

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

TOJARIEH LAW FIRM, PC
JOSEPH TOJARIEH, ESQ. (SBN-265492)
jft@tojariehlaw.com
10250 Constellation Boulevard, Suite 100
Los Angeles, California 90067
Tel: (310) 553-5533/Fax: (310) 553-5536

SCHEPPACH BAUER PC
JOHN M. SCHEPPACH, ESQ. (SBN 240633)
jmscheppach@sbpc.law
23181 Verdugo Drive, Suite 105-A
Laguna Hills, CA 92653
Tel: (949) 209-8880 | Fax: (949) 358-7884

Attorneys for Plaintiffs Jack Williams, Christopher Todd, and all Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA**

JACK WILLIAMS, an individual, and
CHRISTOPHER TODD, an individual, on
behalf of the State of California, as a private
attorney general,

PLAINTIFFS,

v.

PACE SUPPLY CORP.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. SCV-268171

Assigned To: Judge Arthur A. Wick
Dept: 17

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT:**

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

Original Complaint Filed: April 12, 2021

ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
10/12/2021 2:32 PM
Arlene D. Junior, Clerk of the Court
By: Alexandria Hanks, Deputy Clerk

1 Plaintiff JACK WILLIAMS ("Plaintiff Williams" or "Williams"), an individual, and
2 Plaintiff Christopher Todd ("Plaintiff Todd" or "Todd"), an individual, on behalf of themselves
3 and the people of the State of California and as "aggrieved employees" under the Labor Code
4 Private Attorneys General Act of 2004, §2699, et seq. ("PAGA") complains against PACE
5 SUPPLY CORP. ("Defendant," "PACE," or the "Company"), a corporation, and DOES 1 thru 50
6 (collectively "Defendants"), as follows:

7 **I.**

8 **GENERAL ALLEGATIONS**

9 1. This is a Representative Action, pursuant to Labor Code §2699 et seq., brought on
10 behalf of the individuals identified in the PAGA Notice submitted by Plaintiff Williams to the
11 Labor & Workforce Development Agency ("LWDA"), attached hereto as **Exhibit 1**, and the
12 individuals identified in the PAGA Notice submitted by Plaintiff Todd to the LWDA, attached
13 hereto as **Exhibit 2**. Both of these exhibits are hereby incorporated by reference in full.

14 2. During the entirety of the applicable limitations period and continuing to the
15 present, Defendant has failed to properly comply with Labor Code §§226(a), 226.7, and 512,
16 among others.

17 3. Labor Code §226(a)(2) requires that every employer shall semimonthly or at the
18 time of each payment of wages, furnish each of his or her employees, an accurate itemized
19 statement in writing showing the total hours worked by the employee. Plaintiffs and aggrieved
20 employees are issued wage statements that do not include the total hours worked by the employee.

21 4. Labor Code §226(a)(8) requires, semimonthly or at the time of each payment of
22 wages, that every employer shall furnish each of his or her employees an accurate itemized
23 statement in writing showing the name and address of the legal entity that is the employer.
24 Plaintiffs and aggrieved employees are issued wage statements that do not include the name and
25 address of the legal entity that is the employer.

26 5. Labor Code § 226(a)(9) requires, semimonthly or at the time of each payment of
27 wages, every employer to furnish his or her employees an accurate itemized wage statement in
28 writing showing all applicable hourly rates in effect during the pay period and the corresponding

1 number of hours worked at each hourly rate by the employee. Plaintiffs and aggrieved employees
2 are issued wage statements that that do not show all applicable hourly rates in effect during the
3 pay period and the corresponding number of hours worked at each hourly rate.

4 6. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
5 compensation for each meal period the employer fails to provide. Employees are entitled to a first
6 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the
7 first five (5) hours of the shift. Pursuant to Labor Code § 226.7(c), if an employer fails to provide
8 an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay
9 at the employee's regular rate of compensation for each workday that a thirty (30) minute
10 uninterrupted meal period was not provided, was not provided in full, or was not provided in a
11 timely manner. Defendant failed to apprise Plaintiff Williams, Plaintiff Todd, and aggrieved
12 employees of their rights associated with meal periods and failed to provide timely and compliant
13 meal periods. Defendant has had a consistent policy of failing to provide all legally required meal
14 periods and failing to pay such employees one (1) hour of pay at the employees' regular rate of
15 compensation for each workday that the first meal period was not provided within the first (5)
16 hours of the shift.

17 7. Plaintiff Williams and Plaintiff Todd, on behalf of themselves and all aggrieved
18 employees presently or formerly employed by Defendant during the liability period, brings this
19 representative action pursuant to Labor Code §2699, et seq. seeking penalties for Defendant's
20 violation of Labor Code §§ 226(a), 226.7, 512, and all other Labor Code sections and Wage Order
21 sections identified herein and in **Exhibit 1** and **Exhibit 2**.

22 **II.**

23 **JURISDICTION & VENUE**

24 8. This Court has subject matter jurisdiction over any and all causes of action asserted
25 herein pursuant to Article VI, §10 of the California Constitution and California Code of Civil
26 Procedure §410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
27 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
28 laws of the State of California or is subject to adjudication in the courts of the State of California.

1 9. This Court has personal jurisdiction over Defendant because Defendant has caused
2 injuries in Sonoma County and the State of California through their acts, and by their violation of
3 the California Labor Code and California state common law.

4 10. At all times set forth herein, Defendant is and was, based upon information and
5 belief, a California corporation doing business in Sonoma County and in the State of California
6 with its California address at 6000 State Farm Dr Ste 200, Rohnert Park, CA 94927. At all relevant
7 times, Defendant employed Plaintiff Williams and Plaintiff Todd in the State of California.

8 11. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
9 Civil Procedure §395. Defendant operates within California and does business within the county
10 of Sonoma, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all
11 "aggrieved employees" within the State of California and County of Sonoma.

12 III.

13 PARTIES

14 A. Plaintiff

15 12. Plaintiff JACK WILLIAMS is a resident of State of California. Plaintiff was
16 employed by Defendant as a non-exempt employee in California.

17 13. Plaintiff CHRISTOPHER TODD is a resident of the State of California. Plaintiff
18 was employed by Defendant as a non-exempt employee in California.

19 14. Plaintiff Williams and Plaintiff Todd are referred to herein collectively as
20 "Plaintiffs." By way of this Complaint, Plaintiffs seek civil penalties in an amount that renders
21 this matter an "unlimited" civil case within the meaning of California law. This action invokes all
22 forms of applicable tolling, including, without limitation, the tolling provided by the Judicial
23 Council's emergency rules.

24 15. Upon information and belief, Plaintiffs and all aggrieved employees are covered by
25 California Industrial Welfare Commission Occupational Wage Order No. 01 -2001 (Title 8 Cal.
26 Code of Regs. § 11010.)

27 16. Plaintiffs and all current and former employees on whose behalf civil penalties are
28 sought are "aggrieved employees" within the meaning of PAGA. (See Labor Code §2699(c).)

1 **B. Defendants**

2 17. Defendant PACE SUPPLY CORP. is a California Corporation operating in
3 California including in the County of Sonoma. The Defendant's California address is 6000 State
4 Farm Dr Ste 200, Rohnert Park, CA 94927. Defendant employed Plaintiffs and the other aggrieved
5 employees within California. Some of the violations alleged herein arose in the County of
6 Sonoma, California.

7 18. The true names and capacities, whether individual, corporate, associate, or
8 otherwise, of Defendants sued herein as DOES 1 thru 50, inclusive, are currently unknown to
9 Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
10 §474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants
11 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
12 to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
13 capacities of the Defendants designated hereinafter as DOES when such identities become known.

14 19. Plaintiffs are informed and believe, and based thereon allege, that each of the
15 Defendants acted in all respects pertinent to this action as the agent of the other Defendants, carried
16 out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each of
17 the Defendants are legally attributable to the other Defendants.

18 20. The Defendants named herein as DOES 1 thru 50 are and were persons acting on
19 behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
20 provisions of the California Labor Code and public policy as alleged herein.

21 21. Furthermore, Defendants acted in all respects as the employers or joint employers
22 of aggrieved employees. Defendants, and each of them, exercised control over the wages, hours or
23 working conditions of aggrieved employees, or suffered or permitted the aggrieved employees to
24 work, or engaged, thereby creating a common law employment relationship, with the aggrieved
25 employees. Therefore, Defendants, and each of them, employed or jointly employed the aggrieved
26 employees.

27 22. One or more of the Doe Defendants are believed to be affiliated entities of, or
28 executives within, PACE, or otherwise liable for the conduct complained of herein, whether

1 because of alter-ego status, agency principles, aider and abettor (or co-conspirator) status,
2 statutorily-imposed responsibility (Labor Code, §§ 558.1 and 2810.3), or otherwise.

3 **IV.**

4 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

5 23. Plaintiffs and the aggrieved employees are, and at all times pertinent hereto, have
6 been classified as non-exempt employees.

7 24. Upon information and belief, Plaintiffs and the aggrieved employees are covered
8 by California Industrial Welfare Commission Occupational Wage Order No. 01-2001 (Title 8 Cal.
9 Code of Regs. § 11010).

10 25. On a regular and consistent basis, for all aggrieved employees employed by
11 Defendant, Defendant has failed to comply with Labor Code §§ 226(a), 226.7, and 512, among
12 others.

13 26. Plaintiffs and aggrieved employees are issued wage statements that do not include
14 the total hours worked by the employee.

15 27. Plaintiffs and aggrieved employees are issued wage statements that do not include
16 the name and address of the legal entity that is the employer.

17 28. Plaintiffs and aggrieved employees are issued wage statements that that do not
18 show all applicable hourly rates in effect during the pay period and the corresponding number of
19 hours worked at each hourly rate.

20 29. Defendant failed to apprise Plaintiffs and aggrieved employees of their rights
21 associated with meal periods and failed to provide timely and compliant meal periods. Defendant
22 has had a consistent policy of failing to provide all legally required meal periods and failing to pay
23 such employees one (1) hour of pay at the employees' regular rate of compensation for each
24 workday that the first meal period was not provided within the first (5) hours of the shift.

25 30. Additional factual allegations and violations appear in **Exhibit 1** and **Exhibit 2**,
26 which are incorporated by reference in their entirety.

27 ///

28 ///

1 V.

2 CAUSES OF ACTION

3 FIRST CAUSE OF ACTION

4 PLAINTIFF JACK WILLIAMS, PLAINTIFF CHRISTOPHER TODD, AND ALL
5 AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS FOR CIVIL PENALTIES

6 PURSUANT TO PAGA

7 31. Plaintiffs reallege and incorporate by reference all previous paragraphs.

8 32. During the applicable limitations period and continuing to the present, Defendant
9 has issued wage statements that violate Labor Code §226(a) to Plaintiffs and aggrieved employees.
10 Labor Code §226(a)(2) requires that every employer shall semimonthly or at the time of each
11 payment of wages, furnish each of his or her employees, an accurate itemized statement in writing
12 showing the total hours worked by the employee. Defendant issues Plaintiffs and aggrieved
13 employees wage statements that do not include the total hours worked by the employee in violation
14 of Labor Code §226(a)(2).

15 33. During the applicable limitations period and continuing to the present, Defendant
16 has issued wage statements that violate Labor Code §226(a) to Plaintiffs and aggrieved employees.
17 Labor Code §226(a)(8) requires that every employer shall, semimonthly or at the time of each
18 payment of wages, furnish each of his or her employees, an accurate itemized statement in writing
19 showing the name and address of the legal entity that is the employer. Defendant issues Plaintiffs
20 and the aggrieved employees wage statements that do not include the name and address of the
21 legal entity that is the employer in violation of Labor Code §226(a)(8).

22 34. During the applicable limitations period and continuing to the present, Defendant
23 has issued wage statements that violate Labor Code §226(a) to Plaintiffs and aggrieved employees.
24 Labor Code § 226(a)(9) requires that every employer shall, semimonthly or at the time of each
25 payment of wages, furnish each of his or her employees an accurate itemized wage statement in
26 writing showing all applicable hourly rates in effect during the pay period and the corresponding
27 number of hours worked at each hourly rate by the employee. Defendant issues Plaintiffs and
28 aggrieved employees wage statements that do not show all applicable hourly rates in effect during

1 the pay period and the corresponding number of hours worked at each hourly rate by the employee
2 because the wage statements fail to include the applicable regular, overtime rate, and double time
3 rates and the number of hours worked at the corresponding rate in violation of Labor Code
4 §226(a)(9).

