



301 NORTH LAKE AVENUE
SUITE 820
PASADENA, CALIFORNIA 91101
TELEPHONE (213) 553-9200
FACSIMILE (213) 553-9215

March 31, 2017

Via U.S. Mail and Certified Mail
Return Receipt Requested

James C. McKenna
President and CEO
Pacific Maritime Association
555 Market St., 3rd Floor
San Francisco, CA 94105

**Re: Labor Code Violations by Pacific Maritime Association, and APM Terminals
North America, Inc.; Notice of Claim Seeking California Labor Code § 2699
Penalties**

Dear Mr. McKenna:

Pursuant to the Labor Code Private Attorneys General Act of 2004, California *Labor Code* Section 2698, *et seq.*, in accordance with the requirements of *Labor Code* Section 2699.3, this letter shall constitute written notice of intent to seek penalties under *Labor Code* Section 2699. This letter sets forth the specific provisions of the *Labor Code* alleged to have been violated by Pacific Maritime Association ("PMA"), and APM Terminals North America, Inc. ("APM Terminals") (hereinafter collectively referred to as "Employers") regarding their employee, Kim Jones ("Jones"), and other similarly situated aggrieved current and former employees of Employers, including the facts and theories to support the alleged violations.

Employers violated *Labor Code* Section 226(a). This violation arises out of, without limitation, Employers' practice of intentionally and knowingly failing to furnish employees at the time of each payment of wages with an accurate itemized statement in writing showing all of the items required by *Labor Code* Section 226(a) including:

- a. “(6) the inclusive dates of the period for which the employee is paid”;
- b. “(8) the name and address of the legal entity that is the employer...”; and
- c. “(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...”

The earnings statements furnished to Jones and other aggrieved current and former employees of Employers at the time of each payment of wages fail to show (1) the inclusive dates of the period for which Jones is paid; (2) the address of the legal entity that is her employer; and (3) all applicable hourly rates in effect during the pay period and the corresponding number of hours that Jones worked at each hourly rate.

Employers violated *Labor Code* Section 226(a)(6) because the earnings statements furnished to Jones and other aggrieved current or former employees did not show the inclusive dates of the payment period. For instance, Jones’ earning statement issued on May 20, 2016 does not show the start or end dates of the period, only the end date. (See Exhibit “A” attached hereto.) Under 226(a)(6), Employers are required to provide both start and end dates for the payment period on all earnings statements.

Employers violated *Labor Code* Section 226(a)(8) because the earnings statements furnished to Jones and other aggrieved current or former employees fail to accurately show the address of the legal entity employer. Jones’ earnings statements show that her legal entity employer is “Pacific Maritime Association,” but do not contain the address of the employer. (See Exhibit “A” attached hereto.) The earnings statements only show the address of Bank of America, which is apparently the bank where Employers’ payroll account is maintained, but not the legal entity employer. According to the records of the California Secretary of State, the legal entity address for “Pacific Maritime Association” is “555 Market Street, 3rd Floor, San Francisco, CA 94105” (See Exhibit “B” attached hereto.) According to the records of the California Secretary of State, the legal entity address for APM Terminals North America, Inc. is “9300 Arrowpoint Blvd., Charlotte, NC 28273” (See Exhibit “C” attached hereto.) *Labor Code* Section 226(a) requires that the “accurate itemized statement” furnished to Ms. Jones with each wage payment show both the name **and** address of her legal entity employer “as a detachable part of the check” where, as here, Ms. Jones was not paid by personal check or cash. The detachable part of Jones’ wage statements do not show any employer address, in violation of *Labor Code* Section 226(a)(8).

Lastly, Employers violated *Labor Code* Section 226(a)(9) because the earnings statements furnished to Jones and other aggrieved current or former employees fail to accurately show all rates at which employees work. Employers are in violation of *Labor Code* Section 226(a)(9), because Earnings Statements furnished in January of 2017 have illegal block entries

James C. McKenna
Pacific Maritime Association
March 31, 2017
Page 3

for retroactive pay that do not indicate the number of hours worked or an hourly rate. (See Exhibit "C" attached hereto.) The retroactive pay is money owed by Employers to their employees for hours worked between July 1, 2014 when the existing collective bargaining agreement expired, and December 31, 2016, when Employers agreed to new wage rates to be retroactively applied to all hours worked after July 1, 2014. The earnings statements dated January 13, 2017 and January 27, 2017 (Exhibit "D" attached hereto) contain an entry entitled "RETRO," but do not contain entries showing either the number of hours worked for which a "RETRO" wage payment is being made, nor the hourly rate of the "RETRO" wage payments, thus violating *Labor Code* Section 226(a)(9).

