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Attorneys for Plaintiff David Scott Barber

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

DAVID SCOTT BARBER, on behalf of all other aggrieved employees of Defendants and the State of California under the Private Attorneys General Act,

Plaintiffs,

vs.

PCL INDUSTRIAL SERVICES, INC. and DOES 1 through 50, inclusive,

Defendants.

Case No. BCV-25-102950

REPRESENTATIVE ACTION COMPLAINT

1. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

Action Filed:

Plaintiff DAVID SCOTT BARBER, on behalf of all other aggrieved employees of Defendants and the State of California under the Private Attorneys General Act ("Plaintiff") brings this REPRESENTATIVE ACTION COMPLAINT against Defendants PCL INDUSTRIAL SERVICES, INC. and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

1. This is a representative action complaint brought under the California Private Attorneys General Act (Labor Code sections 2698 *et seq*.).

2. Defendants failed to compensate Plaintiff and aggrieved employees for all hours suffered or permitted to work in violation of the applicable IWC Wage Order.

3. Defendants' underpayment of wages was facilitated by their company-wide practices of failing to pay prevailing wages.

4. Defendants failed to pay sick leave as a result of failing to pay prevailing wages.

5. Defendants failed to pay Plaintiff and the aggrieved employees all meal period premiums at the correct regular rate of pay

6. Defendants' employment policies, practices, and payroll administration systems enabled and facilitated these violations on a company-wide basis with respect to aggrieved employees.

7. Plaintiff seeks to recover associated penalties, interests, attorney's fees and costs.

JURISDICTION & VENUE

8. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution as the causes of action are premised upon violations of California law.

9. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

10. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the California economy so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

11. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395, and/or 395.5 because, upon information and belief, Defendants conducted business and committed some of the alleged violations in this County.

PARTIES

A. Plaintiff David Scott Barber

12. Plaintiff Barber is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about November 2012 to the present. Plaintiff worked as a Crane Operator 1.

13. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."]). To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal. App. 5th 533 and *Rodriguez v. Packers Sanitation Services Ltd*. (Feb. 26, 2025, D083400) ___ Cal.Rptr.3d ___ [2025 WL 615064], the PAGA claim is brought exclusively as a representative action and does not include arbitrable claims.

B. Defendants

14. Defendant PCL Industrial Services, Inc. is a Colorado corporation that maintains operations and conducts business throughout the State of California, including in this county.

15. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

16. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

17. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

18. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

GENERAL ALLEGATIONS

19. Plaintiff and the aggrieved employees worked for Defendants as non-exempt employees and were compensated on an hourly basis.

20. Defendants failed to pay Plaintiff and the aggrieved employees at the lawful wage rate for all hours worked, resulting in unpaid minimum wages.

21. In particular, Plaintiff and the aggrieved employees were not paid prevailing wages as required under California law. Plaintiff and other aggrieved employees performed work on public works projects—including projects for CalBio—that required the payment of prevailing wages. These projects involved the construction and operation of anaerobic digesters designed to generate renewable energy and reduce greenhouse gas emissions, thus qualifying as public works under the Labor Code.

22. Despite working on these public works projects for several years, Defendants failed to compensate Plaintiff and similarly situated employees at the applicable prevailing wage rates. Wage statements reflect that Plaintiff was only paid a rate approximating the required prevailing wage during a single pay period at the conclusion of the CalBio project. For example, Plaintiff's wage statement for the pay date of February 7, 2025, shows an hourly rate of $56.46, while for the rest of the project, he was consistently paid a lower hourly rate of $30.52. Based on Plaintiff's job duties—operating a trenching machine up to six feet in depth—he should have been classified under Group 4 of the applicable Operating Engineers prevailing wage determination, and paid a basic hourly rate of $60.96.

