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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

CARLOS GERMAN CASTILLO, an
individual,

Plaintiff,

vs.

MG DRYWALL CONSTRUCTION, INC., a
California corporation; MARIO GARCIA
MALVAIS, an individual; FRANCISCO
GARCIA JR., an individual; and DOES 1-20,
inclusive,

Defendant(s).

Case No.: 24STCV25583

**FIRST AMENDED INDIVIDUAL AND
REPRESENTATIVE COMPLAINT FOR
DAMAGES**

- 1. FAILURE TO PAY ALL REGULAR
AND MINIMUM WAGES EARNED**
(*Cal. Lab. Code §§ 204, 218.5, 218.6, 510,
1194 & 1194.2*)
- 2. FAILURE TO PAY ALL OVERTIME
WAGES EARNED** (*Lab. Code §§ 510,
1194, & 1198*)
- 3. FAILURE TO PROVIDE REST
PERIODS** (*Lab. Code §§ 226.7 & 512*)
- 4. FAILURE TO PAY ALL WAGES UPON
DISCHARGE** (*Lab. Code §§ 201, 202, &
203*),
- 5. FAILURE TO FURNISH WAGE
STATEMENTS** (*Lab. Code § 226 & 226.3*)
- 6. FAILURE TO KEEP ACCURATE
EMPLOYMENT RECORDS** (*Cal. Lab.
Code §§ 1174 & 1174.5*)
- 7. FAILURE TO PAY
REIMBURSEMENTS** (*Cal. Lab. Code §§
221 & 2802*)
- 8. CIVIL PENALTIES PURSUANT TO
P.A.G.A** (*Cal. Lab. Code § 2699, et seq*)

JURY TRIAL DEMANDED

COMES NOW Plaintiff CARLOS GERMAN CASTILLO, an individual who alleges, avers, and claims the following against Defendants MG DRYWALL CONSTRUCTION, INC., a California corporation; MARIO GARCIA MALVAIS, an individual; FRANCISCO GARCIA JR., an individual; DIEGO HERNANDEZ; and DOES 1-20, inclusive:

PARTIES

1. Plaintiff, CARLOS GERMAN CASTILLO (hereinafter “Plaintiff”) is an individual and at all times material herein was and is a resident of the City of Los Angeles, in the County of Los Angeles, California, and an employee of MG DRYWALL CONSTRUCTION, INC. from approximately June 2022 to February 2024, as a Drywaller.

2. Defendant MG DRYWALL CONSTRUCTION, INC. (hereinafter “MG Drywall”) is a California corporation, identified by entity # 4287790, organized in the State of California on June 12, 2019. MG Drywall’s principal place of business is 13741 Foothill Boulevard, Suite 230, Sylmar, California 91342.

3. Defendant MARIO GARCIA MALVAIS, an individual (hereinafter “Malvais”), is the Chief Executive Officer, Chief Financial Officer, and Director of MG Drywall, and at all times material herein was and is a resident of and/or is doing business in the County of Los Angeles, California. Malvais was at all times in control of Plaintiff’s wages, hours, and/or working conditions while acting as an owner/operator of MG Drywall. Malvais is liable for Plaintiff’s damages claimed herein as an employer and pursuant to Labor Code 558.1, as well as other pertinent sources of authority for individual liability for the claims asserted herein.

4. Defendant FRANCISCO GARCIA JR., an individual (hereinafter “Garcia”), is the Secretary of MG Drywall, and at all times material herein was and is a resident of and/or is doing business in the County of Los Angeles, California. Garcia was at all times in control of Plaintiff’s wages, hours, and/or working conditions as an owner/operator of MG Drywall. Garcia is liable for Plaintiff’s damages claimed herein as an employer and pursuant to Labor Code 558.1, as well as other pertinent sources of authority for individual liability for the claims asserted herein. (MG Drywall, Malvais, and Garcia are in hereinafter collectively referred to as “Defendants”).

5. Plaintiff does not know the true names, identities and capacities of the defendants sued herein as DOES 1 through 30, Inclusive, and each of them, and who therefore sues them by such fictitious names. When the true names, identities and capacities of such other defendants have been ascertained, permission of the court will be requested to amend this complaint to insert therein the true names, identities and capacities of said defendants.

6. All times mentioned, Defendants, and each of them, were the employees, agents, servants and representatives of each of the remaining defendants and, at all times herein mentioned, were acting within the course and scope of such employment, agency, service and representation and all things alleged herein were done with the consent, permission, ratification and direction of each of the other Defendants.

7. Plaintiff is informed and believes, and based thereon alleges, that each Defendant sued in this action acts and acted, in all respects pertinent to this action, as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants.

8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant sued in this action, including each Defendant sued by the fictitious names DOES 1 through 20, inclusive, is directly or indirectly responsible in some manner for the occurrences, controversies and damages alleged herein, in various capacities, including but not limited to serving as joint employer, joint tortfeasor, single enterprise, alter ego, or agents of the other Defendants. Each Defendant approved, participated in, controlled, or ratified the acts of all other Defendants.

JURISDICTION AND VENUE

9. This Court has personal jurisdiction over each of the Defendants because they are residents of and/or doing business in the State of California.

