

January 22, 2025

Via Certified Mail

Bay Cities Asphalt Inc.
c/o Trevor Najar, agent for service of process
7948 N. Locke Rd.
Vacaville, CA 95688

Re: PAGA Notice Pursuant to Labor Code § 2699.3 of Violations of the California Labor Code

Dear Sir or Madam:

Pursuant to California Labor Code §2699.3, Rodolfo Amaya hereby gives notice of violations of the following sections of the California Labor Code by Bay Cities Asphalt Inc. (“Employer”): §§204, 226, 226.7, 226.8, 247.5, 510, 512, 558, 1174, 1197, 2802, and IWC Wage Order No. 16-2001 (8 C.C.R. §11160). Employer’s legal violations as described herein were and are knowing and intentional.

Mr. Amaya was an aggrieved employee of Employer as defined by California Labor Code §2699(c) because he was: (1) an employee of Employer within the 12 months prior to the filing of this notice, (2) who personally suffered each of Employer’s violations of the California Labor Code as described herein during that time.

I. Facts and Theories Giving Rise to Employer’s Violations of the California Labor Code

Employer provides asphalt and concrete contracting services in California. On information and belief, Employer employs approximately fifty employees in California. Mr. Amaya was employed by Employer as a non-exempt hourly employee through approximately December 18, 2024.

Employer did not provide Mr. Amaya or other employees with an employment agreement identifying the terms of employment or compensation, a notice pursuant to Labor Code §2810.5, and other key documents. Throughout his employment, Employer did not track or record the hours worked by Mr. Amaya or other employees. Likewise, Employer did not provide employees with wage statements. As a result of these Labor Code violations, employees were unable to determine their regular rate of pay, days or hours worked, or the other crucial information. Mr. Amaya believes that he and other employees were misclassified and paid lump

sums rather than as hourly, non-exempt employees. Mr. Amaya and other employees regularly worked in excess of eight hours in a workday, forty hours in a workweek, and/or six days within one workweek without receiving overtime pay.

Mr. Amaya and other employees were not provided regular meal or rest periods. Instead, they were told to take breaks whenever they could. Due to the nature of their work, they were often unable to take timely, uninterrupted, code-compliant breaks during which they were relieved of all duty. As far as Mr. Amaya is aware, meal periods were not recorded.

Because Employer failed to provide timely meal and rest periods during which employees were relieved of all duties, it owes Mr. Amaya and other employees one hour of compensation for each day worked with a missed rest period and one hour of compensation for each day worked with a missed meal period. Employer failed to pay Mr. Amaya and other employees those wages when they were due and failed to pay employees those wages upon termination.

Mr. Amaya is informed and believes that his and other employees' paychecks were inaccurate, did not reflect all time worked, and did not include overtime pay. On multiple occasions, Mr. Amaya and other employees were instructed to continue working after their regular shifts. On other occasions, Employer instructed Mr. Amaya to drive his personal vehicle to other cities for work purposes, without compensation or reimbursement. Mr. Amaya and other employees used their personal phones for work purposes, for directions and otherwise, without reimbursement.

The above-referenced conduct resulted in Employer failing to maintain accurate records of days and hours actually worked by Mr. Amaya and other employees, failing to pay Mr. Amaya and other employees for all hours actually worked at the promised rates, and failing to provide accurate wage statements showing hours actually worked and wages earned at accurate rates.

II. Provisions of the California Labor Code Violated by Employer and Penalties Sought

As a result of Employer's violations of the California Labor Code, as alleged herein, Mr. Amaya is entitled to recover civil penalties pursuant to California Labor Code §2699 *et seq.* on behalf of himself and all other former or current California employees of Employer who were subjected to its violations of the California Labor Code as described herein.

For failing to provide meal periods and/or requiring employees to work during meal periods in violation of Labor Code §§226.7, 512, and 558 and Industrial Welfare Commission Wage Order No. 16-2001 (8 C.C.R. §11160), Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period or \$200 for each aggrieved employee per pay period for each violation if the Employer's conduct was malicious, fraudulent, or oppressive pursuant to Labor Code §2699(f).

For failing to provide one hour of pay to each employee who was not provided a timely meal period under Labor Code §§512 or 558 and Industrial Welfare Commission Wage Order

No. 16-2001 (8 C.C.R. §11160), in violation of Labor Code §226.7, Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period or \$200 for each aggrieved employee per pay period for each violation if the Employer's conduct was malicious, fraudulent, or oppressive pursuant to Labor Code §2699(f).

For failing to provide rest periods and/or requiring employees to work during rest periods in violation of Labor Code §§226.7 and 558 and Industrial Welfare Commission Wage Order No. 16-2001 (8 C.C.R. §11160), Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period or \$200 for each aggrieved employee per pay period for each violation if the Employer's conduct was malicious, fraudulent, or oppressive pursuant to Labor Code §2699(f).

For failing to provide one hour of pay to each employee who was not provided a rest period under Labor Code §558 and Industrial Welfare Commission Wage Order No. 16-2001 (8 C.C.R. §11160), in violation of Labor Code §226.7, Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period or \$200 for each aggrieved employee per pay period for each violation if the Employer's conduct was malicious, fraudulent, or oppressive pursuant to Labor Code §2699(f).

For misclassifying employees in violation of Labor Code §226.8, Employer is subject to civil penalties of not less than \$5,000 and not more than \$15,000 for each violation, or not less than \$10,000 and not more than \$25,000 for each violation if Employer has engaged in or is engaging in a pattern or practice of these violations.

For failing to maintain accurate time and payroll records and to record meal periods and total hours worked in violation of Labor Code §§247.5, 558, and 1174 and Industrial Welfare Commission Wage Order No. 16-2001 (8 C.C.R. §11160), Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period or \$200 for each aggrieved employee per pay period for each violation if the Employer's conduct was malicious, fraudulent, or oppressive pursuant to Labor Code §2699(f).

For failing to pay at least the minimum wage for time worked, in violation of Labor Code §§204, 558, and 1197 and Industrial Welfare Commission Wage Order No. 16-2001 (8 C.C.R. §11160), Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period or \$200 for each aggrieved employee per pay period for each violation if the Employer's conduct was malicious, fraudulent, or oppressive pursuant to Labor Code §2699(f).

For failing to pay employees overtime premiums for work in excess of eight hours per day, forty hours per week, or six days within one workweek in violation of Labor Code §§510, 558, 1197 and Industrial Welfare Commission Wage Order No. 16-2001 (8 C.C.R. §11160), Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period or \$200 for each aggrieved employee per pay period for each violation if the Employer's conduct was malicious, fraudulent, or oppressive pursuant to Labor Code §2699(f).

For failing to reimburse employees for expenditures incurred by the employees at the instruction of Employer, in violation of Labor Code §2802, Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period or \$200 for each aggrieved employee per pay period for each violation if the Employer's conduct was malicious, fraudulent, or oppressive pursuant to Labor Code §2699(f).

For failing to provide accurate, itemized wage statements from which employees could promptly and easily determine the information required by Labor Code §226, in violation of that section, Employer is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period or \$200 for each aggrieved employee per pay period for each violation if the Employer's conduct was malicious, fraudulent, or oppressive pursuant to Labor Code §2699(f).

Please note that further investigation may shed light upon additional violations beyond those contained herein, and Mr. Amaya reserves the right to file and serve a further amended notice should additional violations be discovered.

Sincerely,

AIMAN-SMITH & MARCY
A PROFESSIONAL CORPORATION



John A. Lofton