23. These underpayments are unlawful. As California courts have held, prevailing wage requirements are statutory minimum wage protections. "Because the prevailing wage law is a

minimum wage law mandated by statute and serves important public policy goals, section 1194 provides an employee with a private statutory right to recover unpaid prevailing wages from an employer who fails to pay that minimum wage." (*Road Sprinkler Fitters Local Union No. 669 v. Fire Sprinkler, Inc*. (2002) 102 Cal.App.4th 765.).

24. Defendants also failed to pay proper overtime wages at the prevailing wage rate. When Plaintiff and other aggrieved employees worked more than 8 hours in a day or 40 hours in a week on public works projects, they were entitled to overtime compensation at one and one-half times the applicable prevailing wage rate. However, Defendants paid overtime based on the regular base rate applicable to non-public work—such as $30.52/hour—instead of using the correct prevailing wage rate. Plaintiff's wage statement for the pay date of January 31, 2025, is illustrative of this failure.

25. As a result, Defendants repeatedly violated the requirement to pay the correct overtime rate for work on public projects. These systemic violations deprived Plaintiff and other aggrieved employees of significant wages owed under the Labor Code and prevailing wage statutes.

26. In doing so, Defendants violated Labor Code § 1771, which mandates payment of not less than the general prevailing rate of per diem wages, including for holiday and overtime work, for all workers employed on public works.

27. Defendants further violated Labor Code § 1774, which requires contractors on public works projects to pay not less than the specified prevailing rate of wages to all workers employed in execution of the contract. Defendants' failure to pay the prevailing wage for overtime hours violated this provision and resulted in underpayments to Plaintiff and similarly situated employees.

28. Furthermore, Claimant alleges that Defendant violated Labor Code section 1776, as Defendant failed to maintain accurate records as required by that statute, as the information is not true and correct due to the incorrect wage rates, and because Defendant failed to comply with Labor Code sections 1771, 1811, and 1815.

29. Labor Code §§ 1810 - 1815 govern the working hours applicable to public works projects like the ones Claimant and other aggrieved employees worked on. For those projects, employees were prohibited from working overtime at all, unless they were paid "at not less than 1 ½ times the basic rate of pay" for hours in excess of 40 in a workweek or 8 in a workday as provided in

Labor Code section 1815. The basic rate is defined as set forth in 1773.9 and published on by the Director of Industrial Relations in connection with wage determinations: https://www.dir.ca.gov/oprl/dprewagedetermination.htm. Here, Defendant instead paid aggrieved employees like Claimant at 1.5x their base rates, not accounting for the wage determined rates, regular rates, or basic hourly rates. Therefore, Defendant is liable accordingly.

30. Defendants also failed to comply with California's paid sick leave requirements. By failing to compensate aggrieved employees at the proper regular rate of pay—including the applicable prevailing wage—Defendants violated Labor Code § 246(i), which mandates that paid sick leave be paid at either the regular rate of pay for the workweek or the 90-day average.

31. Defendants also failed to pay meal period premiums at the correct regular rate of pay. Plaintiff and similarly situated employees frequently experienced missed, short, late, or interrupted meal periods due to the demands of their job responsibilities. Despite these violations, Defendants did not compensate employees with the required meal period premiums at the correct rate. For example, Plaintiff's wage statement for the pay date of March 29, 2024, shows that he was paid a meal premium ("PENLTY/PREM") at a rate of $28.52 rather than the correct prevailing wage rate. Each time Plaintiff and aggrieved employees were denied a compliant meal break, they were owed one hour of pay at the correct regular rate, which Defendants failed to provide.

32. As a result of these violations, Defendants are further liable for derivative violations under Labor Code §§ 201–203 for failing to timely pay all earned wages each pay period and upon separation of employment.

33. Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements.

34. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees.

The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

35. Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

36. Defendants failed to provide all records upon Plaintiff's request. Defendants failed to provide all records within the 30-day period requested by Plaintiff in his original correspondence under the foregoing sections of the Labor Code. Defendants failed to provide Plaintiff's time records. At the time of filing this notice Plaintiff's time records have not been provided to Plaintiff.

37. Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

<u>FIRST CAUSE OF ACTION</u>

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)

38. All outside paragraphs of this Complaint are incorporated into this section.

39. Plaintiff brings this cause of action as a proxy for the State of California on behalf of the following "aggrieved employees" pursuant to the Private Attorneys General Act ("<u>PAGA</u>"), codified as Labor Code section 2698 *et seq.*:

a. All current and former non-exempt employees who worked for Defendants in California at any time from one year prior to the postmark date of the initial PAGA notice through date of trial.

40. Plaintiff reserves the right to amend, supplement, or add to this description of the aggrieved employees, according to proof.

41. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."])

42. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of the employee and other current or former employees against whom a violation of the same provision was committed pursuant to the procedures specified in Section 2699.3. "

43. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

44. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil penalties under the PAGA.

45. On or about **June 3, 2025**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

46. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set forth herein (the "PAGA notice").

47. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's written PAGA notice from the LWDA.

48. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

49. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

50. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

a. ***Unpaid Hours Worked/Overtime and Minimum Wage Violations.*** Violation of Labor Code §§ 204, 510, 558, 1194, 1197, 1198, and the applicable IWC Wage Order.

b. ***Unpaid Prevailing Wages.*** Violation of Labor Code §§ 1771, 1774, 1776, 1810-1815; IWC Wage Orders.

c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.

d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.

e. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.

f. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.

g. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.

h. ***Failure to Provide Employee Records.*** Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders.

i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

51. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(k).

PRAYER

Plaintiff prays for judgment as follows:

a. For recovery of damages in amount according to proof;

b. For all recoverable pre- and post-judgment interest;

c. For this action to be maintained as a representative action under the PAGA;

d. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;

e. For recovery of all civil penalties and other recoverable amounts under the PAGA;

f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and

g. For such other relief the Court deems just and proper.

Dated: August 8, 2025

Ferraro Vega Employment Lawyers, Inc.

Dorota James

Nicholas J. Ferraro
Dorota A. James

Attorneys for Plaintiff David Scott Barber

<u>EXHIBIT 1</u>

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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June 3, 2025

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq*.

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

PCL Industrial Services, Inc.
1500 S Union Ave.
Bakersfield, California 93307

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **DAVID SCOTT BARBER** ("Plaintiff(s)") and all other "aggrieved employees" of the following "Defendant(s)":

PCL INDUSTRIAL SERVICES, INC.

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency ("LWDA") does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act ("PAGA"). "PAGA allows an 'aggrieved employee'—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer." *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(s). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Operator from about November 2012 to the present in Bakersfield, CA. During his employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The "aggrieved employees" include Plaintiff and the following individuals:

> All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the "aggrieved employees" and the "PAGA Period").

Plaintiff reserves the right to expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Hours Worked/Overtime and Minimum Wage Violations
Violation of Labor Code §§ 204, 510, 558, 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 204, 510, 558, 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the "Hours and Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires "[a]ny 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;" and "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;" and "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 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The "Minimum Wages" sections of the applicable IWC Wage Order provide that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise." The foregoing California wage laws require payment of "not less than the applicable minimum wage *for all hours worked* in the payroll period" and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful wage rate for all hours worked, resulting in unpaid minimum wages. In particular, Defendants failed to pay Plaintiff and other aggrieved employees the prevailing wages. Plaintiff and other aggrieved employees worked on public work contracts, e.g. CalBio that entitled them to prevailing wages. Because Plaintiff and other aggrieved employees worked on public works contracts involving anaerobic digester technology to produce energy and reduce greenhouse emissions, Defendants were required to pay him prevailing wages pursuant to the Labor Code. However, Defendants failed to pay Plaintiff and the aggrieved employees the correct among of prevailing wages. While Plaintiff alleges he worked on the CalBio projects for approximately five years, his wage statements evidence he was paid anywhere close to the required prevailing wage only in one pay period at the culmination of the project. An illustrative example of Defendants' singular payment at the prevailing wage is shown below:

