

07/29/2020

Sherri R. Carter, Executive Officer / Clerk of Court

By: L. Castillejo Deputy

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10 AKIM EVANS

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SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

AKIM EVANS, on behalf of all others similarly
aggrieved,

Plaintiff,
vs.

WHELAN SECURITY OF CALIFORNIA, INC.
dba GARDAWORLD SECURITY SERVICES,
a California Corporation; and DOES 1-50,
Inclusive,

Defendants.

CASE NO.: 20STCV10973

FIRST AMENDED COMPLAINT FOR
VIOLATION OF PRIVATE ATTORNEYS
GENERAL ACT, CAL. LABOR CODE
SECTIONS 2698, *et seq.*

JURY TRIAL DEMANDED

GENERAL ALLEGATIONS

1. Plaintiff AKIM EVANS (“Plaintiff”) is an individual residing in the State of California.

2. On information and belief, Defendant WHELAN SECURITY OF CALIFORNIA, INC. dba GARDAWORLD SECURITY SERVICES (“Defendant”) is a California corporation that is duly licensed to conduct business in the State of California.

3. Plaintiff is unaware of the names and capacities of those defendants sued as DOES 1 through 50, but will amend this complaint when that information becomes known. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each of the defendants, including the DOE defendants, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged herein, was acting in the course and scope of, and in furtherance of, such relationship. Unless otherwise specified, Plaintiff will refer to all defendants as “Defendant,” and each allegation pertains to each defendant.

4. This court possesses original subject matter jurisdiction over this matter. Defendant has sufficient minimum contacts in California and has intentionally availed itself of the California market so as to render the exercise of jurisdiction proper. Venue is proper in this judicial district because the complained of conduct occurred in this judicial district.

5. Defendant employed Plaintiff in California as a non-exempt security guard from October 2017 to on or about September 2019. Plaintiff performed duties typical of a security guard. Plaintiff normally worked 5 days a week, 8 or more hours a day. Plaintiff brings his complaint under the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, (“PAGA”), as a representative action on behalf of the State of California regarding violations of the Labor Code as to all similarly aggrieved individuals employed by Defendant as non-exempt employees, however titled, in the State of California. This action is brought solely under PAGA and seeks no relief beyond that available under PAGA.

6. During the period beginning one-year period preceding the filing of the required PAGA notice with the Labor Workforce and Development Agency, and continuing through the

1 present, as alleged herein, Defendant violated Labor Code sections 201-202, 201.3, 204, 216, 223,
2 226, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199, 2802, 2810.5, and all applicable
3 Wage Orders, as to Plaintiff and all other similarly aggrieved employees employed by Defendant
4 in California. These violations subject Defendant to civil penalties as set forth in the foregoing
5 statutes as well as other provisions of the Labor Code, including without limitation Labor
6 Code sections 203, 210, 225.5, 226.3, 558, 558.1, 1174.5, 1194.2, 1197.1, and 2699, and
7 section 20 of all applicable Wage Orders.

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,**

10 **LABOR CODE SECTIONS 2698, *ET SEQ.***

11 7. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

12 8. California law mandates that employees in California be paid for all hours worked,
13 up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.
14 Defendant violated California minimum wage laws by requiring, suffering or permitting Plaintiff
15 and other aggrieved employees to work without compensation. Plaintiff and other aggrieved
16 employees regularly worked shifts of 8.5 hours but were only compensated for 8 hours, resulting
17 in underpaid wages Plaintiff and other aggrieved employees. Upon information and belief,
18 Defendant knew or should have known that Plaintiff and other aggrieved employees were
19 performing work for which they were not being compensated. Defendant also required Plaintiff
20 and other aggrieved employees to work through their off-duty meal periods. Through these
21 practices Defendant systematically deprived Plaintiff and similarly aggrieved employees of
22 compensable time. Accordingly, Plaintiff and similarly aggrieved employees were not being paid
23 for all hours worked causing minimum wage violations pursuant to Labor Code sections 1194-
24 1199, and all applicable Wage Orders. These violations subject Defendant to civil penalties under
25 the foregoing Labor Code sections and other applicable Labor Code sections, including without
26 limitation Labor Code sections 1197.1 and 2699. Each violation of each Labor Code section and
27 Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

28 9. California law requires employers to pay overtime equal to one and one-half times

1 the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each
2 hour worked beyond forty (40) hours per work week. Lab. Code § 510; IWC Wage Order 4-2001
3 (and all applicable Wage Orders), § 3. Employers must pay overtime equal to double the regular
4 hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours
5 worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. Id.

6 10. Defendant has violated California's overtime laws by, among other things, failing
7 to correctly calculate, or record at all, the total number of hours worked by Plaintiff and similarly
8 aggrieved employees and not paying proper overtime for all overtime worked (as discussed
9 above). Based on employees' regular work schedules, Plaintiff and similarly aggrieved employees
10 often worked more than 8 hours in a day and/or 40 hours in a week for which they were not
11 properly compensated. Defendant regularly required Plaintiff and other aggrieved employees
12 work 8.5-hour shifts but only paid them for 8 hours. This conduct results in violations of Labor
13 Code sections 218.5, 510, 1198-1199, and IWC Wage Order 4-2001 (and all applicable Wage
14 Orders), § 12(A). These violations subject Defendant to civil penalties under Labor Code sections
15 218.5, and 2699, and Wage Order 4-2001 (and all applicable Wage Orders), § 20. Each violation
16 of each Labor Code section and Wage Order provision results in a separate civil penalty, for each
17 aggrieved employee, for each pay period during which the referenced statutes and Wage Order
18 provisions were violated.

19 11. Under the Labor Code and IWC Wage Orders, Defendant was required to provide
20 Plaintiff and similarly aggrieved employees with one 30-minute meal period free from all duties
21 for all shifts longer than 5 hours, and a second 30-minute meal period free from all duties for all
22 shifts longer than 10 hours. Meal periods can be waived, but only under the following
23 circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more
24 than six (6) hours, the required meal period may be waived by mutual consent of the employer
25 and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no
26 more than twelve (12) hours, the required second meal period may be waived by mutual consent
27 of the employer and employee, but only if the first meal period was not waived. Employers
28 covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one

1 meal period for shifts over five hours (see above), and (2) to record having done so. If the
2 employer fails to properly record a valid meal period, it is presumed no meal period was
3 provided.

4 12. Plaintiff and similarly aggrieved employees regularly worked periods of more than
5 five and ten hours in a workday without being provided mandatory thirty-minute, duty-free meal
6 periods. Upon information and belief, Defendant did not advise Plaintiff and other aggrieved
7 employees of their right to, timing, or number of meal periods. Defendant never fully relieved
8 Plaintiff and other aggrieved employees of their duties as security guards to take meal periods.
9 Defendant required Plaintiff and other aggrieved employees to remain on premises at all times
10 during their shifts. Defendant did not provide Plaintiff and other aggrieved employees with relief
11 workers, causing Plaintiff and other aggrieved employees to delay and miss their meal periods.
12 Per Defendant's illegal meal period policy/practice, Plaintiff and similarly aggrieved employees
13 did not receive all the meal periods to which they were entitled and Defendant further failed to
14 pay Plaintiff and similarly aggrieved employees an additional hour of wages at their regular rates
15 of pay for each workday a meal period was not provided.

16 13. Defendant failed to provide Plaintiff and similarly aggrieved employees all
17 required and/or fully compliant rest periods, or compensation in lieu thereof. Defendant employed
18 policies and procedures that ensured Plaintiff and other aggrieved employees would not receive
19 all legally required rest periods, as Defendant did not authorize and permit all required rest
20 periods in strict accordance to, and in compliance with, the timing requirements of all applicable
21 Wage Orders. Defendant never advised Plaintiff and other aggrieved employees of their right to,
22 timing, or amount of rest breaks. Defendant told Plaintiff and aggrieved employees to remain on
23 company premises at all times. Defendant never fully relinquished control of Plaintiff and other
24 aggrieved employees to take rest periods. Defendant further employed policies and procedures
25 ensuring that Plaintiff and similarly aggrieved employees did not receive premium wages to
26 compensate them for workdays they did not receive all legally required and fully compliant rest
27 periods.

28 14. California law provides that, at the time of each payment of wages, the employer

1 must provide each employee with an itemized statement showing, inter alia, gross wages earned,
2 total hours worked, all deductions taken, net wages earned, the inclusive dates for which the
3 employee is being paid, the employee's name and last four digits of their social security number,
4 the name and address of the legal entity that it is the employer, and all applicable hourly rates in
5 effect during the pay period and all hours worked at each rate.

6 15. Defendant knowingly and intentionally failed to provide Plaintiff and other
7 aggrieved employees with proper, itemized wage statements as the wage statements provided by
8 Defendant do not accurately reflect, inter alia, gross wages earned, total hours worked, net wages
9 earned, and all applicable hourly rates in effect during each pay period and all hours worked at
10 each applicable hourly rate, for all the reasons herein mentioned. Accordingly, Defendant has
11 violated Labor Code section 226 as to Plaintiff and all similarly aggrieved employees. These
12 violations subject Defendant to civil penalties under the Labor Code, including without limitation
13 Labor Code sections 226 and 2699. Each violation of each Labor Code section and Wage Order
14 provision, for each aggrieved employee, results in a separate civil penalty.

15 16. California law requires employers to keep "accurate and complete" payroll records
16 showing, among other things, the hours worked daily by all non-exempt employees. The
17 applicable IWC Wage Order similarly requires employers to keep time records showing, inter
18 alia, when the employees begins and end each work period and reflecting the times during which
19 all owed meal periods are provided each day. At all relevant times, Defendant has failed, and
20 continues to fail, to keep the required time records by, including but not limited to, adopting and
21 maintaining an unlawful policy and practice of not compensating employees for all hours worked
22 and/or at the correct rate of pay. Defendant's unlawful deductions of employees' hours, coupled
23 with Defendant's failure to provide proper meal and rest periods or premium compensation in lieu
24 thereof resulted in record-keeping violations.

25 17. Defendant's failure to keep "accurate and complete" payroll records for Plaintiff
26 and other similarly aggrieved employees violates Labor Code sections 1174, 1198-99, and Wage
27 Order 4-2001 (and all applicable Wage Orders), section 7. These violations subject Defendant to
28 civil penalties under the Labor Code, including without limitation sections 1174.5 and 2699.

1 Each violation of each Labor Code section and Wage Order provision, for each aggrieved
2 employee, results in a separate civil penalty.

3 18. Labor Code sections 1198 and 1199 make it unlawful to employ any individual
4 under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to
5 comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174,
6 1197, and 1198, or other order or ruling of the IWC. Defendant's violations with respect to
7 minimum wages and/or overtime wages, as alleged herein, result in separate violations of Labor
8 Code sections 1198 and 1199, and subject Defendant to civil penalties under the Labor Code,
9 including without limitation Labor Code sections 1197.1 and 2699. Each violation of each Labor
10 Code section and Wage Order provision, for each aggrieved employee, results in a separate civil
11 penalty.

12 19. California Labor Code section 201.3 requires temporary service employers to pay
13 their employees on a weekly basis. Defendant failed to comply with Labor Code section 201.3 by
14 compensating Plaintiff and other aggrieved employees on a bi-weekly basis instead of a weekly
15 basis, in violation of California law. Defendant's violations of Labor Code section 201.3 subject
16 Defendant to civil penalties, including but not limited to the penalties set forth in California Labor
17 Code sections 201.3. Each violation results in a separate civil penalty, for each aggrieved
18 employee for each pay period during which the statutory provisions were violated.

19 20. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
20 and payable and/or denial of the validity of any claim to wages due. Plaintiff is informed and
21 believes, and based thereon alleges, that Defendant knew or should have known that they had a
22 duty to compensate Plaintiff and the other aggrieved employees pursuant to California law, and
23 that Defendant had the financial ability to pay such compensation, but willfully, knowingly, and
24 intentionally failed to do so, and falsely represented to Plaintiff and the other aggrieved
25 employees that they were properly denied wages. Additionally, Labor Code section 2802
26 requires an employer to reimburse employees for all necessary business expenditures incurred by
27 the employee and Defendant has failed to reimburse Plaintiff and other aggrieved employees for
28 their business expenses in the discharge of their duties.

1 21. Labor Code section 201 requires employers to pay all wages earned and unpaid at
2 the time of discharge, immediately upon discharge. Labor Code section 202 states similar
3 provisions with respect to employees who resign. For all aggrieved employees no longer
4 employed by Defendant, Defendant still has not paid such aggrieved employees all wages earned
5 and unpaid at the time of discharge, in that Defendant has not paid for, all minimum and overtime
6 wages and all meal and rest period premiums. These violations subject Defendant to civil
7 penalties under the Labor Code, including without limitation Labor Code sections 203, 256 and
8 2699. Each violation results in a separate civil penalty, for each aggrieved employee for each pay
9 period during which the statutory provisions were violated.

10 22. Labor Code section 432.5 states that no employer, or agent, manager,
11 superintendent, or officer thereof, shall require any employee or applicant for employment to
12 agree, in writing, to any term or condition which is known by such employer, or agent, manager,
13 superintendent, or officer thereof to be prohibited by law. Upon information and belief,
14 Defendant requires its employees to agree in writing to unlawful background disclosures and
15 authorizations for purposes of background investigations. Defendant knew or had reason to know
16 that it could not require employees to agree in writing to unlawful disclosures and authorizations,
17 but Defendant did it anyway. Defendant required Plaintiff and other employees to agree in writing
18 to such terms and conditions. These violations subject Defendant to civil penalties under the
19 Labor Code. Each violation results in a separate civil penalty, for each aggrieved employee for
20 each pay period during which the statutory provisions were violated.

21 23. Plaintiff complied with the procedures for bringing suit specified in Labor Code
22 sections 2699.3 and 2699.5. Plaintiff gave written notice to the California Labor and
23 Workforce Development Agency ("LWDA") via electronic mail at PAGAfilings@dir.ca.gov
24 on January 6, 2020, and via certified mail to Defendant on January 6, 2020, of the specific
25 provisions of the Labor Code and Wage Orders allegedly violated, including the facts and
26 theories to support the alleged violations.

27 24. Under Labor Code section 2699.3, the LWDA must give written notice by
28 certified mail to the parties it intends to investigate the alleged violations within 65 days of the

1 date of the Plaintiff's written notice. As of the date of this Complaint, the LWDA has not
2 provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of
3 himself and other similarly aggrieved employees. Moreover, as of the date of this Complaint,
4 Defendant has not responded to Plaintiff's PAGA notice in an attempt to cure. Accordingly,
5 Plaintiff has exhausted all administrative remedies required by law.

6 PRAYER

7 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
8 as follows:

- 9 1. For civil penalties according to proof;
- 10 2. For reasonable attorney's fees and costs of suit; and
- 11 3. For such other and further relief as the Court deems just and proper.

12 Dated: July 29, 2020

CROSNER LEGAL, P.C.

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14 _____
15 Michael Crosner
16 Zachary Crosner
17 Rex Phillips
18 Attorneys for Plaintiff
19 AKIM EVANS
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DEMAND FOR JURY TRIAL

Plaintiff AKIM EVANS demands a trial by jury on all claims so triable.

Dated: July 29, 2020

CROSNER LEGAL, P.C.



Michael Crosner
Zachary Crosner
Rex Phillips
Attorneys for Plaintiff
AKIM EVANS

PROOF OF SERVICE
AKIM EVANS vs. WHELAN SECURITY OF CALIFORNIA, INC.
Los Angeles Superior Court Case No. 20STCV10973

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 433 N. Camden Dr., Ste. 400, Beverly Hills, CA 90210.

On July 29, 2020, I served true copies of the following document(s) described as

**FIRST AMENDED COMPLAINT FOR VIOLATION OF PRIVATE ATTORNEYS
GENERAL ACT, CAL. LABOR CODE SECTIONS 2698, et seq.; JURY TRIAL
DEMANDED**

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☒ BY ELECTRONIC TRANSMISSION. I transmitted copies of the above-referenced document(s) on the interested parties in this action by electronic transmission. Said electronic transmission was reported as complete and without error.

☐ BY FACSIMILE TRANSMISSION. I transmitted copies of the above-referenced document(s) on the interested parties in this action by facsimile transmission from (310) 510-6429. A transmission report was properly issued by the transmitting facsimile machine and the transmission was reported as complete and without error.

☐ BY UNITED STATES POSTAL SERVICE. I enclosed the documents in electronic pdf format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal (letterstream.com) to be mailed addressed to the entities and/or persons listed in the Service List as set forth herein. I caused an envelope containing the documents to be placed for collection and mailing and to be mailed by First Class Mail, following our law firm and Letterstream, Inc.'s ordinary business practices. I am readily familiar with our business practices and the business practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. Pursuant to that practice, the above-referenced document(s) were sealed in an envelope, with postage paid, and deposited with a post office, mail box, sub-post office, substation, mail chute, or other facility or postal pick up/drop off regularly maintained by the United States Postal Service or an affiliate thereof, at or near Phoenix, Arizona.

☐ BY OVERNIGHT MAIL SERVICE. I enclosed the documents in electronic pdf format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal (letterstream.com) addressed to the entities and/or persons listed in the Service List as set forth herein. I caused an envelope containing the documents to be placed for collection and mailing and to be mailed by Overnight Mail via Federal Express, following our law firm and Letterstream, Inc.'s ordinary business practices. I am readily familiar with our business practices and the business practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary

PROOF OF SERVICE

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course of business with Federal Express, an express carrier, in Phoenix, Arizona, or delivered with any and all delivery fees to an authorized courier or driver authorized by the express service carrier to receive documents.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 29, 2020, at Los Angeles, California.



Maria Monterrey

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PROOF OF SERVICE
AKIM EVANS vs. WHELAN SECURITY OF CALIFORNIA, INC.
Los Angeles Superior Court Case No. 20STCV10973

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