Rebecca Harteker | Attorney

FRONTIER Law Center

Rebecca@frontierlawcenter.com
(818) 914-3433
6200 Canoga Ave., Suite 470
Woodland Hills, CA 91367
www.frontierlawcenter.com

April 2, 2026

Via Online Filing
http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html

Via Certified Mail
American Builders & Contractors Supply Co., Inc.
706 West Boone Street
Santa Maria, CA 93458

American Builders & Contractors Supply Co., Inc.
One ABC Parkway
Beloit, WI 53511

Subject: *Joshua Fischer v. American Builders & Contractors Supply Co., Inc.*

Dear Representative:

This office represents Joshua Thomas Fischer ("Plaintiff") in connection with Labor Code violation claims related to their employment with American Builders & Contractors Supply Co., Inc. ("Employer"). Employer can be contacted at:

American Builders & Contractors Supply Co., Inc.
706 West Boone Street
Santa Maria, CA 93458

American Builders & Contractors Supply Co., Inc.
One ABC Parkway
Beloit, WI 53511

Plaintiff has personally suffered each of the Labor Code violations alleged in this letter while employed by Employer within the applicable one-year statute of limitations period. As such, Plaintiff intends to seek PAGA penalties on behalf of himself and all other non-exempt employees of Employer employed in California and who were subjected to any or all of the Labor Code violations referenced herein during the PAGA Period (together with Plaintiff, "Aggrieved Employees"). The PAGA Period begins one year prior to the date of this letter and, because the violations alleged herein are ongoing, the PAGA Period extends beyond the date of this letter.

In response to Labor Code violations alleged below, PAGA provides Employer with specific options to mitigate potential penalties:

Taking All Reasonable Steps to Be in Compliance:

Employer can reduce potential penalties to 15% of the maximum by demonstrating it has already taken all reasonable steps to be in compliance with all Labor Code provisions identified in this notice prior to receiving it. If Employer believes it has already taken all reasonable steps to be in compliance with all Labor Code provisions identified in this notice, Employer is encouraged to contact our office to set forth all reasonable steps taken.

If all reasonable steps are taken to be in compliance with all Labor Code provisions identified in this notice within 60 days after receiving it, penalties may be reduced to 30% of the maximum. If Employer intends to take all reasonable steps to be in compliance with all Labor Code provisions identified in this notice, Employer is encouraged to engage in good faith meet-and-confer discussions with our office regarding the alleged violations. Failure to do so may support a finding that all reasonable steps were not taken to comply with the Labor Code provisions identified herein.

Curing Violations:

For certain violations, Employer has the opportunity to fully cure the alleged violations to further reduce penalties or even avoid penalties altogether. Once again, we strongly encourage Employer to promptly initiate meet-and-confer discussions with our office as part of any compliance or cure efforts. Failure to do so may result in a cure that is insufficient.

Employer must notify both our office and the Labor and Workforce Development Agency (LWDA) of any steps taken towards compliance or any attempts to cure. Not only does this approach demonstrate a good faith attempt to come into compliance, but failure to do so could potentially support a finding that Employer's conduct was malicious, fraudulent, or oppressive, thereby leading to increased penalties pursuant to Labor Code section 2699(f)(2)(B).

All communications regarding this matter should be directed to:

Frontier Law Center
6200 Canoga Ave, Suite 470
Woodland Hills, CA 91367

This letter is sent pursuant to the requirements of Labor Code section 2699.3. The Labor Code violations being alleged are as follows:

<u>Misclassification and Overtime Violations</u>

Labor Code section 510, 1194, and 1198, along with the applicable Wage Order provides that an employee shall be paid one and one-half times their regular rate of pay for any work in excess of eight hours in one workday or 40 hours in any one workweek. Labor Code section 510 and the applicable Wage Order further provides that an employee shall be paid twice their regular rate of pay for any work in excess of 12 hours in one day.

Employer misclassified Plaintiff and the Aggrieved Employees as exempt employees when they should have been classified as non-exempt. As a result of this misclassification, Employer failed to pay overtime wages owed to Plaintiff and the Aggrieved Employees.

Specifically, Plaintiff was classified as a salaried employee at $50,000 per year. Plaintiff regularly worked eight to nine hours per day, arriving at approximately 7:00 a.m. and leaving between 4:00 p.m. and 4:30 p.m., five days per week. Additionally, Plaintiff was required to perform work off the clock, including preparing quotes after business hours and remaining available via phone and email at all times to respond to work-related communications. Despite regularly working in excess of eight hours per day, Plaintiff was not paid overtime wages because he was misclassified as exempt.

Civil Penalties Applicable to Overtime Violations

As a result of the above overtime and misclassification violations, Employer is subject to the civil penalties listed in Labor Code sections 558, 1197.1, and 2699.

Meal Break Violations

Labor Code section 512 and the applicable Wage Order provides that an employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, or more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. Meal periods must be uninterrupted, and the employee must be relieved of all duty.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant meal period was not provided.

Missed Meal Breaks

The Aggrieved Employees' meal breaks were regularly missed because Employer failed to establish or communicate a designated time for the Aggrieved Employees to take a 30-minute uninterrupted meal period. As a result, the Aggrieved Employees missed compliant meal periods on a daily basis throughout their employment. Because Plaintiff was classified as a salaried employee, he was not required to clock in or out for meal breaks, and Employer maintained no records of whether meal periods were actually provided or taken.

On Call / On Duty Meal Breaks

An employer provides compliant meal breaks to its employees "if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break." (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1040 (2012)).

Here, the Aggrieved Employees were required to remain on call and on duty because Employer required them to remain available to answer work-related phone calls during any attempted breaks.