10. Under California Code of Civil Procedure Section 395(a), venue is proper in this county because the Defendants reside and/or do business in this county.

11. On or about October 2, 2024, Plaintiff sent a letter by Certified Mail to Defendant, MG Drywall Construction Inc., giving notice of Defendants' Labor Code and Wage Order violations, as alleged herein. A copy of said letter was also submitted on the same date to the California Labor and

1 Workplace Development Agency (“LWDA”), via the online filing system to exhaust the administrative
2 requirements for proceeding with civil penalties under the Private Attorney General Act (“PAGA”),
3 Labor Code Section 2698 et seq. A true and correct copy of the October 2, 2024, letter to the LWDA is
4 attached hereto as **Exhibit A** and fully incorporated herein by reference.

5 12. Plaintiff afforded LWDA the opportunity to consider and decline to prosecute Plaintiff’s
6 notice of Defendants’ Labor Code violations, after notice of Plaintiff’s intent to prosecute a private
7 enforcement action for civil penalties under PAGA cause of action against Defendants, pursuant to
8 California Labor Code section 2699.3, subdivision (a)(2)(A).

9 13. The amount in controversy in this matter exceeds the sum of Thirty-Five Thousand
10 Dollars (\$35,000.00), exclusive of interest, costs, and fees.

11 **GENERAL ALLEGATIONS**

12 14. Plaintiff was employed by Defendants as a drywall installer and repairer for a little over
13 two years. Plaintiff was not provided any paperwork when hired, including an application. Plaintiff
14 worked on a team of approximately fifteen (15) workers who were supervised by Diego Hernandez
15 (hereinafter “Hernandez”).

16 15. Plaintiff worked six days per week from approximately 7:00 AM to 6:00 PM, with a one-
17 hour lunch from 11:00 AM to 12:00 PM. Defendants’ paid Plaintiff a flat rate of \$130 per day, without
18 any regard to actual hours worked. The flat daily rate paid to Plaintiff only attributes to the first eight
19 (8) hours worked during each day, leaving all hours worked beyond eight (8) unpaid. Plaintiff’s regular
20 hourly rate equates to \$16.25 per hour, with an overtime rate of \$24.38 per hour.

21 16. Defendants primarily paid Plaintiff in cash. Plaintiff was informed by his Supervisor
22 Hernandez that there was a check, but Hernandez would cash the check and give Plaintiff cash.
23 Hernandez also paid Plaintiff through Zelle several times. Defendants’ never paid Plaintiff by check but
24 for a few checks at the end of his employment. Plaintiff was never given a W2 or 1099 form.

25 17. Defendants did not allow Plaintiff to take rest breaks throughout the day while failing to
26 pay him premium wages for violation of same.

18. Defendants neither provided Plaintiff with a wage statement nor used a mechanism to record Plaintiff's hours. Defendants at all times concealed Plaintiff's status as employee from government agencies by paying him "under the table."

19. Plaintiff's employment came to tragic end when he sustained serious injuries when the older ladder he was provided to use and was standing on slipped, causing him to lose his balance and fall. Plaintiff suffered a broken arm as a result of the fall. Plaintiff was in severe pain.

20. Hernandez did not call an ambulance or allow one of Plaintiff's coworkers who was present to take Plaintiff to the hospital. Hernandez called someone who took 45 minutes to arrive to the site and take Plaintiff to obtain medical attention. Plaintiff's coworker finally arrived and dropped him at L.A. Downtown Medical Center and left. Plaintiff has been informed by his treating physician that he will require surgery and is unable to work to this day.

21. It was only after the fall and injury that Defendants had Plaintiff fill out an employment application and other necessary hiring documents. On information and belief, Defendants did these things, as well as pay Plaintiff by a few checks, so that he would be an employee and covered by Defendants workers' compensation insurance.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL MINIMUM AND REGULAR WAGES EARNED

[PLAINTIFF AGAINST ALL DEFENDANTS]

(Labor Code §§ 1194, 1194.2, & 1197, and IWC Wage Order 16-2001 § 3)

22. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 21, inclusive, as though set forth fully herein.

23. At all times relevant to this Complaint, the California Wage Orders and California Code of Regulations were in effect and binding on Defendants. In addition, at all times material herein, Plaintiff was under the protection of California Wage Order and California Code of Regulations requirements.

24. Labor Code section 1197 makes it unlawful to pay an employee less than the minimum wage, as established by the Industrial Welfare Commission, for each hour worked.

1 25. Labor Code section 1194 entitles an employee receiving less than the minimum wage to
2 recover, in a civil action, the unpaid balance of minimum wages owing, plus interest thereon, reasonable
3 attorneys' fees, and costs of suit.

4 26. Labor Code section 1194.2 entitles an employee receiving less than the minimum wage
5 to recover liquidated damages in an amount equal to the unpaid minimum wages and interest thereon.

6 27. Plaintiff was paid a flat rate of \$130.00 per day, without regard to the actual hours worked
7 by Plaintiff. Plaintiff worked from 7am to 6pm six days per week, with a one hour break for lunch.
8 Plaintiff at all times should have been paid on an hourly basis, including overtime wages. At no time
9 did Defendants pay Plaintiff by the hour or pay him any wages beyond the flat daily rate.

10 28. The salary paid to Plaintiff compensated him for his regular 8-hour work day only. Thus,
11 Defendants failed to pay Plaintiff any wages for virtually all of the overtime hours worked each day,
12 including minimum wage.

13 29. As a result of Defendants' improper pay policy and/or practices, as described herein,
14 Defendants, failed to pay Plaintiff at least the minimum wage that he was entitled to, for each hour
15 worked, under Labor Code section 1197 and Wage Order No. 16-2001.

16 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants' failure to
17 pay the minimum wage for each hour worked, as described herein, was done willfully. Pursuant to Labor
18 Code 1194.2, Defendants also owe Plaintiff an additional hour of pay at the applicable minimum wage
19 rate for every hour worked by Plaintiff for which he was not paid at least minimum wage.

20 31. Additionally, as a result of Defendants' failure to pay Plaintiff minimum wage for all
21 hours worked, Plaintiff was not timely paid all earned wages as required by Labor Code section 204.

22 32. Defendants failed to keep adequate time records. By failing to keep adequate time records
23 required by Labor Code §§ 226 and 1174, Defendants have made it difficult to calculate the
24 compensation due to Plaintiff.

25 33. Defendants and each of them are liable as Plaintiff's employers since they controlled
26 Plaintiff's wages, hours, and/or working conditions.

27 34. Individual Defendants are also liable pursuant to Labor Code § 558.1.
28

35. Based on Defendants' conduct, as alleged herein, Defendants, and Does 1 through 20, are liable to Plaintiff for unpaid minimum-wage compensation pursuant to California Labor Code sections 1194 and 1197, and Wage Order No. 16-2001, liquidated damages in an amount equal to the unpaid minimum wage, plus interest, attorneys' fees and costs of suit, pursuant to California Labor Code sections 218.5, 218.6, 1194 and 1194.2.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES EARNED

[PLAINTIFF AGAINST ALL DEFENDANTS]

(Labor Code §§ 510, 1194, 1198, Wage Order 16-2001, §3(A))

36. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 35, inclusive, as though set forth fully herein.

37. Plaintiff worked in California and/or under California law.

38. At all times relevant herein, California Labor Code §510 and IWC Wage Order 16-2001 required employers, like Defendants, to pay non-exempt employees overtime premium(s) for hours worked in excess of 8 (or in excess of 12) in a given workday, 40 in a given workweek, or on the seventh day worked in a single workweek. Pursuant to California Labor Code §1198, it is unlawful to employ persons for hours longer than the hours set by the Industrial Welfare Commission ("IWC"), or under conditions prohibited by the applicable wage orders of the IWC.

39. Plaintiff was paid a flat rate of \$130.00 per day, without regard to the actual hours worked by Plaintiff. Plaintiff worked from 7am to 6pm six days per week, with a one hour break for lunch. Plaintiff at all times should have been paid on an hourly basis, including overtime wages. At no time did Defendants pay Plaintiff by the hour or pay him any wages beyond the flat daily rate.

40. The salary paid to Plaintiff compensated him for his regular 8-hour work day only. Thus, Defendants failed to pay Plaintiff any wages for virtually all of the overtime hours worked each day, including minimum wage.

41. As a result of Defendants' improper pay policy and/or practices, as described herein, Defendants, failed to pay Plaintiff at least the minimum wage that he was entitled to, for each hour worked, under Labor Code section 1197 and Wage Order No. 16-2001.

42. Plaintiff worked in excess of eight hours per day and in excess of 40 hours per week, and Defendants unlawfully failed to pay the proper overtime compensation required in violation of IWC Wage Order No. 16, and the California Labor Code §§ 510 and 1198. Pursuant to California Labor Code § 1194, Plaintiff is entitled to recover the unpaid overtime compensation.

43. Pursuant to Labor Code § 1194.2, Plaintiff is entitled to one extra hour of minimum wage pay as a penalty for every hour worked for which he was not at the minimum paid minimum wage.

44. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendants in an amount to be established at trial, plus interest, attorneys' fees and costs pursuant to Labor Code § 1194.

45. Defendants' failure to pay overtime was done willfully, in bad faith, in knowing violation of the California Labor Code and IWC Wage Order 16-2001, and with malice.

46. Defendants and each of them are liable as Plaintiff's employers since they controlled Plaintiff's wages, hours, and/or working conditions. Individual Defendants are also liable pursuant to Labor Code § 558.1.

47. Based on Defendants' conduct, as alleged herein, Defendants, and Does 1 through 20, are liable to Plaintiff for unpaid overtime-wage compensation pursuant to California Labor Code sections 1194 and 1197, and Wage Order No. 16-2001, liquidated damages in an amount equal to the unpaid minimum wage, plus interest, attorneys' fees and costs of suit, pursuant to California Labor Code sections, 1194 and 1194.2

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

[PLAINTIFF AGAINST ALL DEFENDANTS]

(Labor Code §§ 226.7, 218.5, 218.6 & 512, IWC Wage Order 16-2001, §11)

48. Plaintiff incorporates by reference and realleges paragraphs 1 through 47, inclusive, as though set forth fully herein.