Jones was directly affected and/or injured by the foregoing practices. Jones brings this claim and seeks these penalties on her own behalf as an aggrieved employee and on behalf of other current or former aggrieved employees of Employers. *Labor Code* Sections 2699(a) and 2699.3.

Please consider this letter and the enclosed letters to APM Terminals North America, Inc. and the California Labor & Workforce Development Agency, as notice of intent to seek penalties under *Labor Code* Sections 2699, *et seq.*, as required by Section 2699.3.

Please note that, in light of this notice, Employers must take all necessary steps to ensure that all documents in their possession, custody or control (including computer documents, emails, and electronically generated or stored documents) which are or may be relevant to the claims set out in this letter are neither destroyed nor otherwise rendered inaccessible.

Very truly yours,



Kevin D. Cardona
BONONI LAW GROUP, LLP

Enclosure

cc: APM Terminals North America, Inc.
California Labor & Workforce Development Agency

Exhibit “A”

PACIFIC MARITIME ASSOCIATION										M	PP	Issue Date	Exp	Exp	Check #
Payroll Number	Port	Last Name		First Name		I	#			CD	Hours	Dist. Code			
45468 201		Jones		Kim		G	5212-30-2016			00		SMALL			
Company Number	Shift	Port Worked	Date	Occ	Gross Cargo Pen.	Incl. Pen.	Cargo Pen.	Non-Taxable	Taxable	Mileage	ST Hours	OT Hours	POT Hours	TT Hours	Rate
47722	1	200	1218	0463	353.68			4.00				8.00			44.21
47722	1	200	1219	0463	206.29			5.00			7.00				29.47
47722	1	200	1219	0463	132.63							3.00			44.21
47722	1	200	1220	0463	235.76			4.00			8.00				29.47
Totals					928.36			13.00			15.00	11.00			
Gross To Net		State	Current	YTD	Recap		State	Current	YTD						
Earnings			941.36	74558.32	Regular Hours			26.00	1902.00						
FIT				-2842.13	Other Hours				170.00						
Medicare EE		CA	-13.47	-1067.31	Holiday	CA			2357.60						
SDI EE		CA	-8.36	-662.47	Uniform Allow	CA	13.00		951.00						
SIT		CA		-809.25	Vacation	CA			2652.30						
SS EE			-57.55	-4563.65	Wages Regular	CA	928.36		68597.42						
ILWU PMA 401K				-3716.00	Gross Wages Fd		928.36		73607.32						
Dues Loc 26WM				-1135.20	Direct Deposit		858.74								
EE Welfare			-3.24	-279.27											
Net Pay			858.74	59483.04	Check Amount			0.00							

The address on your check will be used to print your 2016 W2 Tax Form.
Please verify your NAME, ADDRESS, and SS#. If a correction is required,
submit a new W4 form to the payroll department before 12/30/16
Week: 17-DEC-2016 to 23-DEC-2016

THE FACE OF THIS DOCUMENT HAS A MULTI-COLORED BACKGROUND - THE BACK OF THIS DOCUMENT READS "ORIGINAL DOCUMENT" - SEE BACK FOR DETAILS



PACIFIC MARITIME ASSOCIATION
WAGE PAYING AGENT FOR
PAYROLL PARTICIPANTS

Bank of America #1499
San Francisco Commercial Building
345 Montgomery Street
San Francisco, CA 94104

PR. NO.
45468

CHECK DIST. CODE
SMALL

CHECK NUMBER

CHECK DATE
12-30-2016

PAY EXACTLY
*****0.00
VOID AFTER 90 DAYS

PAY
EXACTLY VOID VOID VOID VOID VOID VOID

TO
THE
ORDER
OF
Kim G. Jones

VOID VOID VOID

Authorized Signature
53784

Exhibit “B”

Alex Padilla
California Secretary of State

Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Monday, March 27, 2017. Please refer to document [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

C0236740 PACIFIC MARITIME ASSOCIATION

Registration Date:	06/03/1949
Jurisdiction:	CALIFORNIA
Entity Type:	DOMESTIC NONPROFIT
Status:	ACTIVE
Agent for Service of Process:	CRAIG EPPERSON 555 MARKET STREET, 3RD FLOOR SAN FRANCISCO CA 94105
Entity Address:	555 MARKET STREET, 3RD FLOOR SAN FRANCISCO CA 94105
Entity Mailing Address:	555 MARKET STREET, 3RD FLOOR SAN FRANCISCO CA 94105

A Statement of Information is due EVERY ODD-NUMBERED year beginning five months before and through the end of June.

Document Type	File Date	PDF
SI-COMplete	03/26/2015	
SI-COMplete	04/02/2013	

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- If the image of a Statement of Information is not available online, for information on ordering a copy of that statement refer to [Information Requests](#).
- For information on ordering certificates, status reports, certified copies of documents and copies of documents not currently available in the Business Search such as a filing that is not a Statement of Information or filings for other types of business entities, or to request a more extensive search for records, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Frequently Asked Questions](#).

[Modify Search](#)[New Search](#)[Back to Search Results](#)

Exhibit “C”

Alex Padilla
California Secretary of State

Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Thursday, March 30, 2017. Please refer to document [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

C2267913 APM TERMINALS NORTH AMERICA INC

Registration Date:	11/03/2000
Jurisdiction:	DELAWARE
Entity Type:	FOREIGN STOCK
Status:	ACTIVE
Agent for Service of Process:	C T CORPORATION SYSTEM 818 W 7TH ST STE 930 LOS ANGELES CA 90017 9300 ARROWPOINT BLVD. CHARLOTTE NC 28273 P.O. BOX 948 FLORHAM PARK NJ 07932
Entity Address:	
Entity Mailing Address:	

A Statement of Information is due EVERY year beginning five months before and through the end of November.

Document Type	File Date	PDF
SI-COMPLETE	11/01/2016	
SI-COMPLETE	11/04/2015	

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- If the image of a Statement of Information is not available online, for information on ordering a copy of that statement refer to [Information Requests](#).
- For information on ordering certificates, status reports, certified copies of documents and copies of documents not currently available in the Business Search such as a filing that is not a Statement of Information or filings for other types of business entities, or to request a more extensive search for records, refer to [Information Requests](#).
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[Modify Search](#)[New Search](#)[Back to Search Results](#)

Exhibit “D”

Payroll Number		Port	Last Name		First Name		#	Issue Date	CD Hours	Dist. Code				
45468		201	Jones		Kim		G	201-13-2017	00	SMALL				
Company Number	Shift	Port Worked	Date	Occ	Gross Incl. Cargo Pen.	Cargo Pen.	Allowances Non-Taxable Taxable		Mileage	ST Hours	OT Hours	POT Hours	TT Hours	Rate
47722	1	200	0102	0463	498.30		5.00				10.00			49.83
5970	1	2CA	0102	0985	235.76					8.00				
47722	1	200	0103	0463	232.54		5.00			7.00				33.22
47722	1	200	0103	0463	149.49						3.00			49.83
47722	1	200	0104	0463	265.76		5.00			8.00				33.22
47722	1	200	0104	0463	99.66						2.00			49.83
47722	1	200	0106	0463	265.76		5.00			8.00				33.22
47722	1	200	0106	0463	99.66						2.00			49.83
Retro					7925.35									

2014 - 7702.83
2015 - 4230.38 } retro pay
2014 - 1507.58

Gross To Net	State	Current	YTD	Recap	State	Current	YTD
Earnings		9792.28	10028.04	Regular Hours		40.00	40.00
Medicare EE	CA	-141.70	-145.12	Other Hours		8.00	16.00
SDI EE		-87.95	-90.07	Holiday	CA	235.76	471.52
SS EE		-605.88	-620.50	Uniform Allow	CA	20.00	20.00
Dues Loc 26WM			-102.60	Wages Regular	CA	9536.52	9536.52
E Welfare		-34.20	-35.03	Gross Wages Fd		9772.28	10008.04
				Direct Deposit		8922.55	
		8922.55	9034.72			0.00	

Receive your money earlier with Direct Deposit. Funds are in your bank on Thursday, and your Direct Deposit is promptly delivered to the U.S. Postal Service on Tuesday evening.
Call 1-888-762-1234 to receive a Direct Deposit form.
Week: 31-DEC-2016 to 06-JAN-2017



PACIFIC MARITIME ASSOCIATION
WAGE PAYING AGENT FOR
PAYROLL PARTICIPANTS

Bank of America #1499
San Francisco Commercial Building
345 Montgomery Street
San Francisco, CA 94104

PR. NO.
45468

CHECK DIST. CODE
SMALL

CHECK NUMBER

CHECK DATE
01-13-2017

PAY PERIOD
*****0.00

VOID AFTER 90 DAYS

PAY EXACTLY VOID VOID VOID VOID VOID VOID

TO THE ORDER OF

Kim G. Jones

VOID VOID VOID

Authorized Signature
53784

PACIFIC MARITIME ASSOCIATION
 Payroll Number Port Last Name First Name M PP Issue Date Exp Exp CD Hours Check # Dist. Code
 45468 201 Jones Kim G 4 01-27-2017 0 0 SMALL

Company Number	Shift	Port Worked	Date	Occ	Gross Incl. Cargo Pen.	Cargo Pen.	Allowances Non-Taxable Taxable	Mileage	ST Hours	OT Hours	POT Hours	TT Hours	Rate
47722	1	200	0114	0463	33.22		5.00		1.00				33.22
47722	1	200	0114	0463	448.47					9.00			49.83
47722	1	200	0115	0463	398.64		4.00			8.00			49.83
47722	1	200	0115	0463	199.32		2.00			4.00			49.83
47722	2	200	0115	0463	205.32		2.00			4.00			51.33
47722	1	200	0116	0463	199.32		2.00			4.00			49.83
47722	1	200	0116	0463	199.32		2.00			4.00			49.83
47722	1	200	0116	0463	232.54		5.00		7.00				33.22
47722	1	200	0116	0463	149.49					3.00			49.83
597 0	1	2CA	0116	0985	265.76				8.00				
Retro					5211.26								

		7542.66	22.00		16.00	36.00	
Gross To Net	State	Current	YTD	Recap	State	Current	YTD
Earnings	CA	7564.66	20771.02	Regular Hours		44.00	142.00
Medicare EE		-109.37	-300.15	Other Hours		8.00	24.00
SDI EE		-67.88	-186.29	Holiday	CA	265.76	1221.28
SS EE		-467.64	-1283.40	Uniform Allow	CA	22.00	71.00
Dues Loc 26WM			-102.60	Vacation	CA		315.00
E Welfare		-26.40	-72.46	Wages Regular	CA	7276.90	19163.74
					Gross Wages Fd		7542.66
				Direct Deposit		6893.37	
		6893.37	18826.12	Direct Amount		0.00	

Receive your money earlier with Direct Deposit. Funds are in your bank on Thursday, and your Direct Deposit is promptly delivered to the U.S. Postal Service on Tuesday evening.
 Call 1-888-762-1234 to receive a Direct Deposit form.
 Week: 14-JAN-2017 to 20-JAN-2017

THE FACE OF THIS DOCUMENT HAS A MULTI-COLORED BACKGROUND. THE BACK OF THIS DOCUMENT READS "ORIGINAL DOCUMENT" - SEE BACK FOR DETAILS



PACIFIC MARITIME ASSOCIATION
 WAGE PAYING AGENT FOR
 PAYROLL PARTICIPANTS

Bank of America #1499
 San Francisco Commercial Building
 345 Montgomery Street
 San Francisco, CA 94104

PR. NO.
 45468

CHECK DIST. CODE
 SMALL

CHECK NUMBER

CHECK DATE
 01-27-2017

CHECK AMOUNT
 *****0.00
 VOID AFTER 90 DAYS

PAY EXACTLY VOID VOID VOID VOID VOID VOID

TO THE ORDER OF
 Kim G Jones

VOID VOID VOID

Authorized Signature
 53784



301 NORTH LAKE AVENUE
SUITE 820
PASADENA, CALIFORNIA 91101
TELEPHONE (213) 553-9200
FACSIMILE (213) 553-9215

March 31, 2017

Via U.S. Mail and Certified Mail
Return Receipt Requested

Morten H. Engelstoft
Chief Executive Officer
APM Terminals North America, Inc.
c/o
C T Corporation System
818 W 7th Street, Suite 930
Los Angeles, CA 90017

Re: Labor Code Violations by Pacific Maritime Association, and APM Terminals
North America, Inc.; Notice of Claim Seeking California Labor Code § 2699
Penalties

Dear Mr. Engelstoft:

Pursuant to the Labor Code Private Attorneys General Act of 2004, California *Labor Code* Section 2698, *et seq.*, in accordance with the requirements of *Labor Code* Section 2699.3, this letter shall constitute written notice of intent to seek penalties under *Labor Code* Section 2699. This letter sets forth the specific provisions of the *Labor Code* alleged to have been violated by Pacific Maritime Association ("PMA"), and APM Terminals North America, Inc. ("APM Terminals") (hereinafter collectively referred to as "Employers") regarding their employee, Kim Jones ("Jones"), and other similarly situated aggrieved current and former employees of Employers, including the facts and theories to support the alleged violations.

Employers violated *Labor Code* Section 226(a). This violation arises out of, without
~~limitation, Employers' practice of intentionally and knowingly failing to furnish employees at~~

the time of each payment of wages with an accurate itemized statement in writing showing all of the items required by *Labor Code* Section 226(a) including:

- a. "(6) the inclusive dates of the period for which the employee is paid";
- b. "(8) the name and address of the legal entity that is the employer...."; and
- c. "(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee..."

The earnings statements furnished to Jones and other aggrieved current and former employees of Employers at the time of each payment of wages fail to show (1) the inclusive dates of the period for which Jones is paid; (2) the address of the legal entity that is her employer; and (3) all applicable hourly rates in effect during the pay period and the corresponding number of hours that Jones worked at each hourly rate.

Employers violated *Labor Code* Section 226(a)(6) because the earnings statements furnished to Jones and other aggrieved current or former employees did not show the inclusive dates of the payment period. For instance, Jones' earning statement issued on May 20, 2016 does not show the start or end dates of the period, only the end date. (See Exhibit "A" attached hereto.) Under 226(a)(6), Employers are required to provide both start and end dates for the payment period on all earnings statements.

Employers violated *Labor Code* Section 226(a)(8) because the earnings statements furnished to Jones and other aggrieved current or former employees fail to accurately show the address of the legal entity employer. Jones' earnings statements show that her legal entity employer is "Pacific Maritime Association," but do not contain the address of the employer. (See Exhibit "A" attached hereto.) The earnings statements only show the address of Bank of America, which is apparently the bank where Employers' payroll account is maintained, but not the legal entity employer. According to the records of the California Secretary of State, the legal entity address for "Pacific Maritime Association" is "555 Market Street, 3rd Floor, San Francisco, CA 94105" (See Exhibit "B" attached hereto.) According to the records of the California Secretary of State, the legal entity address for APM Terminals North America, Inc. is "9300 Arrowpoint Blvd., Charlotte, NC 28273" (See Exhibit "C" attached hereto.) *Labor Code* Section 226(a) requires that the "accurate itemized statement" furnished to Ms. Jones with each wage payment show both the name and address of her legal entity employer "as a detachable part of the check" where, as here, Ms. Jones was not paid by personal check or cash. The detachable part of Jones' wage statements do not show any employer address, in violation of *Labor Code* Section 226(a)(8).

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Morten H. Engelstoft
APM Terminals North America, Inc.
March 31, 2017
Page 3

show all rates at which employees work. Employers are in violation of *Labor Code* Section 226(a)(9), because Earnings Statements furnished in January of 2017 have illegal block entries for retroactive pay that do not indicate the number of hours worked or an hourly rate. (See Exhibit "C" attached hereto.) The retroactive pay is money owed by Employers to their employees for hours worked between July 1, 2014 when the existing collective bargaining agreement expired, and December 31, 2016, when Employers agreed to new wage rates to be retroactively applied to all hours worked after July 1, 2014. The earnings statements dated January 13, 2017 and January 27, 2017 (Exhibit "D" attached hereto) contain an entry entitled "RETRO," but do not contain entries showing either the number of hours worked for which a "RETRO" wage payment is being made, nor the hourly rate of the "RETRO" wage payments, thus violating *Labor Code* Section 226(a)(9).

Jones was directly affected and/or injured by the foregoing practices. Jones brings this claim and seeks these penalties on her own behalf as an aggrieved employee and on behalf of other current or former aggrieved employees of Employers. *Labor Code* Sections 2699(a) and 2699.3.

Please consider this letter and the enclosed letters to Pacific Maritime Association and the California Labor & Workforce Development Agency, as notice of intent to seek penalties under *Labor Code* Sections 2699, *et seq.*, as required by Section 2699.3.

Please note that, in light of this notice, Employers must take all necessary steps to ensure that all documents in their possession, custody or control (including computer documents, emails, and electronically generated or stored documents) which are or may be relevant to the claims set out in this letter are neither destroyed nor otherwise rendered inaccessible.

Very truly yours,



Kevin D. Cardona
BONONI LAW GROUP, LLP

Enclosure

cc: Pacific Maritime Association
California Labor & Workforce Development Agency



301 NORTH LAKE AVENUE
SUITE 820
PASADENA, CALIFORNIA 91101
TELEPHONE (213) 553-9200
FACSIMILE (213) 553-9215

March 31, 2017

Via U.S. Mail

Attn: PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: **Labor Code Violations by Pacific Maritime Association, and APM Terminals North America, Inc.; Notice of Claim Seeking California Labor Code § 2699 Penalties**

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Kevin D. Cardona
BONONI LAW GROUP, LLP

Enclosure

cc: Pacific Maritime Association
APM Terminals North America, Inc.
