

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Michael Stern

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Attorneys for Plaintiff,
JUAN L. RODRIGUEZ on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JUAN L. RODRIGUEZ, on behalf of himself,
all aggrieved employees, and the State of CA
as a Private Attorneys General,

Plaintiffs,

vs.

CITIGUARD, INC., a California corporation,
and DOES 1-50, inclusive,

Defendants.

Case No.: **20STCV33127**

**REPRESENTATIVE ACTION
COMPLAINT**

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

Plaintiff JUAN L. RODRIGUEZ brings this PAGA representative action complaint on
behalf of himself, all aggrieved employees, and the State of California as a Private Attorneys
General, and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff JUAN L. RODRIGUEZ worked as a security guard for defendant CITIGUARD, INC., and DOES 1-50 (collectively “Defendants”). Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former employees of Defendants within one year of serving notice on the LWDA to the present are aggrieved employees.

2. Defendants failed to comply with California Labor Code requirements due to erroneous, willful and intentional employment practices and policies. Plaintiff brings this representative action on behalf of himself, all other similarly situated aggrieved employees, and the State of California, based upon the claims articulated below. Plaintiff provided notice of his claims pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as illustrated by the attached Exhibit. The LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice period required by §2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

3. Defendants have had a consistent policy and/or practice of: (1) failing to reimburse for required business expenses; (2) failing to pay wages, including overtime and penalty wages; (3) failing to provide rest breaks; (4) failing to provide uninterrupted meal breaks and second meal breaks; (5) failing to provide a day of rest in seven; (6) failing to timely pay all wages owed; and (7) failing to provide accurate itemized wage statements. Defendants are therefore liable for civil penalties under the Cal. Labor Code, including the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described more fully herein.

THE PARTIES

7. Plaintiff JUAN L. RODRIGUEZ is a resident of the State of California and was employed as an hourly, nonexempt employee of Defendants for approximately 3.5 years, until January of 2020.

8. Defendant CITIGUARD, INC. are doing business in California with the capacity to sue and to be sued in the county of Los Angeles, State of California.

9. Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names, Plaintiffs will amend this complaint when their true names and capabilities are ascertained.

10. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees of the representative class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

11. Venue is proper in this judicial district because Defendants conduct business in this county and each defendant has legal obligations to Plaintiff and many of the aggrieved employees in this case that arose in this county.

12. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

13. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California and Defendants are qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

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1 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

2 14. During the relevant time-period, Defendants committed various violations of the
3 California Labor Code as alleged below in more detail. Defendants enforced multiple policies
4 that violate state law, which are intended to increase profits to the detriment of aggrieved
5 employees.

6 15. Defendant CITIGUARD, INC., provides 24/7 armed or unarmed security guard
7 services. This representative action represents dozens of current and former aggrieved
8 employees.

9 16. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
10 to the present, Defendants engaged in unlawful employment practices that resulted in violations of
11 numerous Labor Code sections, as set forth more fully below.

12 17. Plaintiff and all current and former employees within one year of filing this action to
13 the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (*See* Labor
14 code §2699(c)).

15 18. Defendants, and each of them, have committed the following violations of the
16 California Labor Code:

17 **Failure to Reimburse for Required Business Expenses**

18 (Cal. Labor Code §§ 1198, 2802, 2699 *et seq.*)

19 19. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
20 incorporate said paragraphs herein by reference.

21 20. Defendants stationed Plaintiff as an overnight security guard at a Southern California
22 Costco. His regular shift was 8 p.m. – 4 a.m. and he was the only employee stationed during that
23 time. His work required that he patrol the parking lot and exterior of the Costco location
24 throughout his shift. He was required to conduct this patrol in his own vehicle, yet he was never
25 reimbursed for mileage or gas.

