
July 7, 2023

VIA ONLINE FILING

Natalie Palugyai, Secretary
California Labor and Workforce Development Agency

VIA CERTIFIED MAIL—RETURN RECEIPT REQUESTED

DMS Building Maintenance, Inc.
1060 Richfield Rd.
Placentia, CA 92870

DMS Building Maintenance, Inc.
Agent for Service of Process - Jon Deyan
1060 Richfield Rd.
Placentia, CA 92870

Re: Leana Rostran, et al. v. DMS Building Maintenance, Inc.

To Whom It May Concern:

This office represents Leana Rostran and Maria Carrillo (“Claimants”) who were employed by DMS Building Maintenance, Inc., and related entities (collectively “Respondents”). This letter is a notice of Labor Code violations required and made pursuant to Labor Code §2699.3.

This notice and action is brought on behalf of Claimants and all aggrieved employees at all of Respondents’ locations in California (referred to herein as “similarly situated employees”), to recover penalties for unlawfully withheld wages for minimum wages, overtime work, unlawfully withheld wages for meal and rest period violations, payroll reporting violations, and violations of other California laws, as well as other statutory penalties and damages owed to Claimants by Respondents.

Continuously during the year prior to the date of this notice, prior to that, and continuing through the pendency of this claim, Respondents:

- (1) Failed and continue to fail to pay Claimants and other similarly situated employees all minimum wages due;
- (2) Failed and continue to fail to pay Claimants and other similarly situated employees overtime pay (one and a half times their hourly rate) for their work over eight hours per day and 40 hours per week and double-time pay (two times their hourly rate) for their work over 12 hours per day;
- (3) Failed and continue to fail to provide Claimants with accurate, itemized wage statements reflecting actual wages, overtime, and meal/rest period premiums; and
- (4) Failed and continue to fail to properly relieve Claimants and other similarly situated employees for statutorily required 30-minute uninterrupted meal periods for every five hours and 10-minute uninterrupted rest periods every four hours of work, or major fraction thereof, and failed to provide the wages and premiums due for missed meal periods and rest periods on a daily basis.

All of the above violations were suffered by Claimants and similarly situated non-exempt employees at all of Respondents' locations in California on a daily basis in the entire year preceding the date of this notice and continuing throughout the pendency of this claim.

Failure to Pay Minimum Wages

Pursuant to California Labor Code Sections 1182.12, 1194, 1197, and IWC Wage Orders, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Respondents failed to pay Claimants and all similarly situated non-exempt employees minimum wages for all hours worked. Specifically, Respondents did not pay claimants and similarly situated non-exempt employees for all hours reflected on the employees' timecards, resulting in work time that was not compensated in an any manner. Claimants allege on information and belief that Respondents employed a rounding system that when, applied as to the all non-exempt employees, caused the lessening and diminishing of recorded hours worked, and thus, systematically underpaying Claimants and all other employees due to this rounding system that benefitted the employer, rather than the employees. This is unlawful under California law.

Respondents are liable to Claimants for all minimum wages unlawfully withheld, waiting time penalties, and any other penalties imposed by the Labor Code which include but are not limited to, interest, and attorneys' fees and costs.

All of the above violations were suffered by Claimants and similarly situated non-exempt employees at all of Respondents' locations in California on a daily basis in the entire year preceding the date of this notice, and continuing throughout the pendency of this claim.

Failure to Pay Overtime Compensation

Respondents have violated Labor Code section 510 and are subject to Labor Code sections 1194 and other relevant Labor Code sections such as 1194, 1194.2, 1194.3, 1197, 1198, and other pertinent sections of the Labor Code. Labor Code section 510 provides that any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee and any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. Labor Code section 1194 provides that any employee who receives less than the legal overtime compensation due said employee is entitled to recover in a civil action the full amount of the overtime compensation, interest on said compensation, and reasonable attorneys' fees and costs of suit.

Respondents have violated the Labor Code section by not paying Claimants and all similarly situated employees rightfully earned overtime pay for their working more than 8 and 12 hours per day and more than 40 hours per week on a daily and weekly basis. Claimants and other aggrieved, similarly situated employees regularly worked shifts in excess of daily eight hours, without being fully compensated with all overtime premiums due and owing. This is especially true due to the fact that the rounding system caused Claimants and aggrieved employees to lose recorded time, and as a result, reduced their overall compensation.

As a result of Respondents' failure to pay Claimants' rightfully earned overtime pay, Respondents are liable for all back overtime pay, waiting time penalties, and any other penalties imposed by the Labor Code which include but are not limited to, interest, and attorneys' fees and costs.

All of the above violations were suffered by Claimants and similarly situated non-exempt employees at all of Respondents' locations in California on a daily basis in the entire year preceding the date of this notice and continuing throughout the pendency of this claim.

Failure to Provide Meal and Rest Periods

Respondents violated Labor Code sections 226.7 and 226.2 by not providing Claimants, and similarly situated non-exempt employees, with a legally required ten-minute rest period during each four-hour segment of work, or major fraction thereof, as required by California law. Respondents further violated Labor Code sections 226.7 and 512 by not providing Claimants, and similarly situated non-exempt employees, with a meal period of not less than 30 minutes for each work period of more than five hours per day and a second meal period of not less than 30 minutes for a work period of more than 10 hours day.

Respondents are liable to Claimants, and similarly situated non-exempt employees, for one hour of additional pay at the regular rate of compensation for each workday that the required rest periods were not provided and one hour of additional pay at the regular rate of compensation for each day that the required meal periods were not provided.

Respondents are also liable for civil penalties pursuant to Labor Code sections 558 and 2698 *et seq.* in the amount of \$50.00 for each pay period during which Claimants was not provided required rest and meal periods for the initial violation; and \$100.00 for each pay period during which Claimants was not provided required rest and meal periods for each subsequent violation. Respondents are also liable for violating Labor Code section 558.1

All of the above violations were suffered by Claimants and similarly situated non-exempt employees at all of Respondents' locations in California on a daily basis in the entire year preceding the date of this notice, and continuing throughout the pendency of this claim.

Failure to Furnish Accurate Wage Statements

Labor Code section 226 (a) requires employers to furnish each employee with an accurate statement, which includes but is not limited to, gross wages earned, the total numbers of hours worked, the net wages earned, all deductions and the name and legal address of the employer. Labor Code section 226 (e) provides that if an employer fails to provide a statement complying with section 226 (a), then the employee is entitled to recover the greater of actual damages or \$50.00 for the initial violation and \$100.00 for each subsequent violation, up to \$4,000.00.

Respondents failed to furnish and continue to intentionally fail to furnish Claimants and all similarly situated employees with timely, itemized statements that meet the requirements of Labor Code section 226 (a) because those statements failed to include an accurate itemization of the employees' total hours worked, gross and net wages earned, and all applicable hourly rates during the applicable time period, with the corresponding number of hours worked at those hourly rates.

Respondents are therefore liable for all applicable civil penalties pursuant to Labor Code sections 226(a), 226, 226.3, 226.6., 558.1, 1199 and 2698 *et seq.* in the amount of \$250.00 for the initial violation and \$1,000.00 per subsequent violation, or under the default penalties as set forth in Labor Code section 2699 *et seq.*

All of the above violations were suffered by Claimants and similarly situated non-exempt employees at all of Respondents' locations in California on a daily basis in the entire year preceding the date of this notice, and continuing throughout the pendency of this claim.

Failure to Maintain Required Records

Under California Labor Code Sections 226(b), 1174, 1199, and IWC Wage Orders, an employer must maintain records of total daily hours worked by each employee, all applicable rates of pay, gross and net wages earned time records showing when each employee begins and ends each work period, including meal periods, and accurate itemized statements.

Here, Respondents knowingly and intentionally failed to maintain records as required under California Labor Code Sections 226, 1174, 1199 and IWC Wage Orders. Specifically, Respondents' failed to maintain records for Claimants and other similarly situated employees that accurately reflect: (1) all minimum wages due for time spent working while clocked out for meal periods or while working off-the-clock; (2) the proper rate of pay for all overtime hours worked (one and a half times or double the *regular rate of pay*); (3) the proper rate of pay for all meal and rest periods penalty premiums (the *regular rate of pay*); (4) all wages and premiums due for missed meal periods and rest periods. Respondents' rounding system also caused a misstatement and shortening of recorded time worked, including misstating and misrepresenting the hours worked by Claimants and other similarly situated employees. These violations resulted in Respondents maintaining inaccurate records.

Respondents are therefore liable for civil penalties pursuant to Labor Code sections 226(a), 226, 226.3, 1174, 1174.5, 1199, and 2698 *et seq.* in the amount of \$250.00 for the initial violation and \$1,000.00 per subsequent violation, or as enumerated in the preceding statutes, or the default penalties as set forth in Labor Code section 2699 *et seq.*

All of the above violations were suffered by Claimants and similarly situated non-exempt employees at all of Respondents' locations in California on a daily basis in the entire year preceding the date of this notice, and continuing throughout the pendency of this claim.

