STANSBURY BROWN
LAW PC

December 6, 2024

VIA LWDA WEBSITE

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

Re: *Miguel Mendoza v. Valmetal Tulare, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Miguel Mendoza ("Mr. Mendoza") in claims for Labor Code violations arising from his employment with Valmetal Tulare, Inc.; and DOES 1 through 100 (collectively referred to herein as "Employers"). Mr. Mendoza 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. Mendoza 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. Mendoza is employed by Employers as a welder. He began employment with Employers in approximately April 2014 and he is presently employed. Employers are in the business of manufacturing farm equipment. Mr. Mendoza is generally scheduled to work 5 days per week from approximately 7:00 a.m. to 3:30 p.m.

Throughout the duration of Mr. Mendoza's employment with Employers, Mr. Mendoza and other aggrieved employees were not paid for all hours worked. Employers required Mr. Mendoza and other aggrieved employees to clock in and out on a time clock. Upon information and belief, Employers had a practice of rounding the hours of Mr. Mendoza and other aggrieved employees so as to systemically pay them for less time than they actually worked notwithstanding the fact Employers had the ability to accurately record Mr. Mendoza's and the putative classes' work time to the minute.

Employers maintained a policy/practice of not compensating Mr. Mendoza and other aggrieved employees for all their overtime hours worked in the pay period. As discussed above, upon information and belief, Employers maintained a policy/practice of rounding the hours of Mr. Mendoza and other aggrieved employees for purposes of avoiding payment for all overtime hours worked.

Moreover, during Mr. Mendoza's employment with Employers, Mr. Mendoza and other aggrieved employees earned production-based bonuses in addition to other forms of non-discretionary pay that must be included in the regular rate of pay (hereinafter referred to as "Incentive Pay"). However, Employers failed to properly calculate Mr. Mendoza's and other aggrieved employees' respective regular rates of pay for overtime purposes as a result of their receipt of Incentive Pay. Instead, Mr. Mendoza and aggrieved employees were paid less than one and one half times (or two times in the case of double-time hours) the legal regular rate of pay for all overtime hours worked. By way of example, employees received quarterly production bonuses known as "Gains Sharing" based on work performed throughout the entire quarter, but the value of those bonuses was not included in the regular rate of pay for calculating overtime, sick pay, and other payments that must be paid at the regular rate of pay. Mr. Mendoza's wage statement dated February 9, 2024, shows that Mr. Mendoza earned a "Gs" payment of $96.15. However, he was only compensated for overtime during this period at a rate of $43.80 per overtime hour worked, which is exactly 1.5 times his base hourly rate of pay of $29.20 per hour. As such, his overtime rate did not include the value of his "Gs" productivity bonus pay.

Moreover, Employers also paid Mr. Mendoza and other aggrieved employees hourly bonuses identified on wage statements as "Shift Diff" depending on certificates they obtained and the type of work they performed but did not include the value of those bonuses when calculating the regular rate of pay for sick pay and premium payments. For example, on Mr. Mendoza's wage statement dated February 9, 2024, Mr. Mendoza earned "Shift Diff" and also took sick leave during the pay period. However, he was only paid at an hourly rate of $29.20 per hour for his sick leave, which is the same as his base hourly pay rate. As such, Employers did not include the value of "Shift Diff" in his sick pay, thereby underpaying the amount of sick pay he was owed.

Under Employers' stated policies and Mr. Mendoza's agreement with Employers, Mr. Mendoza earned bonus wages and was entitled to bonus payments pursuant to an incentive plan. Mr. Mendoza received some bonus payments at least approximately each quarter. Mr. Mendoza was not paid all bonuses owed. Nor did Employers provide Mr. Mendoza with a written incentive plan. This prevented Mr. Mendoza from reviewing the criteria on which the bonus payments were based and determining whether his bonus payments were properly calculated.

Furthermore, Employers failed to adequately reimburse Mr. Mendoza and other aggrieved employees for all reasonable and necessary work expenditures, including, but not limited to, requiring Mr. Mendoza and other aggrieved employees to purchase boots, welding jackets, welding sleeves, gloves, helmets, helmet lenses, and respirators.

Employers have maintained inaccurate payroll records, failed to timely pay all wages owed to employees, and issued inaccurate wage statements. This is in part a result of Employers' failure to accurately compensate Mr. Mendoza and other aggrieved employees for all minimum and overtime wages, and failure to properly account to Incentive Pay for payment purposes.

Employers failed to meet their obligations to provide paid sick leave to Mr. Mendoza and other aggrieved employees under Labor Code § 246(b) which requires that employers authorize and permit their employees who worked 30 or more days within a year to accrue paid leave, and to allow them to exercise paid sick leave on or after their 90th day of employment. Despite meeting all of the statutory requirements for being able to accrue and utilize paid sick leave, Mr. Mendoza and other aggrieved employees were not provided paid sick leave on occasions where they needed to take a "sick day" in violation of Labor Code § 246(b). Moreover, when Employers did pay Mr. Mendoza and other aggrieved employees sick leave pay, they failed to make such payments at the regular rate of pay, thereby underpaying Mr. Mendoza and other aggrieved employees their entitled sick leave pay.

Employers failed to issue to Mr. Mendoza 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.

As described above, Employers committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 1 ("Wage Order 1"):

Minimum Wage Violations

Employers were required to pay Mr. Mendoza 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; Wage Order 1 § 4. As alleged above, Employers maintained and maintain timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Mendoza and other aggrieved employees. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Mendoza and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

Employers were required to pay Mr. Mendoza and other aggrieved employees overtime wages for all overtime hours worked. *See* Labor Code §§ 1194(a) and 1198; Wage Order 1, § 3. Wage Order 1, § 3 requires 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. Mendoza and other aggrieved employees to work overtime hours but did not compensate Mr. Mendoza and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

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. Mendoza and other aggrieved employees for all necessary business expenses incurred, including, but not limited to, requiring Mr. Mendoza and other aggrieved employees to purchase boots, welding jackets, welding sleeves, gloves, helmets, helmet lenses, and respirators for necessary business purposes. Mr. Mendoza 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. Mendoza 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); Wage Order 1, § 7. 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. Mendoza 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. Mendoza 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. Mendoza and other aggrieved employees was willful and, consequently, entitles Mr. Mendoza 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. Mendoza 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. Mendoza'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. Mendoza 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. Mendoza 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. Mendoza 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. Mendoza and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Mendoza and other aggrieved employees at their respective regular rates of compensation;

e. Employers violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Mendoza and other aggrieved employees for all work-related expenses incurred;

f. Employers violated Labor Code § 226 by failing to furnish Mr. Mendoza 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. Mendoza and other aggrieved employees;

h. Employers violated Labor Code § 204 by failing to pay Mr. Mendoza and other aggrieved employees all wages earned at least twice during each calendar month;

i. Employers violated Labor Code § 233, 245.5, 246(b), and 246.5 by failing to permit and authorize Mr. Mendoza 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. Mendoza and other aggrieved employees;

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. Mendoza and other aggrieved employees; and

l. Employers violated Labor Code §§ 204 and 221-223 by failing to pay Mr. Mendoza 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

Jess Flores

Jessica Flores

cc: Valmetal Tulare, Inc. (via certified mail)