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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
11/13/2023 at 08:00:00 AM
Clerk of the Superior Court
By Isaiah Irizarry, Deputy Clerk

Attorneys for Plaintiff DANIEL A. SALAS, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

DANIEL A. SALAS, on behalf of themselves
and all other Aggrieved Employees,

Plaintiff,

v.

POLVERA DRYWALL CORPORATION
DBA GREAT WESTERN DRYWALL; and
DOES 1- 50, Inclusive,

Defendant,

Case No. 37-2023-00049087-CU-OE-CTL

COMPLAINT

1. Civil Penalties under the Private Attorneys General Act (PAGA)

1 Plaintiff, DANIEL A. SALAS, (“Plaintiff”), as a representative of the State of California
2 and the Labor and Workforce Development Agency (LWDA), and on behalf of himself and other
3 current or former Aggrieved Employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is a representative action brought by Plaintiff, as a representative of the State
6 of California and the LWDA, and on behalf of himself and other Aggrieved Employees, to collect
7 civil penalties for Defendant’s Labor Code violations.

8 2. Defendant and employers, POLVERA DRYWALL CORPORATION DBA
9 GREAT WESTERN DRYWALL (“Defendants”), violated numerous wage and hour laws with
10 respect to Plaintiff and other Aggrieved Employees by failing to provide, for example: accurate
11 and itemized wages statements, payment for all hours worked (including regular wages and
12 overtime), failure to provide a minimum wage, lawful meal periods, lawful rest periods, timely
13 payment during employment, failure to reimburse for expenses incurred during the course and
14 scope of employment, and payment upon separation of employment.

15 **PARTIES**

16 **The Plaintiff**

17 3. Plaintiff is, and at all times herein mentioned was, a resident of California,
18 currently residing in San Diego County.

19 4. Aggrieved Employees are all former and/or current non-exempt employees
20 holding various positions and employed by Defendant within California during the relevant time
21 period who were subject to at least one or more Labor Code violations set forth in the PAGA
22 Notice dated August 16, 2023, and attached hereto as **Exhibit A** (“Aggrieved Employees”).

23 **The Defendants**

24 5. Defendant POLVERA DRYWALL CORPORATION DBA GREAT WESTERN
25 DRYWALL is a California corporation which, at all relevant times mentioned herein, existing,
26 doing business and employing individuals in the County of San Diego, State of California.
27 Plaintiff is informed and thereon alleges that Defendant exercised control over Plaintiff and
28 Aggrieved Employees’ wages, hours, and working conditions.

1 6. The true names and capacities, whether individual, corporate, associate, or
2 otherwise of Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this
3 time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to
4 amend this Complaint to insert the true names and capacities of said Defendants when the same
5 become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of
6 the fictitiously-named Defendants are responsible for the wrongful acts alleged herein and is
7 therefore liable to Plaintiff as alleged hereinafter.

8 7. Plaintiff is informed and believes, and based thereupon alleges, that at all times
9 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
10 supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of
11 the other Defendants, and each of them, and in doing the things alleged herein, were acting at
12 least in part within the course and scope of said agency, employment, conspiracy, joint
13 employment, alter ego status, and/or joint venture and with the permission and consent of each of
14 the other Defendants.

15 8. Plaintiff is informed and believes, and based thereupon alleges, that Defendants,
16 and each of them, including those Defendants named DOES 1-50, acted in concert with one
17 another to commit the wrongful acts alleged therein, and aided, abetted, incited, compelled,
18 and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so.
19 Plaintiff is further informed and believes, and based thereupon alleges, that the Defendants, and
20 each of them, including those Defendants named as DOES 1-50, formed and executed a
21 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged
22 herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended
23 to and actually causing Plaintiff harm.

24 9. Whenever and wherever reference is made in this Complaint to any act or failure
25 to act by a defendant or co-defendant, such allegations and references shall also be deemed to
26 mean the acts and/or failures to act by each defendant acting individually, jointly and severally.
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11. The California Superior Court has jurisdiction over this matter. The individual claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for federal court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional amount required for diversity removal. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including, but not limited to, the California Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure, and California Rules of Court.

