

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Holly Fujie

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Attorneys for Plaintiff CORNELIO PACHECO, as representative of the State of California and the Labor and Workforce Development Agency ("LDWA"), and on behalf of himself and other current and former employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
THE COUNTY OF LOS ANGELES

CORNELIO PACHECO,

Plaintiff,

v.

PANDRO SOKOLOW
CONSTRUCTION, INC., and DOES 1
through 50, inclusive,

Defendants.

Case No.: **21STCV24001**

**REPRESENTATIVE ACTION COMPLAINT
FOR CIVIL PENALTIES**

1. Violation of Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Pay Minimum Wage and Overtime;
2. Violation of Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Provide Meal Periods;
3. Violation of Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Provide Rest Periods;
4. Violation of Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Pay Wages Due at Separation of Employment;
5. Violation of Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Issue Accurate Itemized Wage Statements; and
6. Violation of Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Indemnify for Expenditures or Losses in Discharge of Duties.

1 Plaintiff CORNELIO PACHECO (“Plaintiff” or Mr. Pacheco”), as a representative of the
2 State of California and the Labor and Workforce Development Agency (“LDWA”), and on behalf
3 of himself and other current and former employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
6 who were subjected to one or more of the violations alleged herein by Defendant PANDRO
7 SOKOLOW CONSTRUCTION, INC. The terms “Relevant Time Period” or “Time Period” are
8 one (1) year prior to the filing of this complaint through date of entry of judgment. Plaintiffs
9 reserves the right to amend this complaint to reflect a different “Time Period” as further discovery
10 is conducted.

11 2. Plaintiff and similarly-aggrieved employees seek civil penalties from Defendant
12 for violations of numerous Labor Code provisions, including, but not limited to, sections 201,
13 202, 203, 204, 226, 226.7, 227.3, 510, 1194, and 2802.

14 **JURISDICTION AND VENUE**

15 3. This Court has subject matter jurisdiction over the causes of action alleged in this
16 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
17 excluded from exercising subject matter jurisdiction over said causes of action. The penalties
18 recoverable for Plaintiff do not exceed seventy-five thousand dollars (\$75,000.00), and
19 collectively amongst all aggrieved employees do not exceed five million dollars (\$5,000,000.00).

20 4. Named Defendant is a California corporation doing business throughout
21 the State of California, and specifically, in Los Angeles County. Plaintiff was employed by named
22 Defendants in Los Angeles County. There is no federal question at issue, as the issues herein are
23 based solely on California statutes and law, including the California Labor Code, Industrial
24 Welfare Commission (“IWC”) Wage Orders, California Code of Civil Procedure, California
25 Business and Professions Code, and California Rules of Court. By doing business in the state of
26 California, Defendant has purposefully availed themselves of the state’s jurisdiction.
27 Accordingly, as personal jurisdiction over Defendant would be constitutional, California’s long-

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arm statute provides that California courts may exercise personal jurisdiction over Defendant.
(Code Civ. Pro. § 410.10.)

5. Venue is proper in Los Angeles County, because Defendant perform business in Los Angeles County, and the acts set forth herein occurred in Los Angeles County.

THE PARTIES

A. Plaintiff

6. Plaintiff was employed by Defendant from in around 2006 through July 2020 at Defendant's Santa Monica, California location. Throughout his employment, Defendant controlled Plaintiff's schedule and directed his duties each day, preventing Plaintiff from exercising any reasonable degree of discretion or independent judgment. Plaintiff is accordingly non-exempt under California labor laws and thereby entitled to civil penalties and all other rights accruing from the alleged violations described herein.

B. Defendant(s)

7. Plaintiff is informed and believes, and based thereon alleges, that Defendant Pandro Sokolow Construction, Inc. is a California corporation offering construction services throughout California and is and/or was the employer of Plaintiff and similarly situated employees during the Relevant Time Period. On information and belief, and based thereon, Plaintiff alleges that Defendant is conducting business in good standing in California, and at all time herein mentioned has regularly conducted business throughout the State of California.

8. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief, alleges that said Defendants are legally responsible for the violations alleged herein. Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendants when that information is ascertained.

9. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendant operates as a joint

1 venture and/or single business enterprise, integrated enterprise, and/or are agents of one another,
2 are alter egos, joint employers, and conspire with one another to increase profits by engaging in
3 the conduct described in this complaint.

4 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
5 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
6 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
7 below was acting, at least in part, within the course and scope of that authority as such agent,
8 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
9 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
10 are legally attributable to the other Defendants.

11 **PAGA ADMINISTRATIVE PREREQUISITES**

12 11. By this complaint, Plaintiff also brings this case as a representative action seeking
13 penalties for the State of California in a representative capacity, as provided for by the Private
14 Attorneys General Act (“PAGA”), Labor Code section 2698 et seq., to the extent permitted by
15 law, as an aggrieved employee who was employed by Defendant and subject to alleged violations
16 set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in his/her notice
17 to the Labor Workforce Development Agency (“LWDA”) and the employer: sections 201, 202,
18 203, 204, 226, 226.7, 227.3, 510, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197.1, 1998, and 2802.

19 12. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action
20 under PAGA only after giving the Labor Workforce Development Agency (“LWDA”) and the
21 employer notice of the Labor Code sections alleged to have been violated, and after receiving
22 notice from the LWDA of its intention not to investigate, or after 65 days have passed without
23 notice from the LWDA.

24 13. On March 25, 2021 prior to the filing of this complaint, Plaintiff gave written
25 notice of the specified provisions alleged to have been violated, including the facts and theories
26 to support the alleged violations, as required by Labor Code section 2699.3. This written notice
27 was given via certified mail to Defendant(s), and to the LWDA by electronically filing the notice
28 via the Department of Industrial Relations website. Plaintiff was given a LWDA case number of
LWDA-CM-834414-21 A true and correct copy of Plaintiff’s notice to the LWDA and

Defendant(s), dated March 25, 2021, is attached hereto as Exhibit A.

FACTUAL ALLEGATIONS

14. Plaintiff and similarly-aggrieved employees are, and all times relevant herein, have been non-exempt employees within the meaning the California Labor Code, and the implementing rules of the IWC California Wage Orders.

15. Plaintiff was employed by Defendant in a non-exempt, hourly position as a tractor driver.

16. Plaintiff is informed and believes, and based thereon alleges, that Defendant's policies and practices described herein are common across each of Defendant's locations within the State of California.

17. Mr. Pacheco alleges that Defendant failed to pay Mr. Pacheco and other aggrieved employees for all hours worked in violation of California law, including both minimum wage and overtime compensation. Specifically, Mr. Pacheco and other aggrieved employees worked shifts in excess of eight (8) hours per day, all hours worked, but not compensated were required to be compensated at a rate of at least one-and-a-half times each employee's base rate of pay.

18. Mr. Pacheco further alleges that Defendant had a policy and/or practice of rounding time recorded by Mr. Pacheco and other aggrieved employee, which systematically undercompensated Mr. Pacheco and other aggrieved employees.

19. Mr. Pacheco alleges that he and other aggrieved employees were often precluded from taking timely and uninterrupted meal and rest breaks in accordance with California law due to the nature of their work. Mr. Pacheco and other aggrieved employees often did not receive at least one duty-free, uninterrupted meal period with the first five (5) hours worked, and a second meal period before the start of the 11th hour of work. When employees were prevented from taking timely and complete meal periods, they did not receive premium pay for the missed rest break.

20. Mr. Pacheco further alleges that he and other aggrieved employees often had to miss rest periods for every four (4) hours worked, or a major fraction thereof, as required by the Labor Code. When employees were prevented from taking rest breaks, they did not receive premium pay for the missed rest break.

21. Mr. Pacheco alleges that Defendant failed to provide him and other aggrieved employees with complete and accurate wage statements for all regular hours and overtime hours worked. Mr. Pacheco further alleges that Defendant failed to include him legal employer on the wage statements. This conduct is in violation of Labor Code sections 226 and 1174.

22. Mr. Pacheco alleges that Defendant failed to pay all wages earned at the time their employment ended to him and other aggrieved employees. At the time of Mr. Pacheco and other aggrieved employees' termination, they were entitled to receive back wages that are owed as a result of Defendant's failure to include non-discretionary bonuses in Mr. Pacheco and other aggrieved employees' regular rate for purposes of paying overtime as well as wages for the time worked during the meal breaks or the premiums paid in lieu of missed breaks. This conduct is in violation of Labor Code sections 201, 202, 203, and 204.

23. Mr. Pacheco alleges Defendant failed to reimburse him and other aggrieved employees for necessary business expenditures. Mr. Pacheco and other aggrieved employees were not reimbursed for use of their cellular phones in performing their job duties.

FIRST CAUSE OF ACTION

**VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO
PAY ALL WAGES**

(Labor Code §§ 510, 1194, 1194.2, 1197, and 1197.1)

(By Plaintiff against All Defendant(s))

24. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged.

25. Any employee receiving less than the legal minimum wage or legal overtime compensation is entitled to recover in a civil action the amount of unpaid wages, attorneys' fees, and costs of suit. (Lab. Code, § 1194, subd. (a).)

26. Labor Code section 1182.12 provides that on and after July 1, 2014, the minimum wage for all industries shall not be less than nine dollars (\$9.00) per hour, and on and after January 1, 2016, the minimum wage for all industries shall not be less than ten (\$10.00) per hour. For employers who employed 26 or more people from January 1, 2017 to December 31, 2017, the

1 minimum wage rate in California was ten dollars and fifty cents (\$10.50) per hour. From January
2 18, 2018 to December 31, 2018, the minimum wage rate in California was eleven dollars (\$11.00)
3 per hour. Plaintiff is informed and believes Defendant employed more than 26 employees.

4 27. Notwithstanding any other provision of the Labor Code, hourly minimum wage
5 rates are set for all industries according to statute. (Lab. Code, § 1182.12.) Employers must pay
6 employees no less than minimum wage for each hour worked. (Lab. Code, § 1194.)

7 28. In any action to recover payment of wages less than the minimum wage an
8 employee shall be entitled to recover liquidated damages in an amount equal to the wages
9 unlawfully unpaid and interest thereon. (Lab. Code, § 1194.2.)

10 29. Any work in excess of eight (8) hours in any workday and any work in excess of
11 forty (40) hours in a workweek, shall be compensated at a rate of no less than one and one-half
12 times the regular rate of pay for an employee. (Lab. Code, § 510, subd. (a).) Any work in excess
13 of twelve (12) hours in a workday shall be compensated at the rate of twice the regular rate of pay
14 for an employee. (Lab. Code, § 510, subd. (a).)

15 30. All wages earned in employment are due and payable twice during each calendar
16 month on dates designated in advance by the employer. (Lab. Code, § 204.)

17 31. In case of a dispute over wages, the employer shall pay, without condition and
18 promptly under the Labor Code all wages conceded due, leaving to the employee all remedies
19 he/she is otherwise entitled to as to any balance claimed. (Lab. Code, § 206.)

20 32. Notwithstanding any other provision of the Labor Code, hourly minimum wage
21 rates are set for all industries according to statute. (Lab. Code, § 1182.12.) Employers must pay
22 an employee no less than the minimum wage for each hour worked. (Lab. Code, § 1194.)

23 33. In any action to recover payment of wages less than the minimum wage, an
24 employee shall be entitled to recover liquidated damages in an amount equal to the wages
25 unlawfully unpaid and interest thereon. (Lab. Code, § 1194.2.)

26 34. Plaintiff and the aggrieved employees regularly worked over eight (8) hours per
27 day and forty (40) hours per week. Defendant failed to pay Plaintiff, and the aggrieved employees
28 all minimum wage, overtime premiums, and/or double-time premiums for all hours worked in

1 excess of over eight (8) hours per day and/or forty (40) hours per week for work performed for
2 Defendant. Plaintiff and the aggrieved employees were not paid all wages earned.

3 35. Further, Defendant regularly violated the Labor Code with respect to meeting the
4 requirements of paying wages earned, by failing to include all remuneration when calculating the
5 Plaintiff and the aggrieved employees' regular rate of pay for purposes of paying overtime and/or
6 double time.

7 36. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
8 employees and the State of California for violations of Labor Code sections 204, 510, 1194, 1197,
9 1198 and pursuant to Labor Code section 1197.1 during the PAGA period, in a sum as provided
10 by the Labor Code and/or other statutes.

11 37. Plaintiff, individually and on behalf of the aggrieved employees and the State of
12 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699(g) and Code
13 of Civil Procedure section 1021.5.

14 **SECOND CAUSE OF ACTION**

15 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO**
16 **PROVIDE MEAL PERIODS OR PREMIUM COMPENSATION IN LIEU THEREOF**

17 **(Labor Code §§ 226.7 and 512)**

18 **(By Plaintiff against All Defendant(s))**

19 38. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
20 as if fully alleged.

21 39. Labor Code sections 226.7 and 512 provide that no employer shall employ any
22 person for a work period of more than five (5) hours without providing a meal period
23 uninterrupted by work duties of not less than thirty (30) minutes, or employ any person for a work
24 period of more than ten (10) hours without a second meal period of not less than thirty (30)
25 minutes.

26 40. Labor Code section 226.7 provides that if an employer fails to provide an
27 employee a meal period in accordance with this section, the employer shall pay the employee one
28 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal

1 period is not provided in accordance with this section. Plaintiff alleges Defendant failed to provide
2 legally compliant meal periods, in addition to impeding, discouraging, dissuading, and/or not
3 relieving employees from all work duties during meal periods thereby preventing employees from
4 taking legally compliant meal periods.

5 41. At all times relevant hereto, Plaintiff and the aggrieved employees have worked
6 shifts of more than five (5) hours in a workday. Defendant failed to provide legal compliant meal
7 periods to Plaintiff and the aggrieved employees, by failing to provide meal periods before the
8 fifth (5th) hour of work due to its meal period scheduling policy and practice. Despite failing to
9 provide timely meal periods, Defendant failed to pay one additional hour of pay at Plaintiff and
10 aggrieved employees' regular rate of pay for each workday that a meal period violation occurred.

11 42. At varying times relevant hereto, Plaintiff and the aggrieved employees have
12 worked shifts more than ten (10) hours in a workday.

13 43. By and through their actions, Defendant has intentionally and improperly denied
14 compliant meal periods or compensation in lieu thereof to Plaintiff and the aggrieved employees
15 in violation of Labor Code sections 226.7 and 512 and/or other statutes.

16 44. Defendant's Labor Code violations have caused Plaintiff and the aggrieved
17 employees to suffer, and continue to suffer, damages in amounts which are presently unknown,
18 but will be ascertained according to proof at trial.

19 45. Plaintiff, individually and on behalf of the aggrieved employees and the state of
20 California request recovery of civil penalties for violations of Labor Code sections 226.7 and 512
21 during the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

22 46. Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code section 2699,
23 subdivision (g) and Code of Civil Procedure section 1021.5.

24 **THIRD CAUSE OF ACTION**

25 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO**
26 **PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

27 **(Labor Code § 226.7)**

28 **(By Plaintiff against All Defendant(s))**

1 47. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
2 as if fully alleged.

3 48. Labor Code section 226.7 provides that employers authorize and permit all
4 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours, or
5 major fraction thereof.

6 49. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
7 provide and employee rest periods in accordance with this section, the employer shall pay the
8 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
9 that the rest period is not provided. Plaintiff and the aggrieved employees consistently worked
10 over four (4) hours per shift with no rest breaks, due to Defendant's uniform policies and
11 practices.

12 50. Defendant failed to reasonably make available rest breaks to Plaintiff and the
13 aggrieved employees.

14 51. Defendant's Labor Code violations have caused Plaintiff and the aggrieved
15 employees to suffer, and continue to suffer, damages in amounts which are presently unknown,
16 but will be ascertained according to proof at trial.

17 52. Plaintiff, individually and on behalf of the aggrieved employees and the state of
18 California request recovery of civil penalties for violations of Labor Code sections 226.7 and 512
19 during the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

20 53. Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code section 2699,
21 subdivision (g) and Code of Civil Procedure section 1021.5.

22 **FOURTH CAUSE OF ACTION**

23 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO**
24 **PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES**

25 **(Labor Code §§ 201, 202, 203, 204)**

26 **(By Plaintiff against All Defendant(s))**

27 54. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
28 as if fully alleged herein.

