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**VIA ONLINE FILING**

Labor and Workforce Development Agency  
800 Capitol Mall, MIC-55  
Sacramento, CA 95814  
[PAGAfiling@dir.ca.gov](mailto:PAGAfiling@dir.ca.gov)  
<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: Tommy Carrillo v. Weartech International, Inc., et. al.

Dear Representative:

This office represents Tommy Carrillo (“**Mr. Carrillo**”) with respect to his claims against Weartech International, Inc., The Lincoln Electric Company, and Lincoln Electric Holdings, Inc. (“**Employers**”) for violations of the California Labor Code and IWC Wage Orders. This letter is being sent simultaneously to Employer by certified mail.

Employers employed Mr. Carrillo from approximately November 2009 to June 10, 2020, as an hourly, non-exempt employee. During his employment with Employers, Mr. Carrillo was employed as a Casting Operator at Employer’s location at 1177 N. Grove St., Anaheim, California 92806. Employers are a producer of cobalt-based hardfacing and wear-resistant welding consumables including, but not limited to, machine parts, electrodes, bar cast rods, cobalt wire, and atomized cobalt and nickel based powders.

Mr. Carrillo intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, et seq., the Private Attorneys General Act of 2004 (“**PAGA**”). Mr. Carrillo is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of Employers (“**Aggrieved Employees**”). This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employers violated several of California’s wage and hour laws during Mr. Carrillo’s employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198, and the Industrial Welfare Commission Wage Orders (“**IWC Wage Order**”) including *inter alia*, IWC Wage Order No. 1. The claims made on behalf Mr. Carrillo and Aggrieved Employees are based upon the following facts and theories:

**1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION**

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Mr. Carrillo and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.



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First, Employers regularly required Mr. Carrillo and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Mr. Carrillo and Aggrieved Employees to respond to Employer and work-related requests and perform work while clocked out for purported meal breaks, and otherwise perform work while off-the-clock. Mr. Carrillo and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Mr. Carrillo and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Mr. Carrillo and Aggrieved Employees to perform work off-the-clock without compensation, Employers also failed to accurately record the actual time worked by Mr. Carrillo and Aggrieved Employees, which resulted in a failure to pay Mr. Carrillo and Aggrieved Employees for all hours actually worked, including minimum wages, straight time wages and overtime wages. Finally, and as a matter of policy and/or practice, Employers failed to pay overtime to Mr. Carrillo and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration, such as bonuses.

As a result of the foregoing practices, Employers have failed to pay Mr. Carrillo and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Order No. 1 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Mr. Carrillo and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 1; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

## **2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS**

Employers failed to provide Mr. Carrillo and Aggrieved Employees with legally-compliant 30-minute meal periods. Mr. Carrillo and Aggrieved Employees were required by Employers to work more than five (5) hours per day, but were not provided with uninterrupted 30-minute meal periods. Further, Mr. Carrillo and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Mr. Carrillo and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5<sup>th</sup>) hour of work, and/or to take their second meal periods after their tenth (10<sup>th</sup>) hour of work. On the occasions that Mr. Carrillo and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Carrillo and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported



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meal period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Mr. Carrillo and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Mr. Carrillo and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Mr. Carrillo and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Mr. Carrillo and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including responding to in-person verbal interruptions; and (7) Employers' policy and culture prevented Mr. Carrillo and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Mr. Carrillo and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 1 and California Labor Code sections 226.7(a), 512(a) and 1198.

Mr. Carrillo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 1; penalties pursuant to California Labor Code California Labor Code sections 558 and 1199; and attorneys' fees and costs.

### **3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS**

Employers failed to authorize and permit Mr. Carrillo and Aggrieved Employees take legally-compliant 10-minute periods. Employers required Mr. Carrillo and Aggrieved Employees to work through rest periods. Mr. Carrillo and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Mr. Carrillo and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Mr. Carrillo and Aggrieved Employees were never completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Carrillo and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees,



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failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Mr. Carrillo and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Mr. Carrillo and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Mr. Carrillo and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Mr. Carrillo and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to in-person verbal interruptions; and (7) Employers' policy and culture prevented Mr. Carrillo and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Mr. Carrillo and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 1 and California Labor Code sections 226.7(a), and 1198.

Mr. Carrillo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 1; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

#### **4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT**

As to each pay period, Employers have failed to timely pay all wages earned because Mr. Carrillo and Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Mr. Carrillo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

#### **5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

As a result of the practices described above, the wage statements provided to Mr. Carrillo and Aggrieved Employees never included the actual hours worked, the actual gross wages earned, and the correct rates of pay. Accordingly, Employers violated California Labor Code section 226(a).

Mr. Carrillo and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.



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## **6. FAILURE TO MAINTAIN ACCURATE RECORDS**

Employers have failed to maintain accurate records relating to Mr. Carrillo and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated IWC Wage Order No. 1 and California Labor Code sections 1198.5 and 1174(d).

Mr. Carrillo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 1; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

## **7. FAILURE TO PAY VACATION TIME**

Pursuant to California Labor Code section 227.3, ". . . whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served." During the relevant time period, Employers failed to pay Mr. Carrillo and other Aggrieved Employees for all earned and unused and accrued vacation time at their final rate of pay at the time of termination of their employment. Accordingly, Employers have violated California Labor Code section 227.3.

Mr. Carrillo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; California Labor Code section 227 penalties; and attorneys' fees and costs.

## **8. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT**

Upon the termination of employment, Mr. Carrillo and Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Mr. Carrillo and Aggrieved Employees to work off-the-clock without compensation, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Mr. Carrillo and Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Mr. Carrillo and Aggrieved Employees for accrued vacation time they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Mr. Carrillo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 203, 1199, and 2699(f)(2); and

Therefore, on behalf of himself, the State of California and all Aggrieved Employees, Mr. Carrillo may seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. If you have any questions or require additional information, please do not hesitate to contact us. Thank



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you for your attention to this matter.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read 'Amir Nayebdadash', is written over a light blue horizontal line.

Amir Nayebdadash

**Notice provided to Employer via Certified Mail (7019 1120 0002 3020 3322)**

Weartech International  
Attn: C T Corporation System, Agent for Service of Process  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

**Notice provided to Employer via Certified Mail (7019 1120 0002 3020 3339)**

Weartech International  
22801 St. Clair Avenue  
Cleveland, OH 44117

**Notice provided to Employer via Certified Mail (7019 1120 0002 3020 3346)**

Weartech International  
1177 N. Grove St.  
Anaheim, CA 92806

**Notice provided to Employer via Certified Mail (7019 1120 0002 3020 3353)**

The Lincoln Electric Company  
Attn: C T Corporation System, Agent for Service of Process  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

**Notice provided to Employer via Certified Mail (7019 1120 0002 3020 3360)**

The Lincoln Electric Company  
22801 St. Clair Avenue  
Cleveland, OH 44117

**Notice provided to Employer via Certified Mail (7019 1120 0002 3020 3377)**

Lincoln Electric Holdings, Inc.  
22801 St. Clair Avenue  
Cleveland, OH 44117