

1 **SCHEPPACH BAUER PC**
2 **JOHN M. SCHEPPACH (BAR NO. 240633)**
3 Email: jmscheppach@sbpc.law
4 **THOREY M. BAUER (BAR NO. 234813)**
5 E-mail: tbauer@sbpc.law
23181 Verdugo Drive, Suite 105-A
Laguna Hills, CA 92653
Phone: (949) 209-8880
Fax: (949) 358-7884

6 Attorneys for Plaintiff
7 **CHRISTOPHER TODD**, on behalf of himself,
and all other aggrieved employees

8
9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN JOAQUIN**
11

12 **CHRISTOPHER TODD**, in a representative
13 capacity,

14 Plaintiff,

15 vs.

16 **PACE SUPPLY CORP.**, a California
17 corporation, and **DOES 1** through **10**,
inclusive,

18 Defendants.
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FILED
SUPERIOR COURT - STOCKTON

2021 JUL 12 AM 10:34

CLERK OF COURT

BY **DANIELLE JEANDEBIEN**
DEPUTY

Case No.

STK-CV-40E-2021-0145

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

(1) **Civil Penalties Pursuant To The
Private Attorneys General Act Of
2004, California Labor Code § 2698,
Et Seq.**

1 Plaintiff Christopher Todd brings this civil action and, on information and belief,
2 alleges as follows:

3 **PARTIES, JURISDICTION, AND VENUE**

4 1. Plaintiff Christopher Todd ("Plaintiff" or "Todd") is an individual and a
5 resident of California.

6 2. PACE Supply Corp. ("PACE" or the "Company") is a California corporation.

7 3. PACE is a wholesale distributor of products related to plumbing, hydronics,
8 fire protection, water treatment, pump, water well, septic, sewer and water works. PACE
9 has several California locations.

10 4. Todd is a former non-exempt employee of PACE. By way of this Complaint,
11 Plaintiff seeks civil penalties in an amount that renders this matter an "unlimited" civil case
12 within the meaning of California law. This action invokes all forms of applicable tolling,
13 including, without limitation, the tolling provided by the Judicial Council's emergency rules.

14 5. The true names and capacities of the Doe Defendants (Does 1 through 10,
15 inclusive) are unknown to Plaintiff at this time and Plaintiff is informed and believes that
16 they are in some way liable for the illegal conduct alleged herein. The Doe Defendants are
17 believed to be affiliated entities of, or executives within, PACE, joint employers of Todd
18 and other aggrieved employees, or otherwise liable for the conduct complained of herein,
19 whether because of alter-ego status, agency principles, aider and abettor (or co-conspirator)
20 status, statutorily-imposed responsibility (Labor Code, §§ 558.1 and 2810.3), or otherwise.

21 6. The Court has personal jurisdiction over PACE because the Company does
22 business in this State on an ongoing basis, and the Company otherwise has minimum
23 contacts with this State. The Court has personal jurisdiction over Plaintiff because he is a
24 resident of California and has sufficient minimum contacts with this State. Venue is proper
25 in San Joaquin County inasmuch as the Company conducts business in San Joaquin County,
26 Plaintiff performed work for the Company in San Joaquin County, and the alleged unlawful
27 conduct and/or its effects occurred, at least in part, in San Joaquin County.

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8. Plaintiff is an aggrieved employee within the meaning of PAGA, and the other aggrieved employees on whose behalf civil penalties are sought are described in **Exhibit A**.

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10. Pursuant to Labor Code section 2699.3, Plaintiff, on behalf of himself and all other aggrieved employees as identified in **Exhibit A** to this Complaint, brings this action as a representative action under the Private Attorneys General Act of 2004 (“PAGA”) for civil penalties based on violations of the California Labor Code and the IWC Wage Order(s) as set forth in **Exhibit A**.

12. During the applicable limitations period, the Company has violated California wage-and-hour law in numerous respects, including, without limitation:

(b) The Company has failed to keep accurate records of hours worked as required by law.

1 (d) PACE failed to properly include economic items in the regular rate
2 which has caused the overtime and/or double-time wages of employees to be underpaid.

3 (e) The Company has failed to pay meal period premiums and rest period
4 premiums at the correct rate of pay.

5 (f) The Company has failed to provide accurate itemized wage statements.

6 (g) The Company has failed to provide employees with legally-compliant
7 meal periods, and has failed to pay them the requisite meal period premiums.

