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ALAMEDA COUNTY

February 07, 2017

CLERK OF
THE SUPERIOR COURT
By Burt Moskaira, Deputy

CASE NUMBER:
RG17848582

1 Mark L. Venardi (SBN 173140)
2 Martin Zurada (SBN 218235)
3 Mark Freeman (SBN 293721)
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5 Attorneys for Plaintiff and the Putative Class

6 **IN THE SUPERIOR COURT OF CALIFORNIA**

7 **COUNTY OF ALAMEDA**

8 **UNLIMITED CIVIL CASE**

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10 JUSTIN HAGGARD, an individual on behalf) Case No. _____
11 of himself and other similarly situated)
12 California employees,) **CLASS ACTION COMPLAINT AND**

13 Plaintiff,)

14 vs.)

15 PRECISION DRILLING, INC., a California)
16 corporation; and DOES 1 through 100,)
17 inclusive,)

18 Defendants.)

- 12) **DEMAND FOR JURY TRIAL**
13)
14) **1. Failure to Pay Prevailing Wage (Labor**
15) **Code § 1771)**
16) **2. Inadequate Records (Labor Code § 1174);**
17) **3. Pay Stub Violations (Labor Code § 226);**
18) **4. Unfair Business Practices (Bus & Prof**
19) **Code §§ 17200 et Seq.)**

20 Plaintiff JUSTIN HAGGARD ("Plaintiff"), on behalf of himself and others similarly
21 situated (hereinafter "Class Members"), complains and alleges as follows:

22 **NATURE OF ACTION**

23 1. This is a class action, under California *Code of Civil Procedure* § 382, seeking
24 remedies for conversion of gratuities, failure to pay prevailing wage, failure to provide proper
25 and itemized wage statements, failure to provide pay stub violations, and unfair business
26 practices. Plaintiff brings this action on behalf of himself and others similarly situated due to the
27 named Defendant's practice of failing to pay prevailing wage in violation of *Labor Code* § 1771,
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1 failing to keep accurate records in violation of *Labor Code* § 1174, pay stub violations in
2 violation of *Labor Code* § 226, and unfair, unlawful and fraudulent actions in violation of
3 *Business and Professions Code* §§ 17200 et seq.

4 2. The "Class Period" is designated as the period from four years prior to the filing
5 of this Complaint through the date of trial. Defendant's violations of California's labor laws and
6 unfair competition laws, as described more fully below, have been ongoing for at least the last
7 four years, and are continuing at present.

8 **SUBJECT MATTER JURISDICTION AND VENUE**

9 3. The Court has subject matter jurisdiction and venue is proper because Plaintiff,
10 and Class Members, performed work in Alameda County and Defendant conducts business in
11 Alameda County.

12 **PARTIES**

13 4. At all times relevant to the Complaint, Plaintiff JUSTIN HAGGARD
14 ("Plaintiff"), was a resident of California and employed by Defendant PRECISION DRILLING,
15 INC. ("Defendant"), a California Corporation with an entity address at 378 Santana Row, #396,
16 San Jose, CA 95128. Defendant conducts business throughout Northern California, including in
17 Alameda County. Plaintiff was a non-exempt employee who was paid on an hourly basis and
18 who worked on public projects for Defendant including in Alameda County.

19 5. Entity Defendants DOES 1-100, according to information and belief, (a) are the
20 joint employer of Plaintiff and Class Members because they exercised control over Plaintiff's
21 and Class Members' hours, wages and working conditions, suffered or permitted Plaintiff and
22 Class Members to work, or engaged Plaintiff and Class Members thereby creating a common law
23 employment relationship; (b) are the owners and/or managing agents of Defendant with
24 significant control over the pay and work conditions of Plaintiff and other employees; and/or
25 (c) are an alter ego of Defendant.

26 6. Recognition of the privilege of separate existence of Defendant and/or DOES 1
27 through 100 would be inappropriate because the individual Defendant and/or DOES 1 through
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1 100 have in bad faith dominated and controlled Defendant. Plaintiff is also informed and
2 believes, and thereon alleges that Defendant, and DOES 1 through 100 have:

3 (a) Commingled funds and other assets of Defendant and their own funds and
4 other assets for their own convenience and to assist in evading payment of obligations;

5 (b) Diverted funds and other assets of Defendant for non-corporate uses;

6 (c) Treated the assets of Defendant as their own;

7 (d) Failed to obtain authority to issue shares or to subscribe to or issue shares
8 of Defendant;

9 (e) Failed to maintain minutes or adequate corporate records of Defendant;

10 (f) Failed to adequately capitalize or provide any assets to Defendant;

11 (g) Used Defendant as a mere shell, instrumentality or conduit;

12 (h) Diverted assets from Defendant to themselves, to the detriment of
13 creditors, including Plaintiff and Class Members.

14 GENERAL ALLEGATIONS

15 7. During the Class Period, Plaintiff, like other Class Members worked as an hourly
16 employee on public works projects.

17 8. Throughout the Class Period Defendant had a uniform policy of not paying
18 Plaintiff and other Class Members the applicable prevailing wage for work on public works
19 projects.

20 9. Defendant's uniform practice of not paying Plaintiff and other Class Members'
21 the applicable prevailing wage also meant that Defendant failed to keep accurate records of
22 hourly paid to Plaintiff and Class Members and that Defendant failed to provide Plaintiff and
23 other Class Members with accurate pay stubs.

24 10. From at least four years prior to the filing of this Complaint and continuing
25 through the present date, Defendant has adopted and used unfair business practices to minimize
26 their employees' compensation and increase Defendant's profits, at Plaintiff and Class Member's
27 expense, by failing to pay Plaintiff and Class Members the applicable prevailing wage.
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PLAINTIFF'S CLASS ACTION ALLEGATIONS

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11. Plaintiff brings this case as a class action pursuant to *California Code of Civil Procedure* § 382 on behalf of a putative class consisting of all of Defendant's employees who were subjected to Defendant's practice of failing to pay the applicable prevailing wage to said employees during the Class Period ("Class Members").

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12. During the Class Period Defendants employed between thirty (30) and seventy-five (75) Class Members who have been or are currently employed by Defendants. Class Members are so numerous that joinder of all members is impractical.

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13. Plaintiff's claims are typical of the claims of the Class Members because he and they are, or were, employees who sustained damages arising out of Defendant's (1) failing to pay the applicable prevailing wage to Class Members; (2) failure to keep accurate records of Class Members; (3) failing to provide the Class Members with accurate pay stubs; and (4) unfair, unlawful and fraudulent actions, all during the Class Period.

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14. Plaintiff will fairly and adequately represent the interests of the Class. Plaintiff has no conflict of interest with any member of the Class. Plaintiff has retained competent and experienced counsel in complex class action litigation. Plaintiff's counsel has the expertise and financial resources to adequately represent the interests of the Class.

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15. Common questions of law and fact exist as to all Class Members, and predominate over any questions solely affecting individual Class Members. Questions of law and fact common to Plaintiff and the Class are the following:

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- (a) Whether Defendant violated *Labor Code* § 1771 by failing to pay the applicable prevailing wage to Class Members during the Class Period;
- (b) Whether Defendant violated *Labor Code* § 1174 by failing to keep accurate records of all hourly wages paid to Class Members during the Class Period;
- (c) Whether Defendant violated *Labor Code* § 226 by issuing incorrect pay stubs to Class Members during the Class Period; and

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1 (d) Whether Defendant engaged in unfair business practices and violated *Business*
 2 *and Professions Code* §§ 17200 et seq. by failing to pay the applicable
 3 prevailing wage, failing to keep accurate records of all hourly wages paid to
 4 Class Members, and failing to issue correct pay stubs to Class Members
 5 during the Class Period.

6 16. Class action treatment is superior to any alternative to ensure the fair and efficient
 7 adjudication of the controversy alleged herein. Such treatment will permit a large number of
 8 similarly situated persons to prosecute their common claims in a single forum simultaneously,
 9 efficiently, and without duplication of effort and expense that numerous individuals would entail.
 10 No difficulties are likely to be encountered in the management of this class action that would
 11 preclude its maintenance as a class action, and no superior alternative exists for the fair and
 12 efficient adjudication of this controversy. The Class Members are readily identifiable from
 13 Defendant's employee records and/or payroll records.

