



**SANSANOWICZ**

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May 24, 2023

**VIA ELECTRONIC FILING**

PAGA Administrator  
California Labor and Workforce Development Agency  
PAGAfilings@dir.ca.gov

Re: West Coast Drywall & Co., Inc. d/b/a "West Coast Drywall & Paint (hereafter, "Employer")

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE §2699.3**

To: The PAGA Administrator, the Labor and Workforce Development Agency and the Employer

From: Andrés Ortega Gomez ("Employee"), who was subjected to the Labor Code violations set forth below

Andrés Ortega Gomez, through his counsel, submits this PAGA Notice, pursuant to and in compliance with the requirements of California Labor Code §2699.3(a)/(c), and alleges the facts and theories to support the below alleged violations. This Notice relates back to the Notice submitted on March 1, 2019, LWDA Case No. LWDA-CM-671618-19, filed by Edgar O. Castillo Cazares (erroneously named as "Cazarez"), and amended on May 9, 2019. Mr. Barrios claims the same Labor Code violations as Mr. Cazares, was subject to the same policies and procedures as Mr. Cazares (including Employer's Field Employee Handbook, Revised Edition July 1, 2015), and was employed by Employer at the time Cazares filed his civil action on or about May 9, 2019, and/or First Amended Complaint (dismissing class allegations and proceeding as a PAGA-only action) on or about August 22, 2019, Riverside County Superior Court Case No. RIC1902851. That action has been stayed pending Mr. Cazares' individual arbitration, which was compelled after the United States Supreme Court's decision in *Viking River Cruises v. Moriana* (2022) 142 S.Ct. 1906.

With this Notice, Employee seeks to vindicate his individual PAGA claims, which are the same claims as those asserted in the Cazares representative action, in his individual arbitration.

Employer employed Employee as a piece rate employee from approximately April 22, 2015, through January 2022. His employment overlapped that of Mr. Cazares, who was employed by Employer from May 21, 2018, through May 3, 2019, and during this period Employer utilized consistent policies and procedures regarding Employee and other aggrieved employees, including Mr. Cazares, as follows:

First, Employer's piece rate employees were paid by the unit (or "piece"), rather than by the hour. However, Employer did not compensate Employee for every task that Employer required Employee to perform. An employer cannot avoid paying its employees for non-productive time with a piece rate pay plan. See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 and *Armenta v. Osmose* (2005) 135

Cal.App.4th 314. Because Employer did not pay for all required work activities, Employer failed to pay Employee all wages due and owing, including minimum wage, for every hour worked, in violation of Labor Code §§ 510, 1194, 1197 and 1198, and owes civil penalties pursuant to Labor Code §§ 2699(f), 1197.1, and/or 558.

Second, when calculating Employee's piece rate pay, Employer multiplied the number of piece rate units completed by Employee's rate of pay and then rounded that result to a whole dollar number, rather than include any remaining pennies. As such, Employer failed to pay Employee all piece rate wages, straight time wages, minimum wages and/or overtime wages due for all piece rate units (and every portion thereof) completed by Employee in violation of Labor Code §§ 510, 1194, 1197, and 1198, and therefore owes civil penalties pursuant to Labor Code §§ 2699(f) and/or 558.

Third, Employer failed to authorize and permit and therefore provide Employee paid rest periods, because Employer's piece rate pay plan only paid for Employee's performance of certain work activities and did not compensate Employee for duty-free rest periods. See *Armenta v. Osmose* (2005) 135 Cal.App.4th 314, *Bluford v. Safeway Stores, Inc.* (2013) 215 Cal.App.4th 864. Employer did not pay Employee rest period premium wages for these missed rest periods. As such, Employer violated Labor Code §§ 226.2(a)(1) and 226.7 and owes civil penalties pursuant to Labor Code § 2699(f).

Fourth, Employer failed to reimburse Employee for necessary business expenditures incurred by Employee that Employer should have indemnified Employee from having to incur, such as mileage expense for using personal vehicle, cell phone expense for using personal cell phone, and/or purchase of tools, equipment, and/or clothing required for performing Employer's work. As such, Employer violated Labor Code §§ 450 and 2802, and owes civil penalties pursuant to Labor Code § 2699(f).

Fifth, Employer was required to state the total number of hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for such periods on Employee's wage statement, since Employee was a piece rate employee, yet failed to do so. This was an independent violation of Labor Code §§ 226.2(a)(2) and 226(a). As such, Employer owes civil penalties pursuant to Labor Code §§ 2699(f) and/or 226.3.

Sixth, Employer also failed to include accurate information on the wage statement by rounding the calculations of Employee's piece rate wages. In so doing, Employer failed to include accurate information on Employee's wage statements. This was an independent violation of Labor Code § 226(a). As such, Employer owes civil penalties pursuant to Labor Code §§ 2699(f) and/or 226.3.

Seventh, because of the above pay policies and practices, Employer failed to include all required information on Employee's wage statement, such as total hours worked, all gross wages earned, and all net wages earned, and therefore Employer owes civil penalties pursuant to Labor Code §§ 226.3 and/or 2699(f).

Eighth, Employer failed to always provide Employee with paid sick days at Employee's regular rate of pay. Employee worked for Employer for 30 or more days after July 1, 2015, yet Employer did not always pay Employee for sick days at Employee's regular rate of pay, in violation of Labor Code § 246(l), and therefore owes civil penalties pursuant to Labor Code §§ 2699(f).

Ninth, because of the above pay policies and practices, Employer failed to timely pay all earned wages due to Employee at the separation of his employment. As such, Employer violated Labor Code §§ 201-203 and owes civil penalties pursuant to Labor Code § 2699(f).

Pursuant to Labor Code §2699.3(c)(2)(A), Employer may cure some of the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

We understand that if we do not receive a response within sixty-five (65) calendar days of the postmark and filing date of this notice that the LWDA intends to investigate the allegations subject to cure and/or a notice from Employer that the alleged violations have been cured, and/or if the alleged violations are not cured, then Employees may immediately thereafter commence a civil action against Employer, pursuant to Labor Code § 2699. Please advise within sixty-five (65) calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations.

This letter clearly sets forth Employee's grievances and proposed remedies, pursuant to the Labor Code, PAGA and otherwise, as set forth above. Employee wishes to engage in reasonable efforts to settle this dispute before filing a civil action against the Employer. Employee gives the Employer the opportunity, prior to the expiration of the deadline for the LWDA to investigate, to meet Employee's demands and settle this dispute.

Thank you for your consideration.

Very Truly Yours,



Leonard H. Sansanowicz

cc (via certified mail): 7020-1810-0000-6316-0962, West Coast Drywall & Company, Inc., c/o CT Corporation System, Agent for Service, Authorized: Amanda Garcia, 330 N. Brand Blvd., Glendale, CA 91203