

August 23, 2024

VIA ONLINE SUBMISSION

Stewart Knox, Secretary
California Labor & Workforce
Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

VIA CERTIFIED MAIL

McC Campbell Analytical Inc.
Attn: Legal Department
1534 Willow Pass Rd.
Pittsburg, CA 94565

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE
SECTION 2698, *ET SEQ.*

To: The California Labor and Workforce Development Agency; McC Campbell Analytical Inc.

From: Michael Nunez, on behalf of himself and all other current and former hourly nonexempt employees for violations of the California Labor Code

To Whom It May Concern:

Abramson Labor Group has been retained by former employee Michael Nunez ("Mr. Nunez") to seek compensation and all other available relief, including civil penalties on his behalf and on the behalf of all those similarly aggrieved (collectively with Mr. Nunez, "Claimants") who have been injured by McC Campbell Analytical Inc.'s ("McC Campbell Analytical") violations of the California Labor Code. Mr. Nunez, on behalf of himself and all other similarly aggrieved current and former hourly nonexempt employees of McC Campbell Analytical, intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 ("PAGA").

Factual Statement:

McC Campbell Analytical is operating through California as an analytical chemistry testing provider offering courier services; pharmaceutical testing; custom setups; product testing; and services to test

drinking water, waste water, storm water, metals testing, soil testing, gas and diesel testing, volatile organic compounds (VOC's) testing, and hazardous waste for a wide variety of chemical compounds including organic, inorganic and metallic contaminants.

Claimant Mr. Nunez works for McCampbell Analytical as an hourly, nonexempt employee in the position of Chemical Waste Technician, earning \$19.00 per hour from approximately October 2023 through December 26, 2023. Mr. Nunez, on behalf of himself and all other similarly aggrieved current and former employees in California in various positions, are or were engaged in the chemical testing and disposal for McCampbell Analytical. As part of their employment with McCampbell Analytical, Claimant and other hourly, nonexempt employees, collectively, "hourly nonexempt employees," are or were assigned to and required to suffer and permitted to work, some with and some without pay, while performing tasks collectively including, but not limited to, donning and doffing safety gear (chemical-impervious gloves, respirators, and lab coats); disposing of chemicals from a variety of sized containers (as small as a pill bottle to a 2-gallon jug); testing soil and water samples; testing other sources to ensure pH balance and desired levels; and recording their shift start and stop times, but not their meal periods.

Claimant Mr. Nunez regularly worked five (5) days per week for 8 hours or more hours per day. During the entire course of his employment, McCampbell Analytical failed to provide Mr. Nunez and continues to fail to provide those similarly aggrieved with some overtime pay and compliant meal periods and rest breaks. McCampbell Analytical has also failed to pay minimum wages to Mr. Nunez and other hourly, nonexempt employees in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and section 4 of IWC Wage Order No. 4-2001. As a consequence, McCampbell Analytical has failed to comply with Labor Code sections 226.7, 510, and 512, and sections 3, 11, and 12 of all applicable Industrial Welfare Commission ("IWC") Wage Orders, including but not limited to, IWC Wage Order No. 4-2001. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, McCampbell Analytical has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

McCampbell Analytical has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, McCampbell Analytical has failed and continues to fail to keep accurate time records of Claimants' time worked and has failed to provide timely, accurate wage statements to Mr. Nunez and other aggrieved persons in violation of Labor Code section 226(a). With regard to those no longer employed by McCampbell Analytical, including Mr. Nunez, McCampbell Analytical has violated Labor Code section 203 by failing to pay all wages due upon separation. McCampbell Analytical has failed and continues to fail to fully reimburse Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for cell phone expenses, which were required to carry out their duties and communicate internally, in violation of Labor Code section 2802. Mr. Nunez is informed and believes that such violations are ongoing, systematic, and continuous. Mr. Nunez intends to bring an action against McCampbell Analytical under the Private Attorneys General Act ("PAGA") to recover wages and penalties as provided by California law.¹

¹ Without limitation, Mr. Nunez, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A,

Theories of Labor Code Violations and Remedies:

Claimant Mr. Nunez was employed by McCampbell Analytical from approximately August 2023 through December 26, 2023 as a Chemical Waste Technician. For a period of at least four (4) years prior to August 2024, but for our purposes here, one (1) year prior, McCampbell Analytical has violated and continues to violate the California Labor Code sections as detailed below.

Claimants also were at all times entitled to payment of **minimum wages**. McCampbell Analytical has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and section 4 of IWC Wage Order No. 4-2001. First, Claimants worked a substantial amount of time while off-the-clock—meaning they were not punched in for work—and therefore, those working hours were not recorded and then compensated. This off-the-clock time primarily occurred because Claimants regularly ended their shifts by performing work for an extended period of time that needed to be completed that day but would have been beyond their 8-hour shift durations, so they were instructed to not record that extra time but rather report their scheduled shift-end on their manual timesheets. Claimants' off-the-clock time was never subsequently added and, therefore, uncompensated. Accordingly, Claimants were not paid for that time spent working off the clock. Second, Defendant enforces practices that effectively require Claimants to perform work during their meal periods and rest breaks, the effects of which Defendant could have mitigated by increasing staff to provide coverage so Claimants can take meal periods and rest breaks truly off-duty. However, Defendant instead chose to preserve smaller-than-optimum staffing levels, which forced meal periods and rest breaks into noncompliance. With that, McCampbell Analytical's corresponding failure to provide premium pay at the correct regular rate, if any premiums were paid at all, in lieu of compliant meal periods and rest breaks constitutes McCampbell Analytical's failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. McCampbell Analytical's failure to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in further detail below, also constitutes a failure to pay minimum wages to Claimants. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and section 20 of IWC Wage Order No. 4-2001.

Claimants were at all times entitled to unpaid, timely, off-duty, uninterrupted **meal periods**. As explained in the preceding paragraph, McCampbell Analytical failed to authorize and permit timely, full-length meal periods for Mr. Nunez and all other similarly aggrieved employees as required by Labor Code sections 226.7 and 512 and section 11 of IWC Wage Order No. 4-2001. Mr. Nunez and Claimants' meal periods were noncompliant because they were not off-duty; Claimants were required to monitor and respond to Microsoft Teams messages on their personal cell phones and occasionally interrupted with such messages that required returning to work early from their meal periods. Additionally, Claimants took their meal periods late—after the end of the fifth hour—but McCampbell Analytical instructed Claimants to not record their meal period durations nor their start and stop times. Nonetheless, McCampbell Analytical did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant meal periods for

230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

each workday on which they occurred. Accordingly, since McCampbell Analytical required Mr. Nunez and others similarly situated to work during their meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code sections 558, section 20 of IWC Wage Order No. 4-2001, and 2699(f).

Claimants were at all times entitled to take paid, off duty 10-minute **rest breaks**. However, for the same reasons cited in the preceding paragraph regarding meal periods, McCampbell Analytical likewise failed to authorize and permit Mr. Nunez and all other similarly aggrieved employees to take full-length, off-duty rest breaks as required by Labor Code sections 226.7 and section 12 of IWC Wage Order No. 4-2001. Claimants were not able to take their requisite number of 10-minutes rest breaks based on their shift duration; in fact, Mr. Nunez and Claimants' rest breaks were noncompliant because they were not off-duty; Claimants were required to monitor and respond to Microsoft Teams messages on their personal cell phones and occasionally interrupted with such messages that required returning to work early from their rest breaks. Nonetheless, McCampbell Analytical did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant rest breaks for each workday on which they occurred. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and section 20 of IWC Wage Order No. 4-2001. Furthermore, since McCampbell Analytical required their hourly nonexempt employees to perform work during rest periods in violation of Labor Code section 226.7(b), Claimants seek all available penalties set forth in Labor Code sections 558 and 2699.

At all times relevant herein, Claimants were entitled to the payment of **overtime**. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, McCampbell Analytical was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Mr. Nunez and Claimants regularly worked overtime hours. McCampbell Analytical has failed to and continues to fail to pay Claimants overtime wages owed for off-the-clock time worked that should have been compensated as overtime, yet regularly required them to work these overtime hours without premium pay under Labor Code section 1194. In short, during the entire course of their employment, McCampbell Analytical failed to provide Mr. Nunez and continues to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order No. 4-2001, section 3.

Pursuant to Labor Code section 204, Claimants are entitled to the timely payment of all wages earned "twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month." McCampbell Analytical paid Mr. Nunez and Claimants only once per month, not twice. As such, McCampbell Analytical has violated Labor Code section 204 and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Pursuant to Labor Code sections 201–203, Claimants who have since separated from McCampbell Analytical, including Mr. Nunez, were entitled to be paid all **wages owed upon separation** within the statutorily allotted time—immediately (resignation with notice and termination) or within seventy-two (72) hours (resignation without notice). Claimants, including Mr. Nunez, did not receive his final pay of all wages immediately upon being terminated nor did he receive the wages McCampbell Analytical did pay based on McCampbell Analytical's prior failings to pay all wages owed every pay period, including but not limited to minimum wage, overtime, and meal and rest premiums owed and for all hours worked, as explained above. McCampbell Analytical paid Mr. Nunez his final wages at the time of the next regularly schedule paycheck one week following his termination.

Pursuant to IWC Wage Order No. 4-2001, employers are required to keep accurate time records showing when employees begin and end each work period, including meal periods. During the relevant time period, McCampbell Analytical had a company-wide policy and engaged in a companywide practice of failing to record actual hours worked by failing to require Claimants to record their meal period start and stop times, thereby failing to keep accurate records of work period start and stop times for Claimants, in violation of section 1198. More specifically, Mr. Nunez and Claimants did not record their meal periods—neither the duration nor the start and stop times; rather, McCampbell Analytical auto-deducted 60 minutes for meal periods from their total time worked. Because McCampbell Analytical failed to provide the actual hours worked and, therefore, the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on Claimants' wage statements, Claimants have been prevented from verifying—solely from information on the wage statements themselves—that they were paid correctly and in full. Instead, Claimants have had to refer to other sources beyond their wage statements and reconstruct time records to determine whether in fact they were paid correctly and the extent to which they were underpaid, thereby causing them injury. McCampbell Analytical's decision to fail to record this time was knowing and intentional because it was in the sole position to set forth and implement and enforce these companywide practices. Accordingly, Claimants are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)–(g).

Claimants were at all times entitled to be provided timely and accurate **wage statements** from McCampbell Analytical pursuant to Labor Code section 226. Because McCampbell Analytical failed to pay Claimants minimum wages for all hours worked before, during, and after their shifts and for all overtime wages due, Claimants' wage statements were inaccurate in reflecting overtime and minimum wages, and all hours worked every pay period. As a consequence, Claimants' wage statements also do not reflect the accurate amount of net and gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Finally, Claimants were entitled to be reimbursed by McCampbell Analytical for all necessary, **business-related expenses** they incurred in executing their duties for McCampbell Analytical. California Labor Code section 2802 provides that “An employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” McCampbell Analytical, however, has failed to fully reimburse Mr. Nunez and Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for the expenses for the use of their personal cell phones required to monitor and respond to messages on the Microsoft Teams application and also to communicate with other staff and supervisors. Accordingly, Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802.

McCampbell Analytical's uniform failure to pay minimum and overtime wages, failure to keep accurate time records, failure to furnish timely and accurate wage statements, and failure to reimburse all necessary, business-related expenses violate Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174, 1182.12, 1194, 1197, and 2802, and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys' fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Nunez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties

for themselves, all other aggrieved employees, and the State of California against McCampbell Analytical for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 2802.

Should you require any additional information, please feel free to contact me.

Sincerely,

ABRAMSON LABOR GROUP

A handwritten signature in black ink that reads "Cheryl Kenner". The signature is written in a cursive, flowing style.

Cheryl A. Kenner