



MEHRDAD BOKHOUR
Attorney at Law

1901 Avenue of the Stars | Suite 450
Los Angeles | California 90067

tel 310 975 1493
fax 310 675 0861

January 24, 2025

SUBMITTED VIA LWDA'S PAGA CLAIM NOTICE ONLINE PORTAL

COPY SENT VIA CERTIFIED MAIL TO:

PAVEMENT COATINGS CO.
10240 SAN SEVAINE WAY
JURUPA VALLEY, CA 91752

C/O TIMOTHY SCHMID
10240 SAN SEVAINE WAY
JURUPA VALLEY, CA 91752

Re: Travis Nygard v. Pavement Coatings Co.
Notice of Intent to File Suit for California Labor Code § 2698 et seq. Penalties

To Whom It May Concern:

This office and Falakassa Law, P.C. represent Travis Nygard (hereinafter "Mr. Nygard") and a proposed group of current and former non-exempt employees working for Pavement Coatings Co. (hereinafter "Pavement Coatings") and any of its affiliated, predecessor, and merged entities in the State of California for violations of the California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 510, 512, 516, 1174, 1174.4, 1194, 1194.2, 1197.1, 1199, 2802-2804, and all applicable Industrial Welfare Commission Wage Orders ("Wage Order").

This letter shall serve as notification under Labor Code § 2699.3 (hereinafter "PAGA Notice"). The \$75 filing fee payable to the California Labor and Workforce Development Agency for the Private Attorneys General Act Notice ("PAGA Notice") was paid online. A copy of this PAGA Notice was submitted electronically to the Department of Industrial Relations.

Mr. Nygard wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of the following group of "aggrieved employees":

All current and former non-exempt hourly employees who work or worked for Pavement Coatings Co. in California during the one year immediately preceding the filing of this PAGA Notice and continuing into the present and ongoing ("aggrieved employees")

Pavement Coatings is a construction company specializing in pavement maintenance and preservation services. Its primary focus is on applying asphalt treatments such as chip seal, slurry seal, micro surfacing, and crack seal to extend the lifespan of existing roadways.

Mr. Nygard worked for Pavement Coatings as a non-exempt employee in the role of “Field Mechanic” from November 27, 2023, to December 10, 2024. Based in Sacramento, California, he performed essential duties integral to the company’s operations. Alongside Mr. Nygard, other non-exempt employees—including but not limited to Field Mechanics, Class A Drivers, Sales Representatives, Mill Operators, Equipment Operators, and Construction Laboratory Technicians—played a critical role in supporting Pavement Coatings’ daily operations and overall success across California.

These non-exempt employees were responsible for a wide range of tasks critical to the company’s operations, such as machinery operation, driving, sales, and overall construction duties. Their work ensured the effective operation of Pavement Coatings’ assets. Despite the essential nature of their contributions, Ms. Mack and other aggrieved employees allege that Pavement Coatings failed to comply with California labor laws, including but not limited to accurate timekeeping, proper wage payment, and provision of meal and rest periods, as set forth below.

At all relevant times, Mr. Nygard and other aggrieved employees regularly worked various shifts, many of which were in excess of 8 hours in a workday and 40 hours in a workweek. Mr. Nygard alleges that other aggrieved employees were also subjected to the same policies, procedures, practices, working conditions, and corresponding wage and hour violations to which he was subjected during his employment.

First, at all relevant times, Pavement Coatings has had a uniform practice of consistently failing to accurately record and pay for all time worked, including time under which aggrieved employees were subject to the employer’s control. This included a policy and practice of failing to record and capture aggrieved employees’ time correctly, including all time spent working off the clock. As a result of this company-wide policy/practice, Mr. Nygard and other aggrieved employees are not compensated for all the hours that they work and all of the overtime hours they work, in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

As a result, Mr. Nygard and other aggrieved employees were not adequately paid for all hours worked in violation of Cal. Labor Code §§ 204, 210, 1194, 1197.1, 1199, and applicable Wage Orders. Additionally, due to the unlawful timekeeping policy/practices, Mr. Nygard and other aggrieved employees were also not correctly paid at the correct overtime rate for hours worked in excess of eight hours per shift in violation of Labor Code § 510.

Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law or by order of the commission a civil penalty, restitution of wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed, one

hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

Accordingly, through PAGA and to the extent permitted by law, Mr. Nygard and other aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199, or Labor Code § 2699(f)(2), and attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Moreover, at all relevant times, Mr. Nygard and other aggrieved employees were denied compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to Pavement Coatings' uniform meal period policies/practices, operational requirements and work demands, Mr. Nygard and other aggrieved employees often could not take timely and uninterrupted net 30-minute first meal periods before the end of the fifth hour of work. Further, when Mr. Nygard and other aggrieved employees worked more than 10.0 hours in a shift, they were not allowed and permitted to take a mandated second meal period before the end of the tenth hour of work in violation of the Labor Code and applicable Wage Orders. Indeed, Mr. Nygard's and other aggrieved employees' meal periods were often interrupted and lasted fewer than 30 minutes due to Pavement Coatings' meal period policies/procedures, operational requirements, and work demands.

In addition, for each missed or non-compliant meal period, Pavement Coatings failed and continues to fail to maintain a mechanism by which aggrieved employees were paid meal period premiums at the "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor Code § 226.7.

Accordingly, due to Pavement Coatings' uniform meal period practices, Mr. Nygard and other aggrieved employees were also regularly denied legally compliant meal periods in violation of Labor Code 226.7, 510, 516, and applicable IWC Wage Orders and are entitled to penalties under Labor Code § 2699(f)(2).

Next, at all relevant times, Mr. Nygard and other aggrieved employees were not provided with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due to Pavement Coatings' uniform rest period policies/practices, operational requirements and work demands. As a result, Mr. Nygard and other aggrieved employees were and are often unable to take a net 10-minute duty-free rest period for every major fraction of four hours worked. This includes a second rest period for shifts in excess of six hours and a third rest period for shifts in excess of 10.0 hours in a workday.

By not relieving all non-exempt employees of all duties during rest periods, Pavement Coatings failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."]. In *Augustus*, the California Supreme Court expressly rejected the employer's assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained: "that employers [must] relinquish any control over how employees spend their break time and relieve their employees of all duties." *Id.* at 273. Each time Mr. Nygard and other aggrieved employees could not take a compliant rest period, Pavement Coatings failed and continues to fail to adequately pay rest period premium payments at the "regular rate of pay" as required by Labor Code § 226.7.

Accordingly, due to Pavement Coatings' uniform rest period policies/practices and work demands, Mr. Nygard and other aggrieved employees were also regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders and would be entitled to penalties under Labor Code § 2699(f)(2).

As a result of Pavement Coatings' failure to pay Mr. Nygard and other aggrieved employees for all hours they were subject to the control of Pavement Coatings Co., including all minimum and overtime wages, and Pavement Coatings' failure to pay for meal and rest period premiums at the "regular rate of pay," Pavement Coatings issued wage statements which failed to identify the gross wages earned accurately, the total hours worked, the net wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

Thus, for the violations of Labor Code section 226 described above, Mr. Nygard and other aggrieved employees may also recover Labor Code § 226.3 penalties for Pavement Coatings' violations of Labor Code § 226(a). Consequently, because Pavement Coatings failed to comply with Labor Code § 226(a), Mr. Nygard and other aggrieved employees would be entitled to recover

penalties under Labor Code §§ 226(e) or Labor Code § 2699(f)(2).

Moreover, because Pavement Coatings failed to pay all minimum and overtime wages, and meal and rest period premiums at the “regular rate of pay,” Pavement Coatings also failed and continues to fail to pay the aggrieved employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203. Thus, aggrieved employees would be entitled to recover penalties under Labor Code §§ 201-203 or Labor Code § 2699(f)(2).

Finally, at all relevant times, Pavement Coatings required Mr. Nygard and other aggrieved employees to incur necessary business expenses for work-related purposes but did not reimburse aggrieved employees adequately for these necessary expenditures in violation of Labor Code §§ 2802-2804. Here, Pavement Coatings uniformly failed to reimburse aggrieved employees for all necessary costs incurred in discharging their duties. (*See Cochran v. Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144 [“[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is paid for by a third person or at all...To show liability under section 2802, an employee needs only to show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed”].) Accordingly, due to Pavement Coatings’ uniform failure to adequately reimburse for necessary business expenditures in violation of Labor Code §§ 2800-2802 and applicable Wage Orders, Mr. Nygard and other aggrieved employees would be entitled to civil penalties under Labor Code § 2699(f)(2) and attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

Pursuant to Labor Code § 2699.3(a)(2)(A), please advise within sixty-five (65) calendar days of the date of this notice whether your office intends to investigate the violations alleged herein above. We understand that if we do not receive a response from your office within sixty-five (65) calendar days of this PAGA Notice, Mr. Nygard may thereafter pursue his interests and the interests of similarly aggrieved employees with a civil complaint against Pavement Coatings for its violations of the California Labor Code and applicable Wage Orders.

While we intend to pursue a PAGA representative and/or Class Action lawsuit against Pavement Coatings for unpaid wages and civil penalties under Labor Code § 2699, it is our firm’s policy to attempt to negotiate an early resolution of all matters where possible and beneficial to all aggrieved employees. If Pavement Coatings is interested in resolving this matter, please contact me or have your lawyer contact our office to discuss an informal discovery plan and the possibility of early mediation on or before **March 23, 2025**.

California Labor and Workforce Development Agency
January 24, 2025
Page 6

Respectfully submitted,

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.



Joshua S. Falakassa, Esq.
Mehrdad Bokhour, Esq.