5 35. During the applicable limitations period and continuing to the present, Defendant
6 has had a consistent policy of failing to provide legally-compliant meal periods to Plaintiffs and
7 aggrieved employees. Labor Code §§ 226.7 and 512 require Defendant to provide a first meal
8 period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first
9 five (5) hours of the shift. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an
10 employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at
11 the employee's regular rate of compensation for each workday that a thirty (30) minute
12 uninterrupted meal period was not provided, was not provided in full, or was not provided in a
13 timely manner. Defendant failed to apprise Plaintiffs and the aggrieved employees of their rights
14 associated with meal periods and failed to provide timely meal periods in violation of Labor Code
15 § 512. Defendant has failed to pay such employees one (1) hour of pay at the employees' regular
16 rate of compensation for each workday that the first meal period was not provided within the first
17 (5) hours of the shift in violation of Labor Code § 226.7.

18 36. During the applicable limitations period and continuing to the present, Defendant
19 committed numerous other wage-and-hour violations against Plaintiffs and the aggrieved
20 employees (as more fully described in **Exhibit 2**), including:

21 a. PACE has conducted Company-required uncompensated COVID-19
22 screening off-the-clock (violating, inter alia, Labor Code §§ 204, 510, 1194, and 1197).

23 b. The Company has failed to keep accurate records of hours worked as
24 required by law (violating, inter alia, Labor Code § 1174(d)).

25 c. Workers sent home by PACE as a result of the COVID-19 screening were
26 not provided reporting time pay (violating, inter alia, IWC Wage Order § 5, and Labor Code §§
27 204 and 1194).

28 d. PACE failed to properly include economic items in the regular rate which

1 has caused the overtime and/or double-time wages of employees to be underpaid (violating, inter
2 alia, Labor Code §§ 204, 510, and 1198).

3 e. The Company has failed to pay meal period premiums and rest period
4 premiums at the correct rate of pay (violating, inter alia, Labor Code § 226.7(c)).

5 f. The Company has failed to provide accurate itemized wage statements
6 (violating Labor Code § 226).

7 g. The Company has failed to provide employees with legally-compliant meal
8 periods, and has failed to pay them the requisite meal period premiums (violating, inter alia, Labor
9 Code § 226.7 and 512).

10 h. The Company has failed to properly reimburse expenses incurred by
11 employees (violating Labor Code § 2802).

12 i. The Company has failed to pay employees all their wages due upon
13 separation from employment (violating, inter alia, Labor Code §§ 201, 202, and 203).

14 j. The Company has not provided Plaintiff Todd with requested records in the
15 time required by law (violating Labor Code §§ 1198.5, 226(c), and 247.5).

16 37. Defendant's violation of Labor Code Labor Code §§ 226(a), 226.7, 512, and the
17 other wage-and-hour violations identified above and in **Exhibit 1** and **Exhibit 2**, were all done on
18 a regular and consistent basis.

19 38. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code
20 §2699, et seq. because of Defendant's violation of Labor Code §§ 201, 202, 203, 204, 226(a),
21 226.7, 510, 512, 1194, 1197, and 2802, among others.

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

24 40. Labor Code section 2699(f)(2) provides that the civil penalties recoverable under
25 PAGA are "one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
26 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
27 subsequent violation," except where the Labor Code specifically provides for another penalty.

28 41. For all the above-specified Labor Code violations and those set forth in **Exhibit 1**

1 and **Exhibit 2**, Plaintiffs seek all available civil penalties that California law allows, including the
2 default civil penalties provided by PAGA, and any civil penalties specifically provided by statute
3 for the alleged Labor Code violations (including, without limitation, Labor Code §§ 210, 226.3,
4 256, 558, 1174.5, and 1197.1) which are recoverable under PAGA.

5 42. Under Labor Code §§2699(f)(2) and 2699.5, for each such violation to which the
6 default civil penalties apply, Plaintiffs and all other aggrieved employees are entitled to penalties
7 in an amount to be shown at the time of trial subject to the following formula:

- 8 a. \$100 for the initial violation per employee per pay period; and
- 9 b. \$200 for each subsequent violation per employee per pay period.

10 43. The civil penalties recovered will be allocated 75% to the Labor & Workforce
11 Development Agency and 25% to the affected employees.

12 44. On February 4, 2020, Plaintiff Williams electronically filed a PAGA Claim Notice
13 to the LWDA, via the State of California Labor and Workforce Development Agency / Department
14 of Industrial Relations website (<https://dir.tfaforms.net/308>) and mailed by certified mail, return
15 receipt requested, to Defendant setting forth the specific facts and theories of the violations alleged
16 against Defendants, as prescribed by Labor Code §2698 et seq. (Exhibit "1".) On February 9,
17 2020, Defendant signed a certified mail return receipt verifying that it received Plaintiff's letter.
18 (Exhibit "2".) Pursuant to Labor Code §2699.3(a)(2)(A), no notice was received by Plaintiff from
19 the LWDA evidencing its intention to investigate within 65 calendar days of the postmark date of
20 the notice. Therefore, Plaintiff Williams is entitled to commence a civil action as though the
21 LWDA has chosen not to investigate.

22 45. Plaintiff Todd has also timely and adequately exhausted his administrative
23 remedies. Plaintiff Todd electronically submitted his PAGA Notice to the LWDA on May 7, 2021,
24 provided a copy of the same to Defendant via certified mail, and waited the requisite 65-day time-
25 period before filing his PAGA action in court. Plaintiff Todd originally filed his PAGA action in
26 San Joaquin County Superior Court on July 12, 2021 (assigned Case No. STK-CV-UOE-2021-
27 0006165). This First Amended Representative Action Complaint effectively merges Plaintiff
28 Todd's separate action in San Joaquin County Superior Court with the instant action in Sonoma

County Superior Court, creating efficiency for all concerned. Plaintiff Todd will dismiss his separate action in San Joaquin County Superior Court upon the filing of this First Amended Representative Action Complaint.

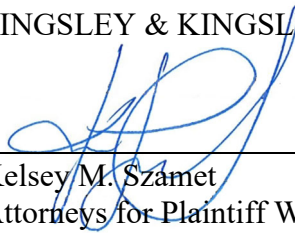
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek judgment against PACE SUPPLY CORP. and DOES 1 thru 50, inclusive, and each of them, as follows for Plaintiffs and all aggrieved employees:

- a. For penalties and other relief pursuant to Labor Code §2698 *et seq.* for Plaintiff Williams, Plaintiff Todd, and all other aggrieved employees.
- b. An award of prejudgment and post judgment interest;
- c. An award providing for payment of costs of suit;
- d. An award of attorneys' fees pursuant PAGA, or pursuant to any applicable legal doctrine, including the common fund doctrine, the substantial benefit theory, and/or the catalyst theory; and
- e. Such other and further relief as this Court may deem proper and just.

DATED: September 20, 2021

KINGSLEY & KINGSLEY, APC

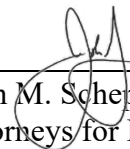
By: 

Kelsey M. Szamet

Attorneys for Plaintiff Williams and all Aggrieved Employees

DATED: September 20, 2021

SCHEPPACH BAUER PC

By: 

John M. Scheppach

Attorneys for Plaintiff Todd and all Aggrieved Employees

EXHIBIT 1

KINGSLEY & KINGSLEY

| L A W Y E R S |

February 4, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

PACE SUPPLY CORP.
6000 State Farm Dr Ste 200
Rohnert Park, CA 94927

Re: JACK WILLIAMS v. PACE SUPPLY CORP.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents JACK WILLIAMS (“Plaintiff”) and a proposed group of current and former employees working for PACE SUPPLY CORP. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of four groups of aggrieved employees defined as follows:

