non-existent; no special skills were required of the employees; the employees' services were to be performed for a long period of time with a high degree of permanence in the working relationship; and the parties believed they were maintaining an employer-employee relationship.).

Unlawful Failure to Pay Wages Due Upon Termination

EMPLOYER has violated California Labor Code § § 201 and 202 by willfully failing to pay all compensation due and owing to Plaintiff and other employees at the time employment was terminated, EMPLOYER willfully failed to pay Plaintiff and other employees who are no longer employed by it all compensation due upon termination of employment as required under California Labor Code §§ 201 and 202 including, but not limited to, missing wages due to inaccurate tracking of employees' time records and failing to property track their hours works and premium pay for missed/short/late meal and rest breaks. Here, Defendants failed to provide Plaintiff's final pay upon separation. Plaintiff and other employees are now also entitled to recover up to thirty (30) days of wages due to EMPLOYER's "willful" failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code. Additionally, because EMPLOYER violated California Labor Code §§ 201, 201and 203 of the Labor Code, EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Mandated Seating

Defendants were required to provide Plaintiff (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) with the seating required under the applicable Industrial Wage Order ("IWO"). In violation of the applicable IWO, Defendants have adopted and continue to adopt a custom and practice of failing to provide its current and former Employees with: 1) Suitable seating when the nature of the Employees' work reasonably permits use of seats and 2) Suitable seating in reasonable proximity to Employee's work areas for use by Employees when a) they are not engaged in active duty, b) their work requires standing and c) such seats would not interfere with the performance of their duties.

Unlawful Failure to Pay Timely Wages

EMPLOYER has failed to timely pay wages to employees as required by California Labor Code section 204. Specifically, the employer has engaged in a pattern and practice of paying employees later than the established paydays, failing to pay wages earned in the current pay period by the required due date. This includes but is not limited to instances where employees were required to work off-the-clock without compensation, or where wages earned, including overtime and other premium pay such as meal and rest break premiums, were not timely paid. These practices have resulted in the systematic delay of wages owed to employees, causing financial hardship and detriment to their economic security.

Injunctive Relief

Plaintiff seeks injunctive relief pursuant to Labor Code sections 2699(e)(1) and 2699(k)(1) to prevent Defendant from continuing its unlawful employment practices. Specifically, Claimant requests the Court to enjoin Defendant from committing further violations of the California Labor Code, including but not limited to the violations of wage payment provisions. Plaintiff also seeks any additional equitable relief necessary to enforce the provisions of the Labor Code and ensure compliance with California labor laws, in order to protect the rights of the Plaintiff and similarly aggrieved employees.

Conclusion

EMPLOYER has violated or has caused to be violated a number of California wage and hour laws. Plaintiff therefore intends to file civil claims for the aforementioned violations of the Labor Code and other law. Plaintiff requests the agency review this notice per PAGA's provisions.

Sincerely,

SIRMABEKIAN LAW FIRM, PC



Sarkis Sirmabekian, Esq.

Gmail

Thank you for submission of your PAGA Case.

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov> Mon, Dec 16, 2024 at 5:18 PM
To: "sarkis@slawla.com" <sarkis@slawla.com>

12/16/2024

LWDA Case No. LWDA-CM-1067673-24
Law Firm : Sirmabekian Law Firm, PC
Plaintiff Name : Hugo Jimenez Valenzuela
Employer: Hal Hays Construction, Inc.
Filing Fee : $75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm