



#23869

- 12

MAKAREM
& ASSOCIATES
Attorneys At Law

Ronald W. Makarem
Jean-Paul Le Clercq
Matthew J. Negrin
Ivan Moe
Randi Thompson
Sonya Ostovar
Vanessa Coe

ostovar@law-rm.com

January 14, 2016

VIA CERTIFIED MAIL (w/ RETURN RECEIPT)

PAGA Administrator
California Labor & Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: **Bluewater Industries, Inc.**

Notice of Labor Code Violations pursuant to Labor Code §2699.3(a)(1)

Dear PAGA Administrator:

This letter shall constitute the required written notification under Labor Code §2699.3(a)(1) of Labor Code violations alleged against **Bluewater Industries, Inc.** ("Bluewater"). Our client, **Misael Sanchez** ("Claimant"), worked as a non-exempt employee for Bluewater. Claimant and other non-exempt employees were subject to several Labor Code violations by Bluewater. The claimant hereby issues this Notice to both the LWDA and the employer in compliance with the notice requirements of Labor Code section 2699.3(a)(1).

In creating an alternative workweek schedule, Bluewater failed to correctly follow the procedural and reporting requirements as defined in the Industrial Welfare Commission ("IWC") Order 16-2001(3)(B) & (C). As a result of the defective alternative workweek schedule, Bluewater did not pay non-exempt employees their earned overtime wages at the rate of 1 ½ times the regular rate for all hours worked in excess of 8 hours per workday or 40 hours in a workweek in violation of Labor Code Sections 510, 1194, 204, 226, 201, 202, and 203.

The claimant hereby gives Notice of the following specific provisions of the Labor Code that have been violated and the facts and theories to support the alleged violations:

Violation	Facts and Theories
Labor Code sections 510, 1194, 1771, 1774	Labor Code section 1771 states: "Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of

11601 Wilshire Bl. Ste. 2440 - Los Angeles, CA 90025
Office: 310.312.0299 - Fax: 310.312.0296
www.makaremlaw.com

	per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.” Labor Code section 1774 states that the “contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.” The prevailing wage rate is the legal minimum wage of the legal overtime compensation applicable to employees working on public work projects. Bluewater was hired as a contractor to work at public work projects at public schools and post offices, among other public works projects. As a result, Bluewater was required to pay its employees working on such public works projects the prevailing wage rates applicable to the trade. However, Bluewater paid a fraction of the minimum prevailing wage rate to its employees working on such public work projects. As a result Bluewater violated Labor Code sections 1771, 1774, and 1194. Also, because Bluewater did not calculate their overtime rate based on the correct prevailing wage rate, these workers were not paid the legal prevailing overtime rate in violation of Labor Code 510 and 1194.
Labor Code sections 510 and 1194	Labor Code section 510 states: “Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 provides: ““Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.” Bluewater often engaged in practices that did not include all the hours worked by its employees, which resulted in their hours not being calculated for overtime pay. For example, Due to the improper alternative workweek schedule implemented by Bluewater, Claimant suffered overtime violations. Claimant and other non-exempt employees of Bluewater (“Bluewater Employees”) regularly worked in excess of eight hours in one workday and in excess of 40 hours in one workweek, and were often not compensated with overtime pay. As a result of this practice, Labor Code sections 510 and

	1194 were violated.
Labor Code section 204	Labor Code section 204 states that “all wages... earned by any person in employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Bluewater often engaged in practices that did not include all the hours worked by its employees, which resulted in their hours not being calculated for overtime pay. For example, Due to the improper alternative workweek schedule implemented by Bluewater, Claimant suffered overtime violations. Claimant and other Bluewater Employees regularly worked in excess of eight hours in one workday and in excess of 40 hours in one workweek, and were often not compensated with overtime pay. As a result, all earned wages were not paid on the regular paydays.
Labor Code section 226	Labor Code § 226(a) provides: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her 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 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.” Bluewater often engaged in practices that did not include all the hours worked by its employees, which resulted in their hours not being calculated for overtime pay. For example, Due to the improper alternative workweek schedule implemented by Bluewater, Claimant suffered overtime violations. Claimant and other Bluewater Employees regularly worked in excess of eight hours in one workday and in excess of 40 hours in one workweek, and were often not compensated with overtime pay. As a result, all earned

	wages were not paid on the regular paydays. As a result, Bluewater failed to furnish accurate itemized statements that accurately reported: all applicable hourly rates and total hours worked by Bluewater Employees in violation of Labor Code section 226.
Labor Code sections 226.7 and 512	Labor Code sections 226.7 and 512 provide that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. Under these provisions, a first meal period is required no later than the end of an employee's fifth hour of work, and a second meal period no later than the end of an employee's 10th hour of work. If an employer fails to provide an employee meal periods in accordance with this law, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. Bluewater did not comply with these meal period provisions. For example, Claimant and other Bluewater Employees would frequently work in excess of 5 hours without a meal break.
Labor Code 226.7	Labor Code section 226.7 provides that employers shall authorize and permit employees to take rest periods at the rate of (10) minutes net rest time per four (4) hours of work, or major fraction thereof. This means that an employer must provide 10 minutes net rest time for each four hour period worked by employees. If an employer fails to provide an employee rest periods in accordance with this law, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. Bluewater did not comply with these rest period provisions. For example, Claimant and other Bluewater Employees did not receive their rest breaks when they worked more than 4 hours.
Labor Code sections 201, 202 and 203	Labor Code section 201 states that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code section 202 states that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. In either case, if an employer willfully fails to pay in accordance with 201 and 202, any wages of an employee who is discharge or who quits shall continue as a penalty. Bluewater failed to pay all overtime wages earned by Bluewater employees as required by Labor Code sections 201 and 202. Moreover, Bluewater has failed to pay all premium wages for missed meal and rest periods to those employees who were discharged or who quit in violation of Labor Code section 201 and 202. Additionally, Bluewater has not paid any of the continuation wages under Labor Code section 203.

Please notify us within the required time period whether or not the Labor and Workforce Development Agency intends to investigate these alleged violations. If no such notice is received within 33 calendar days of the postmark date of this letter, we will proceed with a civil action for penalties pursuant to Labor Code § 2699. Such as civil action will be pursued on behalf of Claimant and other Bluewater Employees. Please send the Notice to our office located at 11601 Wilshire Blvd., Suite 2440, Los Angeles, CA 90025.

Thank you for your attention to this matter.

Respectfully,

MAKAREM & ASSOCIATES, APLC

By: 
SONYA OSTOVAR, Esq.

cc: **Bluewater Industries, Inc.**
2075 Williams Street
San Leandro, California 94577

Bluewater Industries, Inc. – Agent For Service of Process
Chris J. Kirschenheuter
1368 Eastshore Drive
Alameda, California 94501

Law Firm of Michael H. Kim P.C.
Michael H. Kim
475 El Camino Real, Suite 309
Millbrae, California 94030

CERTIFIED MAIL



7015 1520 0003 2491 7364

LOS ANGELES
CA 900
14 JAN '16
PM 12 L



02 1P

\$ 006.95⁵

0001904981 JAN 14 2016

MAILED FROM ZIP CODE 90025

RECEIVED
DEPT. OF INDUSTRIAL RELATIONS

JAN 20 2016

LABOR STANDARDS ENFORCEMENT
OAKLAND DISTRICT OFFICE

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT