

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq., Cal. Bar No. 185123
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq., Cal. Bar No. 260264
kelsey@kingsleykingsley.com
DAVID KELEDJIAN, Esq., Cal. Bar No. 309135
davidk@kingsleykingsley.com
JESSICA ADLOUNI, Esq., Cal. Bar No. 328571
jessica@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Telephone: (818) 990-8300
Fax: (818) 990-2903

TOJARIEH LAW FIRM, PC
JOSEPH TOJARIEH, ESQ. (SBN-71075)
jft@tojariehlaw.com
10250 Constellation Blvd #100
Los Angeles, CA 90067
Tel: (310) 553-5533, Ext. 1001/Fax: (310) 553-5536

Attorneys for Plaintiff and the Proposed Classes

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ROBERTO GONZALEZ SANCHEZ, an
individual, on behalf of himself and others
similarly situated,

PLAINTIFF,

v.

OAKLEY, INC.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 30-2020-01139833-CU-OE-CXC

[Case Assigned for All Purposes to Judge
William Claster in Dept. CX-104]

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Violation of Labor Code § 226(a)
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 ROBERTO GONZALEZ SANCHEZ, an individual, on behalf of himself, and all
2 others similarly situated, and on behalf of the people of the State of California and as an “aggrieved
3 employee” under Labor Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter
4 “PAGA”) complains of Defendant OAKLEY, INC. (“Defendant”) and DOES 1 thru 50, each of
5 them, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382, and Labor Code §2699, et seq., on behalf of Plaintiff and two proposed classes composed of
10 and defined as follows:

- 11 a. All persons who are employed or have been employed as an hourly employee
12 by OAKLEY, INC., in a factory setting in the State of California who worked
13 one or more pay periods since four (4) years prior to the filing of this action to
14 the present. (“Proposed Security Check Class”).
15 b. All persons who are employed or have been employed as an hourly employee
16 by OAKLEY, INC., in the State of California who worked one or more pay
17 periods with overtime pay and shift differential pay since four (4) years prior to
18 the filing of this action to the present. (“Proposed Overtime
19 Class”)(collectively referred to herein as the “Proposed Classes”).

20 2. From at least four (4) years prior to the filing of this action and continuing to the
21 present, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff
22 and all Proposed Security Check Class members. Plaintiff and the Proposed Security Check Class
23 members were not properly compensated for wages/overtime at the appropriate rate of pay because
24 Defendant required Plaintiff and the Proposed Security Check Class members to wait in security
25 check lines when entering and leaving Defendant’s facility. This time spent waiting to undergo
26 and actually undergoing a security check was “clocked out” and as such, Plaintiff and the Proposed
27 Security Check Class were not compensated at the appropriate rate of pay for this time worked.

28 3. From at least four (4) years prior to the filing of this action and continuing to the
present, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff
and all Proposed Overtime Class members. Plaintiff and the Proposed Overtime Class were not
properly compensated at the appropriate rate of pay because Defendant failed to include shift

1 differential pay when calculating Plaintiff and all Proposed Overtime Class members' regular rate
2 in pay periods where they were paid a shift differential pay and were also paid overtime. As such,
3 Plaintiff and the Proposed Overtime Class were paid at a regular rate less than the rate required
4 under California law.

5 4. For at least one (1) year prior to the filing of this action continuing to the present,
6 Defendant has failed to provide accurate itemized wage statements in compliance with Labor Code
7 §226(a) to Plaintiff and all members of the Proposed Classes. Defendant failed to accurately show
8 total hours worked by the employee in violation of Labor Code § 226(a)(2) and failed to accurately
9 show the applicable hourly rates in effect for shift differential pay and overtime pay as required
10 and the corresponding number of hours worked at each hourly rate in violation of Labor Code §
11 226(a)(9).

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

15 6. Plaintiff, on behalf of himself and all members of the Proposed Classes brings this
16 action pursuant to Labor Code §§ 201, 202, 203, 226(a), 510, 1194, 1194.2, and 1199; Wage Order
17 1-2001; and California Code of Regulations, Title 8, Section 11010, seeking unpaid
18 wages/overtime, accurate itemized wage statements, other penalties, injunctive and other equitable
19 relief, and reasonable attorneys' fees and costs.

20 7. Plaintiff, on behalf of himself and all members of the Proposed Classes, pursuant
21 to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
22 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

23 8. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
24 Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to PAGA
25 and continuing to the present, Defendant has violated several Labor Code provisions, as detailed
26 below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved
27 employees presently or formerly employed by Defendant during the liability period as defined in
28 his PAGA notice letter (*see* Exhibit "1"), brings this representative action pursuant to Labor Code

§2699, et seq. seeking penalties for Defendant’s failure to pay wages and/or overtime, including minimum wages, provide accurate itemized wage statements, and pay all wages due upon termination.

II.

JURISDICTION AND VENUE

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

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

11. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California and does business within Orange County. The unlawful acts alleged herein have a direct effect on Plaintiff and all members of the Proposed Classes within the State of California and the county of Orange.

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

III.

PARTIES

A. PLAINTIFF

13. Plaintiff ROBERTO GONZALEZ SANCHEZ is a resident of California.

14. Plaintiff and all members of the Proposed Classes, were regularly required to:

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

2 b. Work without being provided accurate itemized wage statements as
3 required by California law.

4 15. Defendant willfully failed to compensate Plaintiff and the Proposed Security Check
5 Class and the Proposed Overtime Class for wages at the termination of their employment with
6 Defendant.

7 16. As a result of this conduct, Defendant has engaged in unfair competition and
8 unlawful business practices.

9 17. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA
10 are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code
11 §2699(c).)

12 **B. DEFENDANTS**

13 18. Defendant OAKLEY, INC. is believed to be a Washington corporation operating
14 within the State of California. Defendant’s corporate address is believed to be ONE ICON,
15 Foothill Ranch, CA 92610. Upon information and belief, Defendant employed Plaintiff and
16 similarly situated persons as hourly employees within California. Defendant has done and does
17 business throughout the State of California.

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

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

1 employer and/or joint employer of Plaintiff and the Proposed Classes.

2 21. Furthermore, Defendants acted in all respects as the employers or joint employers
3 of the Proposed Classes. Defendants, and each of them, exercised control over the wages, hours
4 or working conditions of the Proposed Classes, or suffered or permitted the Proposed Classes to
5 work, or engaged, thereby creating a common law employment relationship, with the Proposed
6 Classes. Therefore, Defendants, and each of them, employed or jointly employed the Proposed
7 Classes.

8 **IV.**

9 **FACTUAL BACKGROUND**

10 22. Plaintiff and the Proposed Classes are, and at all times pertinent hereto, have been
11 classified as non-exempt employees by Defendant. Defendant hires employees who work as
12 hourly employees who are paid on an hourly basis.

13 23. Upon information and belief, Plaintiff and the Proposed Classes are covered by
14 California Industrial Welfare Commission Occupational Wage Order No. 1-2001 (Title 8 Cal.
15 Code of Regs. § 11010).

16 24. On a regular and consistent basis, Defendant required Plaintiff and the Proposed
17 Security Check Class to wait in security check lines when entering and leaving Defendant's
18 facility. This time spent waiting to undergo and actually undergoing a security check was "clocked
19 out" and as such, Plaintiff and the Proposed Security Check Class were not compensated at the
20 appropriate rate of pay for this time worked.

21 25. On a regular and consistent basis, Plaintiff and the Proposed Overtime Class
22 members were not paid at the proper rate of compensation. Plaintiff and Proposed Overtime Class
23 members were not properly compensated at the correct overtime rate of pay for hours in excess of
24 eight (8) in one day and/or forty (40) hours in one week because Defendant failed to include shift
25 differential pay when calculating Plaintiff and all Proposed Overtime Class members' regular rate
26 for the purposes of determining the correct overtime rate in pay periods where they were paid shift
27 differential pay and were also paid overtime. As such, Plaintiff and the Proposed Overtime Class
28 were paid at a regular rate less than the rate required under California law.

26. On a regular and consistent basis, Defendant has failed to provide Plaintiff and the and all members of the Proposed Classes with itemized wage statements that comply with Labor Code § 226(a). Defendant failed to accurately show total hours worked by the employee in violation of Labor Code § 226(a)(2) and failed to accurately show the applicable hourly rates in effect for shift differential pay and overtime pay as required and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(9).

27. Defendant willfully failed to pay wages and compensation, when Plaintiff and all members of the Proposed Classes quit or were discharged. This failure was willful, without legal justification, and interfered with Plaintiff's and Proposed Overtime Class members' rights.

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

V.

CLASS ACTION ALLEGATIONS

29. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent two Proposed Classes composed of and defined as follows:

- a. All persons who are employed or have been employed as an hourly employee by OAKLEY, INC., in a factory setting in the State of California who worked one or more pay periods since four (4) years prior to the filing of this action to the present. (“Proposed Security Check Class”).
- b. All persons who are employed or have been employed as an hourly employee by OAKLEY, INC., in the State of California who worked one or more pay periods with overtime pay and shift differential pay since four (4) years prior to the filing of this action to the present. (“Proposed Overtime Class”)(collectively referred to herein as the “Proposed Classes”).

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

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

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1 **A. NUMEROSITY**

2 32. The potential members of the Proposed Classes as defined are so numerous that
3 joinder of all the members of the Proposed Classes is impracticable. While the precise number of
4 proposed class members has not been determined at this time, Plaintiff is informed and believes
5 that Defendant currently employ, and during the relevant time periods employed over 100
6 members of the Proposed Classes.

7 33. Plaintiff alleges that Defendant's employment records would provide information
8 as to the number and location of all members of the Proposed Classes. Joinder of all members of
9 the Proposed Classes is not practicable.

10 **B. COMMONALITY**

11 34. There are questions of law and fact common to the Proposed Classes that
12 predominate over any questions affecting only individual members of the Proposed Classes. These
13 common questions of law and fact include, without limitation:

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

16 b. Whether Defendant violated Labor Code § 226(a) and Wage Order 1-2001
17 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11010 by failing to
18 provide accurate and complete itemized wage statements to Plaintiff and the members of the
19 Proposed Wage Statement Class;

20 c. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
21 compensation due and owing at the time that any Proposed Overtime Class member's employment
22 with Defendant terminated;

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

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

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

1 **C. TYPICALITY**

2 35. The claims of Plaintiff are typical of the claims of the Proposed Classes. Plaintiff
3 and all members of the Proposed Classes sustained injuries and damages arising out of and caused
4 by Defendant's common course of conduct in violation of laws, regulations that have the force and
5 effect of law, and statutes as alleged herein.

6 **D. ADEQUACY OF REPRESENTATION**

7 36. Plaintiff will fairly and adequately represent and protect the interests of the
8 members of the Proposed Classes.

9 37. Counsel who represent Plaintiff and the Proposed Classes are competent and
10 experienced in litigating large employment class actions.

11 **E. SUPERIORITY OF CLASS ACTION**

12 38. A class action is superior to other available means for the fair and efficient
13 adjudication of this controversy. Individual joinder of all members of the Proposed Classes is not
14 practicable, and questions of law and fact common to the Proposed Classes predominate over any
15 questions affecting only individual members of the Proposed Classes. Each member of the
16 Proposed Classes has been damaged and is entitled to recovery by reason of Defendant's illegal
17 policy and/or practice of failing to pay all wages due, failing to provide accurate itemized wage
18 statements, and failing to pay all wages upon resignation or termination.

19 39. Class action treatment will allow those similarly situated persons to litigate their
20 claims in the manner that is most efficient and economical for the parties and the judicial system.
21 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
22 action that would preclude its maintenance as a class action.

23 ///

1 **VI.**

2 **FIRST CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED SECURITY CHECK**

4 **CLASS AND PROPOSED OVERTIME CLASS**

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

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

7 40. Plaintiff, on behalf of himself and the Proposed Security Check and Proposed
8 Overtime Classes, realleges and incorporates by reference all previous paragraphs.

9 41. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal
10 minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that
11 eight hours of labor constitutes a day's work and any work in excess of eight hours in one workday
12 and any work in excess of 40 hours in any one workweek must be compensated at the rate of no
13 less than one and one-half times the regular rate of pay for an employee. Any work in excess of
14 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay.
15 California law also requires that any compensation, including shift differential pay, must be
16 included in the regular rate of pay.

17 42. Plaintiff and the Proposed Security Check Class were forced to work on a regular
18 and consistent basis without receiving compensation for all hours worked at the appropriate rate
19 of pay. Defendant required Plaintiff and the Proposed Security Check Class to wait in security
20 check lines when entering and leaving Defendant's facility. This time spent waiting was "clocked
21 out" and as such, Plaintiff and the Proposed Security Check Class were not compensated at the
22 applicable rate of pay for all hours worked.

23 43. Plaintiff and the Proposed Overtime Class were not properly compensated at the
24 appropriate rate of pay because Defendant failed to include shift differential pay when calculating
25 Plaintiff and all Proposed Overtime Class members' regular rate for the purposes of determining
26 the correct overtime rate in pay periods where they were paid shift differential pay and were also
27 paid overtime. As such, Plaintiff and the Proposed Overtime Class were paid at a regular rate less
28 than the rate required under California law for all work in excess of eight (8) hours in a workday

1 and/or forty (40) hours in a workweek.

2 44. By their policy of requiring Plaintiff and members of the Proposed Security Check
3 Class to work off the clock and their failure to include shift differential compensation when
4 calculating the regular rate of pay for Plaintiff and members of the Proposed Overtime Class,
5 Defendant willfully violated the provisions of Labor Code §§ 510, 1194, 1194.2 and 1199.

6 45. As a result of the unlawful acts of Defendant, Plaintiff and members of the Proposed
7 Security Check and Overtime Classes have been deprived of wages and/or overtime in amounts to
8 be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties
9 thereon, attorneys' fees, and costs.

10 **VII.**

11 **SECOND CAUSE OF ACTION**

12 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED SECURITY CHECK**

13 **CLASS AND PROPOSED OVERTIME CLASS**

14 **VIOLATION OF LABOR CODE § 226(A)**

15 46. Plaintiff, on behalf of himself and the Proposed Security Check and Proposed
16 Overtime Classes, realleges and incorporates by reference all previous paragraphs.

17 47. Labor Code § 226(a) requires employers to issue an accurate itemized statement in
18 writing showing total hours worked by the employee and accurately show all applicable hourly
19 rates in effect during the pay period and the corresponding number of hours worked at each hourly
20 rate by the employee. (Labor Code §§ 226(a)(2), (9).)

21 48. IWC Wage Orders 1-2001(7), 1-2000(7), 1-1998(7) require Defendant to maintain
22 accurate records that include "total hours worked in the payroll period and applicable rates of pay"
23 for all hours worked. Defendant failed to keep such accurate records as required.

24 49. Plaintiff and the Proposed Security Check and Proposed Overtime Classes are
25 issued wage statements that do not accurately show total hours worked by the employee. In
26 addition, Plaintiff and the Proposed Wage Statement Class are issued wage statements that do not
27 accurately show the overtime and shift differential rates in effect during the pay period and the
28 corresponding number of hours worked at the accurate rates by Plaintiff and all members of the

1 Proposed Wage Statement Class.

2 50. Defendant's failure to provide accurate itemized wages statements according to
3 Labor Code § 226(a) was all done on a regular and consistent basis.

4 51. An employee suffering injury as a result of a knowing and intentional failure by an
5 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
6 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
7 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
8 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
9 reasonable attorneys' fees.

10 **VIII.**

11 **THIRD CAUSE OF ACTION**

12 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED SECURITY CHECK**

13 **CLASS AND PROPOSED OVERTIME CLASS**

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

15 52. Plaintiff, on behalf of himself and the Proposed Security Check and Proposed
16 Overtime Classes, realleges and incorporates by reference all previous paragraphs.

17 53. Numerous members of the Proposed Security Check Class and the Proposed
18 Overtime Class including the Plaintiff are no longer employed by Defendant. They were either
19 fired or quit Defendant's employ.

20 54. Defendant's failure to pay wages, as alleged above was willful in that Defendant
21 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Overtime
22 Class to penalties under Labor Code § 203, which provides that an employee's wages shall
23 continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

24 55. Defendant has failed to pay Plaintiff and others a sum certain at the time of
25 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
26 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
27 the Proposed Overtime Class are entitled to a penalty in the amount of Plaintiff's and the Proposed
28 Overtime Class members' daily wage multiplied by thirty (30) days.

1 **IX.**

2 **FOURTH CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED SECURITY CHECK**

4 **CLASS AND PROPOSED OVERTIME CLASS**

5 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

6 56. Plaintiff, on behalf of himself and the Proposed Security Check and Proposed
7 Overtime Classes, realleges and incorporates by reference all previous paragraphs.

8 57. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
9 on behalf of the general public, and on behalf of the Proposed Overtime Class, bring this claim
10 pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in
11 this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
12 public, and the Proposed Overtime Class. Plaintiff seeks to enforce important rights affecting the
13 public interest within the meaning of Code of Civil Procedure § 1021.5.

14 58. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
15 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
16 appropriate equitable relief.

17 59. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
18 practices.

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

26 61. Defendant has violated statutes and public policies as alleged herein. Through the
27 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
28 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair

1 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
2 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
3 guaranteed to all employees under law.

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

6 63. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
7 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
8 § 17200, *et seq.* of the Business & Professions Code.

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

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

18 **X.**

19 **FIFTH CAUSE OF ACTION**

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

21 66. Plaintiff, on behalf of himself and all aggrieved employees, reallege and
22 incorporated by reference all previous paragraphs.

23 67. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
24 seeks penalties under Labor Code §2699, *et seq.* because of Defendant's violation of Labor Code
25 §§ 201, 202, 203, 226(a), 510, 1194, 1194.2, and 1199; Wage Order 1-2001; and California Code
26 of Regulations, Title 8, Section 11010, which call for civil penalties.

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

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

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

3 69. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
4 twenty-five percent (25%) to the affected employees.

5 70. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
6 LWDA¹ and mailed a letter by certified mail to Defendant Oakley, Inc.'s entity address, which is
7 ONE ICON, Foothill Ranch, CA 92610, and entity mailing address, which is PO BOX 8509,
8 Mason, OH 45040, as proscribed by the Code on March 23, 2020, describing Defendant's conduct
9 in violation of Labor Code §§ 201, 202, 203, 226(a), 510, 1194, 1194.2 and 1199. (see Exhibit
10 "1.")

11 71. Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt
12 of the notice (see Exhibit "2") and a signed certified green return receipt, dated March 26, 2020,
13 from Defendant establishing that is also received Plaintiff's notice. (see Exhibit "3.")

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

19 **RELIEF REQUESTED**

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

21 1. For compensatory damages in the amount of unpaid wages and/or overtime not paid
22 to Plaintiff and each member of the Proposed Security Check Class and the Proposed Overtime
23 Class from at least four (4) years prior to the filing of this action to the present as may be proven;

24 2. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)
25 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
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 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
2 an aggregate penalty of four thousand dollars (\$4,000) to Plaintiff and each member of the
3 Proposed Security Check Class and the Proposed Overtime Class from at least one (1) year prior
4 to the filing of this action to the present as may be proven;

5 3. For penalties pursuant to Labor Code § 203 for each member of the Proposed
6 Security Check Class and the Proposed Overtime Class who was terminated or resigned equal to
7 their daily wage times thirty (30) days from at least three (3) years prior to the filing of this action
8 to the present as may be proven;

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

10 5. An order enjoining Defendant and its agents, servants, and employees, and all
11 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
12 overtime, accurate itemized wage statements, and wages upon termination/resignation pursuant to
13 Labor Code §§ 201, 202, 203, 226(a), 510, 1194, 1194.2, 1199, and IWC 1-2001;

14 6. 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 7. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
17 Code §§ 201, 202, 203, 226(a), 510, 1194, 1194.2, 1199, and IWC 1-2001.

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

19 9. An award of attorneys' fees; and

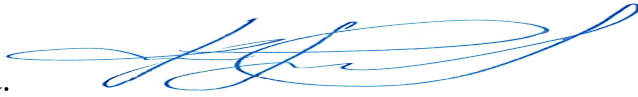
20 10. Such other and further relief as this Court may deem proper and just.

21 **DEMAND FOR JURY TRIAL**

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

23
24 DATED: May 27, 2020

KINGSLEY & KINGSLEY, APC

25
26 By: 

27 Kelsey M. Szamet
28 Attorneys for Plaintiff ROBERTO GONZALEZ
SANCHEZ and the Proposed Classes

EXHIBIT “1”

KINGSLEY & KINGSLEY

| L A W Y E R S |

March 23, 2020

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

Oakley, Inc.
ONE ICON
Foothill Ranch, CA 92610
Certified Mail Number: 7019 2280 0001 9316 0234

Oakley, Inc.
PO Box 8509
Mason, OH 45040
Certified Mail Number: 7019 2280 0001 9316 0234

Re: ROBERTO GONZALEZ SANCHEZ v. OAKLEY, INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents ROBERTO GONZALEZ SANCHEZ (“Plaintiff”) and two proposed groups of current and former employees working for OAKLEY, INC. (“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 himself and the State of California as well as on behalf of two groups of aggrieved employees defined as:

1. All persons who are employed or have been employed as an hourly employee by OAKLEY, INC., in a factory setting in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“Security Check Aggrieved Employees”).
2. All persons who are employed or have been employed as an hourly employee by OAKLEY, INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“Overtime Aggrieved Employees”).

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal minimum wage and the legal overtime

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

March 23, 2020

Page 2 of 3

compensation applicable. Labor Code § 510(a) states that eight hours of labor constitutes a day's work and any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek must be compensated at the rate of no less than one and one-half times the *regular rate of pay* for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the *regular rate of pay*. California law also requires that any compensation, including shift differential pay, must be included in the regular rate of pay.

Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all Security Check Aggrieved Employees. Defendant requires Plaintiff and the Security Check Aggrieved Employees to wait in security check lines when entering and leaving Defendant's facility. This time spent waiting and undergoing the security check was "clocked out" and as such, Plaintiff and the Security Check Aggrieved Employees were not compensated at the appropriate rate of pay for all hours worked.

Plaintiff and the Overtime Aggrieved Employees were not properly compensated at the appropriate rate of pay because Defendant failed to include Plaintiff's and the Overtime Aggrieved Employees' shift differential pay when calculating their regular rate in pay periods where they were paid shift differential pay and were also paid overtime. As such, Plaintiff and the Overtime Aggrieved Employees were paid at a regular rate less than the rate required under California law.

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a). Labor Code §226(a)(2) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Defendant issues Plaintiff and the Security Check Aggrieved Employees and Overtime Aggrieved Employees itemized wage statements that do not accurately show total hours worked by the employee in violation of Labor Code §226(a)(2) and failed to accurately show the applicable hourly rates in effect for shift differential pay and overtime pay as required and the corresponding number of hours worked at each hourly rate in violation of Labor Code §226(a)(9).

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 the Security Check Aggrieved Employees and Overtime 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 the Security Check Aggrieved Employees and Overtime Aggrieved Employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

March 23, 2020

Page **3** of **3**

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, 226(a), 510, 1194, 1194.2, 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. Toharih Law Firm, PC 10250 Constellation Blvd #100, Los Angeles, CA 90067 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

Your City *

Encino

Your Work Phone Number

8189908300

Your State *

California ▼

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Roberto Gonzalez Sanchez

Plaintiff/Aggrieved Employee Occupation *

Hourly Employee

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select... ▼

Employer Name *

Oakley, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

Employer City

One Icon

Foothill

Employer State

California ▼

Employer Zip/Postal Code

92610

Employer Industry

Please select... ▼

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

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 – Oakley, Inc..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.

Doug Menendez

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Monday, March 23, 2020 3:19 PM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

3/23/2020

LWDA Case No. LWDA-CM-779743-20
Law Firm : Kingsley & Kingsley
Plaintiff Name : Roberto Gonzalez Sanchez
Employer: Oakley, Inc.

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

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

KINGSLEY & KINGSLEY

| L A W Y E R S |

March 23, 2020

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

Oakley, Inc.
ONE ICON
Foothill Ranch, CA 92610
Certified Mail Number: 7019 2280 0001 9316 0234

Oakley, Inc.
PO Box 8509
Mason, OH 45040
Certified Mail Number: 7019 2280 0001 9316 0234

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LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

March 23, 2020

Page 2 of 3

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LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

March 23, 2020

Page **3** of **3**

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KINGSLEY & KINGSLEY, APC

By: _____

Kelsey M. Szamet

KMS/dm

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/266>
 2. Toharih Law Firm, PC 10250 Constellation Blvd #100, Los Angeles, CA 90067 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:

Oakley, Inc.
PO Box 8509
Mason, OH 45040



9590 9402 5739 0003 2788 17

2. Article Number (Transfer from service label)

7019 2280 0001 9316 0234

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

[Handwritten Signature]

☒ Agent

☐ Addressee

B. Received by (Printed Name)

F. Morales

C. Date of Delivery

3/20

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

☒ Return Receipt for Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

USPS TRACKING #



9590 9402 5739 0003 2788 17

**United States
Postal Service**

• 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

AKLEY, INC. — PAGA LETTER

5-241600



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