1 55. Plaintiff is informed and believes, and thereon alleges, that as part of Defendant's
2 ongoing unfair business practices, Defendant failed to pay all employees all wages earned during
3 their employment at the time of their separation in violation of Labor Code sections 200 and 201.

4 56. Labor Code section 201 provides that an employer is required to pay an employee
5 whose employment is terminated by the employer all wages earned and unpaid immediately upon
6 termination.

7 57. Labor Code section 202 requires an employer pay to an employee who quits his or
8 him employment, all wages earned and unpaid no later than 72 hours thereafter.

9 58. Labor Code section 203 provides that an employer who fails to pay all wages
10 earned and due an employee who is discharged or who quits within the timeframe set forth in
11 sections 201 and 202, the wages of the employee shall continue as a penalty from the due date at
12 the same rate of pay until paid, but not more than 30 days.

13 59. In violation of the Labor Code and IWC Wage Orders, Defendant failed to timely
14 pay all wages due to Plaintiff and the aggrieved employees upon separation of employment.
15 Specifically, Defendant failed to pay Plaintiff and the aggrieved employees all minimum, regular,
16 and overtime wages owed immediately upon termination or within 72 hours of resignation as a
17 result of their unfair rounding practices, among other things.

18 60. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees
19 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
20 will be ascertained according to proof at trial.

21 61. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
22 employees and the State of California for violations of Labor Code sections 201, 202, and 203
23 during the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

24 62. Plaintiff, individually and on behalf of the aggrieved employees and the State of
25 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
26 (g) and Code of Civil Procedure section 1021.5.

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FIFTH CAUSE OF ACTION

**VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO
ISSUE ITEMIZED WAGE STATEMENTS AND MAINTAIN RECORDS**

(Labor Code §§ 226, 1174)

(By Plaintiff against All Defendant(s))

63. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged herein.

64. Labor Code sections 226, 226.3, 1174, and 1174.5, and applicable IWC Wage Orders provide that employers must keep records and provide employees with itemized wage statements showing all hours worked and each applicable rate of pay in effect during the pay period with the corresponding number of hours worked at each hourly rate.

65. Labor Code section 1174, subdivision (d), requires an employer to keep at a central location in California or at the plant or establishment at which the employee is employed, payroll records showing the hours worked daily, and the wages paid to each employee. Labor Code section 226, subdivision (a) requires an employer to provide 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 wage statement in writing, including specified information, including, but not limited to: (1) gross wages earned; and (2) total hours worked by the employee; (3). Labor Code section 226, subdivision (e) provides that if an employer knowingly and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned, the total hours worked by the employee and the applicable hourly overtime rates, causing the employee injury, then the employee is entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each subsequent violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes that Defendant willfully failed to make or keep accurate records for Plaintiff and the aggrieved employees.

66. The IWC Wage Orders require that every employer shall keep accurate information with respect to each employee, including time records showing when each employee

1 begins and ends each work period, the total daily hours worked by each employee, and the total
2 hours worked in each payroll period, and applicable rates of pay. Plaintiff is informed and
3 believes that Defendant willfully and intentionally failed to make and/or keep records which
4 accurately reflect the hours worked by Plaintiff and the aggrieved employees. Specifically,
5 Plaintiff believes that Defendant's records: (1) were inaccurate and incomplete.

6 67. An employee is deemed to suffer injury if the employer fails to provide an accurate
7 wage statement containing all of the required information set forth in Labor Code section 226,
8 subdivision (a). (Lab. Code, § 226, subd. (e)(2).) In addition, the omission of time worked, proper
9 rates of pay, records of missed meal and rest breaks, and/or premium pay make it difficult for
10 employees to determine whether they were paid all wages due without complicated calculations
11 and/or reconstruction of records required to be maintained by the employer.

12 68. Labor Code 226.3 provides that any employer who violates subdivision (a) of
13 Labor Code section 226 shall be subject to a civil penalty in the amount of two hundred fifty
14 dollars (\$250) per employee per initial violation and one thousand dollars (\$1,000) per employee
15 for each subsequent violation, for which the employer fails to provide the employee a wage
16 deduction statement or fails to keep the records required in subdivision (a) of Labor Code section
17 226. The civil penalties provided for in this section are in addition to any other penalty provided
18 by law.