1. All persons who are employed or have been employed as an hourly employee by PACE SUPPLY CORP., in the State of California who worked one or more pay periods with overtime since one (1) year prior to the date of this letter and continuing to the present. (“Total Hours Aggrieved Employees”).
2. All persons who are employed or have been employed as an hourly employee by PACE SUPPLY CORP., in the State of California who received a physical paycheck since one (1) year prior to the date of this letter and continuing to the present. (“Employer Name and Address Aggrieved Employees”).
3. All persons who are employed or have been employed as an hourly employee by PACE SUPPLY CORP., in the State of California who worked one or more pay periods with overtime since one (1) year prior to the date of this letter and continuing to the present. (“Rates Aggrieved Employees”).
4. All persons who are employed or have been employed as an hourly employee by PACE SUPPLY CORP., in the State of California who worked one or more shifts over five (5) hours and/or shift where a meal period premium was paid since one

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

February 4, 2021

Page 2 of 3

(1) year prior to the date of this letter and continuing to the present. (“Meal Break Aggrieved Employees”).

Labor Code §226(a)(2) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee. Plaintiff and the Total Hours Aggrieved Employees are issued wage statements that do not include the total hours worked by the employee. As such, Plaintiff is an aggrieved employee within the meaning PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and Total Hours Aggrieved Employees.

Labor Code §226(a)(8) requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized wage statement in writing showing the name and address of the legal entity that is the employer. Plaintiff and the Employer Name and Address Aggrieved Employees are issued wage statements that do not include the name and address of the legal entity that is the employer. As such, Plaintiff is an aggrieved employee within the meaning PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and Employer Name and Address Aggrieved Employees.

Labor Code §226(a)(9) requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized wage statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the Rates Aggrieved Employees are issued wage statements that do not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226(a)(9). As such, Plaintiff is an aggrieved employee within the meaning PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and Rates Aggrieved Employees.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiff and the Meal Break Aggrieved Employees of their rights associated with meal periods and failed to provide timely and compliant meal periods. Defendant failed to pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each workday that the first meal period was not provided within the first (5) hours of the shift.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

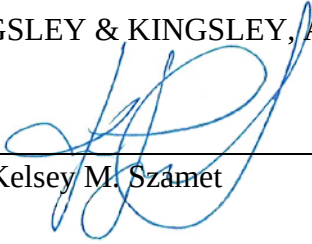
February 4, 2021

Page 3 of 3

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 226(a), 226.7, and 512 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/jl

1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
2. PACE SUPPLY CORP. via USPS Certified Mail # 7018 1130 0001 5815 3950
3. Tojarieh Law Firm, PC, 10250 Constellation Blvd., Suite 100, Los Angeles, CA 90067

EXHIBIT 2

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

1 **PROOF OF SERVICE**

2 I am employed by Scheppach Bauer PC, a law firm in the County of Orange, State of
3 California. I am over the age of eighteen (18) and am not a party to this action. My firm's
business address is 23181 Verdugo Drive, Suite 105-A, Laguna Hills, CA, 92653.

4 On October 12, 2021, I served the within document(s) described as:

5 **FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT**

6 on the interested parties in this action as stated below:

7

8 MICHAEL D. BRUNO Email: mbruno@grsm.com 9 RACHEL WINTTERLE Email: rwintterle@grsm.com 10 GORDON REES SCULLY MANSUKHANI, LLP 11 275 Battery Street, Suite 2000 San Francisco, CA 94111 12 KINGSLEY & KINGSLEY, APC 13 ERIC B. KINGSLEY Email: eric@kingsleykingsley.com 14 KELSEY M. SZAMET Email: kelsey@kingsleykingsley.com 15 16133 Ventura Blvd., Suite 1200 Encino, CA 91436 16 TOJARIEH LAW FIRM, PC 17 JOSEPH TOJARIEH Email: jft@tojariehlaw.com 18 10250 Constellation Boulevard, Suite 100 Los Angeles, CA 90067	ATTORNEYS FOR DEFENDANT Pace Supply Corp. ATTORNEYS FOR PLAINTIFF Jack Williams
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21 ☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a true copy of the
22 document to be sent to the persons at the corresponding electronic address as
23 indicated above on the above-mentioned date. I utilized One Legal e-services to
accomplish said electronic transmission.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct. Executed on October 12, 2021.

26 John M. Scheppach
27 (Type or print name)

28 (Signature of Declarant)