12. Defendant is a company that specializes in installing residential light gauge metal framing and drywall. Defendant employed Plaintiff and Aggrieved Employees in California during the relevant PAGA period. Aggrieved Employees are all former and/or current non-exempt employees holding various positions and employed by Defendant within California during the relevant time period who were subject to at least one or more Labor Code violations set forth in the PAGA Notice dated August 16, 2023 and attached hereto as **Exhibit A**

14. The position required Plaintiff to work more than 8 hours a day and/or 40 hours per week without lawful compensation. Plaintiff and Aggrieved Employees were regularly not paid for minimum wages and overtime for compensable work time spent under the control of Defendant, including off-the-clock work which was in excess of regularly scheduled, eight-hour daily shifts.

15. Plaintiff and Aggrieved Employees were subject to not having all their compensable work time recorded due to Defendant's lack of adequate staffing. Not all of Plaintiff

1 and Aggrieved Employees' compensable work time spent under the control of Defendant was
2 accounted for and compensated. Specifically, Plaintiff is informed and believes that Defendant
3 (1) adjusted clock in and clock out times to the disadvantage of Plaintiff and other Aggrieved
4 Employees by rounding up clock-in times when Plaintiff and Aggrieved Employees clocked-in
5 before the scheduled start of their respective shifts and rounded down clock-out times when
6 Plaintiff and Aggrieved Employees worked past the scheduled end time for their shifts, as well
7 as (2) requiring Plaintiff and Aggrieved Employees to continue working when ostensibly on
8 duty-free meal periods, or requiring them to return to work before the end of their thirty-minute
9 meal periods but prohibiting them from clocking back in until the legally required thirty-minute
10 mark.

11 16. Based on information and belief, Plaintiff believes he and Aggrieved Employees
12 were also not being reimbursed for all necessary expenses incurred in the performance of their
13 job duties. Specifically, Defendant required Plaintiff and Aggrieved Employees, regardless of
14 classification, to use their personal cellular telephones to communicate with colleagues and
15 supervisors in the course of performing their respective duties but failed to reimburse them for
16 use of the personal cellular devices nor the consumption of personal calling. Specifically,
17 Plaintiff used their telephone to communicate with their foreman to verify their duties and make
18 sure they had completed all the tasks that were assigned for that day. Plaintiff and Aggrieved
19 Employees had to provide their own tools to perform their work duties and were not reimbursed
20 for providing their own tools.

21 17. Defendant failed to authorize and permit all required meal and rest periods for
22 Plaintiff and Aggrieved Employees because, upon information and belief, Defendant maintained
23 unlawful meal/rest period policies and practices. In order to curtail labor costs, Defendant
24 regularly did not staff enough employees to provide sufficient coverage to maintain their
25 business operations so Plaintiff and Aggrieved Employees could not both complete their
26 assigned daily duties and take complete, timely and uninterrupted meal and rest breaks.
27 Defendant prioritized completion of daily duties and customer satisfaction ahead of meal and
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1 rest period compliance. Defendant failed to provide Plaintiff and Aggrieved Employees with an
2 additional hour of premium pay at the regular rate of pay for each meal/rest period violation, as
3 required by Labor Code section 226.7.

4 18. As a result of the violations described above, Plaintiff and Aggrieved Employees
5 experienced collateral or derivative violations. Specifically, Defendant failed to provide Plaintiff
6 and Aggrieved Employees accurate itemized wage statements in writing in compliance with
7 Labor Code section 226 and failed to compensate Plaintiff and Aggrieved Employees for all
8 wages owed at the time employment with Defendant had ended.

9 19. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
10 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
11 departments, divisions, commissions, boards, agencies or employees for violation of the code
12 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
13 behalf of himself and other current or former employees pursuant to the procedures specified in
14 Labor Code section 2699.3.

15 20. For all provisions of the Labor Code except those for which a civil penalty is
16 specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendant a
17 penalty of one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the
18 initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period
19 for each subsequent pay period in which Defendant violated these provisions of the Labor Code.

20 21. Defendant's conduct during the PAGA period with respect to Plaintiff and
21 Aggrieved Employees violates numerous Labor Code sections as detailed herein.