19 69. An employee is deemed to suffer injury if the employer fails to provide an accurate
20 wage statement containing all of the required information set forth in Labor Code section 226,
21 subdivision (a). (Lab. Code, § 226, subd. (e)(2).)

22 70. 60. Labor Code section 1174, subdivision (d), requires an employer to keep at
23 a central location in California or at the plant or establishment at which the employees are
24 employed, payroll records showing the hours worked daily and the wages paid to each employee.

25 71. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's
26 failure to maintain accurate and complete records. This civil penalty is in addition to the civil
27 penalty of \$100 per initial violation and \$200 per subsequent violation per pay period, per
28 aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation

1 of section 1174, subdivision (d).

2 72. The IWC Wage Orders require that every employer shall keep accurate
3 information with respect to each employee, including, but not limited to, time records showing
4 the total daily hours worked by each employee, the total hours worked in each payroll period, and
5 applicable rates of pay.

6 73. Plaintiff is informed and believes that Defendant willfully and intentionally failed
7 to make and/or keep records which accurately reflect the hours worked by Plaintiff and aggrieved
8 employees. Specifically, Plaintiff believes that Defendants' records fail to include, *inter alia*: (1)
9 all rest and meal breaks; (2) reimbursement for all necessary business expenditures; (3)
10 compensation for actual hours worked; (4) total hours worked; (5) number of hours worked at
11 each hourly rate; (6) the correct overtime rate; and (7) gross and net wages earned.

12 74. In addition, the omission of time worked make it difficult for employees to
13 determine whether they were paid all wages due without complicated calculations and/or
14 reconstruction of records required to be maintained by the employer.

15 75. Plaintiff is informed and believes, and based thereon alleges, that Defendant
16 willfully failed to maintain accurate payroll records for Plaintiff and the aggrieved employees by
17 failing to accurately reflect the hours worked by and wages paid to Plaintiff and the aggrieved
18 employees. Specifically, Defendant's records do not accurately reflect Plaintiff's and the
19 aggrieved employees' hours worked due to its failure to include time spent driving to Plaintiff
20 and the aggrieved employees first location of their day and driving from their last location of the
21 day, among other things.

22 76. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees
23 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
24 will be ascertained according to proof at trial.

25 77. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
26 employees and the State of California for violations of Labor Code sections 226, 1174, and
27 pursuant to Labor Code sections 226.3 and 1174.5 during the PAGA period, in a sum as provided
28 by the Labor Code and/or other statutes.

1 78. Plaintiff, individually and on behalf of the aggrieved employees and the State of
2 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
3 (g) and Code of Civil Procedure section 1021.5.

4 **SIXTH CAUSE OF ACTION**

5 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR**
6 **INDEMNIFICATION FOR EXPENDITURES OR LOSSES IN DISCHARGE OF**
7 **DUTIES**

8 **(Labor Code § 2802)**

9 **(By Plaintiff against All Defendant(s))**

10 79. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
11 as if fully alleged herein.

12 80. Defendant failed to indemnify Plaintiff and the aggrieved employees for all
13 necessary expenditures or losses incurred by Plaintiff and the aggrieved employees in direct
14 consequence of the discharge of their duties. Specifically, Defendant failed to indemnify Plaintiff
15 and the aggrieved employees for expenditures they incurred on their behalf, including, but not
16 limited to: (1) use of their cellular phones in direct consequence of the discharge of their duties
17 to Defendant.

18 81. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees
19 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
20 will be ascertained according to proof at trial. Plaintiff seeks recovery of civil penalties
21 individually, on behalf of the aggrieved employees and the State of California for violations of
22 Labor Code section 2802 during the PAGA period, in a sum as provided by the Labor Code and/or
23 other statutes.

24 82. Plaintiff, individually and on behalf of the aggrieved employees and the State of
25 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
26 (g) and Code of Civil Procedure section 1021.5.