Premium Pay Not Paid

Premium pay for missed meal breaks must be paid at the employees' regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021)). The regular rate of pay includes all remunerations, including shift differentials, incentive pay, and other non-discretionary bonuses. Here, the Aggrieved Employees did not receive premium pay for missed meal breaks.

Civil Penalties Applicable to Meal Break Violations

As a result of the above meal break violations, Employer is subject to the civil penalties listed in Labor Code sections 558 and 2699.

Rest Break Violations

Labor Code section 226.7 and the applicable Wage Order requires employers to authorize and permit its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net per four hours or major fraction thereof. Employees must be relieved of all duties during their rest breaks.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant rest break was not provided.

Missed Rest Breaks

The Aggrieved Employees' rest breaks were regularly missed entirely. Plaintiff regularly worked full-day shifts of approximately eight to nine hours, five days per week. For an eight to nine hour shift, Plaintiff was entitled to at least two 10-minute rest breaks. However, Employer failed to provide the Aggrieved Employees with any duty-free rest periods as required for each four hours worked or major fraction thereof.

Because Plaintiff was classified as a salaried employee, he was not required to clock in or out, and Employer maintained no records of whether rest periods were actually provided or taken. As a result, Plaintiff missed compliant rest periods on a daily basis throughout his employment.

On Call / On Duty Rest Breaks

The Aggrieved Employees were required to remain on call and generally on duty during their rest breaks. Courts have repeatedly held that employers may not impose any limits on rest breaks. (*Augustus v. ABM Sec. Servs., Inc*., 2 Cal. 5th 257, 269 (2016) (an employer cannot "satisfy its obligation to relieve employees from duties and employer control during rest periods when the employer [] requires its employees to remain on call")). Thus, Employer violated the Labor Code by requiring the Aggrieved Employees to remain on call and on duty during their rest breaks.

On Premises Rest Breaks

An employer generally may not place restrictions on its employees during their rest breaks, such as requiring its employees to remain on the premises and subject to the employer's control. In fact, the California Division of Labor Standards and Enforcement has provided the following guidance on its website:

> Q. Can my employer require that I stay on the work premises during my rest period?
>
> A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself. In *Augustus v. ABM Security Services, Inc*., (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the rest period requirement "obligates employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time." (citation omitted) As a practical matter, however, if an employee is provided a ten minute rest period, the employee can only travel five minutes from a work post before heading back to return in time.

Here, since the Aggrieved Employees were not allowed to leave the work premises during their rest breaks, they were subject to Employer's control during the rest breaks. Thus, the Aggrieved Employees were not provided with compliant rest breaks.

Premium Pay Not Paid

Premium pay for missed rest breaks must be paid at the employees' regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021)). The regular rate of pay includes all remunerations, including shift differentials, incentive pay, and other non-discretionary bonuses. Here, the Aggrieved Employees did not receive premium pay for missed rest breaks.

Civil Penalties Applicable to Rest Break Violations

As a result of the above rest break violations, Employer is subject to the civil penalties listed in Labor Code section 2699.

Failure to Maintain Payroll Records

Labor Code section 1174(d) requires every employer to keep accurate records showing the names and addresses of all employees, the ages of all minor employees, the total hours worked daily and weekly by each employee, and all deductions and wages paid to each employee. Employer failed to maintain accurate and complete payroll records for the Aggrieved Employees as required by Labor Code section 1174(d). Specifically, because Employer classified Plaintiff and the Aggrieved Employees as salaried Outside Sales Representatives exempt from overtime, Employer did not require them to clock in or out and maintained no records of their actual daily or weekly hours worked. As a result, Employer's records failed entirely to capture the hours regularly worked by the Aggrieved Employees, including time spent after business hours preparing quotes and fulfilling customer orders, as well as time spent remaining available and responsive to work-related phone calls and emails at all times—all of which constituted compensable hours worked that were never recorded. Additionally, because Plaintiff was not required to clock in or out for meal periods, Employer maintained no records reflecting whether compliant meal or rest periods were actually provided or taken on any given day, making it impossible to verify compliance with California's meal and rest period requirements from Employer's records alone.

Civil Penalties Applicable to Failure to Maintain Payroll Records

As a result of Employer's failure to maintain accurate payroll records, Employer is subject to the civil penalties listed in Labor Code sections 1174.5 and 2699.

Wage Statement Violations

Labor Code section 226 requires an employer to provide wage statements to its employees which include, among other things, gross and net wages earned, total hours worked, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, all deductions, the inclusive dates of the period for which the employee is paid, and the name and address of the legal entity that is the employer. Employer failed to provide wage statements which accurately reflected this information.

Civil Penalties Applicable to Wage Statement Violations

As a result of the wage statement violations detailed above, Employer is subject to the civil penalties listed in Labor Code sections 226.3 and 2699.

Waiting Time Penalties

Labor Code sections 201 and 202 require that an employer provide an employee with all wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the employee's resignation. When an employer fails to comply with the above, the employee is entitled to the equivalent of a day's wage at their regular rate of pay for each day the employer is late, for up to 30 days. (Labor Code section 203). Employer failed to pay all wages owed at the conclusion of the Aggrieved Employees' employment.

Civil Penalties Applicable to Waiting Time Penalties

Because of Employer's failure to pay all wages at the conclusion of employment and to pay the resulting waiting time penalties, Employer is subject to the civil penalties listed in Labor Code section 2699.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional facts or theories of liability, they expressly reserve the right to revise these facts and/or add any new claims by amending and/or supplementing this letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Sincerely,

/s/

Rebecca Harteker