26 21. An employer's obligation to reimburse for mileage is undisputed. The California
27 Supreme Court expressly endorsed the extension of Cal. Labor Code §2802 to car mileage
28 expenses in *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 561. Plaintiff's

paystubs do not have any entries for reimbursement of any expenses. A screenshot of Plaintiff's 01/03/2020 paystub is below:

Earnings		rate	hours	this period	year to date	Important Notes
Regular		13.5000	80.00	1,080.00	1,080.00	BASIS OF PAY: HOURLY
Overtime		20.2500	43.00	870.75	870.75	
Dbl Time		13.5000	8.00	216.00	216.00	Additional Tax Withholding Information Taxable Marital Status: CA: Single Exemptions/Allowances: CA: 0
Gross Pay				\$2,166.75	2,166.75	
Deductions		Statutory				
		Federal Income Tax		-151.13	151.13	
		Social Security Tax		-134.34	134.34	
		Medicare Tax		-31.42	31.42	
		CA State Income Tax		-87.32	87.32	
		CA SUI/SDI Tax		-21.67	21.67	
Net Pay				\$1,740.87		
Checking 1				-1,740.87		
Net Check				\$0.00		

Your federal taxable wages this period are
\$2,166.75

22. As a result of these practices, Defendants have violated Cal. Labor Code §§1198 and 2802, as well as the Industrial Welfare Commission Wage Orders. Defendants are liable for civil penalties under PAGA pursuant to Cal. Labor Code §2699 *et seq.*

Failure to Pay Wages, Including Overtime and Penalty Wages

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 2699 *et seq.*)

23. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

24. Section 2(K) of Wage Order 4 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Defendants have been engaged in many unlawful employment practices which resulted in underpayment of wages each pay period.

25. Labor Code §510 and California IWC Wage Order 4 §3(A)(1) require employers to pay employees one-and-one-half (1 ½) times the regular hourly rate of all those hours worked in excess of eight (8) hours in one workday and in excess of forty (40) hours in one workweek, and

1 double-time for hours over 12 in one day and in excess of eight hours on the seventh consecutive
2 day.

3 26. Labor Code §1198 requires, “the maximum hours of work and the standard
4 conditions of labor fixed by the commission shall be the maximum hours of work and the
5 standard conditions of labor for employees.”

6 27. Plaintiff’s wage statements indicate that he is underpaid overtime hours worked,
7 listing the incorrect rate of pay for double time. This underpayment impacted Plaintiff and
8 aggrieved employees every pay period. Additionally, Plaintiff was required to work extended
9 hours over the holidays, up to 36 hours straight. He was not paid all overtime owed as required
10 by California law.

11 28. Defendants have a policy and practice of rounding time entries to scheduled start and
12 scheduled end times, regardless of when employees actually started working. As the wage
13 statement above illustrates, all hours worked are rounded to the scheduled start time at the start
14 of the hour. The California Supreme Court has rejected the *de minimis* argument frequently
15 echoed by employers, confirming that employees are entitled to payment for all hours (and
16 minutes) worked. Indeed, California law will permit a “rounding policy only ‘if the rounding
17 policy is fair and neutral on its face’ and ‘it is used in such a manner that it will not result, over a
18 period of time, in failure to compensate the employees properly for all the time they have
19 actually worked.’” (*Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 846 citing *See’s Candy*,
20 210 Cal.App.4th at p. 907.) The policy utilized by Defendants is neither fair nor neutral, as it
21 consistently shaved time from the hours worked by Plaintiff and aggrieved employees.

22 29. When employees like Plaintiff and others earning at or near minimum wage do not
23 receive payment for all hours worked, including time shaved from their timecards due to
24 employer rounding, the result is that they are earning less than the statutory minimum wages for
25 all hours worked in violation of Labor Code §1197. Defendants have been engaged in many
26 unlawful employment practices which resulted in underpayment for hours worked each pay
27 period, including overtime hours worked.

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36. During Plaintiff's employment, Defendants failed to maintain a complaint meal period policy and practice. Defendants failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes" Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal . . . period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Order provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

37. Plaintiff never received a meal break. As the only employee stationed for the overnight shift, he was never relieved of duties or permitted to leave his post. In addition to missing all required first meal periods, Plaintiff and aggrieved employees also never received a required second meal period when applicable, and they were not paid penalty wages for any missed meal periods.