PCL INDUSTRIAL SERVICES, INC.
661-832-3995

82189 BARBER, DAVID SCOTT

Route : 6200000
Advice No: 20220255
Deposit Date: 2025-02-07
Period Start : 2025-01-27
Period End : 2025-02-02

EARNINGS | DEDUCTIONS

PERIOD EARNINGS	HOURS	RATE	AMOUNT	YEAR TO DATE AMOUNT	DESCRIPTION	PERIOD AMOUNT	YEAR TO DATE AMOUNT
Regular	-25.07	30.52	-765.14	4,668.34	------------ Gross -----	1,757.26	9,916.26
Regular	25.07	56.46	1,415.45	1,415.45	Federal Income Tax	134.37	536.75
Overtime	-1.64	45.78	-75.08	416.59	Federal FICA Withheld	108.95	592.18
Overtime	1.64	84.69	138.89	138.89	Federal Medicare Withhe	25.48	138.49
Doubletime				183.12	CALIFORNIA WH	73.66	252.20
PENLTY/PREM			167.05	167.05	CALIFORNIA SDI EE	21.09	114.62
HOLIDAY PAY				976.64	Empl only		365.00
MISSED OT HR				366.24			
MISSED DT HR				10.99			
BF SICK PAY				610.40			
CLOTHING ALW				86.46			
FRINGE BEN			876.09	876.09			
BF SICK ACCR				40.00			
* Sick Taken/Availab	20.00		20.00				

Gross Pay	1,757.26	Taxable Gross	1,757.26	Deductions	363.55	Net	1,393.71

BANK NO.	NAME OF BANK/SAVINGS AND LOAN	ACCOUNT NUMBER	AMOUNT
322273722	KERN SCHOOLS FEDERAL CR UNION	******8529	1,393.71

Extract from Plaintiff's Wage Statement with a Pay Date of 02/07/2025

During this pay period and <u>only this pay period</u>, Plaintiff was paid an hourly rate of $56.46 rather than the usual deficient hourly rate of 30.52 which he was paid throughout his five years on the project. However, he should have been paid at the basic hourly wage of $60.96 as his work operating a trenching machine up to 6 ft should have placed him within Group 4 of the appropriate prevailing wage determination for operating engineers.

Regarding the minimum wage claims, "because the prevailing wage law is a minimum wage law mandated by statute and serves important public policy goals, section 1194 provides an employee with a private statutory right to recover unpaid prevailing wages from an employer who fails to pay that minimum wage." *Road Sprinkler Fitters Local Union No. 669 v. Fire Sprinklers, Inc.* (2002) 102 Cal. App. 4th 765.

Defendants also failed to properly pay the prevailing wage rate applicable to overtime hours because it did not pay time and a half wages for overtime hours (40+, 8+, etc.) worked on public works projects, instead paying 1.5x or 2.0x the aggrieved employees' unadorned straight time rate for non-public works projects, as opposed to the "regular rate" or the prevailing basic hourly wage.

PCL INDUSTRIAL SERVICES, INC.
661-832-3995

82189 BARBER, DAVID SCOTT

Route : 6200000
Advice No: 1262062
Deposit Date: 2025-01-31
Period Start : 2025-01-20
Period End : 2025-01-26

EARNINGS | DEDUCTIONS

PERIOD EARNINGS	HOURS	RATE	AMOUNT	YEAR TO DATE AMOUNT	DESCRIPTION	PERIOD AMOUNT	YEAR TO DATE AMOUNT
Regular	40.00	30.52	1,220.80	4,212.68	---------- Gross -----	1,537.80	6,818.92
Overtime	1.00	45.78	45.78	400.11	Federal Income Tax	88.76	337.35
Doubletime				183.12	Federal FICA Withheld	91.75	403.74
HOLIDAY PAY	8.00	30.52	244.16	976.64	Federal Medicare Withhe	21.45	94.42
MISSED OT HR				366.24	CALIFORNIA WH	45.28	150.86
MISSED DT HR				10.99	CALIFORNIA SDI EE	17.76	78.15
BF SICK PAY				610.40	Empl only	58.00	307.00
CLOTHING ALW			27.06	58.74			
BF SICK ACCR				40.00			
* Sick Taken/Availab	20.00		20.00				
	49.00						

