

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Michelle Williams Court

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

BENJAMIN BROWN-BAXTER, as an
individual and on behalf of aggrieved
employees,

Plaintiff,

vs.

TUTOR PERINI CORPORATION, a
Massachusetts corporation; DESERT
MECHANICAL, INC., a Nevada
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **21STCV30039**

REPRESENTATIVE ACTION
COMPLAINT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004

DEMAND OVER \$25,000.00

1 Plaintiff Benjamin Brown-Baxter (“Plaintiff”) hereby submits this Complaint
2 (“Complaint”) against Defendants Tutor Perini Corporation, Desert Mechanical, Inc., and Does 1
3 through 50 (collectively referred to as “Defendants”) on behalf of himself and all aggrieved
4 employees of Defendants for penalties for violations of the California Labor Code as follows:

5 **INTRODUCTION**

6 1. This action is within the Court’s jurisdiction under California Labor Code §§ 212,
7 225.5, and 2698 *et seq.*, and the applicable California Industrial Welfare Commission’s (“IWC”)
8 Wage Orders.

9 2. This Complaint challenges systemic illegal employment practices resulting in
10 violations of the California Labor Code against individuals who worked for Defendants.

11 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
12 jointly and severally, have acted intentionally and with deliberate indifference and conscious
13 disregard to the rights of all employees by issuing wages in an improper form of payment.

14 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 have engaged in, among other things a system of willful violations of the California Labor Code
16 by creating and maintaining policies, practices and customs that knowingly deny employees the
17 above stated rights and benefits.

18 **JURISDICTION AND VENUE**

19 5. The Court has jurisdiction over the violations of the California Labor Code §§
20 212, 225.5, and 2698 *et seq.*

21 6. Venue is proper in this County because Defendants operate businesses and are
22 located in the County of Los Angeles.

23 **PARTIES**

24 7. Plaintiff was hired by Defendants as a Plumber Apprentice and worked from
25 about February 2020 until about December 15, 2020. Plaintiff was and is the victim of the
26 policies, practices, and customs of Defendants complained of in this action in ways that have
27 deprived him of the rights guaranteed by California Labor Code §§ 212, 225.5, and 2698, *et seq.*

28 8. Plaintiff is informed and believes, and based thereon alleges, that Defendant Tutor

1 Perini corporation was and is a Massachusetts corporation doing business in the State of
2 California providing general contracting services.

3 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant
4 Desert Mechanical, Inc. was and is a Nevada corporation doing business in the State of
5 California providing mechanical contracting services.

6 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
7 herein mentioned Defendants and Does 1 through 50, are and were corporations, business
8 entities, individuals, and partnerships, licensed to do business and actually doing business in the
9 State of California. As such, and based upon all the facts and circumstances incident to
10 Defendants' business, Defendants are subject to California Labor Code §§ 212, 225.5, and 2698
11 *et seq.*

12 11. Plaintiff does not know the true names or capacities, whether individual, partner
13 or corporate, of the Defendant sued herein as Does 1 through 50, inclusive, and for that reason,
14 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
15 complaint when the true names and capacities are known. Plaintiff is informed and believes and
16 based thereon alleges that each of said fictitious Defendants was responsible in some way for the
17 matters alleged herein and proximately caused Plaintiff and members of the general public and
18 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

19 12. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
21 Defendants, and each of them, were the agents, servants and employees of each of the other
22 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
23 acting within the course and scope of said agency and employment.

24 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
25 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
26 joint venturer of, or working in concert with each of the other co-Defendants and was acting
27 within the course and scope of such agency, employment, joint venture, or concerted activity. To
28 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the

1 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
2 Defendants.

3 14. At all times herein mentioned, Defendants, and each of them, were members of,
4 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
5 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

6 15. At all times herein mentioned, the acts and omissions of various Defendants, and
7 each of them, concurred and contributed to the various acts and omissions of each and all of the
8 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
9 herein mentioned, Defendants, and each of them, ratified each and every act or omission
10 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
11 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
12 damages as herein alleged.

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

15 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

16 16. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
17 though fully set forth herein.

18 17. Plaintiff brings this cause of action on behalf as a proxy for the State of California
19 and in this capacity, seeks penalties on behalf of all Aggrieved Employees from June 10, 2020,
20 through the present, for Defendants' violation of Labor Code §§ 212 and 225.5, arising from
21 Defendants' payment of earned wages to the Aggrieved Employees with checks drawn from
22 M&T Bank, an out-of-state bank that did not have a branch in California. A physical address for
23 M&T Bank was not listed on the checks. Defendants also failed to identify a California bank
24 where the Aggrieved Employees could cash a payroll check without incurring a fee.
25 Consequently, Plaintiff and the Aggrieved Employees did not receive the full amount of wages
26 earned.

27 18. On or about June 10, 2021, Plaintiff sent written notice to the California Labor &
28 Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 212

1 and 225.5, pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”).
2 Plaintiff also provided notice of said Labor Code violation to Defendants via certified mail
3 pursuant to the PAGA.

4 19. As of the date of the filing of this Complaint, the LWDA has yet to provide notice
5 to Plaintiff as to whether it intends to investigate the Labor Code violation provided for in the
6 written notice. As such, pursuant to Labor Code § 2699(a), Plaintiff and the Aggrieved
7 Employees may seek recovery of any and all applicable civil penalties on behalf of the State of
8 California for Defendants’ violation of Labor Code §§ 212 and 225.5.

9 20. Plaintiff has therefore complied with all notice and exhaustion requirements
10 pursuant to PAGA.

11 21. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
12 applicable civil penalties for Defendants’ violation of Labor Code §§ 212 and 225.5, for the time
13 period described above, on behalf of himself and other Aggrieved Employees.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for judgment individually and all others on whose behalf
16 this suit is brought against Defendants, jointly and severally, as follows:

- 17 1. Upon the First Cause of Action, for civil penalties pursuant to statute as set forth
18 in California Labor Code § 2699, and for costs and attorney’s fees
19 2. On all causes of action for attorneys’ fees and costs as provided by California
20 Code of Civil Procedure section 1021.5; and
21 3. For such other and further relief the Court may deem just and proper.
22

23 DATED: August 13, 2021

DIVERSITY LAW GROUP, P.C.

24 By: 

25 Larry W. Lee

26 Max W. Gavron

27 Attorneys for Plaintiff and Aggrieved Employees
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