38. Defendants failed to permit Plaintiff and aggrieved employees to take timely, off-duty meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7, 512, 1198 and Wage Order 4-2001(11). As a derivative claim, Plaintiff alleges that pay statements were inaccurate, failing to include all required meal period penalties calculated at the regular rate of pay, thus failing the requirements of Labor Code §226(a). As a result of these violations, Defendants are liable for civil penalties pursuant to Cal. Labor Code §§558 and 2698 *et seq.*

Day of Rest Violations

(Cal. Labor Code §§551, 552, 558, 1198, 2698 *et seq.*; Wage Order 4)

39. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

40. Cal. Labor Code §§551 and 552, and Wage Order 4 §3(F) require that employers provide employees with “one day’s rest in seven.” The California Supreme Court recently

1 confirmed that “[a] days of rest is guaranteed for each workweek.” (*Mendoza v. Nordstrom, Inc.*
2 (2017) 2 Cal. 5th 1074, 1078.) However, Plaintiff and aggrieved employees were frequently
3 scheduled to work and did work seven days in a workweek. Plaintiff worked seven days per
4 week every week. He did not take a single day off during a calendar month. In addition, during
5 holidays, he was asked to work even more, once asked to work 36 hours straight with no breaks,
6 no meal periods, just work.

7 41. This excessive scheduling is in clear violation of California’s day of rest laws.
8 Plaintiff will testify, and his personnel records reflect, that he was denied the required day of rest
9 mandated by the Labor Code. As a result of these violations, Defendants are liable for civil
10 penalties pursuant to Cal. Labor Code §§558 and 2698 *et seq.*

11 **Failure to Timely Pay All Wages Owed**

12 (Cal. Labor Code §§201, 202, and 2698 *et seq.*)

13 42. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
14 incorporate said paragraphs herein by reference.

15 43. Failure to Pay Wages Due Upon Termination. Plaintiff and aggrieved employees who
16 ended their employment with Defendants during the last year were entitled to promptly be paid
17 all lawful compensation, and other premiums, as required by Labor Code §§201-203.

18 44. Pursuant to Cal. Lab. Code §§201 and 202, if an employer discharges an employee,
19 the wages earned and unpaid at the time of discharge are due and payable immediately, and if an
20 employee quits his or her employment, his or her wages shall become due and payable no later
21 than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours’
22 notice of intention to quit, in which case the employee is entitled to wages at the time of quitting.

23 45. During the relevant time period, Defendants intentionally and willfully failed to pay
24 Plaintiff and aggrieved employees who are no longer employed by it all compensation due upon
25 termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §203,
26 Plaintiff and aggrieved employees are now also entitled to recover up to thirty (30) days of
27 wages due to Defendants’ “willful” failure to comply with the statutory requirements of §§201
28

1 and 202 of the Labor Code. Moreover, because Defendants violated §§201, 202, and 203,
2 Defendants are liable for civil penalties pursuant to Cal. Lab. Code §2698 *et seq.*

3 46. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to pay
4 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant
5 to Labor Code §204(a). Defendants failed to pay all wages earned to employees as a result of the
6 unlawful employment policies and practices discussed herein. As a result of these practices,
7 employees were underpaid for hours worked, including overtime and penalty wages, and this
8 underpayment resulted in a failure to pay all wages owed twice per month. Defendants are liable
9 for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

10 **Failure to Provide Accurate Itemized Wage Statements**

11 (Cal. Labor Code §§ 226, 226.3, 1174, 2698 *et seq.*)

12 47. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
13 incorporate said paragraphs herein by reference.