8 (h) The Company has failed to properly reimburse expenses incurred by
9 employees.

10 (i) The Company has failed to pay employees all their wages due upon
11 separation from employment.

12 (j) The Company has not provided Plaintiff with requested records in the
13 time required by law.

14 13. Plaintiff has experienced one or more of the alleged violations.

15 14. Violations of the applicable IWC Wage Order(s) are actionable under PAGA
16 through Labor Code sections 558 and 1198, among others.

17 15. Labor Code section 2699(f)(2) provides that the civil penalties recoverable
18 under PAGA are “one hundred dollars (\$100) for each aggrieved employee per pay period
19 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
20 period for each subsequent violation,” except where the Labor Code specifically provides
21 for another penalty.

22 16. For all the above-specified Labor Code violations and those set forth in
23 **Exhibit A**, Plaintiff seeks all available civil penalties that California law allows, including
24 the default civil penalties provided by PAGA, and any civil penalties specifically provided
25 by statute for the alleged Labor Code violations (including, without limitation, Labor Code
26 §§ 210, 226.3, 256, 558, 1174.5, and 1197.1) which are recoverable under PAGA.

27 17. In addition to civil penalties, Plaintiff seeks attorney's fees and costs, as
28 authorized under PAGA.

1 **PRAYER**

2 WHEREFORE, Plaintiff requests judgment as follows:

3 **On The First Cause Of Action**

- 4 1. For all forms of relief and civil penalties recoverable under PAGA;
- 5 2. For attorney's fees and costs pursuant PAGA, or pursuant to any applicable
- 6 legal doctrine, including the common fund doctrine, the substantial benefit theory, and/or
- 7 the catalyst theory;
- 8 3. For interest on all amounts owing, commencing from the date such amounts
- 9 were due; and
- 10 4. For all such other relief as the Court deems just and proper.
- 11

12 Dated: July 9, 2021

SCHEPPACH BAUER PC

13 By: _____

14 JOHN M. SCHEPPACH
15 Attorneys for Plaintiff
16 CHRISTOPHER TODD
17

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff demands a trial by jury on all claims and issues so triable.

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21 Dated: July 9, 2021

SCHEPPACH BAUER PC

22 By: _____

23 JOHN M. SCHEPPACH
24 Attorneys for Plaintiff
25 CHRISTOPHER TODD
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27
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EXHIBIT A

PAGA NOTICE

May 7, 2021

VIA CERTIFIED MAIL

Employer

Pace Supply Corp.
Attn: William W. Hatcher Jr
Registered Agent For Service Of Process
114 Pierce St
Santa Rosa, CA 95404

VIA ONLINE SUBMISSION

California Labor & Workforce
Development Agency

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Re: *Christopher Todd v. Pace Supply Corp.*
PAGA Notice

Dear Employer and the LWDA:

Christopher Todd ("Todd"), on behalf of himself and all other aggrieved non-exempt employees, and through his undersigned representative, hereby provides notice pursuant to the California Private Attorneys General Act of 2004, Labor Code sections 2698 – 2699.5 ("PAGA"), of alleged violations of the California Labor Code committed by Pace Supply Corp. ("PACE" or the "Company"). Pursuant to PAGA, the Labor Code provisions allegedly violated, including the alleged facts and theories in support thereof, are set forth in the paragraphs below. All citations in this PAGA Notice are to the California Labor Code as it is presently constituted. The Labor Code may be amended in one or more respects after the date of this PAGA Notice.

I. BACKGROUND

PACE is a wholesale distributor of products related to plumbing, hydronics, fire protection, water treatment, pump, water well, septic, sewer and water works. PACE has several California locations. Todd worked for PACE as a non-exempt hourly employee at one of its facilities in California's Central Valley. At PACE, Todd experienced several wage-and-hour violations.

PAGA Group

This PAGA Notice is alleged on behalf of, and applies to, all current and former non-exempt employees of PACE who worked at any of its locations in California at any time during the applicable limitations period. These are the "aggrieved employees" referenced herein.

II. ALLEGED LABOR CODE VIOLATIONS

Todd and the other aggrieved employees have experienced a variety of Labor Code violations. They are discussed below in no particular order.

1. Uncompensated COVID-19 Screening (Off-The-Clock Compensable Work)

Prior to entering a Company facility at the beginning of a shift, and before employees were clocked in, PACE required employees to go through temperature/symptom screening off-the-clock. Similarly, when employees left PACE's premises for meal periods, PACE required employees to undergo temperature/symptom screening while they were off-the-clock. The Company's mandatory temperature/symptom screening was a fully compensable event, and the Company failed to pay for this time. In other words, the time during which employees were required to line up for, wait for, and go through temperature/symptom screening was a form of off-the-clock work for which they are entitled to be paid. This unlawful off-the-clock work caused Todd and other aggrieved employees to not be paid the applicable California minimum wage for compensable work (in violation of, and actionable under, Labor Code §§ 1194, 1194.2, 1197, 1197.1 & 1199), to not be timely paid all their wages owed each pay period (in violation of, and actionable under Labor Code §§ 204 & 218), and to not receive proper overtime and/or double-time compensation (in violation of, and actionable under, Labor Code §§ 510 & 1198).

As a result of this off-the-clock work, the Company also failed to provide Todd and other aggrieved employees with wage statements that accurately reflected their gross wages earned (violating Labor Code § 226(a)(1)), their net wages earned (violating Labor Code § 226(a)(5)), and their applicable rates of pay and hours worked at those rates (violating Labor Code § 226(a)(9)). The Company's non-compliance with California's wage statement requirements violated and is actionable under Labor Code §§ 226(a) and 226.3.

The Company was required to keep, in a centralized location, three years' worth of accurate records showing the hours worked by, and wages paid to, its employees; however, the Company failed to do so in violation of Labor Code § 1174(d). The off-the-clock work rendered these records inaccurate.

As a result of the off-the-clock work, the Company did not provide separated employees (Todd included) with final pay that contained all wages due to them under California law. This deficiency in final pay was willful within the meaning of Labor Code § 203. The Company's non-provision of timely and sufficient final pay to separated employees violated, and is actionable under, Labor Code §§ 201, 202, 203, 208, 226(a), and 226.3.

In addition, those employees who were sent home by PACE before their shift started as a result of the screening were owed reporting time pay, and, on information and belief, the Company did not tender such reporting time pay to those who were sent home. The Company's reporting time pay infractions violate the reporting time pay provisions of § 5 of the IWC Wage Orders and are actionable under Labor Code §§ 204, 1194, and 558. Insofar as Labor Code section 226 applies

to reporting time pay, because the Company omitted the reporting time pay owed on its wage statements, the Company failed to provide aggrieved employees with wage statements that accurately reflected their gross wages earned (violating Labor Code § 226(a)(1)) or their net wages earned (violating Labor Code § 226(a)(5)). As a result of the reporting time pay infractions and the Company's failure to pay the reporting time pay owed, the Company did not provide separated employees with final pay that contained all wages due to them under California law. This deficiency in final pay was willful within the meaning of Labor Code § 203. The Company's non-provision of timely and sufficient final pay to separated employees violated, and is actionable under, Labor Code §§ 201, 202, 203, 208, 226(a), and 226.3.

2. Incorrect Calculation Of The Regular Rate

PACE provided employees (Todd included) with compensatory items besides normal hourly pay, including (without limitation) hazardous pay and holiday pay which functioned as an attendance bonus (collectively, "Compensatory Items"). PACE was required to, but failed to, properly include Compensatory Items in the regular rate of pay for purposes of calculating overtime and double-time wages owed. Stated differently, PACE did not pay the required overtime or double-time wages associated with Compensatory Items, which are often referred to as overtime adjustments or true-ups. PACE's failure to properly include Compensatory Items in the regular rate has caused the overtime and/or double-time wages of employees to be underpaid, in violation of, and actionable under, Labor Code §§ 204, 218, 510, and 1198.

Moreover, the incorrect calculation of the regular rate and concomitant underpayment of overtime and/or double-time wages has resulted in inaccurate payroll records, in violation of Labor Code § 1174(d), and wage statements issued to employees which inaccurately reflected their net and gross wages, and the applicable rate of pay, in violation of Labor Code section 226(a)(1), (5), and (9).

For those aggrieved employees who have separated from the Company, the incorrect calculation of the regular rate and underpayment of overtime and/or double-time wages has also resulted in final paychecks (or direct deposits) that did not contain all the wages due to them, in violation of Labor Code section 201, 202, 203, 208, 226(a), and 256. This deficiency in final pay was willful.

3. Deficient Meal & Rest Period Premium Payments

As mentioned, PACE provided employees with Compensatory Items besides normal hourly pay. Insofar as meal period premiums and rest period premiums must be paid at the regular rate of pay, when PACE paid out meal period or rest period premiums to aggrieved employees, these payments were deficient because they were not calculated based on the employee's regular rate of pay. PACE did not account for Compensatory Items (e.g., hazardous pay) when calculating and paying the premiums, all in violation of Labor Code § 226.7(c)

Insofar as Labor Code section 226 requires employers to accurately identify and list the meal period and rest period premiums owed to employees on wage statements, PACE failed to do

so. As a result of the inaccurate calculation of meal and rest period premiums, the wage statements inaccurately reflected the net and gross wages, and the applicable rate of pay, in violation of Labor Code section 226(a)(1), (5), and (9).

For those aggrieved employees who have separated from the Company, insofar as meal period premiums and rest period premiums must be paid at the regular rate of pay, the incorrect calculation of the regular rate and associated underpayment of meal and rest period premiums has also resulted in final paychecks (or direct deposits) that did not contain all the wages due to them, in violation of Labor Code section 201, 202, 203, 208, 226(a), and 256. This deficiency in final pay was willful.

4. Inaccurate Wage Statements

In addition to the wage statement violations mentioned above, the wage statements issued to aggrieved employees failed to show their total hours worked, in violation of Labor Code § 226(a)(2). On its wage statements, PACE would list a variety of different pay lines, but there was no tally of actual hours worked, and the total hours actually worked is not otherwise ascertainable from information appearing on the face of the wage statement. Moreover, when PACE would issue hazardous pay, PACE failed to list the associated hours of the hazardous pay, in violation of Labor Code § 226(a)(9). This omission made the total hours worked all the more vague and ambiguous. Finally, PACE failed to provide its name and address on its wage statements, in violation of Labor Code § 226(a)(8). Information appearing on the check part itself is not the same as supplying the requisite information on the detachable wage statement. (*Noori v. Countrywide Payroll & HR Solutions, Inc.* (2019) 43 Cal.App.5th 957, 966.)

All wage statement deficiencies asserted in this PAGA Notice were knowing and intentional. The Company's non-compliance with California's wage statement requirements violated and is actionable under Labor Code §§ 226(a) and 226.3.

5. Meal Period Violations

Under California law, all non-exempt employees who work more than five (5) hours in a shift are entitled to take an unpaid, duty-free meal period of at least thirty (30) minutes. Meal periods must start after no more than five (5) hours of work. (Labor Code, § 512(a); IWC Wage Orders, § 11.) Under California law, all non-exempt employees who work more than ten (10) hours in a shift are entitled to take a second unpaid, duty-free meal period of at least thirty (30) minutes. Second meal periods must start after no more than ten (10) hours of work. (Labor Code, § 512(a); IWC Wage Orders, § 11.) Employers are forbidden from requiring employees to work during a meal period that is mandated by California statutory law or by an IWC Wage Order. (Labor Code, § 226.7(b).) For meal periods, the employer must "relieve the employee of all duty and relinquish any control over the employee and how he or she spends the time." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038-1039.) Under California law, employers must provide an employee with an additional hour of pay at their regular rate of compensation for each workday that the employee is not provided with a meal period "in accordance with" California statutory law or IWC Wage Orders. (Labor Code, § 226.7(c).)

PACE failed to provide Todd and other aggrieved employees with meal periods on a timely basis, i.e., by the 5-hour marker for first meal periods (or the 10-hour marker for second meal periods). PACE failed to maintain the requisite meal period infrastructure at its facilities to ensure that meal periods were timely provided. Moreover, when employees worked into the 5th hour (or 10th hour) without taking the required meal period, PACE would often have them alter their time entries in order to avoid the appearance of a meal period violation and in order to avoid PACE's incurrence of a meal period premium payment.

Furthermore, when aggrieved employees left the Company's premises during meal periods, the Company required the employees to undergo COVID-19 screening off-the-clock before reentry. Consequently, the meal periods of these employees were legally deficient – they did not receive an uninterrupted 30 minutes of uncontrolled duty-free time.

