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December 28, 2023

**VIA U.S. MAIL, CERTIFIED MAIL,
AND ONLINE ELECTRONIC FILING**

Labor & Workforce Development Agency
800 Capital Mall, Suite 5000
Sacramento, CA 95814

Re: **PAGA Claim Notice**
Shauna Stalnaker / Blue Pacific Engineering and Construction, Inc.

To Whom It May Concern:

This office represents Ms. Shauna Stalnaker (“Claimant”) in the above referenced matter. This letter shall serve as Claimant’s notice, made pursuant to the California Private Attorney General Act (“PAGA”), California Labor Code Section 2698, *et seq.*, of Claimant’s wage and hour claims and related violations of the California Labor Code against her former employer Blue Pacific Engineering and Construction, Inc. and its ownership (collectively “Blue Pacific”). Claimant seeks to represent all other current and former aggrieved employees of Blue Pacific who suffered one or more violations of the California Labor Code, including those described herein.

I. INTRODUCTION

Blue Pacific provides engineering and construction services generally in and around the greater San Diego area. Claimant was hired by Blue Pacific in July of 2020. Claimant’s job duties included managing all bank accounts, collecting monthly billing, overseeing accounts payable, preparing work-in-progress reports, managing payroll, taxes, and workers compensation, as well as reporting and distributing employee benefits and processing employee deferred compensation withholdings.

Claimant has personal, first-hand knowledge that, during her tenure, Blue Pacific unlawfully engaged in an intentional practice of improperly diverting employee 401(k) withholdings and other deferred compensation thereby depriving employees of a portion of their wages. In addition to employing unlawful payroll practices, Blue Pacific also routinely and intentionally failed to timely pay Claimant and other aggrieved employees their regular wages as required by statute. In fact, Claimant was specifically instructed by Blue Pacific to implement and

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maintain these unlawful practices. As a result of these unlawful practices, Claimant's and her co-workers' wage statements were necessarily incorrect. Claimant's protests about the unlawful decisions and practices were ignored until, ultimately, she was illegally fired by Blue Pacific's owner in retaliation for persisting with her protests about them.

Blue Pacific's intentional misconduct and unlawful practices with respect to diverting employee contributions, including those intended for tax-deferred compensation plans, violate numerous sections of the California Labor Code as set forth below.

II. THEORIES OF LABOR CODE VIOLATIONS AND REMEDIES

Claimant, on behalf of herself and all aggrieved current and former Blue Pacific employees, alleges the following violations:

Failure to Pay Timely Pay Wages § 204

Section 204 of the California Labor Code states in relevant part that all wages earned by any employee are due and payable twice during each calendar month on days designated in advance by the employer as the regular paydays. If an employee does not receive full payment of all wages due on the designated payday the payment is considered late. On numerous occasions, Blue Pacific failed to furnish all wages due and owing to employees on their designated payday. Specifically, employees of Blue Pacific frequently experienced delays in receiving their wages. Over the last year, aggrieved employees' paychecks were unable to be processed, "bounced," due to Blue Pacific's bank account not having sufficient funds. Blue Pacific also developed a practice of delaying employee paydays altogether, forcing employees to wait many days before receiving their pay.

Labor Code § 210 imposes civil penalties upon an employer who fails to pay its employees' wages on time. An initial violation subjects the employer to a penalty of \$100 per employee. Willful or intentional and subsequent violations both subject the employer to the assessment of penalties at the rate of \$200 per employee and an additional 25% of the amount unlawfully withheld. In light of the foregoing, Claimant, for herself and the aggrieved employees, seeks to recover these penalties.

Improper Withholding of Wages § 221

An employer may only withhold, deduct, or divert amounts from an employee's wages in select circumstances, such as: (1) when required or empowered to do so by state or federal law, or (2) when a deduction is expressly authorized in writing by the employee to cover insurance premiums, benefit plan contributions or other deductions not amounting to a rebate on the employee's wages, or (3) when a deduction to cover health, welfare, or pension contributions is expressly authorized by a collective bargaining agreement.

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Here, although Blue Pacific repeatedly represented that it was withholding employee wages for the purpose of making contributions to deferred compensation plans, beginning in March of 2023, such funds were either delayed unlawfully or were never deposited into employee accounts. Accordingly, Claimant, for herself and the aggrieved employees, seeks to recover all unpaid improperly withheld wages in addition to applicable waiting time penalties.

Failure to Provide Timely and Accurate Wage Statements § 226

California employers are required to furnish every employee with an itemized, written, detachable or separate statement, or paystub, at the time of payment of wages. The wage statement must be accurate and contain the gross wages earned, total hours worked by the employee, all deductions, net wages earned, inclusive dates of the pay period, the employee's name and social security number, and the name and address of the legal entity that is the employer, pursuant to California Labor Code § 226(a) and § 226.2(a).

A missing, incomplete or inaccurate wage statement subjects an employer to a \$100.00 penalty for each occurrence, which pursuant to Labor Code § 226(c) has been interpreted to mean each and every payday in which a compliant wage statement is not provided.

As noted above, Blue Pacific developed a practice of representing to employees that a portion of their wages were being diverted to deferred compensation plans without ever depositing the withheld funds. Accordingly, the wage statements provided to Claimant and the other aggrieved employees from March of 2023 through December of 2023 are inaccurate and fraudulent. In light of the foregoing, Claimant for herself and the and aggrieved employees, seeks to recover applicable penalties or damages contemplated under § 226(e).

Failure to Pay Prevailing Wages Pursuant to Labor Code § 1774:

Blue Pacific willfully failed to properly defer employee wages into fringe benefit accounts created pursuant to applicable prevailing wage laws. Accordingly, Claimant, for herself and the aggrieved employees, seeks to recover unpaid improperly withheld wages in addition to all applicable penalties.

Waiting Time Penalties Pursuant to Labor Code § 203:

Some aggrieved employees no longer work for Blue Pacific. They either resigned or were terminated. Based on the foregoing, Blue Pacific has a consistent policy of failing to timely pay all wages due and owing to aggrieved employees at the time of their termination or within seventy-two (72) hours of their resignation, as required by California under Labor Code § 203. In light of the foregoing, Claimant, for herself and the aggrieved employees, seeks to recover wages and all applicable penalties.

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Unfair Competition Under Business and Professions Code § 17200, et seq.:

Blue Pacific's unlawful conduct has been and, on information and belief, continues to be unfair, unlawful, and harmful to aggrieved employees and the general public in violation of Business & Professions Code § 17200 *et seq.* These acts by Blue Pacific violate, *inter alia*, California Labor Code §§ 204, 221, 226, 1774, 203. Claimant intends to pursue these claims in litigation against Blue Pacific and its ownership.

III. CONCLUSION

As a result of Blue Pacific's Labor Code violations, as well as its violations of other California laws, Blue Pacific is liable for back wages, premiums, and penalties, attorneys' fees and costs, unreimbursed expenses incurred, and other damages and remedies.

Accordingly, I respectfully request that you advise me, via certified U.S. Mail within sixty (60) days of the postmark on this letter, that the State of California does not intend to investigate the above-described Labor Code violations and that Claimant, for herself and the other aggrieved employees, may pursue a representative PAGA claim against, and recovery penalties from, Blue Pacific pursuant to Labor Code § 2699.

Sincerely,



David D. Cardone

DDC/mr

cc:

VIA CERTIFIED MAIL

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