14 48. California Labor Code §226(a) provides that “[e]very employer shall, semimonthly or
15 at the time of each payment of wages, furnish each of his or her employees...an accurate itemized
16 statement in writing showing (1) gross wages earned, (2) total hours worked..., (3) the number of
17 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
18 (4) all deductions ... , (5) net wages earned, (6) the inclusive dates of period for which the
19 employee is paid, (7) the name of the employee and his or her social security number..., (8) the
20 name and address of the legal entity that is the employer, and (9) all applicable hourly rates in
21 effect during the pay period and the corresponding number of hours worked at each hourly rate
22 by the employee.”

23 49. Labor Code §1174 provides that “[e]very employer employing labor in this state shall
24 ... (c) [k]eep a record showing the names and addresses of all employees employed and the ages
25 of all minors [and] (d) [k]eep at a central location in the state or at the plants or establishments at
26 which employees are employed, payroll records showing the hours worked daily by and the
27 wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
28 employees employed at the respective plants or establishments. These records shall be kept in

1 accordance with rules established for this purpose by the commission, but in any case, shall be
2 kept on file for not less than two years.”

3 50. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
4 wage statements to Plaintiff and the aggrieved employees and maintain accurate records, in
5 accordance with Labor Code §§226(a) and 1174. The statements provided to Plaintiff and
6 aggrieved employees have not accurately reflected total hours worked (that is left blank), actual
7 gross wages earned, including overtime and meal/rest premiums, and reimbursement for business
8 expenses.

9 51. Such failures caused injury to Plaintiff and others, by, among other things, impeding
10 them from knowing the total hours worked and the amount of wages, overtime, and penalty
11 wages to which they are and were entitled. Defendants knowingly and intentionally failed to
12 itemize the gross wages earned, net wages earned, and total hours worked. Defendants are liable
13 for civil penalties pursuant to Labor Code §§226.3 and 2698 *et seq.*

14 52. Through this representative action, Plaintiff will advance the interests of hundreds of
15 current and former employees, such that joinder is impracticable. These current and former
16 employees can be readily be identified through a review of Defendants’ payroll records and the
17 records of the company that handles payroll for Defendants.

18 53. Plaintiff seeks to recover the PAGA civil penalties through a representative action
19 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
20 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

21 **FIRST CAUSE OF ACTION**

22 **Against All Defendants for Violation of the Private Attorneys General Act (“PAGA”)**
23 **(California Labor Code §2698 *et seq.*)**

24 54. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
25 incorporate said paragraphs herein by reference.

26 55. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by
27 Defendants during the applicable statutory period and suffered one or more of the Labor Code
28 violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all

1 other current and former aggrieved employees of Defendants, the civil penalties provided by
2 PAGA, plus reasonable attorneys' fees and costs.

3 56. Plaintiff seeks to recover the PAGA civil penalties through a representative action
4 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
5 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

6 57. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
7 Code provisions:

- 8 a. Failure to Reimburse for Required Business Expenses (Cal. Lab. Code §§1198,
9 2802, 2699 *et seq.*);
- 10 b. Failure to Pay Wages, Including Overtime and Penalty Wages (Cal. Lab. Code
11 §§218, 510, 558, 1194, 1197, 1198, 2699 *et seq.*);
- 12 c. Failure to Provide Rest Breaks (Cal. Lab. Code §§226, 226.7, 512, 558, 1198,
13 2698 *et seq.*; Wage Order 4);
- 14 d. Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks (Cal. Lab.
15 Code §§226, 226.7, 512, 558, 2699 *et seq.*; Wage Order 4);
- 16 e. Day of Rest Violations (Cal. Lab. Code §§551, 552, 558, 1198, 2698 *et seq.*;
17 Wage Order 4)
- 18 f. Failure to Timely Pay All Wages Owed (Cal. Lab. Code §§201, 202, 2698 *et*
19 *seq.*); and
- 20 g. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code §§ 226,
21 226.3, 1174, 2698 *et seq.*).

22 58. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
23 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
24 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
25 employee for each subsequent violation of Labor Code §226(a).

26 59. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
27 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial
28 violations for each underpaid employee for each pay period for which the employee was

1 underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid
2 employee for each pay period for which the employee was underpaid.

