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IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF UMATILLA

SEAN PEN; MONY PEN; JAKE  
TILLERY; and BAREHK WELLEY,

Plaintiffs,

v.

WELLENS FARWELL, INC.

Defendant.

) Case No. 17CV37330  
)  
) **SECOND AMENDED COMPLAINT**  
) (Failure to Pay Prevailing Wages / Failure to  
) Pay Wages Upon Termination / Unlawful  
) Discrimination Based on Race / Wrongful  
) Discharge / Failure to Register Assumed  
) Business Name)  
)  
) Damages in the amount of \$273,962.03;  
) filing fee per ORS §21.160(1)(c)  
)  
) **NOT SUBJECT TO MANDATORY**  
) **ARBITRATION**

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiffs, SEAN PEN, MONY PEN, JAKE TILLERY, and BAREHK WELLEY  
(hereafter, collectively referred to as “Plaintiffs” or individually by name), through counsel,  
allege as follows:

1.

Plaintiff, SEAN PEN, is an adult resident of Union County, Oregon, and a former  
employee of Wellens Farwell, Inc. dba Wellens Farwell Construction (hereafter “Defendant”).  
SEAN PEN, was hired by Defendant on or about September 20, 2016.

1 2.

2 Plaintiff, MONY PEN, is an adult resident of Union County, Oregon, and a former  
3 employee of Defendant. MONY PEN, was hired by Defendant on or about September 23, 2015.

4 3.

5 Plaintiff, JAKE TILLERY, is an adult resident of Wallowa, Oregon, and a former  
6 employee of Defendant. JAKE TILLERY, was hired by Defendant on or about August 6, 2015.

7 4.

8 Plaintiff, BAREHK WELLEY, is an adult resident of Union County, Oregon, and a  
9 former employee of Defendant. BAREHK WELLEY, was hired by Defendant on or about  
10 September 20, 2016.

11 5.

12 On information and belief, Defendant is a domestic business corporation, registered with  
13 the State of Oregon, with a principal place of business in the City of Enterprise, in the County of  
14 Wallowa, State of Oregon, and conducts regular business in the County of Umatilla, State of  
15 Oregon. Defendant conducts business as Wellens Farwell Construction in Oregon.

16 6.

17 While under the employment of Defendant, Plaintiffs preformed work on prevailing  
18 wage projects and were not properly compensated for work preformed on these projects.  
19 Moreover, Defendant has violated ORS §652.140 by not paying wages to Plaintiffs by the next  
20 business day following Plaintiffs termination.

21 7.

22 Plaintiff, SEAN PEN, on information and belief, is owed back wages totaling **\$970.88**,  
23 for prevailing wage jobs. Per ORS §279C.855, an equal amount in liquidated damages is also  
24 owed, bringing that amount to **\$970.88**. The wages calculated above were due no later than the  
25 Plaintiff's last paycheck, per ORS §652.140. Since wages were not paid to Plaintiff in

1 accordance with ORS §652.140, the penalty wage under ORS §652.150 applies, which is 8 hours  
2 per day, up to the 30-day maximum. At Twenty Dollars and Sixty-Four Cents per hour  
3 (**\$20.64/hr**) (average wage over the last 30 days), the total penalty wage owed under ORS  
4 §652.150 is **\$4,953.60**. Additionally, Defendant is liable for the statutory interest rate of Nine  
5 percent (9%) per annum, ORS §82.010, which begins accruing on the penalty wages 30 days  
6 after willful non-payment occurs. *Wilson v. Smurfit Newsprint Corp.*, 197 Or. App. 648 (2005).  
7 Finally, reasonable attorney's fees are included in the calculation of these violations under  
8 various statutes cited above. *See*, ORS §652.560. Under current accounting, Plaintiff's Claim  
9 amounts to **\$6,895.36**, plus reasonable attorney's fees, and interest under ORS §82.010.

10 8.

11 Plaintiff, MONY PEN, on information and belief, is owed back wages totaling **\$3,004.31**,  
12 for prevailing wage jobs. Per ORS §279C.855, an equal amount in liquidated damages is also  
13 owed, bringing that amount to **\$3,004.31**. The wages calculated above were due no later than the  
14 Plaintiff's last paycheck, but have not been paid to date. Per ORS §652.140, since the wages  
15 were not paid to Plaintiff in the statutory period, the penalty wage under ORS §652.150 applies,  
16 which is 8 hours per day, up to the 30-day maximum. At Thirty-Nine Dollars and Sixty Cents  
17 per hour (**\$39.60/hr**) (average pay for the past 30 days), the total penalty wage owed under ORS  
18 §652.150 is **\$9,504.00**. Additionally, Defendant is liable for the statutory interest rate of Nine  
19 percent (9%) per annum, ORS §82.010, which begins accruing on the penalty wages 30 days  
20 after willful non-payment occurs. *Wilson v. Smurfit Newsprint Corp.*, 197 Or. App. 648 (2005).  
21 Finally, reasonable attorney's fees are included in the calculation of these violations under  
22 various statutes cited above. *See*, ORS §652.560. Under current accounting, Plaintiff's Claim  
23 amounts to **\$15,512.62**, plus reasonable attorney's fees, and interest under ORS §82.010.

24 9.

25  
**Second Amended Complaint: Page 3 of 11**

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1 Plaintiff, JAKE TILLERY, on information and belief, is owed back wages totaling  
2 **\$13,715.71**, for prevailing wage jobs. Per ORS §279C.855, an equal amount in liquidated  
3 damages is also owed, bringing that amount to **\$13,715.71**. The wages calculated above were  
4 due no later than the Plaintiff's last paycheck, but have not been paid to date. Per ORS §652.140,  
5 since the wages were not paid to Plaintiff in the statutory period, the penalty wage under ORS  
6 §652.150 applies, which is 8 hours per day, up to the 30-day maximum. At Twenty-One Dollars  
7 per hour (**\$21.00/hr**) (average wage over the last 30 days), the total penalty wage owed under  
8 ORS §652.150 is **\$5,440.13**. Additionally, Defendant is liable for the statutory interest rate of  
9 Nine percent (9%) per annum, ORS §82.010, which begins accruing on the penalty wages 30  
10 days after willful non-payment occurs. *Wilson v. Smurfit Newsprint Corp.*, 197 Or. App. 648  
11 (2005). Finally, reasonable attorney's fees are included in the calculation of these violations  
12 under various statutes cited above. *See*, ORS §652.560. Under current accounting, Plaintiff's  
13 Claim amounts to **\$32,871.55**, plus reasonable attorney's fees, and interest under ORS §82.010.

14 10.

15 Plaintiff, BAREHK WELLEY, on information and belief, is owed back wages totaling  
16 **\$4,834.85**, for prevailing wage jobs. Per ORS §279C.855, an equal amount in liquidated  
17 damages is also owed, bringing that amount to **\$4,834.85**. The wages calculated above were due  
18 no later than the Plaintiff's last paycheck, but have not been paid to date. Per ORS §652.140,  
19 since the wages were not paid to Plaintiff in the statutory period, the penalty wage under ORS  
20 §652.150 applies, which is 8 hours per day, up to the 30-day maximum. At Thirty-Five Dollars  
21 and Forty-Seven Cents per hour (**\$35.47/hr**) (average wage for last 30 days), the total penalty  
22 wage owed under ORS §652.150 is **\$8,512.80**. Additionally, Defendant is liable for the statutory  
23 interest rate of Nine percent (9%) per annum, ORS §82.010, which begins accruing on the  
24 penalty wages 30 days after willful non-payment occurs. *Wilson v. Smurfit Newsprint Corp.*, 197  
25 Or. App. 648 (2005). Finally, reasonable attorney's fees are included in the calculation of these

**Second Amended Complaint: Page 4 of 11**

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1 violations under various statutes cited above. *See*, ORS §652.560. Under current accounting,  
2 Plaintiff's Claim amounts to **\$18,182.50**, plus reasonable attorney's fees, and interest under ORS  
3 §82.010.

4 11.

5 Plaintiffs reserve the right to amend this complaint pursuant to ORS §31.725.

6 12.

7 **FIRST CLAIM FOR RELIEF**

8 (Failure to Pay Prevailing Wage, ORS §297C.840, ORS §297C.860 - Brought by All Plaintiffs)

9 Plaintiffs re-allege paragraphs 1 through 11 above as though fully set forth herein.

10 13.

11 Defendant held contracts on prevailing wage projects, which Plaintiffs collectively and  
12 individually worked on. Defendant then failed to pay the prevailing wage for all work completed  
13 on these projects pursuant to ORS §297C.840. Defendant paid each Plaintiff substantially less  
14 than the prevailing wage for these projects resulting in lost wages for each employee.

15 14.

16 As a contractor of a prevailing wage project, Defendant is obligated to pay prevailing  
17 wages to all employees or is liable for sanctions under ORS §279C.860. Since Defendant has  
18 failed to pay prevailing wages under ORS §297C.840, Defendant should be barred from  
19 receiving further prevailing wage public works contracts for the next three years pursuant to  
20 ORS §279C.860 (1)(b).