Failure to Pay Timely Wages During Employment

Pursuant to California Labor Code § 204, for all labor performed between the 1st and 15th days of any calendar month, Respondents are required to pay their nonexempt employees between the 16th and 26th day of the month during which the labor was performed. California Labor Code § 204 also provides that for all labor performed between the 16th and 26th days of any calendar month, Respondents are required to pay their nonexempt employees between the 1st and 15th day of the following calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday of the next regular payroll period.

Respondents knowingly and willfully failed to pay Claimants, and similarly situated non-exempt employees all the wages earned when due as required by California Labor Code § 204.

Pursuant to California Labor Code § 210, failure to pay the wages of each employee as provided in California Labor Code § 204 will subject Respondents to a civil penalty of: (1) one hundred dollars (\$100) for each failure to pay each employee for each initial violation; and (2) two hundred dollars (\$200) for each failure to pay each employee, plus twenty-five percent (25%) of the amount unlawfully withheld, for each subsequent violation.

Respondents' conduct described herein violates California Labor Code § 204. As a proximate result of the aforementioned violations, Claimants has been damaged in an amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 210, 226, 558, 1194, 1197.1, 2699, and other applicable provisions under the Labor Code and IWC Wage Orders, Claimants is entitled to recover the unpaid balance of wages owed to them by Respondents, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

All of the above violations were suffered by Claimants and similarly situated non-exempt employees at all of Respondents' locations in California on a daily basis in the entire year preceding the date of this notice, and continuing throughout the pendency of this claim.

Failure to Pay Timely Wages to Discharged and/or Quitting employees

Pursuant to California Labor Code Sections 201, 202, and 203, employers are required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code Section 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Furthermore, pursuant to California Labor Code Section 202, Employers are required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or wages at the time of quitting. California Labor Code Section 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code Sections 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to 30 workdays.

Respondents have willfully failed to pay accrued wages and other compensation to Claimants after being discharged in accordance with California Labor Code Sections 201 and 202. As a result, Claimants is entitled to all available statutory and civil penalties, including the waiting time penalties provided in California Labor Code sections 203 and 256, together with interest thereon, as well as other available remedies. In the same manner as above, Respondents have failed to pay all similarly situated employees their rightfully earned accrued wages and other compensation upon being discharged or quitting.

All of the above violations were suffered by Claimants and similarly situated non-exempt employees at all of Respondents' locations in California during the entire year preceding the date of this notice, and continuing throughout the pendency of this claim.

Violation of California Labor Code §§ 233, 246 – Failure to Pay All Accrued Sick Days

Because of Respondents' failure to recognize, and pay wages for, all hours worked, including regular and overtime hours, Respondents failed to recognize and appropriately pay Claimants and other aggrieved employees for all sick hours earned and paid during the relevant period, as required by California Labor Code sections 246 and 233. This also constitutes discrimination under Labor Code Section 98.6. Respondents also failed to properly itemize the amount of sick leave banked as a result of these violations.

Accordingly, Claimants and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

All of the above violations were suffered by Claimants and similarly situated non-exempt employees at all of Respondents' locations in California on a daily basis in the entire year preceding the date of this notice and continuing throughout the pendency of this claim.

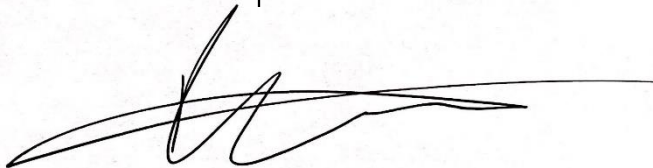
* * * * *

Respondents are in direct violation of numerous California wage and hour laws including but not limited to said sections stated above. We hereby provide notice under the Private Attorney's General Act of 2004, Labor Code sections 2699, et seq. If the agency does not intend to investigate or bring an action for the alleged violations, we request a letter confirming the same.

By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency ("LWDA") before he or she can invoke the provisions of § 2699, et seq., by seeking redress in court. (Labor Code § 2699.3(a)(1).) The LWDA must then notify the employer and the employee within 65 calendar days regarding whether it intends to investigate the alleged violation. (Labor Code § 2699.3(a)(2)(B).) If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code section 2699. (Labor Code § 2699.3(a)(2)(A).) Unless we hear from you within sixty-five days, we intend to proceed with our lawsuit as provided by law.

Sincerely,

ELKIN | GAMBOA LLP

A handwritten signature in black ink, appearing to read 'Benjamin McLain', with a long horizontal flourish extending to the right.

Benjamin McLain