14 17. Defendant's actions are generally applicable to the entire Class. Prosecution of
 15 separate actions by individual Class Members creates the risk of inconsistent or varying
 16 adjudications of the issues presented herein, which, in turn, would establish incompatible
 17 standards of conduct for Defendant.

18 18. Because joinder of all members is impractical, a class action is superior to other
 19 available methods for the fair and efficient adjudication of this controversy. Furthermore, the
 20 amounts at stake for many Class Members may not be sufficient to enable them to maintain
 21 separate suits against Defendant.

22 **FIRST CAUSE OF ACTION**
 23 **Failing to Pay Prevailing Wage**
 24 **in Violation of *Labor Code* § 1771**
Plaintiff Individually and on Behalf of the Class Against Defendant

25 19. Plaintiff re-alleges and incorporates paragraphs 1-18.

26 20. *Labor Code* § 1771 states: "Except for public works projects of one thousand
 27 dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a
 28 similar character in the locality in which the public work is performed, and not less than the

1 general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this
2 chapter, shall be paid to all workers employed on public works.”

3 21. The public projects at issue during the Class period exceed \$1,000.

4 22. In violation of *Labor Code* § 1771 Defendant consistently failed to pay Plaintiff
5 and other Class Members the applicable prevailing wage during the Class Period.

6 23. Plaintiff and the Class Members suffered injuries as a result of Defendant’s
7 violation of *Labor Code* § 1771 in an amount to be determined at trial.

8 24. Plaintiff has incurred costs and attorneys’ fees in bringing the action and seeks to
9 recover such costs under *Labor Code* § 218.5.

10 **SECOND CAUSE OF ACTION**

11 **Failure to Keep Adequate Time Records
12 in Violation of *Labor Code* § 1174**

13 **Plaintiff Individually and on Behalf of the Class Against Defendant**

14 25. Plaintiff re-alleges and incorporates paragraphs 1–24.

15 26. *Labor Code* § 1174 requires that all employers shall keep accurate time and wage
16 records for all employees. *Labor Code* § 1174.5 further requires that any employee suffering
17 injury due to a willful violation of the aforementioned obligations may seek damages, including
18 civil penalties, from the employer.

19 27. During the Class Period Defendants consistently failed to maintain accurate time
20 and wage records for Plaintiff and Class Members as required by *Labor Code* § 1174.

21 28. Defendant failed to maintain such records under *Labor Code* § 1174 and
22 Defendant’s failure to maintain such records subjects Defendant to statutory damages of \$500
23 per employee.

24 29. Plaintiff has incurred costs and attorneys’ fees in bringing the action and seeks to
25 recover such costs under *Labor Code* § 1174.
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THIRD CAUSE OF ACTION
Pay Stub Violations
in violation of *Labor Code* § 226
Plaintiff Individually and on Behalf of the Class Against Defendant

30. Plaintiff re-alleges and incorporates paragraphs 1–29.

31. *Labor Code* § 226 requires that, at each time for payment of wages, an employer must furnish each employee with a semi-monthly pay stub reflecting, among other things, the total amount of hours worked by the employee and the hourly rate of compensation, during that time period.

32. Defendant either failed to provide Plaintiff and Class Members with accurate paystubs or provided them with inaccurate paystubs during the Class Period.

33. During the Class Period, Plaintiff’s and Class Members’ employment with Defendant was subject to *Labor Code* § 226. Defendant’s failure to furnish proper pay stubs to Plaintiff and Class Members was a knowing and willful violation of *Labor Code* § 226(a) entitling Plaintiff and Class Members to recover the greater of all actual damages incurred by Plaintiff and Class Members or statutory penalties of \$50 for the initial pay period violation and \$100 for each subsequent pay period violation up, per employee, to a total aggregate penalty of \$4,000 per employee.

34. Plaintiff and Class Members suffered injuries as a result of Defendant’s violation of *Labor Code* § 226 to be determined at trial, in that, among other things, Plaintiff and Class Members do not have pay stubs reflecting total gratuities paid to them in order to precisely determine whether and how much they are owed for unpaid gratuities.

35. Plaintiff has incurred costs and attorneys’ fees in bringing the action and seek to recover such costs under *Labor Code* § 226(e).

FOURTH CAUSE OF ACTION
Unfair Business Practices
in Violation of *California Business & Professions Code* § 17200
Plaintiff Individually and on Behalf of the Class Against Defendant

36. Plaintiff re-alleges and incorporates paragraphs 1–35.

37. During the Class Period, Plaintiff’s and Class Members’ employment with

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1 Defendant was subject to the *Labor Code* and applicable *Wage Orders* promulgated by the
2 California Industrial Welfare Commission. At all relevant times, Defendant, as employer of
3 Plaintiff and Class Members, was subject to the California Unfair Trade Practices Act,
4 *California Business & Professions Code* §§ 17200 et seq., which required them to abide by the
5 *Labor Code* and applicable *Wage Orders* promulgated by the California Industrial Welfare
6 Commission.

7 38. Defendant engaged in unfair trade practices prohibited by *California Business &*
8 *Professions Code* §§ 17200 et seq. by:

9 (a) failing to pay Plaintiff and Class Members the applicable prevailing wage
10 in violation of *Labor Code* § 1771 (See First Cause of Action of the Complaint);

11 (b) failing to keep adequate time records in violation of *Labor Code* § 1174
12 (See Second Cause of Action of the Complaint); and

13 (c) failing to provide adequate pay stubs in violation of *Labor Code* § 226
14 (See Third Cause of Action of the Complaint).

15 39. Defendant violated *California Business & Professions Code* §§ 17200, et seq., by
16 committing acts prohibited by applicable *Labor Code* provisions, thus giving Defendant a
17 competitive advantage over other employers and businesses with whom Defendants were in
18 competition and who were in compliance with the law.

19 40. As a direct and proximate result of Defendant’s violations, Plaintiff’s and Class
20 Members’ rights under the law were violated because Plaintiff and Class Members suffered
21 monetary losses. Plaintiff and Class Members seek restitution in the form of unpaid wages, with
22 interest thereon, together with disgorgement of ill-gotten profits and injunctive relief to prohibit
23 Defendant from violating the state and federal laws and regulations listed in the count.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for the
26 following relief:

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- 1 1. Certification of this action as a class action, appointment of Plaintiff as
- 2 representative of the Class, and appointment of Plaintiff's counsel as Class counsel;
- 3 2. All unpaid wages due, including but not limited to prevailing wages, and
- 4 statutory prejudgment interest, pursuant to *California Labor Code* §§ 1771 and *California*
- 5 *Business & Professions Code* §§ 17200, et seq., in an amount to be determined at trial;
- 6 3. For restitution of sums to Plaintiff and the Class Members for
- 7 Defendant's past failure to pay, during the Class Period, prevailing wages, withholding taxes,
- 8 matching funds, social security, Medicare, unemployment and workers' compensation
- 9 premiums and compensation for missed meal and work breaks in an amount according to the
- 10 proof;
- 11 4. For injunctive relief to prohibit Defendants from violating California
- 12 employments laws described in this Complaint pursuant to *Labor Code* § 17200 et seq.;
- 13 5. For damages or statutory penalties for inadequate pay stubs pursuant to
- 14 *Labor Code* § 226;
- 15 6. For damages for inadequate wage and hour records pursuant to *Labor*
- 16 *Code* § 1174 in the statutory amount;
- 17 7. For reasonable attorneys' fees incurred in pursuing the recovery of wages
- 18 pursuant to the *California Labor Code*, including §§ 218.5, 226; and 1174;
- 19 8. For compensatory, general and special damages according to proof and as
- 20 allowed by law;
- 21 9. For costs of the suit herein; and
- 22 10. For such other and further relief as the Court may deem appropriate.

23 Dated: February 7, 2017

VENARDI ZURADA LLP



Martin Zurada
Attorneys for Plaintiff
JUSTIN HAGGARD

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DEMAND FOR JURY TRIAL

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Plaintiff on behalf of himself and Class Members respectfully demands a jury trial of his and the Class Members' claims.

Dated: February 7, 2017

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