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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR ORANGE COUNTY, COMPLEX CIVIL LITIGATION  
12

13 LARRY SMALL, KENNETH CHARLES, )  
14 GLEN CADOGAN, THEONHILIUS THOMAS )  
and MICHAEL GITTENS on behalf of )  
15 themselves and others similarly situated, )

16 Plaintiffs, )

17 vs. )

18 BRINDERSON, BRINDERSON )  
19 CONSTRUCTORS INC., DOES 1-50, )  
inclusive, )

20 Defendants. )  
21 )

Case No.: 04CC00717

[Assigned to the Honorable Gail A. Andler –  
Department CX102]

**NOTICE OF PENDENCY OF CLASS  
ACTION**

Complaint Filed: December 21, 2004

22 TO: All Construction Craft employees who performed work for Brinderson Constructors, Inc. from  
23 December 21, 2000 to the present.

24 **A CLASS ACTION LAWSUIT HAS BEEN FILED AND CERTIFIED ON BEHALF OF A**  
25 **PLAINTIFF CLASS OF WHICH YOU MAY BE A MEMBER. THIS NOTICE PROVIDES**  
26 **IMPORTANT INFORMATION ABOUT YOUR RIGHTS IN CONNECTION WITH THAT**  
27 **LAWSUIT. PLEASE READ IT CAREFULLY.**

28 Currently pending in the California Superior Court for the County of Orange is a certified class action lawsuit against Brinderson Constructors, Inc. A class action lawsuit is a lawsuit in which one or more persons sue on behalf of themselves and others who have similar claims. This is not a notice of a lawsuit against you. This Notice is being published for the purpose of informing you of the pendency of the litigation and your rights with respect to it.

1 The Plaintiffs allege Brinderson failed to comply with all of the requirements of Wage Order 16  
2 regarding secret ballot elections to adopt four-ten hour alternative work week schedules and are  
3 therefore entitled to overtime pay of one and one-half times an employee's regular rate of pay for the  
4 ninth and tenth hour worked during an alternative work schedule, failed to provide second meal periods  
when working over 10 hours in a day and failed to pay an extra hour's wage for the missed meal period,  
and failed to pay for time waiting and traveling within refineries to work locations in the refineries.  
Brinderson denies the allegations Plaintiffs are asserting in the lawsuit.

5 Plaintiffs allege that these actions constitute unfair business practices under California Business and  
6 Professions Code section 17200 as well as violations of California Labor Code sections 201, 203, 223,  
7 226, 226.7, 512, and 221 and of the Industrial Wage Commission's Order 16-2001. Plaintiffs seek  
8 statutory penalties and equitable relief including restitution and an injunction debarring defendants from  
further violations of these laws, attorney's fees, costs of suit, and any other remedy this Court deems just  
and proper. Defendants deny they engaged in any illegal, deceptive, or unfair practice or activity, that  
any amounts are owed or that it injured or damaged any of the class members in any way.

9 Brinderson believes prior class counsel, Attorney Ellyn Moscowitz, filed the lawsuit on December 21,  
10 2004, as part of a scheme to use the lawsuit to try to pressure Brinderson into signing collective  
11 bargaining agreements with Ms. Moscowitz' trade union clients, such as Pipefitters Local 250.  
12 Brinderson believes the claims the plaintiffs assert are unfounded and/or exaggerated. For example:

- 13 • Brinderson believes most craft employees prefer to work a four ten-hour day schedule as  
14 an alternative to a traditional five eight-hour day schedule, and that Brinderson was not  
15 required by Wage Order 16 to pay premium pay or overtime for the ninth and tenth hour  
16 worked during a four ten-hour day alternative workweek schedule. Working four ten-  
17 hour days usually resulted in an extra day off work for employees. Furthermore, if an  
18 employee worked a fifth day, double time started sooner, at the ninth hour on the fifth  
19 day.
- 20 • Brinderson believes craft employees were allowed to take a second unpaid 30-minute  
21 meal period if they wanted to when they worked more than 10 hours in a workday.  
22 Brinderson should not be penalized merely because it allegedly did not force employees  
to take a second unpaid 30-minute meal period. Brinderson believes most craft  
employees prefer not to take a second unpaid 30-minute meal period when they work  
more than 10 hours in a workday. In other words, Brinderson believes most employees  
working, for example, eleven hours would rather go home at the end of eleven hours of  
work instead of staying on the jobsite longer to take a second unpaid 30-minute meal  
period before going home for the day.
- Brinderson believes it properly paid craft employees for time spent traveling by bus or  
other vehicles between the gates of a facility, such as a refinery, and the location within a  
facility where the work was performed and that Brinderson is therefore not liable for  
allegedly unpaid travel time.

23 Brinderson is proud of its hard-working and safety conscious craft employees, and Brinderson is  
24 fighting this lawsuit because it believes it treated its craft employees fairly in all of these matters.

25 The Court has certified the following class and subclasses. The class members consist of all  
26 constructors who performed work for Brinderson Constructors, Inc. from December 21, 2000 to the  
27 present. The class and subclasses consist of the following:

- 28 1. A Plaintiff class is established and defined as follows: "All building and construction  
trade employees, excluding management employee, who performed work for Brinderson  
Constructors, Inc. from December 21, 2000 to present."

1           2.     The following sub-classes are established:

- 2           a.     All persons who are employed or have been employed by Defendants in the State  
3           of California as construction craft workers, including but not limited to asbestos  
4           workers, boilermakers, cement mason, pipe fitters, electrician, iron workers,  
5           painters, glazier, roofers, plasterers, gunite workers, laborers, operating engineers,  
6           millwrights, plumbers, welders, sheet metal workers, carpenters [sic] instrument  
7           technician, and elevator constructors, who at any time since December 21, 2000  
8           to be present worked over eight (8) hours per day and were not paid one and one  
9           half (1 ½) times the regular rate of pay for all overtime hours worked on a 40 hour  
10          work week.
- 11          b.     All persons who are employed or have been employed by Defendants in the State  
12          of California as construction craft workers, including but not limited to asbestos  
13          workers, boilermakers, cement mason, pipe fitters, electrician, iron workers,  
14          painter, glazier, roofers, plasterers, gunite workers, laborers, operating engineers,  
15          millwright, plumbers, welders, sheet metal workers, carpenter, instrument  
16          technician, and elevator constructors, who at any time since December 21, 2000  
17          to the present did not receive a second meal period as required by Labor Code  
18          Section 226.7 and Murphy vs. Kenneth Cole (2007) 40 Cal.4th 1094.
- 19          c.     All persons who are employed or have been employed by Defendants in the State  
20          of California as construction, craft workers, including but not limited to asbestos  
21          workers, boilermakers, cement mason, pipe fitters, electrician, iron workers,  
22          painters, glazier, roofers, plasterers, gunite workers, laborers, operating engineers,  
23          millwrights, plumber, welders, sheet metal workers, carpenter, instrument  
24          technician, and elevator constructors, who at any time since December 21, 2000  
25          to the present were not paid for travel time per Morillion vs. Royal Packing Co.  
26          (2000) 22 Cal.4th 575.

27     The Court has not passed any of the merits of the parties' contentions. This notice is not to be  
28     understood as an expression of any opinion of the Court.

29     The Law Offices of Ellyn Moscovitz, 20 North Raymond Avenue, Suite 240, Pasadena, California  
30     91103 was former counsel prosecuting this action on behalf of the named Plaintiffs and the class.  
31     Current counsel representing the class ("Class Counsel") is Hadsell Stormer Keeny Richardson &  
32     Renick, 128 North Fair Oaks Avenue, Pasadena, California, 91103. Class Counsel represents the Class  
33     members on a contingent basis, without any charge to class members. This means that Class Counsel is  
34     not charging the named Plaintiffs or members of the class a fee. If the Plaintiffs and the class prevail on  
35     their claims, and if attorney's fees are awarded, an award of attorney's fees or costs will be made for any  
36     recovery for the class members from Brinderson directly.

37     Former class counsel, The Law Offices of Ellyn Moscovitz, received some funding of costs for this  
38     lawsuit from the Los Angeles/Orange Counties Building and Trades Council, AFL-CIO to assist in this  
39     litigation.

40     If you are a member of the class as defined above and do not request exclusion from the class, you will  
41     remain a member of the class. If you remain in the class, any claims that you may have against the  
42     defendants arising from the matters alleged in the Class Action will be determined in the Class Action,  
43     in which you will be represented by Class Counsel. You will not be able to present such claims in  
44     another lawsuit whether the outcome in this action is favorable to you or not. The Plaintiffs and Class  
45     Counsel will act as your representatives and counsel for the presentation of the case against the  
46     defendants. If you desire, you may also appear through your own attorney at your own expense. **IF**  
47     **YOU WANT TO REMAIN A MEMBER OF THE CLASS, YOU SHOULD NOT SEND IN THE**  
48     **REQUEST FOR EXCLUSION. YOU ARE NOT REQUIRED TO DO ANYTHING AT THIS**

1 **TIME.**

2 If you wish to exclude yourself from the Class, you must send a written "Request for Exclusion"  
3 postmarked on or before June 8, 2009 to the following address:

4 Small vs. Brinderson:  
5 **THIRD-PARTY NOTICE ADMINISTRATOR**  
6 c/o CAC Services Group, LLC  
7 1551 Southcross Drive West  
8 Burnsville, MN 55306  
9 Toll Free Tel.: (800) 951-7324  
10 Fax: (952) 224-2193

11 The Request for Exclusion must include your name and address, and must specifically state that you  
12 wish to request to be excluded from the Plaintiff class in the case entitled "Small vs. Brinderson  
13 Constructors Inc., Case No. 04CC00717, California Superior Court, County of Orange." A Request for  
14 Exclusion Form is provided for your convenience.

15 If you request to be excluded from the class, you will not share in any recovery (if any) that may be  
16 made in the Class Action; you will not be bound by any judgment in the Class Action; and you are free  
17 to pursue any claims you may have against the defendants by filing your own lawsuit.

18 If you have any questions about this notice, or this lawsuit, you may contact Class Counsel:

19 Randy Renick, Esq.  
20 Hadsell Stormer Keeny Richardson & Renick  
21 128 North Fair Oaks Avenue  
22 Pasadena, California 91103  
23 Toll Free Tel: (888) 654-6156  
24 Fax: (626) 577-7079

25 You may wish to seek the advice and guidance of your own attorney, at your expense, about your legal  
26 rights. For further information concerning this Notice, you may also contact Hadsell Stormer Keeny  
27 Richardson & Renick at the address shown above.

28 **PLEASE DO NOT WRITE OR CALL THE COURT OR THE CLERK OF THE COURT.**

DATE: APR 23 2009

BY THE ORDER OF THE HONORABLE  
GAIL A. ANDLER

  
\_\_\_\_\_  
Judge of the Superior Court