49. As alleged herein, Defendants have maintained a policy and/or practice whereby Plaintiff was denied rest breaks required by California law. Specifically, Defendants have systematically failed

1 and/or refused to provide Plaintiff with all uninterrupted, off-duty rest breaks of at least 10 consecutive
2 minutes in duration, as guaranteed under California Labor Code sections 226.7 and 512, and Wage Order
3 16-2001.

4 50. Wage Order 16-2001, requires an employer to pay an employee an additional hour of
5 compensation for every shift in which said employee was not authorized or permitted to take a mandated
6 rest period. California Labor Code section 226.7, subdivision (b), likewise requires an employer to pay
7 an employee an additional hour of compensation for every shift that a rest period mandated by the
8 California Wage Orders is not provided.

9 51. At all times relevant herein, Defendants have failed and/or refused to provide Plaintiff
10 with a premium hour of pay for each shift there was a missed, late, or interrupted rest period, pursuant
11 to California Labor Code section 226.7 and Wage Order 16-2001.

12 52. Defendants and each of them are liable as Plaintiff's employers since they controlled
13 Plaintiff's wages, hours, and/or working conditions. Individual Defendants are also liable pursuant to
14 Labor Code § 558.1.

15 53. Based on Defendants' conduct, as alleged herein, Defendants, and Does 1 through 20, are
16 liable to Plaintiff for one hour of premium pay compensation pursuant to California Labor Code section
17 226.7, and Wage Order No. 16-2001, plus interest, attorneys' fees and costs of suit, pursuant to California
18 Labor Code sections 218.5 and 218.6.

19 **FOURTH CAUSE OF ACTION**

20 **FAILURE TO PAY ALL WAGES UPON DISCHARGE, WAITING TIME PENALTIES**

21 **[PLAINTIFF AGAINST ALL DEFENDANTS]**

22 (Labor Code § 203, IWC Wage Order 16-2001 §3(A))

23 54. Plaintiff incorporates by reference and realleges paragraphs 1 through 53, inclusive, as
24 though set forth fully herein.

25 55. Sections 201 and 202 of the California Labor Code require employers to promptly pay all
26 wages owing to an employee at the conclusion of employment.

27 56. Plaintiff is no longer working for Defendants. When Plaintiff's employment ended with
28 Defendants, Plaintiff did not receive all compensation due and owing as required pursuant to Labor Code

§ 203, which provides that an employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

57. Specifically, Defendants did not pay Plaintiff, inter alia, all regular wages or overtime wages owed at the time of discharge.

58. Plaintiff has not been paid all wages earned for more than thirty (30) days. Defendants' failure to pay Plaintiff all wages owed was willful.

59. Plaintiff is therefore entitled to thirty (30) days of waiting time penalties against Defendants in an amount to be determined at trial. Plaintiff also requests recovery of reasonable attorney's fees, costs, and interest pursuant to Labor Code §§ 218.5 and 218.6.

60. Defendants and each of them are liable as Plaintiff's employers since they controlled Plaintiff's wages, hours, and/or working conditions. Individual Defendants are also liable pursuant to Labor Code § 558.1.

FIFTH CAUSE OF ACTION

FAILURE TO FURNISH ACCURATE WAGE STATEMENTS

[PLAINTIFF AGAINST ALL DEFENDANTS]

(Labor Code §§ 226, 226.3, and IWC Wage Order 16-2001, §7(B))

61. Plaintiff incorporates by reference and realleges paragraphs 1 through 60, inclusive, as though set forth fully herein.

62. Labor Code § 226(a) requires Defendants, at the time of each payment of wages, to provide each employee with an accurate wages statement itemizing among other things, the total hours worked by the employee, the applicable hourly rate, the gross and net wages earned by the employee in the pay period, and the name and address of the legal entity that is the employer.

63. Defendants failed to keep accurate time of Plaintiff's work hours and failed to pay all wages earned. Moreover, Plaintiff was never issued a wage statement. Defendants have knowingly and intentionally failed to comply with Labors Code section 226(a).

64. By failing to keep adequate records, as required by Labor Code section 226, Defendants have injured Plaintiff and made it costlier to calculate the unpaid wages due to Plaintiff and not compensated by Defendants (including wages, interest, and penalties therein).

65. Plaintiff seeks to recovery penalties by Labor Code section 226(e) and 226.3 for the wage statement violations committed by Defendants, and reasonable attorney's fees. Defendants and each of them are liable as Plaintiff's employers since they controlled Plaintiff's wages, hours, and/or working conditions. Individual Defendants are also liable pursuant to Labor Code § 558.1.

SIXTH CAUSE OF ACTION

FAILURE TO KEEP ACCURATE PAYROLL RECORDS

[PLAINTIFF AGAINST ALL DEFENDANTS]

(Labor Code §1174, 1174.5 and IWC Wage Order 16-2001, §7(A))

66. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 65, inclusive, as though set forth fully herein.