Gross Pay	1,537.80	Taxable Gross	1,479.80	Deductions	323.00	Net	1,214.80

BANK NO.	NAME OF BANK/SAVINGS AND LOAN	ACCOUNT NUMBER	AMOUNT
322273722	KERN SCHOOLS FEDERAL CR UNION	******8529	1,214.80

Extract from Plaintiff's Wage Statement with a Pay Date of 01/31/2025

During this pay period, Plaintiff's overtime payment was calculated based on the $30.52 hourly rate rather than the prevailing wage basic hourly rate of $60.96.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

<u>Unpaid Prevailing Wages</u>
Violation of Labor Code §§ 1771, 1774, 1776, 1810-1815; IWC Wage Orders

As addressed above, Defendants failed to properly pay the prevailing wage rate applicable to overtime hours because it did not pay time and a half wages for overtime hours (40+, 8+, etc.) worked on public works projects, instead paying 1.5x or 2.0x the aggrieved employees' unadorned straight time rate for non-public works projects, as opposed to the "regular rate" or the prevailing basic hourly wage.

For this reason, Defendants violated Labor Code section 1771, which required payment "not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, [] paid to all workers employed on public works."

Additionally, as Defendants violated Labor Code section 1774, which required Defendants and to "pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract." Because Defendants failed to pay overtime at the lawful wage rate, its employees were not paid the prevailing wage rates required by law for such overtime hours. This resulted in underpayments on overtime hours to the aggrieved employees.

Furthermore, Claimant alleges that Defendant violated Labor Code section 1776, as Defendant failed to maintain accurate records as required by that statute, as the information is not true and correct due to the incorrect wage rates, and because Defendant failed to comply with Labor Code sections 1771, 1811, and 1815.

Moreover, Labor Code sections 1810, 1811, 1812, 1813, 1814, 1815 govern the working hours applicable to public works projects like the ones Claimant and other aggrieved employees worked on. For those projects, employees were prohibited from working overtime at all, unless they were paid "at not less than 1 ½ times the basic rate of pay" for hours in excess of 40 in a workweek or 8 in a workday as provided in Labor Code section 1815. The basic rate is defined as set forth in 1773.9 and published on by the Director of Industrial Relations in connection with wage determinations: https://www.dir.ca.gov/oprl/dprewagedetermination.htm. Here, Defendant instead paid aggrieved employees like Claimant at 1.5x their base rates, not accounting for the wage determined rates, regular rates, or basic hourly rates. Therefore, Defendant is liable accordingly.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code §§ 1775 (minimum of $40 per day per employee and up to $200 per day per employee) and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.7

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 40 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the workweek;" (2) "by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days;" or (3) "for exempt employee … in the same manner as the employer calculates wages for other forms of paid leave time." Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees "with written notice of the amount of paid sick leave available … for use on either the employee's itemized wage statement … or in a separate writing provided on the designated pay date with the employee's payment of wages."

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. As stated above, Defendants engaged in an unlawful policy and practice of failing to pay prevailing wages. As a result, Defendants failed to pay sick leave at one of the rates required by section 246(i) because they failed to pay at what was the correct regular rate of pay for the workweek. Defendants' paid sick leave underpayments were a matter of common payroll practices that applied to Plaintiff and other aggrieved employees.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862

Defendants failed to pay Plaintiff and the aggrieved employees all meal period premiums at the correct regular rate of pay. Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods to keep up with high demands of the job. As stated above, Defendants engaged in an unlawful policy and practice of failing to pay prevailing wages. As a result Defendants, failed to pay Plaintiff and the other aggrieved employees all meal period premiums at the correct regular rate of compensation.

