

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
mgavron@diversitylaw.com

Attorneys for Plaintiff and Class Members

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 7/2/2024 2:25 PM
Reviewed By: R. Walker
Case #20CV367327
Envelope: 15821053**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JAMES ABERNATHY, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

DEACON CONSTRUCTION, LLC, an
Oregon limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 20CV367327

[Assigned for all purposes to the Hon. Charles F.
Adams, Dept. 7]

**DECLARATION OF JAMES ABERNATHY IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: July 25, 2024
Time: 1:30 P.M.
Dept.: 7

Action Filed: June 17, 2020
Trial Date: None Set

1 I, James Abernathy, declare as follows:

2 1. I am an individual over the age of 18 years old and am a resident of California. I
3 am the named Plaintiff in this matter. I have personal knowledge of the facts set forth below and
4 if called to testify I could and would do so competently.

5 2. I worked for Defendant Deacon Construction, LLC (“Defendant”) as a
6 construction worker from about December 2019, to about April 7, 2020. I worked as an hourly,
7 non-exempt employee.

8 3. During my employment with Defendant, I regularly worked shifts of at least five
9 hours. Defendant did not permit me to record the exact start and stop times of my meal periods,
10 or even how long a meal period lasted. As such, I do not believe I was provided with timely and
11 proper off-duty meal breaks.

12 4. In addition, I frequently worked on job sites where I was required to use my
13 personal cell phone for work purposes. For example, I was required to view and respond to
14 work-related communications in order to do my job. Defendant did not reimburse me for the
15 costs of using my personal cell phone.

16 5. Defendant also failed to provide me with proper wage statements during my
17 employment. The wage statements I received identified my employer as “DC LLC – SAC GC.” I
18 do not believe this is the correct legal name for Defendant. The wage statements also showed a
19 pay period end date, but did not identify the pay period start date. As such, I could not tell which
20 dates I was being paid for just by looking at the wage statement.

21 6. I understand that this action was brought on behalf of all other employees in the
22 State of California, and that I am acting as a representative for Class Members. As the Class
23 Representative, I understand that it is my responsibility to act in the best interests of Class
24 Members and not my own. I agree that I will not put my own interests ahead of those of the
25 Class Members, and that I will not settle out my class claims in this lawsuit separately or
26 independently from Class Members. Moreover, I am not aware of any conflicts that exist
27 between my interests and the interests of Class Members that would impair or affect my ability
28 to serve as representative for Class Members.

9. I have discussed the case with my attorneys on a number of occasions, provided information and documents to my attorneys to help with the prosecution of the case, prepared for and had my deposition taken, and reviewed documents in the case, including the Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement”). I have spent many hours working on this case doing the tasks described above. I also reviewed and participated in drafting my declaration in support of class certification, which I understand the Court granted. I assisted in the prosecution of this case and dedicated myself to making it successful. I will provide a more detailed description of the time and energy I spent on this case in my declaration in support of final approval, to the extent that the Court grants preliminary approval, as requested.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DocuSigned by:
James Abernathy
104EB8TE307BE47F...