

FILED
Superior Court Of California,
Sacramento
11/30/2021
tcrowther
By _____, Deputy
Case Number:
34-2021-00311942

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12 and on behalf of all others similarly situated.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SACRAMENTO**

15 GILBERTO RUEDA, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 CLARKWESTERN DIETRICH
20 BUILDING SYSTEMS LLC; and DOES 1
21 through 20, inclusive,

22 Defendants.

Case No.

**COMPLAINT FOR VIOLATION OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
(CAL. LAB. CODE §§ 2698, *ET SEQ.*)**

BY FAX

1 Plaintiff Gilberto Rueda, on behalf of aggrieved employees, alleges as follows:

2 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

3 1. Pursuant to the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et*
4 *seq.* (“PAGA”), Plaintiff Gilberto Rueda (“Plaintiff”) brings this representative action against
5 defendant Clarkwestern Dietrich Building Systems LLC; and DOES 1 through 20, inclusive
6 (“Defendants”), on behalf of himself and all other aggrieved employees who are and were
7 employed by Defendants as non-exempt employees throughout California.

8 2. Defendants are in the business of manufacturing construction materials.

9 3. Through this action, Plaintiff alleges that Defendants have engaged in a
10 systematic pattern of wage and hour violations under the California Labor Code and Industrial
11 Welfare Commission (“IWC”) Wage Orders.

12 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
13 increased their profits by violating state wage and hour laws by, among other things:

14 (a) failing to pay all wages (including minimum wages and overtime
15 wages);

16 (b) failing to provide lawful meal periods or compensation in lieu thereof;

17 (c) failing to authorize or permit lawful rest breaks or provide compensation
18 in lieu thereof;

19 (d) failing to provide accurate itemized wage statements;

20 (e) failing to pay all wages due upon separation of employment.

21 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
22 others similarly situated in California to recover, among other things, attorneys’ fees, costs and
23 expenses, and penalties pursuant to Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 227.3,
24 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2698, *et*
25 *seq.*, and Code of California Civil Procedure § 1021.5.

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JURISDICTION AND VENUE

6. This is a representative action brought under PAGA, codified at Cal. Lab. Code §§2698, *et seq.* The civil penalties sought by Plaintiffs exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

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

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff is a citizen of California and worked for Defendants in California during the relevant time periods as alleged herein.

11. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all relevant times.

14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the employer and/or joint employer of Plaintiff and the class members.

15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

16. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

17. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

18. At all relevant times mentioned herein, Defendants employed Plaintiff and other California citizens as non-exempt employees at Defendants' California business location(s).

19. Defendant employed Plaintiff as a non-exempt employee at Defendants' California business location.

20. Defendants continue to employ non-exempt employees within California.

21. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers, employees, and other professionals

1 who were knowledgeable about California's wage and hour laws, employment and personnel
2 practices, and the requirements of California law.

3 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and aggrieved employees were entitled to receive wages for
5 all time worked (including minimum wages and overtime wages) and that they were not
6 receiving all wages earned for work that was required to be performed. In violation of the
7 Labor Code and IWC Wage Orders, Plaintiff and aggrieved employees were not paid all wages
8 (including minimum wages and overtime wages) for all hours worked at the correct rate due to
9 requirements to work off-the-clock, and overtime calculations that omitted non-discretionary
10 bonuses or other incentive pay, among other issues.

11 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and aggrieved employees were entitled to receive all required
13 meal periods or payment of one (1) additional hour of pay at Plaintiff's and aggrieved
14 employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.
15 In violation of the Labor Code and IWC Wage Orders, Plaintiff and aggrieved employees did
16 not receive all meal periods or payment of one (1) additional hour of pay at Plaintiff's and
17 aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted
18 meal period.

19 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and aggrieved employees were entitled to receive all rest
21 breaks or payment of one (1) additional hour of pay at Plaintiff's and aggrieved employees'
22 regular rate of pay when a rest break was missed. In violation of the Labor Code and IWC
23 Wage Orders, Plaintiff and aggrieved employees did not receive all rest breaks or payment of
24 one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay when a rest
25 break was missed.

26 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and aggrieved employees were entitled to receive itemized
28 wage statements that accurately showed the following information pursuant to the Labor Code:

1 (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate
2 units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
3 deductions, provided that all deductions made on written orders of the employee may be
4 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period
5 for which the employee is paid; (7) the name of the employee and only the last four digits of his
6 or her social security number or an employee identification number other than a social security
7 number; and (8) all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate by the employee. In violation of the
9 Labor Code, Plaintiff and aggrieved employees were not provided with accurate itemized wage
10 statements.

11 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and aggrieved employees were entitled to timely payment of
13 wages due upon separation of employment. In violation of the Labor Code, Plaintiff and
14 aggrieved employees did not receive payment of all wages within permissible time periods.

15 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known they had a duty to compensate Plaintiff and aggrieved employees, and
17 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
18 intentionally failed to do so in order to increase Defendants' profits.

19 28. Therefore, Plaintiff brings this lawsuit seeking monetary relief against
20 Defendants on behalf of himself and all aggrieved employees to recover, among other things,
21 attorneys' fees, penalties, costs, and expenses.

22 **FIRST CAUSE OF ACTION**

23 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

24 29. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs
25 as though fully set forth herein.

26 30. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
27 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
28 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for

1 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
2 an aggrieved employee on behalf of himself or herself and other current or former employees
3 pursuant to the procedures specified in Labor Code § 2699.3.

4 31. For all provisions of the Labor Code except those for which a civil penalty is
5 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
6 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
7 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
8 period in which Defendants violated these provisions of the Labor Code.

9 32. Defendants' conduct violates numerous Wage Order and Labor Code sections,
10 including, but not limited to, the following:

- 11 a. violation of Labor Code §§ 201-203, 204, 210, 227.3, 246, 510, 1182.12,
12 1194, 1197, and 1198 for failure to timely pay all earned wages (including
13 minimum wage, overtime wages, sick wages, and vacation wages) owed
14 to Plaintiffs and other aggrieved employees during employment and upon
15 separation of employment as herein alleged;
 - 16 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
17 periods to Plaintiffs and other aggrieved employees and failure to pay
18 premium wages for missed meal periods as herein alleged;
 - 19 c. violation of Labor Code § 226.7 for failure to permit rest breaks to
20 Plaintiffs and other aggrieved employees and failure to pay premium
21 wages for missed rest periods as herein alleged;
 - 22 d. violation of Labor Code § 226 and 226.3 for failure to provide accurate
23 itemized wage statements to Plaintiffs and other aggrieved employees as
24 herein alleged; and
 - 25 e. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
26 accurate and complete records showing, among other things, the hours
27 worked daily by and the wages paid to aggrieved employees.
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33. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator and had one or more of the violations committed against him, and therefore are properly suited to represent the interests of all other aggrieved employees.

34. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendant and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

35. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

36. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiff, on his own behalf and on behalf of all other aggrieved employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties against Defendants on behalf of all aggrieved employees pursuant to Labor Code §§ 2698, *et seq.*;

2. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code § 2698, *et seq.*; and

3. For such other relief as the Court deems just and proper.

Dated: November 30, 2021

AEGIS LAW FIRM, PC

By: 

Fawn F. Bekam

Attorneys for Plaintiff Gilberto Rueda