21 15.

22 Plaintiffs were entitled to the full prevailing wage benefit and have financially suffered  
23 in the amount set out in paragraphs 7, 8, 9, and 10. Therefore, Plaintiffs are entitled to full back  
24 pay of withheld wages, as well as, liquidated damages equal to the amount withheld, as set out  
25 in ORS §279C.855.

**Second Amended Complaint: Page 5 of 11**

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1 16.

2 **SECOND CLAIM FOR RELIEF**

3 (Failure to Pay Wages on Termination, ORS §652.140 - Brought by All Plaintiffs)

4 Plaintiffs re-allege paragraphs 1 through 15 above as though fully set forth herein.

5 17.

6 ORS §652.140 was in full force and effect and was binding on Defendant.

7 18.

8 The amounts owed in paragraphs 7, 8, 9, and 10 were due on Plaintiffs' final paychecks.

9 Those amounts were then not paid pursuant to ORS §652.140 upon separation of each Plaintiff  
10 from employment with Defendant.

11 19.

12 Plaintiffs are thus entitled to a penalty wage of 8 hours per day for the maximum 30 days,  
13 plus attorney's fees pursuant to ORS §652.200, as well as pre-judgment interest at nine percent  
14 per annum pursuant to ORS §82.010.

15 20.

16 **THIRD CLAIM FOR RELIEF**

17 (Unlawful Discrimination Based on Race, ORS 659A.030 - Brought by SEAN PEN)

18 Plaintiff SEAN PEN hereby incorporates the allegations in paragraphs 1-19 and further  
19 alleges:

20 21.

21 SEAN PEN is of Asian descent and has a child who is African American.

22 22.

23 At all material times, SEAN PEN's co-worker and supervisor, Dirk Evans, was an  
24 authorized agent and employed by Defendant and was acting within the course and scope of such  
25 agency and/or employment.

1 23.

2 On or about, September 28, 2016, SEAN PEN, was verbally harassed on the basis of race  
3 by co-worker Dirk Evans. SEAN PEN was called multiple names by co-worker EVANS  
4 including 'dumb ass', 'retard', and 'fucking stupid'. Likewise, on or about November 3, 2016,  
5 co-worker Evans called SEAN PEN 'nigger'.

6 24.

7 Further, as described herein, Defendant discriminated and retaliated against SEAN PEN  
8 because he complained and/or reported race discrimination in the workplace. Defendant allowed  
9 workplace harassment that was severe or pervasive to have the purpose or effect of unreasonably  
10 interfering with SEAN PEN's work performance or created an intimidating, hostile or offensive  
11 working environment based upon race.

12 25.

13 On, or about, November 3, 2016, SEAN PEN contacted Mr. Wellens (agent of  
14 Defendant) about comments made to him by co-worker Evans, Mr. Wellens investigated SEAN  
15 PEN's claims and verbally reprimanded employees. However, no apology was offered to SEAN  
16 PEN. SEAN PEN was so upset by comments made that he worked in the shop for the rest of the  
17 day. SEAN PEN was terminated on November 21, 2017.

18 26.

19 SEAN PEN has suffered, will continue to suffer, and is entitled to recover from  
20 Defendant, economic damages consisting of lost wages and benefits and front pay in an amount  
21 to be determined at trial, not to exceed \$50,000. As described above, plaintiff was discriminated  
22 against in the terms and conditions of his employment. Defendant allowed workplace harassment  
23 that was severe or pervasive to have the purpose or effect of unreasonably interfering with SEAN  
24 PEN's work performance or created an intimidating, hostile or offensive working environment  
25 based upon race.

**Second Amended Complaint: Page 7 of 11**

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1 27.

2 Plaintiff is entitled to recover from Defendant compensatory damages for emotional  
3 distress in an amount to be determined at trial, not to exceed \$100,000. ORS §659A.885(3)(c).

4 28.

5 Plaintiff is entitled to recover from Defendant his costs and reasonable attorneys' fees  
6 incurred herein. ORS §659A.885(1).

7 29.

8 **FOURTH CLAIM FOR RELIEF**

9 (Wrongful Discharge - Brought By SEAN PEN)

10 Plaintiff SEAN PEN re-alleges paragraphs 1 through 28 above as though fully set forth  
11 herein, and further alleges:

12 30.

13 During a meeting on November 3, 2016 (two months after employing SEAN PEN) with  
14 Defendant inquired about SEAN PEN's Drivers License. SEAN PEN stated he had lost his  
15 license and that he would need time to obtain a new one. SEAN PEN sent Defendant a copy of  
16 his newly issued Drivers License on November 14, 2016. On November 21, 2016, SEAN PEN  
17 texted Defendant, "Do I not have a job anymore." Defendant responded "not at this time".

18 31.

19 Defendant terminated SEAN PEN's employment based upon retaliation for SEAN PEN  
20 reporting the unlawful race-based discrimination. The purported reason proffered by Defendant  
21 related to the driver's license was mere pretext.

22 32.

23 As a proximate result of Defendant's termination of SEAN PEN, SEAN PEN has  
24 sustained losses in earnings and other employment benefits in the amount of \$50,000.  
25

1 33.

2 **FIFTH CLAIM FOR RELIEF**

3 (Operating Under an Unregistered Business Name- ORS §648.007, ORS §648.135(2) -

4 Brought by All Plaintiffs)

5 Plaintiffs hereby incorporate the allegations in paragraphs 1-32 and further alleges:

6 34.

7 Wellens Farwell, Inc., is conducting business as Wellens Farwell Construction. However,  
8 the name Wellens Farwell Construction was not registered with the state of Oregon until March  
9 16, 2017, after Defendant had carried on, conducted or transacted, leading to the above causes  
10 of action in violation of the assumed business name statute.

11 35.

12 Assumed business names must be registered with the State of Oregon pursuant to ORS  
13 §648.007. If a business conducts its affairs under an unregistered name, a plaintiff is entitled to  
14 recover Five Hundred Dollars (\$500) pursuant to ORS §648.135(2).

15 36.

16 Additionally, the prevailing party is entitled to recover reasonable attorneys fees “in any  
17 action or suit in which the cause of action arises out of business that the defendant carried on,  
18 conducted or transacted in violation of ORS §648.007.” ORS §648.135(2).

19 37.

20 Defendant is subject to the fine in paragraph 31. Defendant operated its business under  
21 the name “Wellens Farwell Construction” without registering the name with the State in clear  
22 violation of statutory law.

23  
24 38.

25 **DEMAND FOR JURY TRIAL**

1 Plaintiffs hereby demand a jury trial on all issues.

2  
3 39.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiffs prays for judgment against Defendant as follows:

6 I. MONY PEN

- 7 a) Back wages of \$3,004.31 for prevailing wage work;
- 8 b) Liquidated damages of \$3,004.31 for prevailing wage work;
- 9 c) A penalty wage of \$9,504.00;
- 10 d) Costs and disbursements incurred herein;
- 11 e) Reasonable attorney's fees; and
- 12 f) Other relief as the Court deems just and equitable.

13 II. JAKE TILLERY

- 14 a) Back wages of \$13,715.71 for prevailing wage work;
- 15 b) Liquidated damages of \$13,715.71 for prevailing wage work;
- 16 c) A penalty wage of \$5,440.13;
- 17 d) Costs and disbursements incurred herein;
- 18 e) Reasonable attorney's fees; and
- 19 f) Other relief as the Court deems just and equitable.

20 III. BAREHK WELLEY

- 21 a) Back wages of \$4,834.85 for prevailing wage work;
- 22 b) Liquidated damages of \$4,834.85 for prevailing wage work;
- 23 c) A penalty wage of \$8,512.80;
- 24 d) Costs and disbursements incurred herein;
- 25 e) Reasonable attorney's fees; and

1 f) Other relief as the Court deems just and equitable.

2 IV. SEAN PEN

3 a) Back wages of \$970.88 for prevailing wage work;

4 b) Liquidated damages of \$970.88 for prevailing wage work;

5 c) A penalty wage of \$4,953.60;

6 d) Economic damages in the amount to be determined by the trier of fact to fairly  
7 compensate SEAN PEN in accordance with Oregon law for lost income, and not  
8 to exceed \$100,000;

9 e) Non-economic damages in the amount to be determined by the trier of fact to  
10 fairly compensate SEAN PEN in accordance with Oregon law, and not to exceed  
11 \$100,000;

12 f) Costs and disbursements incurred herein;

13 g) Reasonable attorney's fees; and

14 h) Other relief as the Court deems just and equitable.

15  
16  
17 Dated: September 26, 2017

Respectfully submitted,

18  
19 **STEVENS & LEGAL, LLC**

20 /s/ Michael O. Stevens

21 

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Michael O. Stevens, OSB No. 095198  
22 Attorney for Plaintiffs

23 Trial Attorney:

24 Michael O. Stevens, OSB No. 095198  
25