3 60. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
4 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
5 period, per aggrieved employee for subsequent violations for all Labor Code provisions for
6 which a civil penalty is not specifically provided.

7 61. Plaintiff and the other current and former employees of Defendants are aggrieved
8 employees. They were or are employed by Defendants, and each of them, and the violations
9 alleged herein were committed against them. Plaintiff brings this action on behalf of himself and
10 all other current and former aggrieved employees.

11 62. At the time of each violation, Defendants employed one or more employees.

12 63. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each of
13 them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be
14 determined at trial, pre-judgment interest, costs and attorneys' fees.

15 64. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
16 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
17 Workforce Development Agency ("LWDA") and served by certified mail upon Defendants,
18 Plaintiff through counsel notified the LWDA and Defendants of the specific Labor Code
19 provisions that Defendants have violated. The LWDA did not respond to Plaintiff's Notice
20 within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies.
21 Pursuant to Labor Code §2699.3, Plaintiff may now pursue his PAGA claims in this action on
22 behalf of aggrieved employees and the State of California.

23 **PRAYER FOR RELIEF**

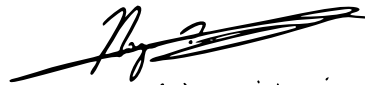
24 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays
25 for judgement against Defendants as follows:

26 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
27 determined at trial, but at least the jurisdictional amount of this Court;
28

2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;
3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable law;
4. Pre-judgement and post-judgement interest as provided by law; and
5. Such other and further relief that the Court may deem just and proper.

DATED: August 28, 2020

**KOUL LAW FIRM
LAW OFFICES OF SAHAG MAJARIAN II**



BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff JUAN L. RODRIGUEZ, and
all aggrieved employees

EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

June 24, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Citiguard, Inc.
9301 Corbin Ave., Unit 1800
Northridge, CA 91324

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Juan L. Rodriguez
Employer: Citiguard, Inc.

Dear Sir or Madam:

Claimant Juan L. Rodriguez has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM, and Sahag Majarian of Law Offices of Sahag Majarian II, to represent him, and all other aggrieved employees, for wage and hour claims against his former employer, Citiguard, Inc., <https://www.mysecurityguards.com/> (hereafter “Employer.”)

Employer provides 24/7 armed or unarmed security guard services. Claimant worked for Employer for approximately 3.5 years, until January of 2020. At the time of separation, he was working 7 days per week, averaging 60 hours per week, earning \$13.50 per hour.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Reimburse For Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Defendant stationed Claimant as an overnight security guard at a Southern California Costco. His regular shift was 8 pm – 4 am and he was the only employee stationed during that time. His work required that he patrol the parking lot and exterior of the Costco location throughout his shift. He was required to conduct this patrol in his own vehicle, yet he was never reimbursed for mileage or gas.

An employer's obligation to reimburse employees for mileage is undisputed. The California Supreme Court expressly endorsed the extension of §2802 to car mileage expenses in *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 561. Claimant's paystubs do not have any entries for reimbursement of any expenses. A screenshot of Claimant's 01/03/2020 paystub is below:

Earnings				year to date	Important Notes
Regular	rate 13.5000	hours 80.00	this period 1,080.00	1,080.00	BASIS OF PAY: HOURLY
Overtime	20.2500	43.00	870.75	870.75	
Dbl Time	13.5000	8.00	216.00	216.00	
Gross Pay			\$2,166.75	2,166.75	
Deductions					Additional Tax Withholding Information
Statutory					Taxable Marital Status:
Federal Income Tax				-151.13	CA: Single
Social Security Tax				-134.34	Exemptions/Allowances:
Medicare Tax				-31.42	CA: 0
CA State Income Tax				-87.32	
CA SUI/SDI Tax				-21.67	
Net Pay			\$1,740.87		
Checking 1			-1,740.87		
Net Check			\$0.00		

Your federal taxable wages this period are
\$2,166.75

As a result of these practices, