



JOSE GARAY, APLC

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January 16, 2023

VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency
Private Attorneys General Act – Filing

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Agent for Service of Process for MARK EVANS, AND EVANS AND SONS LLC.
MARK W EVANS
Individual 4491973
820 E LASSEN AVE APT D
CHICO, CA 95973

**Re: ROSENDO DIAZ V. MARK EVANS (AS AN INDIVIDUAL) and EVANS
 AND SONS LLC
 PAGA Notice**

Dear California Labor and Workforce Development Agency and AC Enterprises Inc.:

Please be advised that Jose Garay, APLC represents the interests of ROSENDO DIAZ (“Claimant”). The purpose of this correspondence is to inform you that Claimant intends to seek penalties, on behalf of himself and all other aggrieved employees, against his employer **MARK EVANS (AS AN INDIVIDUAL) and EVANS AND SONS LLC** (“Employer”) pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698 *et seq.* This correspondence serves as Claimant’s written notice by online filing with the Labor and Workforce Development Agency (“LWDA”) and by certified mail to the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3(a)(1).

Specific Provisions of the Labor Code Alleged to Have Been Violated

The specific provisions of the Labor Code alleged to have been violated are as follows: Labor Code sections 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and 2802.

Facts and Theories Supporting the Alleged Violations

Employer owns and operates a construction company that provides general contracting services. Employer employed Claimant as a non-exempt hourly employee in California within the past year. Claimant's job duties included, *inter alia*, cutting and installing molding, cutting and installing cabinet wood and other carpentry. Employer employed or currently employs other aggrieved employees in California. The aggrieved employees consist of all non-exempt employees employed by Employer during the "PAGA Period," which is defined as one (1) year prior to the submission of this letter to the LWDA and certified mailing to Employer to the present.

During the PAGA Period, Employer failed to pay Claimant and other aggrieved employees minimum, regular, overtime, and double time wages for all hours worked at the legally mandated rates. During the PAGA Period, Employer also failed to account for and pay the legal sick pay rate, premium rate (non-productive time, rest periods, piece rate), vacation and bonus rate according to California law. During the liability period the Claimant and other aggrieved employees were promised a piece-rate, however they were not paid the piece-rate and were paid as minimum wage employees and/or regular hourly employees. Furthermore, Defendants did not pay the correct legal rate when Plaintiff and aggrieved employees worked non-productive time and time spent during rest breaks when Plaintiff and aggrieved employees were paid by piece rate. In addition, hours worked were either rounded to the nearest half hour or hour and failed to include post and preliminary duties and travel time. During the PAGA Period, Employer also failed to reimburse employees for necessary expenditures incurred for the benefit of the Employer without reimbursement.

Plaintiff and other aggrieved employees were not paid the legal wage they were entitled to during the legal time period. During the PAGA Period, Claimant and aggrieved employees worked more than eight (8) hours, 10 hours, and/or 12 hours per workday, and/or more than 40 hours per workweek. Employer failed to pay Claimant and other aggrieved employees all wages at the appropriate rates. Specifically, Claimant and other aggrieved employees had to wait in long lines in order to clock in for their shifts without compensation. In addition, Employer prohibited Claimant and aggrieved employees from clocking in more than five (5) minutes before their shifts or more than five (5) minutes after their shifts, and failed to pay compensation for the time spent under Employer's control that was beyond the five (5) minutes before or after their shifts. Employer also rounded Claimant's and other aggrieved employees' time worked, thereby depriving them of compensation for time worked during their shifts. Employer's rounding practice systematically undercompensated Claimant and other aggrieved employees and favored Employer rather than the employees. Further, Employer paid Claimant and aggrieved employees different wages depending on the shift but failed to include the shift differential in their regular rate of pay when calculating their overtime compensation. As such, Employer failed to pay Claimant and other aggrieved employees minimum, regular, overtime, and double time wages for all hours worked, in violation of Labor Code sections 204, 206, 210, 510, 558, 1194, 1197, 1197.1, and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Orders.

During the PAGA Period, Employer failed to provide timely off-duty 30-minute meal periods within the appropriate time intervals to Claimant and other aggrieved employees as required by Labor Code section 512 and section 11 of the applicable Wage Order. Specifically,

Claimant and aggrieved employees regularly had their meal periods shortened (i.e., less than 30 minutes) because workers were interrupted or cut short by management and owners. In addition, meal periods were sometimes late due to Employer's workload. In addition, Employer did not implement a practice of providing second meal periods to Claimant and aggrieved employees when they worked more than 10 hours in a workday. Accordingly, Employer failed to provide Claimant and other aggrieved employees with timely, uninterrupted off-duty meal periods, and failed to compensate Claimant and other aggrieved employees with an additional hour of pay at their regular rate of pay for every day in which they were denied a compliant meal period, in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage Orders.

During the PAGA Period, Employer failed to authorize or permit ten-minute (10) rest periods for every four (4) hours or major fraction thereof worked. Specifically, Claimant and aggrieved employees regularly missed their rest breaks, had them restricted to the worksite, shortened, and/or interrupted. Further, Employer failed to compensate Claimant and other aggrieved employees with an additional hour of pay at their regular rate of pay for every day in which they suffered a rest period violation. Accordingly, Employer violated Labor Code section 226.7 and the applicable IWC Wage Orders.

As a result of, and in addition to, the aforementioned Labor Code violations, Employer failed to provide accurate itemized wage statements that accurately reported, among other things, the gross and net wages earned, the total hours worked, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate. As a result, Employer violated Labor Code sections 226 and 226.3. Similarly, Employer failed to maintain accurate and complete records showing the hours worked daily by and the wages paid to Claimant and the aggrieved employees due to the same violations referenced above. Consequently, Employer violated Labor Code sections 1174 and 1174.5.

As a result of, and in addition to, the above referenced Labor Code violations, Employer failed to timely pay all wages owed throughout Claimant and the aggrieved employees' employment and following the end of the aggrieved employees' employment. Accordingly, Employer violated Labor Code sections 201-204, and 210.

Based on these violations, Claimant will seek attorneys' fees, costs, and penalties under the Labor Code on behalf of herself and all other aggrieved employees who were employed by Employer during the PAGA Period. Please advise if the Labor and Workforce Development Agency has any objection to Claimant including PAGA claims in a lawsuit against Employer. Should you have any questions, comments, or concerns, please do not hesitate to contact the undersigned.

Sincerely,

JOSE GARAY, APLC



Jose R. Garay, Esq.