



VIA EMAIL – jmoren@smharbor.com

June 7, 2024

John Moren
San Mateo County Harbor District
504 Alhambra Ave, 2nd Floor
El Granada, CA 94018

RE: BID ADVISORY
Low Bidder: Bellingham Marine Industries, Inc.
Awarding Agency: San Mateo County Harbor District
Project: Oyster Point Marina West Basin Access Improvements
2024-04
FFC Case No.: 1217SJ

Dear Mr. Moren:

The Foundation for Fair Contracting (FFC) is a nonprofit organization which has been serving the public interest since 1985. The objective of the FFC is, in-part, to monitor for compliance with prevailing wage laws pertaining to the construction industry, educate industry stakeholders, and ensure a fair and level playing field is present for all contractors. Unbalanced bids raise questions in regard to performance and compliance with the rules and regulations for the payment of prevailing wages, and the safety and well-being of the workforce. It further opens the question of excessive future change orders, the fairness to and rights of other bidders in the bidding process, and the intent of the bidding process in general.

In deference to all bidders and in order for the public interest to best be served, please enter this formal bid advisory against the above-noted contractor as a matter of public record. We respectfully request that Bellingham Marine Industries, Inc. (Bellingham) bid be rejected for the following reasons:

- **LITIGATION AND PRIVATE ATTORNEY GENERAL ACT (PAGA) LAWSUITS**
Bellingham has an ongoing pattern of litigation and PAGA related lawsuits filed with the State of California, brought forth from workers who have been victims of wage theft. Supporting documentation is attached for your review.
- **FAILURE TO COMPLY WITH BID SPECIFICATIONS/UNFAIR COMPETITIVE ADVANTAGE**
Bellingham's bid is in excess of 32% lower than all other bidders on this project. A large bid variance commonly indicates a failure to bid in accordance with the plans and specifications and/or account for the proper prevailing wage rate – including travel and subsistence. If awarded the project, change orders would be inevitable to complete the project in accordance with the specifications and/or prevailing wage laws/standards. This gives Bellingham an unfair advantage in its bidding practices against its competitors and puts the San Mateo County Harbor District into a precarious legal position.

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- **FAILURE TO COMPLY WITH WORKFORCE DEVELOPMENT AND FORMAL APPRENTICESHIP PROGRAMS**

Bellingham has not made a good faith effort to participate and invest in Local Workforce Development, nor have they participated in local hiring of workers in the community through formal and recognized pre-apprenticeship programs and formal apprenticeship programs for specific apprenticeable crafts. They have failed to request, employ, train, and pay the proper prevailing wages to apprentices.

Please contact our office with questions, comments, or clarifications.

Sincerely,



Jesse Jimenez
Executive Director

Case: 1217SJ

cc: San Mateo County Harbor District – Board of Commissioners
Tom Mattusch – Email: tmattusch@smharbor.com
Kathryn Slater-Carter – Email: kslater-carter@smharbor.com
George Domurat – Email: gdomurat@smharbor.com
Virginia Chang Kiraly – Email: vchang-kiraly@smharbor.com
William Zemke – Email: wzemke@smharbor.com

PAGA NOTICE PUBLIC SEARCH

LWDA #	Submission Type	Submission Date	Submission Name	Employer Name	Employer City	Employer Zip Code	# of Impacted Employees	Law Firm for PAGA Plaintiff	Employer Filer Firm	Court Case #	Plaintiff for PAGA Case	Filer/Attorney for PAGA Case	Employer Filer
LWDA-CM-991846-23	PAGA Notice	11/03/23	AP-4880470	Bellingham Marine Industries, Inc.	Lynden	98264	50	Justice Law Corporation		30-2024-01389972-CU-OE-CXC	Jesus J Fuentes	Douglas Han	

PAGA NOTICE PUBLIC SEARCH - CASE DETAIL

Case Information

Case Number: LWDA-CM-991846-23
Plaintiff for PAGA Case: Jesus J Fuentes
Filer/Attorney for PAGA Case: Douglas Han
Law Firm for PAGA Plaintiff: Justice Law Corporation
Employer: Bellingham Marine Industries, Inc.
Date Case Received:
Filer for Employer:
Employer Filer Firm:
Court Type: California Superior Courts
Court Name: Orange County Superior Court
PAGA Court Case Number: 30-2024-01389972-CU-OE-CXC
Violation Type:
Related BOFE Case:

Attachments

Attachment Name	Description	Date Submitted	Type
Court Complaint Submitted on 04/03/2024 02:24:56 PM by Douglas Han	2024_04_03_LWDA Submission_PAGA CX (Bellingham adv. Fuentes).pdf	4/3/2024 9:24 PM	Court Complaint
PAGA Notice Submitted on 11/03/2023 03:36:07 PM by Douglas Han	2023_11_03_PAGA Notice (Bellingham Marine Industries, Inc. adv. Fuentes).pdf	11/3/2023 10:36 PM	PAGA Notice

1 DOUGLAS HAN (SBN 232858)
2 SHUNT TATAVOS-GHARAJEH (SBN 272164)
3 TALIA LUX (SBN 336074)
4 **JUSTICE LAW CORPORATION**
5 751 N. Fair Oaks Avenue, Suite 101
6 Pasadena, California 91103
7 Telephone: (818) 230-7502
8 Facsimile: (818) 230-7259

Assigned for All Purposes
Judge Randall J. Sherman
Dept. CX105

Attorneys for Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**

10 JESUS FUENTES, individually, and on behalf
11 of other members of the general public
12 similarly situated;

13 Plaintiff,

14 v.

15 BELLINGHAM MARINE INDUSTRIES,
16 INC., a Washington corporation; and DOES 1
17 through 100, inclusive;

18 Defendants.

Case No.: 30-2024-01389972-CU-OE-CXC

**COMPLAINT FOR CIVIL PENALTIES
FOR VIOLATION OF LABOR CODE
§§ 2698, et seq. (PRIVATE ATTORNEYS
GENERAL ACT OF 2004)**

1 Plaintiff JESUS FUENTES (“Plaintiff”) hereby submits this Complaint against Defendant
2 BELLINGHAM MARINE INDUSTRIES, Inc. and DOES 1 through 100, inclusive (collectively,
3 “Defendants”), individually and on behalf of other current and former aggrieved employees of
4 Defendants for penalties as follows:

5 **INTRODUCTION**

6 1. This representative action is brought pursuant to Labor Code §§ 2698, *et*
7 *seq.* (the Private Attorneys General Act of 2004 (“PAGA”)) for Defendants’ violations of Labor
8 Code §§ 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551,
9 552, 558, 1102.5(b), 1102.5(d), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the
10 Industrial Welfare Commission Wage Orders.

11 2. This Complaint challenges Defendants’ systemic illegal employment
12 practices resulting in violations of the stated provisions of the Labor Code against the identified
13 group of employees.

14 3. Plaintiff is informed and believes and thereon alleges Defendants jointly
15 and severally acted intentionally and with deliberate indifference and conscious disregard to the
16 rights of all employees in (1) failing to properly calculate and pay all minimum and overtime
17 wages; (2) failing to pay all meal period and rest break premium wages; (3) failing to provide
18 accurate wage statements; (4) failing to pay all wages due and owing during employment and
19 upon termination of employment; and (5) failing to reimburse all necessary business expenses.

20 **JURISDICTION AND VENUE**

21 4. This action is brought pursuant to PAGA. The civil penalties sought by
22 Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established
23 according to proof at trial.

24 5. This Court has jurisdiction over this action pursuant to California
25 Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all
26 causes except those given by statute to other courts. The statutes under which this action is
27 brought do not specify any other basis for jurisdiction.

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1 **12.** At all times herein mentioned, Defendants, and each of them, were agents,
2 partners, joint venturers, representatives, servants, employees, successors-in-interest, co-
3 conspirators and assigns, each of the other, and at all times relevant hereto were acting within the
4 course and scope of their authority as such agents, partners, joint venturers, representatives,
5 servants, employees, successors-in-interest, co-conspirators and assigns, and that all acts or
6 omissions alleged herein were duly committed with ratification, knowledge, permission,
7 encouragement, authorization and consent of each Defendant designated herein.

8 **13.** As such, and based upon all the facts and circumstances incident to
9 Defendants’ business in California, Defendants are subject to PAGA and Labor Code §§ 201,
10 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558,
11 1102.5(b), 1102.5(d), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

CAUSE OF ACTION

(Violation of Labor Code §§ 2698, et seq. (“PAGA”))

**(Against BELLINGHAM MARINE INDUSTRIES, INC., and DOES 1 through
100)**

16 **14.** Plaintiff incorporates by reference the allegations contained in paragraphs
17 1 through 13, and each and every part thereof with the same force and effect as though fully set
18 forth herein.

19 **15.** PAGA expressly establishes that any provision of the California Labor
20 Code which provides for a civil penalty to be assessed and collected by the California Labor and
21 Workforce Development Agency (“LWDA”), or any of its departments, divisions, commissions,
22 boards, agencies or employees for a violation of the California Labor Code, may be recovered
23 through a civil action brought by an aggrieved employee on behalf of themselves, and other current
24 or former employees.

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1 **16.** On November 3, 2023, Plaintiff provided written notice to the LWDA and
2 Defendants of the specific provisions of the Labor Code he contends were violated, and the
3 theories supporting his contentions. Attached hereto as **Exhibit 1** and incorporated by reference
4 is a copy of the written notice to the LWDA. Plaintiff believes that on or about January 7, 2024,
5 the sixty-five (65) days’ notice period expired as to all Defendants, and the LWDA did not take
6 any action to investigate or prosecute this matter. Thus, Plaintiff exhausted his administrative
7 remedies.

8 **17.** Plaintiff and the other hourly-paid or non-exempt employees are
9 “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all current
10 or former hourly-paid or non-exempt employees (whether hired directly or through a staffing
11 agency) of Defendants employed in California at any time during the period from November 3,
12 2022, to the present, and one or more of the alleged violations was committed against them.

13 **Failure to Pay Minimum and Overtime Wages**

14 **18.** At all times relevant herein, Defendants were required to compensate their
15 non-exempt employees minimum wages for all hours worked and overtime wages for all hours
16 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
17 mandate of Labor Code §§ 510, 1194, 1197, and 1198.

18 **19.** As a policy and practice, Defendants failed to compensate aggrieved
19 current and former employees for all hours worked, resulting in a failure to pay all minimum
20 wages and overtime wages, where applicable.

21 **Failure to Provide Meal Periods and Rest Breaks**

22 **20.** In accordance with the mandates of Labor Code §§ 226.7 and 512,
23 Defendants were required to authorize and permit their non-exempt employees to take a
24 10-minute rest break for every four (4) hours worked or major fraction thereof, and were further
25 required to provide their non-exempt employees with a 30-minute meal period for every five (5)
26 hours worked.

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1 **21.** As a policy and practice, Defendants failed to provide aggrieved current
2 and former employees with legally mandated meal periods and rest breaks and failed to pay proper
3 compensation for this failure.

4 **Failure to Timely Pay Wages During Employment**

5 **22.** At all times relevant herein, Defendants were required to pay their
6 employees within a specified time period pursuant to the mandate of Labor Code § 204.

7 **23.** As a policy and practice, Defendants failed to pay aggrieved current and
8 former employees all wages due and owing within the required time period.

9 **Failure to Timely Pay Wages Upon Termination**

10 **24.** At all times relevant herein, Defendants were required to pay their
11 employees all wages owed in a timely fashion at the end of employment pursuant to California
12 Labor Code §§ 201 and 202.

13 **25.** As a result of Defendants’ Labor Code violations alleged above,
14 Defendants failed to pay aggrieved former employees their final wages pursuant to Labor Code
15 §§ 201 and 202 and accordingly owe waiting time penalties pursuant to Labor Code § 203.

16 **Failure to Provide Complete and Accurate Wage Statements**

17 **26.** At all times relevant herein, Defendants were required to keep *accurate*
18 records regarding their California employees pursuant to the mandate of Labor Code §§ 226 and
19 1174.

20 **27.** As a result of Defendants’ various Labor Code violations, Defendants
21 failed to keep accurate records regarding aggrieved current and former employees. For example,
22 Defendants failed in their affirmative obligation to keep accurate records regarding aggrieved
23 current and former employees’ gross wages earned, total hours worked, all deductions, net wages
24 earned, and all applicable hourly rates and the number of hours worked at each hourly rate.

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1 **Whistleblower Protection**

2 **28.** At all times relevant herein, Defendants were prohibited from retaliating
3 against their employees for disclosing information, or believing the employees disclosed or may
4 have disclosed information to an employee who has authority to investigate, discover, or correct
5 the violation or noncompliance, if the employees had reasonable cause to believe that the
6 information disclosed a violation of state or federal statute, or a violation of or noncompliance
7 with a local, state, or federal rule or regulation, regardless of whether disclosing the information
8 was part of the employee’s job duties.

9 **29.** As a policy and practice, Defendants retaliated against Plaintiff for
10 disclosing what Plaintiff believed to be a violation of or noncompliance with a local, state, or
11 federal rule or regulation, to an employee who had authority to investigate, discover, or correct
12 the violation or noncompliance.

13 **Failure to Reimburse Business Expenses**

14 **30.** At all times relevant herein, Defendants were required to reimburse its
15 employees for any and all necessary expenditures or losses incurred by the employees in direct
16 consequences of the discharge of their duties pursuant to the mandate of Labor Code §§ 2800 and
17 2802.

18 **31.** As a policy and practice, Defendants failed to pay aggrieved current and
19 former employees all business expenses incurred and owed within the required time period.

20 **Penalties**

21 **32.** Pursuant to California Labor Code § 2699, Plaintiff, individually, and on
22 behalf of current and former aggrieved employees, requests and is entitled to recover from
23 Defendants, and each of them, civil penalties, interest, attorneys’ fees and costs pursuant,
24 including but not limited to:

- 25 **a.** Penalties under California Labor Code § 2699 in the amount of one
26 hundred dollars (\$100) for each aggrieved employee per pay period for the
27 initial violation, and two hundred dollars (\$200) for each aggrieved
28 employee per pay period for each subsequent violation;

- b. Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- d. Penalties under Labor Code § 1197.1 in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;
- e. Any and all additional penalties as provided by the Labor Code and/or other statutes; and
- f. Attorneys' fees and costs pursuant to Labor Code §§ 218.5, 1102.5(b), 1102.5(d), 1194, and 2699, and any other applicable statute.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and as representatives of current and former aggrieved employees pursuant to PAGA, prays for judgment as follows:

1. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 2698, *et seq.*, by failing to pay minimum and overtime wages, failing to provide meal periods and rest breaks or pay premium wages in lieu thereof, failing to timely pay wages during employment and upon termination, failing to provide complete and accurate wage statements, and failing to reimburse necessary business expenses;

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2. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code §§ 2698, *et seq.*, for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1102.5(b), 1102.5(d), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802;
3. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code §§ 218.5, 1102.5(b), 1102.5(d), 1194, and 2699, and any other applicable statute; and
4. For such other and further relief the Court may deem just and proper.

Dated: March 28, 2024

JUSTICE LAW CORPORATION

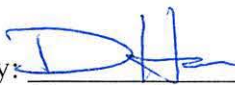
By:  _____
Douglas Han
Shunt Tatavos-Gharajeh
Talia Lux
Attorneys for Plaintiff

EXHIBIT 1

November 3, 2023

BY U.S. MAIL/ELECTRONIC SUBMISSION

PAGAFilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: BELLINGHAM MARINE INDUSTRIES, INC.

Dear Representative:

We have been retained to represent Jesus Fuentes against Bellingham Marine Industries, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer or managing agent acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 1-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "BMI").

Mr. Fuentes is pursuing his California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Fuentes may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Bellingham Marine Industries, Inc. is a Washington corporation located at 144 River Road, Lynden, Washington 98264.

BMI employed Mr. Fuentes as an hourly-paid non-exempt Field Technician within one year of the date of this letter (until or until around October of 2023) in the State of California. BMI directly controlled the wages, hours and/or working conditions of Mr. Fuentes' and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

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¹ Mr. Fuentes does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Fuentes will amend this notice when the true names and capacities are known. Mr. Fuentes is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Fuentes and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

The “aggrieved employees” that Mr. Fuentes may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of BMI within the State of California.

BMI failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly compensate minimum and overtime wages, failed to properly provide legally mandated meal and rest breaks or pay premium wages in lieu thereof, failed to issue compliant wage statements, and failed to reimburse for all necessary business-related costs and expenses, thus resulting in Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751, an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Fuentes has standing to pursue penalties on behalf of the state for violations affecting all aggrieved employees at BMI, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

BMI has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1102.5(b) and (d), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay time-and-a-half or double-time overtime wages and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Fuentes and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. BMI failed to compensate Mr. Fuentes and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, and during meal breaks. BMI also failed to include non-discretionary bonuses into aggrieved employees’ regular rate of pay for purposes of overtime compensation. Therefore, Mr. Fuentes and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, BMI failed to pay aggrieved employees paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

California Labor Code sections 226.7 and 512(a) require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, BMI routinely required Mr. Fuentes and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with BMI's policies and expectations and build docks. BMI failed to provide coverage to Mr. Fuentes and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Lastly, BMI failed to authorize and permit aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, BMI failed to compensate Mr. Fuentes and other aggrieved employees all the premium wages they were owed, including failing to pay premium wages at aggrieved employees' regular rate of pay.

California Labor Code section 551 states "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Section 552 further states "[n]o employer of labor shall cause his employees to work more than six days in seven." BMI required aggrieved employees to work seven days in a row or more without one day's rest.

California Labor Code section 432.5 states "[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law." BMI required aggrieved employees to execute arbitration agreements as a condition of employment despite knowing that such agreements are prohibited under Labor Code section 432.6.

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California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits their employment, their wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours' previous notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, BMI failed to pay Mr. Fuentes and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 202 and therefore is liable under California Labor Code sections 203 and 210.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, BMI failed to pay Mr. Fuentes and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204, and is therefore liable under California Labor Code section 210.

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LWDA

November 3, 2023

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California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, BMI did not provide Mr. Fuentes and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from BMI were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Fuentes and other aggrieved employees, (2) total hours worked by Mr. Fuentes and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Fuentes and other aggrieved employees, (4) all deductions for Mr. Fuentes and other aggrieved employees, (5) net wages earned by Mr. Fuentes and other aggrieved employees, (6) the inclusive dates of the period for which aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of their social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by aggrieved employees.

California Labor Code section 558 allows recovery of penalties. Pursuant to the code, (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Fuentes and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code section 1102.5(b) requires that an employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties. California Labor Code section 1102.5(d) prohibits retaliation against an employee for having exercised their rights pursuant to California Labor Code section 1102.5(b). Mr. Fuentes was terminated in retaliation for his protected activity of reporting BMI's noncompliance with appropriate regulations to an employee who had the authority to investigate, discover, or correct the noncompliance.

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. During the relevant time period, BMI failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid to Mr. Fuentes and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, BMI did not provide Mr. Fuentes and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of their job duties or in direct consequence of their obedience to the directions of the employer. During their employment, Mr. Fuentes and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by BMI, including for purchasing equipment they were required to wear while working and using their personal cell phones and personal vehicles for work-related purposes.

We believe that Mr. Fuentes and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code sections 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1102.5(b) and (d), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in question and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

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LWDA
November 3, 2023
Page 7 of 7

The purpose of this letter is to satisfy the requirement created by California Labor Code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Fuentes will seek these penalties on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of BMI within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", written over a horizontal line.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Bellingham Marine Industries, Inc.
c/o CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive
Sacramento, California 95833
Agent for Service of Process for Bellingham Marine Industries, Inc.

Legal Department
c/o Bellingham Marine Industries, Inc.
144 River Road
Lynden, Washington 98264

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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is jtorrez@justicelawcorp.com

On April 3, 2024, I served the foregoing document described as

COMPLAINT FOR CIVIL PENALTIES FOR VIOLATION OF LABOR CODE §§ 2698, et seq. (PRIVATE ATTORNEYS GENERAL ACT OF 2004)

for the following case: **Fuentes v. Bellingham Marine Industries, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-991846-23**
 Court Case No.: 30-2024-01389972-CU-OE-CXC
 Orange County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

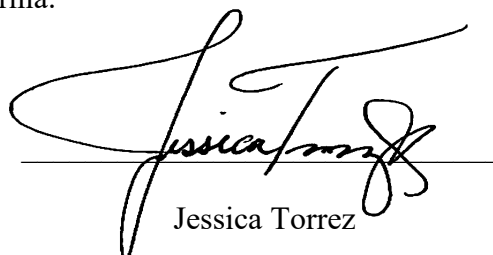
[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 3, 2024, at Pasadena, California.


Jessica Torrez