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VIA ONLINE FILING

Labor and Workforce Development Agency

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Sacramento, CA 95814

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<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: Rufino G. Bolanos AKA Rufino Gutierrez v. West Coast Drywall & Company, Inc.

Dear Representative:

This office represents Rufino G. Bolanos AKA Rufino Gutierrez (**Mr. Gutierrez**) with respect to his claims under the California Labor Code against West Coast Drywall & Company, Inc. ("**Employer**"). This letter is being sent simultaneously to Employer by certified mail.

Employer employed Mr. Gutierrez approximately until June 2023 as an hourly, non-exempt employee. Employer provides services in the industry of installing drywall, painting homes and commercial properties.

Mr. Gutierrez intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("**PAGA**"). Mr. Gutierrez is seeking penalties on behalf of himself as an aggrieved employee and in a representative capacity on behalf of the State of California. This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employer violated several of California's wage and hour laws during Mr. Gutierrez's employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.2, 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the Industrial Welfare Commission Wage Orders ("IWC Wage Order") including *inter alia*, IWC Wage Order No. 16. The claims made on behalf of Mr. Gutierrez and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employer has engaged in numerous unlawful practices which resulted in the failure to pay Mr. Gutierrez and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

First, Employer regularly required Mr. Gutierrez and Aggrieved Employees to work more than eight (8) hours in a day or forty (40) hours in a workweek, but failed to pay them overtime compensation for such work. Employer also failed to provide Mr. Gutierrez and Aggrieved Employees with adequate training



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as to the payment of overtime compensation, all in an effort to keep its workers uninformed as to his legal right to overtime compensation. In addition, Employer regularly required Mr. Gutierrez and Aggrieved Employees to work off-the-clock in order to complete his duties and responsibilities. This off-the-clock work included, amongst other things, requiring Mr. Gutierrez and Aggrieved Employees to: (1) respond to Employer and work-related requests and perform work while clocked out for purported meal breaks; (2) perform work before and after the scheduled shift times. Mr. Gutierrez and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Mr. Gutierrez and Aggrieved Employees to perform work off-the-clock without compensation, Employer also failed to accurately record the actual time worked by Mr. Gutierrez and Aggrieved Employees, which resulted in a failure to pay Mr. Gutierrez and Aggrieved Employees for all hours actually worked, including minimum wages, straight time wages and overtime wages. Employer also failed to compensate Mr. Gutierrez and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration, including piece-rate pay. Finally, and as a matter of policy and/or practice, Employer failed to pay overtime to Mr. Gutierrez and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employer has failed to pay Mr. Gutierrez and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employer violated IWC Wage Order No. 16 and California Labor Code sections 204, 226.2, 510, 1194, 1197, 1197.1 and 1198.

Mr. Gutierrez and Aggrieved Employees will therefore seek unpaid wages; PAGA default penalties; penalties pursuant to paragraph (18)(A) of IWC Wage Order No. 16; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; compensation pursuant to Labor Code Section 1194; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employer failed to provide Mr. Gutierrez and Aggrieved Employees with legally-compliant 30-minute meal periods. Mr. Gutierrez and Aggrieved Employees were required by Employer to work more than five (5) hours per day, but was not provided with uninterrupted 30-minute meal periods. Further, Mr. Gutierrez and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when he worked over ten (10) hours per day. Employer regularly required Mr. Gutierrez to work through his first and second meal periods, to take his first meal period after his fifth (5th) hour of work, and/or to take his second meal periods after his tenth (10th) hour of work. On the rare occasions that Mr. Gutierrez and Aggrieved Employees were able to take a meal period, their meal periods were typically interrupted or cut short.

Employer's policies, practices, and procedures were responsible for the violations alleged above and



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prevented Mr. Gutierrez and Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Mr. Gutierrez and Aggrieved Employees regarding his right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Mr. Gutierrez and Aggrieved Employees about his right to premium wages for non-compliant meal periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Gutierrez and Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employer required Mr. Gutierrez and Aggrieved Employees are to remain on-call and respond to work-related requests at all times, including during meal periods, which included in-person verbal interruption from his supervising foreman; and (7) Employer's policy and culture prevented Mr. Gutierrez and Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees right to receive timely, uninterrupted, and duty-free meal periods. In addition, Mr. Gutierrez and other Aggrieved Employees generally paused their work in order to quickly eat something and resume working within 15 minutes. Employer, by and through its management, knew Mr. Gutierrez and other Aggrieved Employees generally paused their work in order to quickly eat something and resume working within 15 minutes. Employer, by and through its management, knew Mr. Gutierrez and other Aggrieved Employees were not receiving at least uninterrupted 30-minute meal period.

Mr. Gutierrez and Aggrieved Employees did not receive an extra hour of wages at his regular rate of pay for the meal periods which was not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order No. 16 and California Labor Code sections 226.7, 512(a) and 1198.

Mr. Gutierrez will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (18)(A) of IWC Wage Order No. 16; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

Employer failed to authorize and permit Mr. Gutierrez and Aggrieved Employees take legally-compliant 10-minute rest periods. Employer required Mr. Gutierrez to work through rest periods. Mr. Gutierrez and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when he worked more than four (4) hours or a major fraction thereof. Further, Mr. Gutierrez and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when he worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Mr. Gutierrez and Aggrieved Employees were not completely relieved of duty as



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required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016). On the rare occasions, Mr. Gutierrez and Aggrieved Employees were able to take a rest break, Employer failed to compensate them for said rest periods at a regularly hourly rate separate from any piece-rate compensation.

Employer's policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Gutierrez and Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employer failed to adequately inform and train Mr. Gutierrez and Aggrieved Employees regarding his right to take timely, uninterrupted, and duty-free rest periods; (4) Employer failed to adequately inform and train Mr. Gutierrez and Aggrieved Employees about his right to premium wages for non-compliant rest periods; (5) Employer failed to ensure that there was adequate staffing to allow Mr. Gutierrez and Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employer required Mr. Gutierrez and Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding in-person verbal interruptions from his supervising foreman; and (7) Employer's policy and culture prevented Mr. Gutierrez and Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees right to receive rest periods.

Mr. Gutierrez and Aggrieved Employees did not receive an extra hour of wages at his regular rate of pay for the rest periods which was not provided to them in compliance with California law.

Accordingly, Employer violated IWC Wage Order No. 16 and California Labor Code sections 226.7, and 1198.

Mr. Gutierrez and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (18)(A) of IWC Wage Order No. 16; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

As to each pay period, Employer has failed to timely pay all wages earned because Mr. Gutierrez and Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employer violated California Labor Code section 204(a).

Mr. Gutierrez and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.



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5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

As a result of the practices described above, the wage statements provided to Mr. Gutierrez and Aggrieved Employees failed to include the actual hours worked, the actual gross wages earned, and the correct rates of pay, meal and rest premiums owed, the number of piece rate units earned and any applicable piece rates paid, the inclusive pay period dates, the name and address of the legal entity that is the employer, the total hours compensable rest and recovery periods, the rate of compensation and gross wages paid for rest and recovery periods, the total hours of nonproductive time, and the rate of compensation and gross wages paid for nonproductive time. Accordingly, Employer violated California Labor Code section 226(a) and 226.2.

Mr. Gutierrez and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

Employer has failed to maintain accurate records relating to Mr. Gutierrez and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employer violated IWC Wage Order No. 16 and California Labor Code sections 1198.5 and 1174(d).

Mr. Gutierrez will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (18)(A) of IWC Wage Order No. 16; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 16 requires employers to provide employees with the tools or equipment necessary for the performance of his job. During the relevant time period, Mr. Gutierrez and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employer. These costs include, but are not limited to, the costs of using their own personal tools and cell phones for work related duties, which they were required to maintain and keep on them during work hour. In fact, Employer maintains a small hardware shop within its premises and expects employees to purchase tools from it. Mr. Gutierrez and Aggrieved Employees were not reimbursed for tools purchased from Employer which were required for his work. Further, Mr. Gutierrez and Aggrieved Employees were required to use their personal vehicles to travel to different locations for Employer but never received mileage reimbursement for this travel. Accordingly, Employer violated IWC Order No. 16 and California



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Labor Code sections 2800 and 2802.

Mr. Gutierrez and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (18)(A) of IWC Wage Order No. 16; and attorneys' fees and costs.

8. FAILURE TO PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

Upon the termination of employment, Mr. Gutierrez and Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employer's practices of requiring Mr. Gutierrez and Aggrieved Employees to work off-the-clock without compensation, unlawful rounding practices, failure to pay for nonproductive time separate time from any piece rate compensation, failure to properly calculate regular rates, failure to accurately record all hours actually worked, and failure to pay rest period times at a regularly hourly rate. Employer failed to pay Mr. Gutierrez and Aggrieved Employees for all straight time wage, minimum wages, and overtime compensation owed to them upon termination of his employment. Employer also failed to pay Mr. Gutierrez and Aggrieved Employees for meal period premiums, and rest period premiums, amongst other wages. Accordingly, Employer violated California Labor Code sections 201 and 202.

Mr. Gutierrez and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 203, 1199, and 2699(f)(2); and attorneys' fees and costs.

Therefore, on behalf of himself, the State of California, and Aggrieved Employees, Mr. Gutierrez may seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read 'Amir Nayebdadash', is written over a horizontal line.

Amir Nayebdadash



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Notice provided to Employer via Certified Mail (9415 5118 9956 2237 1408 39)

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CT Corporation System, Agent for Service of Process
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Notice provided to Employer via Certified Mail (9415 5118 9956 2237 1408 39)

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