For all these reasons, PACE violated its meal obligations under Labor Code § 512(a), Labor Code § 226.7(b), and the applicable IWC Wage Order provisions. (IWC Wage Orders, § 11 [meal periods].) The Company did not pay Todd or other aggrieved employees the one hour of premium pay to which they were entitled for the meal violations. The Company's non-payment of the required meal period premiums violated and is actionable under Labor Code §§ 226.7(c).

As a result of the meal period time-punch editing, and the COVID-19 screening on meal periods, the Company created inaccurate time records, in violation of Labor Code § 1174(d). Moreover, as a result of these PACE activities (altering time records and conducting COVID-19 screening during off-the-clock meal periods) employees were not paid for all time worked. These PACE activities caused employees not be paid the applicable California minimum wage for compensable work (in violation of, and actionable under, Labor Code §§ 204, 1194, 1194.2, 1197, 1197.1 & 1199), to not be paid their regular hourly rate for all hours worked (in violation of, and actionable under Labor Code §§ 204 & 218), and to not receive proper overtime and/or double-time compensation (in violation of, and actionable under, Labor Code §§ 204, 510 & 1198).

As a result of the meal period time-punch editing, the COVID-19 screening on meal periods, and the failure to pay meal period premiums when owed, the Company failed to provide Todd and other aggrieved employees with wage statements that accurately reflected their total hours worked (violating Labor Code § 226(a)(2)), their gross wages earned (violating Labor Code § 226(a)(1)), their net wages earned (violating Labor Code § 226(a)(5)), and their applicable rates of pay and hours worked at those rates (violating Labor Code § 226(a)(9)).

As a result of the meal period time-punch editing, the COVID-19 screening on meal periods, and the failure to pay the meal period premiums when owed, the Company did not provide separated employees (Todd included) with final pay that contained all wages due to them under California law. This deficiency in final pay was willful within the meaning of Labor Code § 203. The Company's non-provision of timely and sufficient final pay to separated employees violated, and is actionable under, Labor Code §§ 201, 202, 203, 208, 226(a), and 226.3.

6. Unreimbursed Expenses

Labor Code § 2802 requires employers to fully reimburse employees for expenses incurred in the discharge of their work-related duties or while carrying out the directions of their employer. PACE failed to pay Todd and other aggrieved employees for all their work-related expenses. Among other things, the Company required Todd and other aggrieved employees to download and use an application (app) on their personal cell phones for work-related purposes, including work-related communications and time recordation. The app is called HCMToGo. The Company did not reimburse Todd or other aggrieved employees for the required work-related usage of their personal phones. In addition, the Company did not supply Todd and other aggrieved employees with a sufficient quantity of masks for work, and employees were required to obtain their own masks at their own expenses. The Company did not reimburse aggrieved employees for their required personal purchase of masks for work. Finally, Todd and other aggrieved employees who worked in sanitation positions for PACE had their work clothes/uniforms heavily soiled with trash, chemicals, and/or other items, and could not launder them with their ordinary laundry. The Company did not reimburse Todd and other employees in sanitation positions for the laundering of their work clothes/uniform. The Company's failure to properly reimburse employees for their expenses violated and is actionable under Labor Code § 2802(a)-(c).

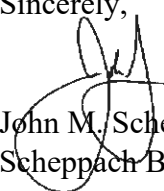
7. Untimely Records Production

Todd, through counsel, requested his personnel file, wage statements, and time records from PACE on January 14, 2021. PACE untimely produced Todd's personnel file, wage statements, and time records on March 16, 2021, violating Labor Code § 1198.5 [30-day deadline for personnel file], § 226(c) [21 days for wage statements], and § 247.5(a) [requiring time records to be produced in the same time as wage statements, which is 21 days from the day of the request].)

III. Civil Penalties

For all the above-specified Labor Code violations, Todd, on behalf of himself and all other aggrieved employees, reserves all rights to pursue any and all available civil penalties that California law allows, including the default civil penalties provided by PAGA, and any civil penalties specifically provided by statute for the alleged Labor Code violations (including, without limitation, Labor Code §§ 210, 226.3, 256, 558, 1174.5, and 1197.1) which are recoverable under PAGA. Todd, on behalf of himself and all other aggrieved employees, also reserves the right to assert claims for Labor Code violations and associated penalties that are uncovered in the discovery process, including (without limitation) claims under Labor Code § 558.1 and § 2810.3.

Sincerely,


John M. Scheppach
Scheppach Bauer PC