27 **PRAYER FOR RELIEF**

28 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 1 1. For civil penalties pursuant to the PAGA in an amount according to proof;
- 2 2. For reasonable attorney's fees and costs, pursuant to the PAGA and California
- 3 Code of Civil Procedure section 1021.5; and
- 4 3. That the Court award such other and further relief as this Court may deem
- 5 appropriate.

6 Dated: June 28, 2021

MAHONEY LAW GROUP, APC

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8 By:


Kevin Mahoney, Esq.
Attorney for Plaintiff CORNELIO
PACHECO, as an individual, and on behalf
of all similarly situated employees.

EXHIBIT A



Kevin Mahoney, Esq.
Phone : (562) 590-5550
Facsimile : (562) 590-8400
kmahoney@mahoney-law.net

March 25, 2021

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY
PAGAfilings@dir.ca.gov

VIA CERTIFIED MAIL# 7019 2970 0000 2983 6926

Return Receipt Requested

Pandro Sokolow Construction, Inc.
2809 Pico Blvd.
Santa Monica, CA 90405

Re: *Cornelio Pacheco v. Pandro Sokolow Construction, Inc.*

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency; Pandro Sokolow Construction, Inc.

From: Cornelio Pacheco, on behalf of himself and aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mr. Cornelio Pacheco ("Mr. Pacheco" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 et seq. ("PAGA"), on behalf of himself and all other aggrieved employees.

Please also be advised that this letter constitutes written notice required by Labor Code sections 2699.3, subdivision (a)(1), and 2699.3, subdivision (c)(1), and may lead to action against Pandro Sokolow Construction, Inc. ("PSC" or "Employer") in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer, and any and all related parent, and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, as well as against any and all offices, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

Theories of Labor Code Violations and Remedies

Pandro Sokolow Construction, Inc. ("PSC" or "Employer") is a California corporation offering construction services throughout California, including Los Angeles County. Mr. Pacheco was employed by Employer as an hourly, non-exempt tractor driver.

Mr. Pacheco alleges Employer violated various sections of the Labor Code, including sections 201, 202, 203, 204, 206, 210, 221, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and 2802 by failing to provide Mr. Pacheco and all other aggrieved employees with meal and rest periods and premium pay, failing to pay all wages owed, including minimum wage and overtime, failing to reimburse all necessary business expenditures, failing to provide accurate wage statements and maintain accurate payroll records, and failing to provide all wages earned at end of employment. Mr. Pacheco and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer in non-exempt positions in California during the liability period of one (1) year prior to the filing of a complaint alleging a PAGA cause of action.

A. PSC Failed to Provide Mr. Pacheco and other Aggrieved Employees with Meal and Rest Periods, or Premium Compensation in lieu thereof, in accordance with California law.

Mr. Pacheco alleges that he and other aggrieved employees were often precluded from taking timely and uninterrupted meal and rest breaks in accordance with California law due to the nature of their shifts. Mr. Pacheco and other aggrieved employees allege that they did not receive at least one (1) duty-free, uninterrupted meal period within the first five (5) hours worked, and a second meal period before the start of the 11th hour of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-42.) In fact, at times Employer did not have sufficient employees to provide relief for meal periods and thereby required Mr. Pacheco and other aggrieved employees to continue working throughout their meal periods. Further, Mr. Pacheco and other aggrieved regularly worked in excess of ten (10) hours, however were not provided a second timely, uninterrupted duty-free meal period. When employees were prevented from taking timely and complete meal periods, they did not receive premium pay as compensation for the missed meal period.

Mr. Pacheco further alleges that he and other aggrieved employees did not receive at least one duty-free, uninterrupted rest period for every four (4) hours worked, or major fraction thereof, as required by the Labor Code. Mr. Pacheco and other aggrieved employees were generally precluded from taking rest periods due to Employer's failure to sufficiently staff shifts to provide relief and thereby allow Mr. Pacheco and other aggrieved employees the opportunity to take rest breaks. When employees were prevented from taking rest breaks, they did not receive premium pay for the missed rest break.

Mr. Pacheco alleges he and other aggrieved employees were not compensated with premium pay for every meal period and rest period that was not provided. Employer's conduct is actionable under PAGA as violations of Labor Code sections 226.7 and 512, and The Industrial Welfare Commission Order No. 16 ("Wage Order 16").