22 22. Plaintiff alleges that Defendant has engaged in a systematic pattern of wage and
23 hour violations under the California Labor Code and IWC Wage Orders.

24 23. At all relevant times herein, Defendant employed Plaintiff and Aggrieved
25 Employees who were subject to the employment policies described herein, in whole or in part,
26 and therefore suffered at least one or more of the violations set forth herein.

27 24. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
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1 or should have known that Plaintiff and Aggrieved Employees were entitled to receive wages
2 for all hours worked, including the applicable minimum, regular, and overtime wages, and that
3 they were not receiving all wages earned for work that was required to be performed. In violation
4 of the Labor Code and IWC Wage Orders, Defendant failed to pay Plaintiff and Aggrieved
5 Employees for all hours worked. Accordingly, Defendant failed to pay Plaintiff and Aggrieved
6 Employees all earned minimum, regular, and/or overtime compensation. Defendant did not pay
7 all premium pay at the regular rate of pay. Defendant paid Aggrieved Employees a prevailing
8 wage that was not factored into Aggrieved Employees regular rate of pay.

9 25. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
10 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all
11 required meal periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
12 Employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty meal
13 period. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice,
14 and policy of not providing timely meal periods. Defendant failed to pay an additional hour of
15 pay to Plaintiff and Aggrieved Employees for late meal periods. As a result of Defendant's
16 unlawful policy and practice, Plaintiff and aggrieved employees did not receive all meal periods
17 or payment of one (1) additional hour of pay at Plaintiff's and Aggrieved Employees' regular
18 rate of pay when they did not receive a timely, uninterrupted 30 minute off-duty meal period.

19 26. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
20 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all
21 required rest periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
22 Employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty rest
23 period. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice,
24 and policy of not providing timely rest periods. Defendant failed to pay an additional hour of
25 pay to Plaintiff and Aggrieved Employees for each rest periods were not provided or was
26 interrupted. As a result of Defendant's unlawful policy and practice, Plaintiff and Aggrieved
27 Employees did not receive all required rest periods or payment of one (1) additional hour of pay
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1 at Plaintiff's and Aggrieved Employees' regular rate of pay when they did not receive a timely,
2 uninterrupted 10 minute off-duty rest period.

3 27. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
4 or should have known that Plaintiff and certain Aggrieved Employees were entitled to timely
5 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
6 and certain Aggrieved Employees did not receive payment of all wages due, within permissible
7 time periods, upon separation of employment.

8 28. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
9 or should have known that Plaintiff and Aggrieved Employees were entitled to receive itemized
10 wage statements that accurately showed their actual hours worked, total hours worked, number
11 of hours worked at each hourly rate, gross and net wages earned, and correct employer
12 information in accordance with California law. As a result of the wage violations specified
13 above, and in violation of the Labor Code, Plaintiff and Aggrieved Employees were not provided
14 with accurate itemized wage statements that accurately reported their gross and net wages
15 earned, total hours worked, each applicable rate of pay in effect during the pay period with the
16 corresponding number of hours worked, and the address of the legal entity that is the employer,
17 among other things.

18 29. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
19 should have known that Defendant was required to maintain accurate records of the hours
20 worked by Plaintiff and Aggrieved Employees. In violation of the Labor Code, Defendant failed
21 to maintain accurate records of hours worked by Plaintiff and Aggrieved Employees due to its
22 off-the-clock and/or unfair rounding practices, among other things.

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1 the postmark date on the latter notice.

2 35. California Labor Code §§2698-2699.5, in relevant part provides, “any provision
3 of this code that provides for a civil penalty to be assessed and collected by the Labor and
4 Workforce Development Agency...for a violation of this code, may, as an alternative, be
5 recovered through a civil action brought by an Aggrieved Employee on behalf of himself or
6 herself and other current or former employees pursuant to the procedures specified in Section
7 2699.3.”

8 36. As an Aggrieved Employee, Plaintiff brings this civil action to recover civil
9 penalties for Defendant’s Labor Code violations.

10 **First Violation**

11 **(Failure to Provide Meal Periods, in Violation of Labor Code Section 512)**

12 37. Under California Labor Code §512(a), “An employer may not employ an
13 employee for a work period of more than five hours per day without providing the employee
14 with a meal period of not less than 30 minutes, except that if the total work period per day of the
15 employee is no more than six hours, the meal period may be waived by mutual consent of both
16 the employer and employee.”

