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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

BRENDA GARCIA, an individual, on behalf
of herself and others similarly situated

PLAINTIFF,

v.

TITANIUM ALARM, LLC; and DOES 1 thru
50, inclusive,

DEFENDANTS.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 23 2020

BY ANGELINE GARCIA
ANGELINE GARCIA, DEPUTY

CASE NO. CIVDS 2013199

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Pay Timely Wages Pursuant to Labor Code §§ 204 and 210
3. Penalties Pursuant to Labor Code § 203
4. Violation of Business & Professions Code § 17200
5. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff BRENDA GARCIA, an individual, on behalf of herself, all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under Labor Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter “PAGA”),
4 complains of Defendant TITANIUM ALARM, LLC (“Defendant”) and each of them, as follows:

5 **I.**

6 **INTRODUCTION**

7 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
8 382, and Labor Code §2699, et seq., on behalf of Plaintiff and a Proposed Class defined as:

9 All employees who are employed or have been employed by
10 TITANIUM ALARM, LLC, in the State of California who earned
11 commission pay and overtime in the same pay period since four (4)
years prior to the filing of this action to the present. (“Proposed
Class” or “Proposed Class Members”)

12 2. Plaintiff submitted her Class Action Complaint to the Court on March 30, 2020.
13 Due to the unprecedented Court closure reflected in the PRESS RELEASE issued by the Court on
14 March 18, 2020 and detailed in the “GENERAL ORDER OF THE PRESIDING JUDGE” also
15 issued on March 18, 2020, Plaintiff is uncertain as to when the Class Action Complaint will be
16 accepted for filing and conformed by the Clerk of this Court.

17 3. Plaintiff now submits this First Amended Class and Representative Action
18 Complaint to the Court on the date indicated in the signature line below. Due to the unprecedented
19 Court closure reflected in the PRESS RELEASE issued by the Court on March 18, 2020 and
20 detailed in the “GENERAL ORDER OF THE PRESIDING JUDGE” also issued on March 18,
21 2020, Plaintiff is uncertain as to when this First Amended Complaint will be accepted for filing
22 and conformed by the Clerk of this Court

23 4. Any limitations periods referenced in this complaint are extended pursuant to
24 Emergency Rule 9 of the “Emergency Rules Related to COVID-19,” Appendix I to the California
25 Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation for
26 civil actions with limitations periods over 180 days are tolled from April 6, 2020 until October 1,
27 2020. Any reference to the class period or statute of limitations is extended into the past by the
28 number of days in which this tolling was in effect.

1 5. From at least four (4) years prior to the filing of this action and continuing to the
2 present, Defendant has had a consistent policy of failing to pay wages and/or overtime to all
3 Proposed Class Members when they work more than eight hours in a day or forty hours in a week.
4 Plaintiff and other Proposed Class Members were not properly compensated for overtime at the
5 appropriate rate of pay because Defendant failed to blend commission pay into their regular rate
6 of pay for the purposes of calculating the overtime rate. As such, Plaintiff and the Proposed Class
7 were paid at a regular rate less than the rate required under California law.

8 6. From January 1, 2020 and continuing to the present, Defendant has had a consistent
9 policy of failing to timely pay their California employees after the conclusion of each pay period
10 in compliance with Labor Code §§ 204 and 210.

11 7. For at least three (3) years prior to the filing of this action continuing to the present,
12 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
13 the Proposed Class.

14 8. Plaintiff, on behalf of herself and all Proposed Class Members brings this action
15 pursuant to Labor Code §§ 201, 202, 203, 204, 210, 510, 1194, and 1199; Wage Order 4-2001;
16 and California Code of Regulations, Title 8, Section 11040, seeking unpaid wages/overtime, other
17 penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

18 9. Plaintiff, on behalf of herself and all Proposed Class Members, pursuant to Business
19 & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of
20 all benefits Defendant enjoyed from its unlawful conduct as described herein.

21 10. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
22 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
23 PAGA and continuing to the present, Defendant has violated several Labor Code provisions, as
24 detailed below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of herself and all
25 aggrieved employees presently or formerly employed by Defendant during the liability period as
26 defined in her PAGA notice letter (*see* Exhibit "1"), brings this representative action pursuant to
27 Labor Code §2699, et seq. seeking penalties for Defendant's failure to pay wages and/or overtime,
28 pay timely wages, and pay all wages due upon termination.