B. PSC Failed to Pay Mr. Pacheco and Other Aggrieved Employees for All Hours Worked, in Accordance with California Law, Including Both Minimum Wage and Overtime

Employer failed to pay Mr. Pacheco and other aggrieved employees for all hours worked at the legally mandated wage rates, including minimum wage, and overtime compensation. Specifically, Mr. Pacheco and other aggrieved employees worked shifts in excess of eight (8) hours per day, all hours worked, but not compensated were required to be compensated at a rate of at least one-and-a-half times each employee's base rate of pay. To the extent such hours exceeded twelve (12) in one day or eight (8) on the seventh consecutive day worked, such hours were required to be compensated at a rate of at least two times each employee's base rate of pay.

Further, Employer either compensated Ms. Pacheco and aggrieved employees for overtime and double time hours worked at their regular rate of pay despite having worked in excess of up to and over twelve (12) hours per workday and in excess of eight (8) hours on the seventh consecutive day of work in a workweek, or would simply not compensate for hours worked in excess of ten (10) hours per workday. In addition, Employer maintained a common practice of rounding time recorded by Mr. Pacheco and other aggrieved employees at regular fifteen (15) minute increments to the detriment of Mr. Pacheco and other aggrieved employees.

Employer's failure to pay minimum wage and applicable overtime rates to Mr. Pacheco and other aggrieved employees, as well as rounding time recorded, as detailed above, is actionable under PAGA as a violation of Labor Code sections 221, 510, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and the applicable IWC Wage Orders.

C. PSC Failed to Compensate Mr. Pacheco and Other Aggrieved Employees for all Necessary Business Expenditures Incurred During Their Employment

Mr. Pacheco and other aggrieved employees were required to regularly use their personal cellphones to, carry out their work duties, for instance to communicate with their supervisors, specifically to take instructions on when to load and unload materials, and report or obtain status of arrival of certain materials. However, despite the foregoing, Employer failed to reimburse Mr. Pacheco and aggrieved employees with a reasonable percentage of their cellular phone bills.

Furthermore, Mr. Pacheco and other aggrieved employees were required to purchase their own tools to carry out their employment duties. Notwithstanding this expectation, Mr. Pacheco and other aggrieved employees were not reimbursed by Employer for said necessary expenditures.

Employer's failure to provide complete compensate for all necessary business expenditures incurred by Mr. Pacheco and other aggrieved employees in direct consequence of their duties to Employer is actionable under PAGA as a violation of Labor Code section 2802, and Wage Order 16.

D. PSC Failed to Provide Mr. Pacheco and Other Aggrieved Employees Compliant Wage Statements, and Failed to Pay all Wages Earned at the Time Their Employment Ended

Employer further failed to maintain complete and accurate payroll records and failed to provide Mr. Pacheco and other aggrieved employees with complete and accurate wage statements. Specifically, Mr. Pacheco and other aggrieved employees received wage statements that failed to include all rest and meal break premiums earned per pay period, reimbursement for all necessary business expenditures, compensation for actual hours worked, total hours worked, number of hours worked at each hourly rate, the correct overtime rate, and gross and net wages earned. This conduct is in violation of Labor Code sections 226, 226.3, 1174 and 1174.5 and is actionable under PAGA.

As a further result of Employer's failure to pay all wages owed as described herein, Employer also violated Labor Code sections 201, 202, and 203, due to its uniform policy, practice, and procedure of failing to pay all wages earned to former employees at the time their employment ended.

E. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Pacheco becomes aware of additional compensation owed or losses incurred by Mr. Pacheco or by any other aggrieved employee of the Employer, Mr. Pacheco expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

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If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

MAHONEY LAW GROUP APC

Kevin Mahoney, Esq

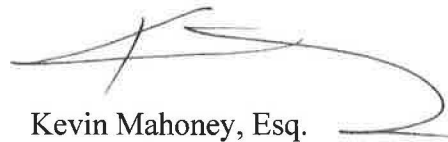
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Sincerely,



Kevin Mahoney, Esq.

MAHONEY LAW GROUP, APC