



MM LAW
A Professional Corporation

500 N. Brand Blvd., Suite 2000
Glendale, CA 91203
Tel: 818-810-7747
Fax: 818-230-9018
maralle@mmlawapc.com

November 12, 2024

NOTICE VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency (LWDA)
Attn: PAGA Administrator
<https://dir.tfaforms.net/308>

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

JAAM Builders, Inc.
c/o Jeffrey Platt, Agent
697 Greenfield Drive
San Diego, CA 92021

**RE: Jose Valencia/JAAM Builders, Inc.
Private Attorneys General Act**

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("PAGA"), Mr. Jose Valencia (hereafter "Valencia") provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt hourly paid employees (hereafter the "Aggrieved Employees"), by JAAM Builders, Inc. and Jeffrey Platt (hereafter collectively "JAAM"), of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802. Jeffrey Platt is being included in this PAGA notice pursuant to Labor Code Section 558.1 as he was or is an owner/director/managing agent of JAAM Builders, Inc., was involved in the day-to-day operations of the business, and as such, controlled the wages, hours, and working conditions of Valencia and the other Aggrieved Employees. On behalf of himself and all other Aggrieved Employees, Valencia hereby provides this notice to the Labor & Workforce Development Agency and JAAM and its agents and representatives.

At all relevant times, JAAM has employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Valencia and the Aggrieved Employees are "employees" within the meaning of Wage Order 16-2001 (hereafter "the Wage Order") § 2, subdivision (H) and "Aggrieved Employees" within the meaning of Labor Code § 2699, subdivision (c).

It is our position that due to personally suffering the below violations, Valencia can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees who worked for JAAM Builders, Inc. anywhere in the state of California (at all different locations) during the relevant PAGA period.

STATEMENT OF FACTS

JAAM first began to employ Valencia as a laborer in or around February 2022. Valencia generally worked Monday through Friday from approximately 7:00 a.m. to 3:30 p.m. Valencia's employment ended on or around September 30, 2024.

At all relevant times, JAAM issued wages to Valencia and all of the other Aggrieved Employees on a weekly basis and paid them by the hour or by task. Valencia's latest rate of pay was approximately \$29.00. At all relevant times, Valencia and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

JAAM failed to pay Valencia and the other Aggrieved Employees for all time worked or subject to its control. The company did not have a formal timekeeping system and Valencia never clocked in/clocked out. In addition, to the extent employees worked through their meal periods and those meal periods were interrupted, they were not compensated for that time, which would be akin to a minimum wage violation. Furthermore, JAAM management would often speak to or call/text Valencia and the other Aggrieved Employees about work-related matters before the start of their shifts or after their shifts had ended. Valencia would consistently receive calls/texts from superintendent Josue (last name unknown), regarding his work schedule, job locations, and tasks. Finally, JAAM required Valencia and the other employees to bring their own personal tools and did not pay Valencia and others twice the minimum wage rate in violation of Wage Order 16-2001, section 8(B).

JAAM failed to pay Valencia and the Aggrieved Employees properly-calculated overtime wages even though they worked more than 8 hours per day and/or 40 hours per week throughout their employment. Valencia's and the Aggrieved Employees' actual work hours (including the "off the clock" hours mentioned above) entitled them to overtime compensation. However, JAAM did not compensate Valencia and the Aggrieved Employees with the correct amount of overtime. It was not company policy to keep accurate track of all hours worked and to pay employees the accurate amount of overtime, especially since the "off the clock" work was not factored into the equation. Furthermore, any incentive payments and/or bonus payments were not factored into employees' regular rate of pay for purposes of deciphering the correct overtime rate of pay. In addition, any bonus and/or incentive payments were not factored into the correct sick pay wages and meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

JAAM failed to provide all compliant meal periods and authorize and permit all compliant rest periods to which Valencia and the other Aggrieved Employees were entitled. Valencia and the other Aggrieved Employees were entitled to take off-duty, uninterrupted 30-minute meal periods before the fifth and tenth hours of work and to take uninterrupted 10-minute rest periods for every four hours or major fraction thereof worked. Due to the workload, Valencia would not be able to take timely, uninterrupted meal periods before the 5th or 10th hour worked due to the workload and pressure from management to finish tasks. On information and belief, JAAM did not keep track of Valencia's and the Aggrieved Employees' meal periods. Per *Donohue v. AMN Services, LLC*, (2021) 11 Cal.5th 58, where time records do not facially show an employee took a compliant meal

period, a rebuttable presumption arises that the employer failed to provide it, giving rise to a meal period violation. Similarly, Valencia and the other Aggrieved Employees were not always able to take their 10-minute rest breaks due to the workload. As such, the culture as well as the policies and procedures of JAAM did not lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved of all work duties. The environment at JAAM was not conducive to receiving multiple statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced. Moreover, when Valencia and the other Aggrieved Employees took their meal periods, JAAM management/staff would interrupt them with questions about work related matters or their meal periods were cut short due to their workload. On information and belief, JAAM did not provide premium wages for these meal and rest break violations; if JAAM did provide premium wages, they were not paid at the correct rate, as explained above.

JAAM failed to reimburse Valencia and the other Aggrieved Employees for business expenses they incurred in direct consequence of the discharge of their duties. JAAM required Valencia and the Aggrieved Employees to use their own personal cell phones to communicate with ownership/management concerning work matters, as well as use their own personal tools and personal vehicles for work purposes. However, JAAM did not reimburse Valencia and the other Aggrieved Employees for these mobile phone, tools, and gas/mileage expenses. Accordingly, JAAM was in violation of California Labor Code sections 2800 and 2802.

JAAM failed to pay its employees all wages due to them within any time period specified by California Labor Code section 204, including the minimum wages and overtime as described above as well as meal/rest break premiums.

JAAM did not provide Valencia and the other Aggrieved Employees accurate, itemized wage statements in violation of Labor Code 226. Wage statements must include all hours worked, overtime hours worked, all applicable hourly rates, the correct legal name and correct address of employer entity, gross wages earned, all deductions, net wages earned, reimbursement for business expenses, the correct start and end of the applicable pay period, the employee ID numbers or social security numbers, among other items. Labor Code § 226(a)(2). JAAM's failure to maintain accurate records as to the hours worked daily by employees also constitutes a violation of Labor Code section 1174(d).

JAAM failed to separately compensate Valencia and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time in violation of Labor Code section 226.2. JAAM failed to provide Valencia and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross and net wages paid for those activities during the pay period.

Finally, because JAAM did not properly pay all wages earned as explained herein, JAAM also failed to pay final wages owed to the Aggrieved Employees in violation of Labor Code section 203. These earned but unpaid wages include minimum wages and compensation for all hours

worked, overtime compensation, premium pay for missed meal and rest breaks, and business expense reimbursement, among others.

Accordingly, Valencia now seeks civil penalties on behalf of himself and the Aggrieved Employees based on JAAM's alleged violations of the California Labor Code and the Wage Order.

THE WAGE ORDER

The Wage Order applies to "all job classifications associated with construction, including but not limited to work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair work, by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq., and any other similar or related occupations or trades. (§ 2(C)).

At all relevant times during the applicable limitations period, JAAM, Valencia, and the Aggrieved Employees were covered by the Wage Order because Valencia and all of the Aggrieved Employees worked for JAAM as laborers and in similar occupations associated with construction. Accordingly, Valencia and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

FAILURE TO PAY WAGES FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

Labor Code §§ 510, 558, 1194, 1197, and 1198

Labor Code sections 510, 1194, and 1197 require employers to pay the wages agreed to and at least minimum wages for all time under the employer's control, overtime wages for hours worked over eight per day or forty per week at one and one-half times the employee's regular rate of pay, and double-time wages for hours worked over twelve in one day or for the first eight hours of work on the seventh consecutive day of work at two times the employee's regular rate of pay. Labor Code section 558 establishes a civil penalty for violation of Labor Code section 510. Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

JAAM failed to pay all minimum, regular and overtime wages to Valencia and the other Aggrieved Employees because JAAM paid wages based on rounded times, did not pay for off-the-clock work, and failed to pay overtime wages based on correct regular rates of pay.

FAILURE TO PROVIDE MEAL PERIODS

Labor Code §§ 226.7, 512, and 1198

Employers must provide employees a 30-minute, uninterrupted meal period after no more than five hours of work, and a second such meal period after no more than 10 hours work. Labor Code § 512(a); IWC Wage Order(s) §§ 11(A)-(B); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. If an employer fails to provide an employee a meal period in accordance

with California law, the employer must pay the employee one hour of pay at the employee's regular rate for each work day the meal period is not provided. Lab. Code § 226.7(c); IWC Wage Order(s), § 11(D); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

JAAM failed to provide Valencia and the other Aggrieved Employees with compliant meal periods and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

Labor Code § 226.7 & 1198

The Rest Period section of the applicable Wage Order provides: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees' immediate work area." IWC Wage Order(s), § 11; Labor Code § 226.7(c); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

JAAM failed to authorize and permit Valencia and the other Aggrieved Employees to take rest periods and failed to pay one hour of correctly-calculated premium pay for each day such a rest period was not provided.

FAILURE TO PAY FOR REST AND RECOVERY PERIODS AND OTHER NONPRODUCTIVE TIME

Labor Code § 226.2

In relevant part, Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
 - (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.
 - ...
 - (3) (A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:
 - (i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of

compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.

- (ii) The applicable minimum wage.

At all relevant times during the applicable limitations period, JAAM compensated Valencia and the other Aggrieved Employees on a piece rate basis and failed to separately compensate Valencia and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time. Accordingly, Valencia seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, subdivisions (a)(1) and (a)(4) and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

Labor Code §§ 226

California employers are required to provide itemized wage statements showing, among other things, “gross wages earned,” “total hours worked by the employee,” “net wages earned,” and “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Labor Code §§ 226(a)(1), (2), (5), (9).

JAAM did not provide itemized wage statements accurately reflecting Valencia’s and the other Aggrieved Employees’ gross wages earned, total hours worked, net wages earned, and all applicable hourly rates and the number of hours worked at each rate.

FAILURE TO PROVIDE ACCURATE RECORDS

Labor Code §§ 1174, 1174.5, 1198; IWC Wage Order(s), § 6

An employer must maintain payroll records showing hours worked daily by, and wages paid to, its employees, in accordance with rules established by the Industrial Welfare Commission. Labor Code §1174. An employer must also maintain time records showing when each work period, and meal period, begins and ends. IWC Wage Order(s), § 6.

Because JAAM rounded employees’ time worked, did not record off-the-clock work, and did not keep track of meal periods and/or interrupted employees’ meal periods, JAAM failed to maintain accurate records as to the hours worked daily by employees and as to when each work period and meal period began and ended.

FAILURE TO REIMBURSE FOR EXPENSES

Labor Code §§ 1198, 2802, and 2804

An employer must reimburse its employees for their reasonable business-related expenses. Labor

Code § 2802. The right to reimbursement cannot be waived. Labor Code § 2804.

JAAM failed to reimburse Valencia and the other Aggrieved Employees for their reasonable business-related expenses, including use of their own personal vehicles, cell phones, and tools in effectuating their job duties.

**FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT
& UPON SEPARATION**

Labor Code §§ 201-204

An employer must pay “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment...twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Labor Code § 204. An employer must pay all wages owed to terminated employees at the time of termination, or within 72 hours to employees who quit. Labor Code §§ 201-202. If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days, until paid. Labor Code § 203.

As a result of its failure to pay all wages earned, as described above, JAAM failed to pay all wages due to Valencia and the Aggrieved Employees during employment and all final wages due to the Aggrieved Employees upon separation of employment and violated Labor Code Sections 201-204.

PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES LABOR CODE

Labor Code § 558.1

In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

At all relevant times, Jeffrey Platt was an employer of Valencia and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of JAAM Builders, Inc. Jeffrey Platt directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of Valencia and the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Aggrieved Employees, Valencia seeks the same civil penalties against Jeffrey Platt on the same grounds for which he seeks civil penalties against JAAM Builders, Inc.

CONCLUSION

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that Jose Valencia will seek both reasonable

attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Maralle Messrelian".

Maralle Messrelian, Esq.
maralle@mmlawapc.com