67. In relevant part, Labor Code § 1174(d) requires employers to keep payroll records showing the hours worked daily by and the wages paid to employees. Likewise, the relevant Wage Orders require employers to keep accurate records for each employee in regards to total wages paid each payroll period, total hours worked in the payroll period and applicable rates of pay, as well as time records showing when employees begin and end each work period, including meal periods, split shift intervals, and total daily hours.

68. Defendants violated Labor Code § 1174(d), IWC Wage Order 16-2001, § 7(A), by knowingly, intentionally, and willfully failing to accurately keep required payroll records showing the actual hours worked and income earned each day by Plaintiff.

69. As a result of Defendants' failure to maintain accurate payroll records, Plaintiff suffered actual economic harm as they have been precluded from accurately monitoring the number of hours worked and thus hindered in seeking all wages owed, including wages for all hours worked.

70. As a result of Defendants' unlawful acts, Defendants is subject to penalties, attorneys' fees and costs, pursuant to Labor Code §1174.5, and IWC Wage Order 16-2001 §20(A). Defendants and each of them are liable as Plaintiff's employers since they controlled Plaintiff's wages, hours, and/or working conditions. Defendants are alternatively liable pursuant joint and/or special employment doctrines, and/or pursuant to Labor Code 218.7, 218.8, and 558.1.

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY REIMBURSEMENTS**

3 **[PLAINTIFF AGAINST ALL DEFENDANTS]**

4 (Cal. Labor Code §§ 221 & 2802)

5 71. Plaintiff incorporates by reference and re-allege paragraphs 1 through 70, inclusive, as
6 though set forth fully herein.

7 72. At all times material herein, California Labor Code §§ 221 and 2802 were in full force
8 and effect and binding on Defendants. Said sections require employers to indemnify its employees for
9 all expenditures and losses incurred by Plaintiff in direct consequence of the discharge of duties.

10 73. In violation of California Labor Code §§ 221 and 2802, Plaintiff failed to receive
11 reimbursements for expenses while employed by Defendants, including but not limited to expenses
12 incurred for gas and mileage, which were necessary expenditures and/or losses incurred by Plaintiff in
13 direct consequence of the discharge of his duties.

14 74. Plaintiff is informed and believe, and thereon allege, he is entitled to reimbursement for
15 all expenses incurred in direct consequence of the discharge of Plaintiff's duties, as well as interest,
16 reasonable attorney's fees and costs of suit, in an amount according to proof at trial.

17 **EIGHTH CAUSE OF ACTION**

18 **[Civil Penalties Under PAGA (Cal. Lab. Code § 2699, et seq.)]**

19 **[PLAINTIFF AGAINST ALL DEFENDANTS]**

20 75. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 74, inclusive, as
21 though set forth fully herein.

22 76. At all times herein mentioned, Defendants were subject to the Labor Code of the State
23 of California and the applicable Industrial Welfare Commission Orders.

24 77. California Labor Code § 2699(a) specifically provides for a private right of action to
25 recover penalties for violations of the Labor Code: "Notwithstanding any other provision of law, any
26 provision of this code that provides for a civil penalty to be assessed and collected by the Labor and
27 Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies,
28 or employees, for a violation of this code, may, as an alternative, be recovered through a civil action

brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

78. Plaintiff has exhausted his administrative remedies pursuant to California Labor Code § 2699.3. On October 2, 2024, he gave written notice by online filing to the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code that Defendants have violated against Plaintiff and current and former aggrieved employees, including the facts and theories to support the violations. Plaintiff also paid the filing fee. Plaintiff’s PAGA case number is: LWDA-CM-1054025-24.

79. More than 65 days have elapsed since Plaintiff provided notice, but the Labor and Workforce Development Agency has not indicated that it intends to investigate Defendants’ Labor Code violations discussed in the notice. Accordingly, Plaintiffs may commence a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§ 210, 226.3, 48.5(e), 510, 558, 1197.1, and 1699(f)(2).

80. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to penalty under § 1174.5. Pursuant to the applicable IWC Order 5-2001 § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods, and total hours worked daily shall also be recorded. Additionally, pursuant to the applicable IWC Order 5-2001 § 7(A)(3), every employer shall keep total hours worked in the payroll period and applicable rates of pay.

81. During the time period of employment for Plaintiff and the Aggrieved Employees, Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to maintain accurate records showing meal periods, and accurate records showing when employees begin and end each work period. Defendants’ failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know,

1 understand and question the accuracy and frequency of meal periods, and the accuracy of their hours
2 worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way
3 to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic
4 enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have suffered
5 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest
6 on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its
7 obligation under state law, all to their respective damage in amounts according to proof at trial.
8 Because of Defendants' knowing failure to comply with the Labor Code and applicable IWC Wage
9 Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented
10 from knowing, understanding, and disputing the wage payments paid to them.

11 82. Based on the conduct described in this Complaint, Plaintiff is entitled to an award of
12 civil penalties on behalf of himself, the State of California, and similarly Aggrieved Employees of
13 Defendants. The exact amount of the applicable penalties, in all, shall be an amount to be shown
14 according to proof at trial. These penalties are in addition to all other remedies permitted by law.

15 83. Plaintiff also seeks the imposition of civil penalties against Messieurs, Mario Garcia
16 Malvais and Fransisco Garcia Jr. pursuant to Labor Code § 558, in addition to personal liability for
17 the violations of MG Drywall.

18 84. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs pursuant
19 to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall
20 be entitled to an award of reasonable attorney's fees and costs."

21 **WHEREFORE, PLAINTIFF PRAYS FOR RELIEF AGAINST DEFENDANTS AS**
22 **FOLLOWS:**

23 **As to the First Cause of Action for Failure to Pay Minimum Wages Earned:**

- 24 1. For all unpaid minimum wages due, according to proof at trial;
- 25 2. For liquidated damages pursuant to Labor Code § 1194.2, according to proof at trial;
- 26 3. For prejudgment interest at the maximum legal rate;
- 27 4. For reasonable attorneys' fees;
- 28

5. For costs of suit;
6. Liability against Defendants and any person acting on behalf of Defendants pursuant to Labor Code § 558.1; and
7. For such other and further relief as the Court may deem proper.

As to the Second Cause of Action for Failure to Pay all Overtime Wages Earned:

1. For all unpaid overtime wages due pursuant to Labor Code §§ 510 & 1194, subject to proof at trial;
2. For prejudgment interest at the maximum legal rate pursuant to Labor Code § 1194;
3. For reasonable attorneys' fees pursuant to Labor Code § 1194; and
4. For costs of suit pursuant to Labor Code § 1194;
5. Liability against Defendants and any person acting on behalf of Defendants pursuant to Labor Code § 558.1; and
6. For such other and further relief as the Court may deem proper.

As to the Third Cause of Action for Failure to Provide Rest Periods:

1. For all unpaid premium wages due and owing as a result of each rest period violation pursuant to Labor Code 226.7(c), subject to proof at trial;
2. Reasonable attorney's fees, costs, and interest pursuant to Labor Code §§218.5 & 218.6;
3. Liability against Defendants and any person acting on behalf of Defendants pursuant to Labor Code § 558.1; and
4. For such other and further relief as the Court may deem proper.

As to the Fourth Cause of Action for Failure to Pay All Wages Upon Discharge:

1. For damages, including the full amount of unpaid wages and continuation of wages allowable under Labor Code § 203 subject to proof at trial;
2. Reasonable attorney's fees, costs, and interest pursuant to Labor Code §§218.5 & 218.6;
3. Liability against Defendants and any person acting on behalf of Defendants pursuant to Labor Code § 558.1; and
4. For such other and further relief as the Court may deem proper.

As to the Fifth Cause of Action for Failure to Furnish Accurate Wage Statements:

1. For penalties pursuant to Labor Code §§ 226(e) and 226.3, subject to proof at trial;
2. For reasonable attorneys' fees;
3. For costs of suit; and
4. For such other and further relief as the Court may deem proper.

As to the Sixth Cause of Action for Failure to Keep Accurate Records:

1. All penalties authorized by Labor Code § 1174.5;
2. For injunctive relief; and
3. For such other and further relief as the Court may deem proper.

As to the Seventh Cause of Action for Failure to Reimburse Employment Expenses:

1. Reimbursement of all expenses authorized by Labor Code § 2802;
2. For prejudgment interest at the maximum legal rate;
3. For reasonable attorneys' fees;
4. For costs of suit; and
5. For such other and further relief as the Court may deem proper.

As to the Eighth Cause of Action for Civil Penalties Under the Private Attorneys General Act of 2004, Cal. Lab. Code §2698 et seq.

1. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to provide meal periods, failing to maintain accurate records of meal periods, failing to authorize and permit rest periods, failing to reimburse for all necessary business expenses, failing to maintain accurate records of all hours worked and meal periods, failing to pay final wages at termination, failing to provide paid sick days, and failing to furnish accurate wage statements;
2. For all actual, consequential and incidental losses and damages, according to proof;
3. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all other applicable Labor Code provisions;

- 1 4. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
2 Labor Code § 2699;
3 5. For such other and further relief as the Court may deem equitable and appropriate.
4

5 DATED: December 27, 2024

FINNEGAN & DIBA, A LAW CORPORATION

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7
8 By: Kasey Diba
KASEY DIBA, ESQ.
9 Attorneys for Plaintiff, CARLOS CASTILLO
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11
12 **DEMAND FOR JURY**
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14 Plaintiff hereby demands a trial by jury on all claims, excepting claims based on equity.
15

16 DATED: December 27, 2024

FINNEGAN & DIBA, A LAW CORPORATION

17
18 By: Kasey Diba
19 KASEY DIBA, ESQ.
20 Attorneys for Plaintiff, CARLOS GERMAN
CASTILLO
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EXHIBIT “A”



FINNEGAN & DIBA
A LAW CORPORATION

3660 Wilshire Blvd., Suite 800, Los Angeles, CA 90010 / Tel: 213-480-0292 / Fax: 213-480-0805 / Email: info@fdlegal.com

October 2, 2024

– Via Certified U.S. Mail –
[Return Receipt Requested]

MG Drywall Construction, Inc.
13741 Foothill Boulevard, Suite 230
Sylmar, CA 91342

Attn: Mr. Mario Malvais
Mr. Francisco Garcia

**RE: CARLOS GERMAN CASTILLO v. MG DRYWALL CONSTRUCTION, INC., et al.
L.W.D.A. CASE NO.: PENDING
NOTICE OF INTENT TO SEEK CIVIL PENALTIES PURSUANT TO LABOR
CODE § 2698, ET SEQ.**

To Whom It May Concern:

As you are aware, Finnegan & Diba, ALC has been retained by Mr. Carlos Castillo (Hereinafter “Employee”) concerning a lawsuit against his former employer, MG Drywall Construction, Inc. (Hereinafter “Employer”).

I am writing this letter to inform you of Employee’s intent to seek recovery of civil penalties pursuant to the provisions of the California Labor Code Sections 2698, 2699, 2699.3, and 2699.5, also known as the Labor Code Private Attorneys General Act of 2004 (PAGA), as well as the factual basis supporting Employee’s allegations of Employer’s violations of specific sections of the California Labor Code, as explained more specifically below.

Mr. Castillo worked for Employer as a Drywall technicians/installer. Employee was continuously employed by Employer throughout the duration of his employment.

Employee contends he was not paid all wages earned for services rendered for Employer’s benefit. Specifically, Employee was not paid all wages earned, inclusive of overtime pay due to the fact that Employer paid Employee by a flat daily rate that did not take into account actual hours worked, did not provide Employee the opportunity to take mandated rest periods, and did not reimburse Employee driving to and from his daily assignment. Employee also contends those hours worked for which they were not paid any wage at all is also a failure to pay at least minimum wage for those hours worked. As a result, Employer failed to keep accurate records of Employee’s hours worked and income earned, and failed to provide accurate wage statements. On information and belief, Employer treated all employees similarly situated as Employee in the same manner.

Employee further contends that he was not given all uninterrupted 10-minute rest breaks in accordance with California Labor Code and Wage Order requirements. Employee also contends that

Employer's other workers also were not given uninterrupted 10-minute rest breaks. Neither Employee nor Employer's other employees were paid premium wages for missed breaks. Employee also contends they were not paid all wages due upon termination, were not reimbursed for business expenses incurred.

The result is that Employer is liable for civil penalties arising out of their pattern and practice of failing to comply with various California Labor Code sections. Employer's above-described conduct results in violations of the following labor codes:

Failure to Pay All Wages Earned – Labor Code §§ 203, 204, 1194, & 1197: Employee alleges Employer intentionally failed to pay wages when due. Specifically, Employer failed to pay all wages earned as mandated by Labor Code § 204 since Employer was not paying Employees all regular and overtime wages earned or missed break premium wages each pay period. As a result of Employer's failure to pay Client all wages earned, Employer violated Labor Code § 204. As a further result of Employer's failure to pay all wages earned upon discharge of employee, Employer is liable for all penalties, statutory and civil, for violation of Labor Code § 203, which Employer has failed to do to date.

Failure to Pay Overtime Wages – Labor Code §§ 510, 1194, 1198: Employee alleges Employer intentionally failed to pay overtime wages due for all work performed in excess of eight (8) hours in one (1) workday and all work performed in excess of forty (40) hours in one workweek in violation of Labor Code §§ 510, 1194, 1197, and the applicable wage order.

Failure to Provide Mandated Meal Breaks or Pay Premium Wages - Labor Code §§ 512 & 226.7: Employee alleges Employer intentionally failed to provide Employees and Employer's other employees with statutorily mandated meal breaks and failed to pay one additional hour of pay at the regular rate of compensation for each workday that the meal period was not provided. Client maintains that Employer is liable for civil penalties for violations of Labor Code §§ 512 and 226.7, in addition to the unpaid premium wages.

Failure to Provide Mandated Rest Breaks or Pay Premium Wages - Labor Code §§ 512 & 226.7: Employee alleges Employer intentionally failed to provide Employees and Employer's other employees with statutorily mandated rest breaks and failed to pay one additional hour of pay at the regular rate of compensation for each workday that the rest period was not provided. As a result, Employer is liable for civil penalties for violation of Labor Code §§ 512 and 226.7, in addition to the unpaid premium wages.

Failure to Pay All Wages Earned No Later than the Next Payroll Period – Labor Code § 204, 510, 1194: Employee alleges Employer intentionally failed to pay Employees and all other employees all wages when due. Specifically, Employer failed to pay Employees all overtime wages earned and failed to pay missed break premium wages when earned as mandated by Labor Code §§ 204, 512, 226.7, and 1194. As a result of Employer's failure to pay all wages earned in accordance with Labor Code §§ 204, 512, 226.7, and 1194, Employer is liable for civil penalties for each failure during each pay period to compensate its employees in accordance with California law.

Failure to Pay All Wages Due Upon Discharge – Labor Code §§ 201, 202, & 203:

Employer violated Labor Code § 201 and 202 since it did not pay Employees and other employees all wages due after the end of employment. Specifically, Employer owed Employees and other employees unpaid wages, and unpaid premium wages for failing to provide meal and rest breaks. As result of Employer's failure to pay all wages earned upon discharge of Employees and its employees, Employer is liable for all civil penalties for violation of Labor Code §§ 201, 202, and 203.

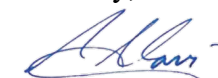
Failure to Provide Accurate Wage Statements - Labor Code §§ 226(a) & 226.3: Employee alleges Employer intentionally failed to provide accurate wage statements throughout the duration of Employees' employ in violation of Labor Code § 226(a). On account of Employer's failure to provide accurate wage statements to Employees or any of its employees, Employer is liable for civil penalties pursuant to Labor Code §§ 226.3, 2699(f) and 2699.5.

Failure to Maintain Accurate and Adequate Records - Labor Code § 1174 & 1174.5: As a result of failing to account for all wages earned and owed to Employees on Employer's wage statements, inclusive of minimum wages, regular wages, overtime wages and missed break premiums, Employer's records are all inaccurate. Since the records will not reflect all wages earned by Employees and Employer's other employees and because this failure to maintain accurate records is the result of intentional conduct by Employer, Employer is liable for civil penalties, pursuant to Labor Code §§ 2699(f), 2699.5, and 1174.5.

Willful Misclassification as an Independent Contractor: Employee alleges Defendants willfully misclassified him as an independent contractor in order to avoid compliance with pertinent California Labor Code and Federal, State and Local payroll tax provisions, thereby invoking civil penalties under Labor Code 226.8, which makes it unlawful for any person or employer to willfully misclassify an individual as an independent contractor. Employee was paid by a flat rate and not given wage statements or any tax records at the end of the year and because of same alleges Defendants are liable for the misclassification penalty.

Employee anticipates filing a civil action concerning their wage and hour claims and seeking recovery of associated civil penalties as warranted by the California Labor Code, including but not limited to Labor Code § 2698, et seq. This letter is being sent to you to inform you of Employee's intent to collect civil penalties associated with Employers' violations of the California Labor Code as required by Labor Code § 2698, et seq. and factual support for same.

Sincerely,



Amir T. Alavi, Esq.

cc: Mr. Castillo (by email only)

Thank you for submission of your PAGA Case.

From noreply@salesforce.com <noreply@salesforce.com>
on behalf of
LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Date Wed 10/2/2024 12:00 PM
To Amir Alavi <AAlavi@fdlegal.com>

10/2/2024

LWDA Case No. LWDA-CM-1054025-24
Law Firm : FINNEGAN & DIBA, ALC
Plaintiff Name : CARLOS GERMAN CASTILLO
Employer: MG DRYWALL CONSTRUCTION, INC.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private Attorneys General Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)



3660 Wilshire Blvd., Suite 800, Los Angeles, CA 90010

FIRST-CLASS



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0006108778 OCT 02 2024

MG Drywall Construction, Inc.
Attn: Mr. Mario Malvais
Mr. Francisco Garcia
13741 Foothill Blvd., Suite 230
Sylmar, CA 91342

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

*Mc Engwall Construction, Inc.
13741 Foothill Blvd. #230
Sylmar, CA 91342*



9590 9402 8673 3310 0705 14

2. Article Number (Transfer from service label)

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Adult Signature
- ☒ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

*M4 Drywall Construction, Inc.
13741 Foxhill Blvd. #230
Sylmar, GA 91342*



9590 9402 8673 3310 0705 14

2. Article Number (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Handwritten Signature]

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 3660 Wilshire Boulevard, Suite 800, Los Angeles, California 90010.

On the date herein below specified, I served the foregoing document described as set forth below on the interested parties in this action, at Los Angeles, California, addressed as follows:

Date of Service: **DECEMBER 27, 2024**

Document(s) Served: **FIRST AMENDED COMPLAINT FOR DAMAGES**

Person Served: **ATKINSON, ANDELSON, LOYA, RUUD & ROMO APC
JOSHUA LANGE, ESQ.
ANDREA CERVANTES, ESQ.
12800 CETER COURT DRIVE SOUTH #300
CERRITOS, CA 90703
JOSHUA.LANGE@AALRR.COM
ANDREA.CERVANTES@AALRR.COM**

____ (BY U.S. Mail) I enclosed the documents in a sealed envelope or package addressed to the address above and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

____ (BY U.S. Certified Mail) I enclosed the documents in a sealed envelope or package addressed to the address above and placed the envelope for collection and certified mailing with return receipt, in a sealed envelope with postage fully prepaid.

____ (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight deliver carrier and addressed to the persons at the addresses above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

____ (BY FAX) I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used.

____ (BY MESSENGER SERVICE) I served the documents by placing them in an envelope or package addressed to the addresses above, and provided them to a professional messenger service for personal service on this date.

____ (BY PERSONAL SERVICE) I personally delivered by hand to the offices of the addressee(s).

____ (BY EMAIL TRANSMISSION) I emailed a copy of the foregoing document(s) this date via email to the email addresses shown above.

XX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED at Los Angeles, California, on December 27, 2024



Declarant, Rosalyn Truong

PROOF OF SERVICE