1 **II.**

2 **JURISDICTION AND VENUE**

3 11. This Court has subject matter jurisdiction over all causes of action asserted herein
4 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
5 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
6 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
7 State of California or is subject to adjudication in the courts of the State of California.

8 12. This Court has personal jurisdiction over Defendant because Defendant has caused
9 injuries in the County of San Bernardino and the State of California through their acts, and by their
10 violation of the California Labor Code, California state common law, and California Business &
11 Professions Code § 17200, *et seq.*

12 13. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
13 Civil Procedure § 395. Defendant operates within California and does business within San
14 Bernardino County. The unlawful acts alleged herein have a direct effect on Plaintiff and all
15 Proposed Class Members within the State of California and the county of San Bernardino.

16 14. This case should be classified as complex according to Rule 3.400 of the California
17 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
18 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive
19 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
20 require substantial post judgment judicial supervision.

21 **III.**

22 **PARTIES**

23 **A. PLAINTIFF**

24 15. Plaintiff BRENDA GARCIA is a resident of California.

25 16. Plaintiff and all Proposed Class Members, were regularly required to:

26 a. Work without being paid for all hours at the appropriate rate;

27 b. Work without being paid wages in a timely manner;

28 17. Defendant willfully failed to compensate Plaintiff and all Proposed Class Members

1 for wages at the termination of their employment with Defendant.

2 18. As a result of this conduct, Defendant has engaged in unfair competition and
3 unlawful business practices.

4 19. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA
5 are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code
6 §2699(c).).

7 **B. DEFENDANTS**

8 20. Defendant TITANIUM ALARM, LLC is believed to be a Utah corporation
9 operating within the State of California. Defendant’s corporate address is believed to be 10565
10 Civic Center Dr., Suite 160, Rancho Cucamonga, CA 91730. Upon information and belief,
11 Defendant employed Plaintiff and similarly situated persons as hourly employees within
12 California. Defendant has done and does business throughout the State of California.

13 21. The true names and capacities, whether individual, corporate, associate, or
14 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
15 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
16 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
17 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
18 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
19 capacities of the Defendants designated hereinafter as DOES when such identities become known.

20 22. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
21 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
22 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
23 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
24 employer and/or joint employer of Plaintiff and the Proposed Class Members.

25 23. Furthermore, Defendants acted in all respects as the employers or joint employers
26 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
27 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
28 engaged, thereby creating a common law employment relationship, with the Proposed Class.

1 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

2 **IV.**

3 **FACTUAL BACKGROUND**

4 24. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
5 classified as non-exempt employees by Defendant. Defendant hires employees who work as
6 hourly employees who are paid on an hourly basis and also earn commission pay.

7 25. Upon information and belief, Plaintiff and the Proposed Class are covered by
8 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
9 Code of Regs. § 11040).

10 26. On a regular and consistent basis, Plaintiff and the Proposed Class Members were
11 not paid at the proper rate of compensation. Plaintiff and Proposed Class Members were not
12 properly compensated for overtime at the appropriate rate of pay because Defendant failed to blend
13 commission pay into their regular rate of pay for the purposes of calculating the applicable
14 overtime rate during pay periods when the Proposed Class Member worked overtime and also
15 earned commission pay.

16 27. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid
17 timely at the conclusion of the pay period. Defendant's employees are issued their wages twelve
18 (12) days after the close of each weekly payroll period ends in violation of Labor Code §§ 204(d)
19 and 210.

20 28. Defendant willfully failed to pay wages and compensation, when Plaintiff and all
21 Proposed Class Members quit or were discharged. This failure was willful, without legal
22 justification, and interfered with Plaintiff's and Class Members' rights.

23 29. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

24 **V.**

25 **CLASS ACTION ALLEGATIONS**

26 30. Plaintiff brings this action on behalf of herself and all others similarly situated as a
27 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a
28 proposed class composed of and defined as follows:

1 All employees who are employed or have been employed by
2 TITANIUM ALARM, LLC, in the State of California who earned
3 commission pay and overtime in the same pay period since four (4)
4 years prior to the filing of this action to the present. ("Proposed
5 Class" or "Proposed Class Members")

6 31. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
7 amend or modify the class description with greater specificity, by division into subclasses, or by
8 limitation to particular issues.

9 32. This action has been brought and may properly be maintained as a class action
10 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
11 community of interest in the litigation and the Proposed Classes are easily ascertainable.

12 **A. NUMEROSITY**

13 33. The potential members of the Proposed Class as defined are so numerous that
14 joinder of all the members of the Proposed Class is impracticable. While the precise number of
15 proposed Class Members has not been determined at this time, Plaintiff is informed and believes
16 that Defendant currently employ, and during the relevant time periods employed over 50 members
17 of the Proposed Class.

18 34. Plaintiff alleges that Defendant's employment records would provide information
19 as to the number and location of all Proposed Class Members. Joinder of all members of the
20 Proposed Class is not practicable.

21 **B. COMMONALITY**

22 35. There are questions of law and fact common to the Proposed Class that predominate
23 over any questions affecting only individual Proposed Class Members. These common questions
24 of law and fact include, without limitation:

25 a. Whether Defendant failed to pay wages and/or overtime compensation as
26 required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;

27 b. Whether Defendant fail to timely pay wages to Plaintiff and the Proposed
28 Class during the course of employment, in violation of Labor Code § 204;

c. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay

1 compensation due and owing at the time that any Proposed Class Member's employment with
2 Defendant terminated;

3 d. Whether Defendant violated § 17200, *et seq.* of the Business & Professions
4 Code by engaging in the acts previously alleged; and

5 e. Whether Plaintiff and the members of the Proposed Class are entitled to
6 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

7 f. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
8 acts alleged herein.

9 **C. TYPICALITY**

10 36. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
11 all members of the Proposed Class sustained injuries and damages arising out of and caused by
12 Defendant's common course of conduct in violation of laws, regulations that have the force and
13 effect of law, and statutes as alleged herein.

14 **D. ADEQUACY OF REPRESENTATION**

15 37. Plaintiff will fairly and adequately represent and protect the interests of the
16 members of the proposed Class.

17 38. Counsel who represent Plaintiff and the Proposed Class are competent and
18 experienced in litigating large employment class actions.

19 **E. SUPERIORITY OF CLASS ACTION**

20 39. A class action is superior to other available means for the fair and efficient
21 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
22 practicable, and questions of law and fact common to the Proposed Class predominate over any
23 questions affecting only individual members of the Proposed Class. Each member of the Proposed
24 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
25 practice of failing to pay all wages due, and failing to pay all wages upon resignation or
26 termination.

27 40. Class action treatment will allow those similarly situated persons to litigate their
28 claims in the manner that is most efficient and economical for the parties and the judicial system.

1 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
2 action that would preclude its maintenance as a class action.

3 **VI.**

4 **FIRST CAUSE OF ACTION**

5 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

6 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

7 **LABOR CODE §§ 510, 1194, AND 1199**

8 41. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
9 reference all previous paragraphs.

10 42. Labor Code §§ 510, 1194 and 1199 require an employer to compensate its
11 employees at the rate of no less than one and one-half times the regular rate of pay for any work
12 in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.
13 California law also requires that any compensation, including commission pay, must be included
14 in the regular rate of pay.

15 43. Plaintiff and the Proposed Class were forced to work on a regular and consistent
16 basis without receiving compensation for all hours worked at the proper rate. Specifically, Plaintiff
17 and the Proposed Class were not paid at the proper overtime rate when they worked more than
18 eight (8) hours in one day or forty (40) hours in one week and also earned commission pay in the
19 same pay period because Defendant failed to blend the commission pay into the regular rate of pay
20 for the purposes of calculating the overtime rate.

21 44. By their policy of requiring Plaintiff and members of the Proposed Class to work
22 in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
23 compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully
24 violated the provisions of Labor Code §§ 510, 1194, and 1199.

25 45. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
26 Members have been deprived of wages and/or overtime in amounts to be determined at trial, and
27 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
28 costs.

1 **VII.**

2 **SECOND CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

4 **FAILURE TO TIMELY PAY WAGES PURSUANT TO LABOR CODE §§ 204 AND 210**

5 46. Plaintiff incorporates each and every allegation set forth in all of the foregoing
6 paragraphs as if fully set forth herein.

7 47. From January 1, 2020 and continuing to the present, Defendant has had a consistent
8 policy of failing to timely pay their California employees after the conclusion of each pay period
9 in compliance with Labor Code §§ 204 and 210.

10 48. Labor Code § 204(d) requires that employees paid on a weekly, biweekly, or
11 semimonthly basis be paid no later than seven (7) calendar days after the payroll period ends.

12 49. Defendant's California employees are issued their wages twelve (12) days after the
13 close of each payroll period.

14 50. As such, Defendant's California employees are issued their wages more than seven
15 (7) days following the close of the payroll period. Thus, Defendant's practice violates Labor Code
16 §§ 204.

17 51. Pursuant to Labor Code §210, Defendant is subject to a civil penalty of one hundred
18 dollars (\$100) for each failure to pay each employee for any initial violation and two hundred
19 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
20 withheld, for each subsequent violation, or any willful or intentional violation.

21 52. Plaintiff and the Proposed Class have been damaged in an amount according to
22 proof at the time of trial.

23 **VIII.**

24 **THIRD CAUSE OF ACTION**

25 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

26 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

27 53. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
28 reference all previous paragraphs.

61. California's wage and hour laws express fundamental public policies. Providing employees with proper wages and compensation are fundamental public policies of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and their employees from competitors who lower their costs by failing to comply with minimum labor standards.

62. Defendant has violated statutes and public policies as alleged herein. Through the conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and privileges guaranteed to all employees under law.

63. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in violation of § 17200, *et seq.* of the Business & Professions Code.

64. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise of reasonable care, should have known that the conduct was unlawful. As such it is a violation of § 17200, *et seq.* of the Business & Professions Code.

65. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and others similarly situated have been damaged in a sum as may be proven.

66. Unless restrained, Defendant will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendant, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and members of the proposed Class the money Defendant has unlawfully failed to pay.

///

1 **X.**

2 **FIFTH CAUSE OF ACTION**

3 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

4 67. Plaintiff, on behalf of herself and all aggrieved employees, realleges and
5 incorporates by reference all previous paragraphs.

6 68. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
7 seeks penalties under Labor Code §2699, et seq use of Defendant's violation of Labor Code §§
8 201, 202, 203, 204, 210, 510, 1194, 1199; Wage Order 4-2001; and California Code of
9 Regulations, Title 8, Section 11090, which call for civil penalties.

10 67. Additionally, Labor Code § 204(d) requires that employees paid on a weekly,
11 biweekly, or semimonthly basis be paid no later than seven (7) calendar days after the payroll
12 period ends. Defendants' California employees are paid after the seventh (7th) day following the
13 close of the payroll period in violation of these statutes. Plaintiff asserts these allegations pursuant
14 to PAGA on behalf of herself and aggrieved employees for violation of Labor Code §§204(d) and
15 210 as to the relevant period of the 2019 calendar year only.

16 68. For at least one (1) year prior to the date of the letter sent to the Labor and
17 Workforce Development Agency and Defendant giving notice of these PAGA claims and
18 continuing to the present, Defendant has violated Labor Code §§ 510, 1194, 1194.2, and 1199,
19 which require an employer to compensate its employees at the minimum wage rate for all hours
20 worked and at a rate of no less than one and one-half times the regular rate of pay for any work in
21 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.
22 California law also requires that any compensation, including commission pay, must be included
23 in the regular rate of pay for the purpose of determining the correct overtime rate. Here, Plaintiff
24 and other aggrieved employees were not properly compensated at the appropriate rate of pay
25 because Defendant failed to blend Plaintiff's and the aggrieved employees' commission pay into
26 the regular rate of pay for the purposes of calculating the overtime rate during pay periods that
27 aggrieved employees worked overtime and also earned commission pay.

28 69. Defendant has failed to pay Plaintiff and others a sum certain at the time of

1 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
2 sums for thirty (30) days thereafter.

3 69. For each such penalty, Plaintiff and the aggrieved employees are entitled to
4 penalties in an amount to be shown at trial, subject to the following formula:

5 a. \$100 for the initial violation per employee per pay period.

6 b. \$200 for each subsequent violation per employee per pay period.

7 70. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
8 twenty-five percent (25%) to the affected employees.

9 71. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
10 LWDA¹ and mailed a letter by certified mail to Defendant Titanium Alarm, LLC's entity address,
11 which is 10565 Civic Center Dr., Suite 160, Rancho Cucamonga, CA 91730, as proscribed by the
12 Code on March 31, 2020, describing Defendant's conduct in violation of Labor Code §§ 201, 202,
13 203, 204, 210, 510, 1194, 1199. (*see* Exhibit "1.")

14 72. Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt
15 of the notice (*see* Exhibit "2") and a signed certified green return receipt from Defendant
16 establishing that it also received Plaintiff's notice. (*see* Exhibit "3".)

17 73. As no letter evidencing the LWDA's intention to investigate was received by
18 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
19 action as though the LWDA had not chosen to investigate pursuant to Labor Code
20 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First
21 Amended Class and Representative Action Complaint immediately.

22 **RELIEF REQUESTED**

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

24 1. For compensatory damages in the amount of unpaid wages and/or overtime not paid
25 to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing of this
26

27 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/266>).

1 action to the present as may be proven;

2 2. For penalties pursuant to Labor Code §§204 and 210;

3 3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)
4 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
5 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
6 an aggregate penalty of four thousand dollars (\$4,000);

7 4. For penalties pursuant to Labor Code § 203 for all employees who were terminated
8 or resigned equal to their daily wage times thirty (30) days;

9 5. An award of prejudgment and post judgment interest;

10 6. An order enjoining Defendant and its agents, servants, and employees, and all
11 persons acting under, in concert with, or for it from failing to provide timely wages, providing
12 proper wages and/or overtime, and wages upon termination/resignation pursuant to Labor Code
13 §§ 201, 202, 203, 204, 210, 510, 1194, and 1199 and IWC 4-2001;

14 7. For restitution for unfair competition pursuant to Business & Professions Code
15 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

16 8. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
17 Code §§ 201, 202, 203, 204, 210, 510, 1194, 1199, and IWC 4-2001.

18 9. An award providing for payment of costs of suit;

19 10. An award of attorneys' fees; and

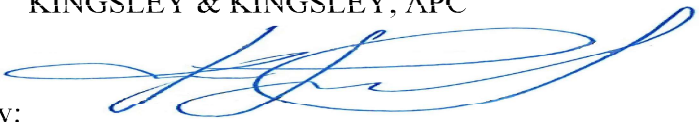
20 11. Such other and further relief as this Court may deem proper and just.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

23
24 DATED: July 22, 2020

KINGSLEY & KINGSLEY, APC

25
26 By: 

27 Kelsey M. Szamet
28 Attorneys for Plaintiff BRENDA GARCIA and the
Proposed Class

EXHIBIT “1”



March 31, 2020

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Titanium Alarm, LLC
10565 Civic Center Dr., Suite 160
Rancho Cucamonga, CA 91730
Certified Mail:7019 2280 0001 9316 0241

Re: BRENDIA GARCIA v. TITANIUM ALARM, LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents BRENDIA GARCIA (“Plaintiff”) and a proposed group of current and former employees working for TITANIUM ALARM, LLC (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All employees who are employed or have been employed by TITANIUM ALARM, LLC, in the State of California who earned commission pay and overtime in the same pay period since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Specifically, Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. California law also requires that any compensation, including commission pay, must be included in the regular rate of pay for the purpose of determining the correct overtime rate.

Here Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and other aggrieved employees were not properly compensated at the appropriate rate of pay because Defendant failed to blend Plaintiff’s and the aggrieved employees’ commission pay into the regular rate of pay for the purposes of calculating the overtime rate during pay periods that aggrieved employees worked overtime and also earned commission pay. As such, Plaintiff and all aggrieved employees were paid at an overtime rate less than the rate required under California law and Defendant has violated Labor Code §§510,

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

March 30, 2020

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1194, and 1199 with respect to Plaintiff and all aggrieved employees.

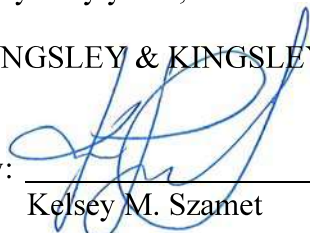
Defendant failed to pay Plaintiff and all aggrieved employees all wages for a biweekly payroll period within seven (7) calendar days following the close of the payroll period in violation of Labor Code §§ 204(d) and 210. Plaintiff and all aggrieved employees were paid on the twelfth (12th) day following the close of the payroll period in violation of these statutes. As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §§ 204(d) and 210 with respect to Plaintiff and all aggrieved employees. Plaintiff asserts these allegations pursuant to PAGA on behalf of herself and aggrieved employees' for violation of Labor Code §§ 204(d) and 210 as to the relevant period of the 2019 calendar year only.

Defendant failed to pay all wages due upon separation. Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant's employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code § 203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 204, 210, 510, 1194, and 1199 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/dm

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/266>
 2. United Employees Law Group, PC, 5500 Bolsa Avenue, Suite 201, Huntington Beach, CA 92649 via U.S. Regular Mail

EXHIBIT “2”



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.

Your Street Name, Number and Suite/Apt *

16133 Ventura Boulevard,

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California ▼

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Brenda Garcia

Plaintiff/Aggrieved Employee Occupation *

Hourly Employee

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select... ▼

Employer Name *

Titanium Alarm, LLC

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

Employer City

Employer State

Employer Zip/Postal Code

Employer Industry

Add additional defendants

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☐ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☒ Other

Child Labor – Specify Ages**Provide Details of Other Violation *****Other(Maybe Multiple)**

- ☐ Other Violation

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice. Filing fees should be paid by check, made out to LWDA, and sent by regular mail to:

Department of Industrial Relations
Accounting Unit
455 Golden Gate Ave, 10th Floor
San Francisco, CA 94102

The check should be accompanied by a cover letter with sufficient information to identify the notice, including the LWDA case number assigned upon submission of this form.

Parties requesting in forma pauperis status should complete a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form and submit it online with the notice below.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.
- ☒ I declare that I have or will pay the filing fees required by statute [Labor Code section 2699.3(a)(1) (B)] according to the instructions on the PAGA home page, unless I have claimed in forma pauperis by checking the box below.

Notice and Other Attachments**PAGA Claim Notice (must be a .pdf) ***

LWDA Letter – ...larm, LLC.pdf

Other Attachment – (if any) (must be a .pdf)

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

- ☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

Doug Menendez

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Tuesday, March 31, 2020 9:45 AM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

3/31/2020

LWDA Case No. LWDA-CM-781058-20

Law Firm : Kingsley & Kingsley

Plaintiff Name : Brenda Garcia

Employer: Titanium Alarm, LLC

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



March 31, 2020

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Titanium Alarm, LLC
10565 Civic Center Dr., Suite 160
Rancho Cucamonga, CA 91730
Certified Mail:7019 2280 0001 9316 0241

Re: BRENDIA GARCIA v. TITANIUM ALARM, LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents BRENDIA GARCIA (“Plaintiff”) and a proposed group of current and former employees working for TITANIUM ALARM, LLC (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All employees who are employed or have been employed by TITANIUM ALARM, LLC, in the State of California who earned commission pay and overtime in the same pay period since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Specifically, Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. California law also requires that any compensation, including commission pay, must be included in the regular rate of pay for the purpose of determining the correct overtime rate.

Here Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and other aggrieved employees were not properly compensated at the appropriate rate of pay because Defendant failed to blend Plaintiff’s and the aggrieved employees’ commission pay into the regular rate of pay for the purposes of calculating the overtime rate during pay periods that aggrieved employees worked overtime and also earned commission pay. As such, Plaintiff and all aggrieved employees were paid at an overtime rate less than the rate required under California law and Defendant has violated Labor Code §§510,

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

March 30, 2020

Page 2 of 2

1194, and 1199 with respect to Plaintiff and all aggrieved employees.

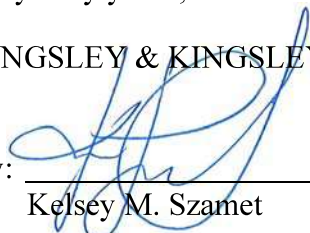
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Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/dm

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/266>
 2. United Employees Law Group, PC, 5500 Bolsa Avenue, Suite 201, Huntington Beach, CA 92649 via U.S. Regular Mail

EXHIBIT “3”

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:

Titanium LLC
10565 Civic Center Dr., Suite 160
Rancho Cucamonga, CA 91730



9590 9402 5739 0003 2786 95

2. Article Number (Transfer from service label)

7019 2280 0001 9316 0241

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X G.M. #3071 C19 ☐ Agent ☐ Addressee

B. Received by (Printed Name)

Titanium

C. Date of Delivery

9/3

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
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

USPS TRACKING #



9590 9402 5739 0003 2786 95

United States
Postal Service

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10



• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY
A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER - TITANIUM ALARM, LLC