An illustrative example of Defendants' failure to pay meal period premiums at the prevailing wage is shown below:

PCL INDUSTRIAL SERVICES, INC. 82189 BARBER, DAVID SCOTT
1500 S. UNION AVE
BAKERSFIELD CA 93307

Route: 6200000
Payment No: 3242050
Payment Date: 3/29/2024
Period Start: 3/18/2024
Period End: 3/24/2024

EARNINGS DEDUCTIONS

PERIOD EARNINGS DESCRIPTION	HOURS	RATE	AMOUNT	YEAR TO DATE AMOUNT	DESCRIPTION	PERIOD AMOUNT	YEAR TO DATE AMOUNT
Regular	40.00	28.52	1,140.80	12,676.78	Gross Wages	1,512.90	16,122.61
Overtime	4.00	42.78	171.12	1,219.23	Federal Income Tax	84.78	816.35
Doubletime	2.63	57.04	150.02	723.27	Federal FICA Withholding	89.15	943.80
PENLTY/PREM	1.00	28.52	28.52	28.52	Medicare Withheld-Employee	20.85	220.73
HOLIDAY PAY				684.48	California Franchise Tax Board	44.42	376.43
BF SICK PAY				285.20	California State Disability	15.82	167.44
CLOTHING ALW			22.44	305.13	Empl only	75.00	900.00
SICK TIME TAKEN	10.00						
SICK TIME AVAILABLE	30.00						
SICK TIME TAKEN LA	0.00						
SICK TIME AVAILABLE LA	0.00						

Gross Pay	1,512.90	Taxable Gross	1,437.90	Deductions	330.02	Net	1,182.88

BANK NO. / NUMERO DA LA SUCCURSALE	NAME OF BANK/SAVINGS AND LOAN NOM DE L'INSTITUTION FINANCIERE	ACCOUNT NUMBER NUMERO DU COMPTE	AMOUNT MONTANT

Extract of Plaintiff's Wage Statement with a Pay date of 03/29/2024 showing a deficient premium payment.

Here, Plaintiff was paid a "PENLTY/PREM" at a rate of $28.52 rather than what should have been his statutorily required prevailing wage. Each time Plaintiff and the aggrieved employees experienced a non-compliant meal period they were owed a meal period premium. As a matter of policy and practice, Defendants failed to pay all owed meal period premiums at the correct rate of pay.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides "every person who fails to pay the wages of an employee as provided in Section … 204 … shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Indeed, Defendants failed to pay all premiums, overtime, sick leave, and other earning on time each payday.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums at the prevailing wage owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Failure to Provide Employee Records
Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders

Defendants violated Labor Code sections 226, 432, 1198.5, and 1174 with respect to the aggrieved employees.

Labor Code section 226(b) requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer." Labor Code section 432 states that "[i]f an employee … signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request." Labor Code section 1198.5 grants "[e]very current and former employee, or his or her representative, … the right to inspect and receive a copy of the personnel files that the employer maintains relating to the employee's performance or to any grievance concerning the employee." Section 7(A) (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates that employers maintain and make available "time records showing when the employee begins and ends each work period" as well as time records showing "[m]eal periods, split shift intervals, and daily hours worked[.]" Labor Code section 1174(d) requires these and other records be maintained for at least three years.

Defendants failed to provide all records upon Plaintiff's request. Defendants failed to provide all records within the 30-day period requested by Plaintiff in his original correspondence under the foregoing sections of the Labor Code. Defendants failed to provide Plaintiff's time records. At the time of filing this notice Plaintiff's time records have not been provided to Plaintiff.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate "payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments." <u>Section 7(A)</u> of the <u>IWC Wage Orders</u>, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

<u>Attorneys' Fees and Costs</u>
Labor Code § 2699(k)(1)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(k)(1).

- LITIGATION HOLD NOTICE –

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold <u>must be suspended immediately</u>.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

Dorota James

Dorota A. James

Cc Plaintiff David Scott Barber

John T. Egley – Defendants Representative
jegley@calljensen.com

jg