17 38. Defendant violated Labor Code § 512 by failing to provide Plaintiff and
18 Aggrieved Employees who worked shifts of greater than five hours, uninterrupted and/or timely
19 meal periods within the first five hours of the shifts worked. Defendant failed to pay Plaintiff
20 one hour’s pay at Plaintiff’s regular rate of pay for each day Defendant failed to provide a meal
21 period in compliance with section 512.

22 **Second Violation**

23 **(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)**

24 39. Under California Labor Code §226.7(b), “An employer shall not require an
25 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
26 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”
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28 40. Industrial Welfare Commission (IWC) provides, “Every employer shall authorize

1 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
2 of each work period. The authorized rest period time shall be based on the total hours worked
3 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

4 41. Defendant failed to authorize and permit Plaintiff and Aggrieved Employees to
5 take rest periods and mandated by the Wage Order.

6 42. Under §226.7(c), an employer who violates §226.7(b), “...shall pay the employee
7 one additional hour of pay at the employee’s regular rate of compensation for each workday that
8 the meal or rest or recovery period is not provided.”

9 43. Defendant failed to pay Plaintiff and Aggrieved Employees who were not
10 provided rest periods one hour of pay at their regular rate of pay.

11 **Third Violation**

12 **(Failure to Provide Complete and Accurate Wage Statements,**
13 **in Violation of Labor Code Section 226)**

14 44. Under California Labor Code §226(a), an employer is legally obligated to provide
15 its employees, semi-monthly or at the time of payment of wages, “an accurate itemized statement
16 in writing...”

17 45. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
18 for Defendant’s Labor Code violations alleged herein, as well as attorney’s fees and costs, under
19 Labor Code § 2699.
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21 **Fourth Violation**

22 **(Failure to Pay Overtime Wages)**

23 46. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Orders, an
24 employer is required to compensate employees for all overtime, which is calculated at one and
25 one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per
26 day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive
27 workday, with double time for all hours worked in excess of twelve (12) hours in any workday
28 and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in

any workweek.

47. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

Fifth Violation

(Failure to Pay Minimum Wages)

48. Pursuant to California Labor Code §§ 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.

49. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

Sixth Violation

(Failure to Timely Pay Wages During Employment)

50. Pursuant to California Labor Code § 204, for all labor performed between the 1st and 15th days of any calendar month, an employer is required to pay its 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, Defendant was required to pay their 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.

51. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

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1 **Seventh Violation**

2 **(Failure to Pay All Wages Due to Discharged and Quitting Employees)**

3 52. Pursuant to California Labor Code § 201, 202, and 203, Defendant is required to
4 pay all earned and unpaid wages to an employee who is discharged. California Labor Code §
5 201 mandates that if an employer discharges an employee, the employee's wages accrued and
6 unpaid at the time of discharge are due and payable immediately.

7 53. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
8 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
9 Labor Code § 2699.

10 **Eighth Violation**

11 **Failure to Reimburse Business Expenses in Violation of Labor Code § 2802**

12 **(Against all Defendants and DOES 1 to 50, inclusive)**

13 54. Labor Code § 2802 provides that an employer shall indemnify his or her
14 employee for all necessary expenditures or losses incurred by the employee in direct
15 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
16 the employer.

17 55. Defendants failed to indemnify and reimburse Plaintiff for all necessary
18 expenditures or losses incurred by Plaintiff in direct consequence of the discharge of Plaintiff's
19 job duties.

20 56. Pursuant to Labor Code § 2802, Plaintiff is entitled to recover business expenses
21 incurred as a result of discharging his duties, including interest.

22 57. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
23 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
24 Labor Code § 2699.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiff prays for the following relief:

- 27 1. For penalties in an amount according to proof;
- 28 2. For reasonable attorney's fees and costs pursuant to PAGA; and

3. For such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

Dated: November 10, 2023

WORK LAWYERS PC

Justin Lo, Esq.
Attorney for Plaintiff DANIEL A. SALAS and
Aggrieved Employees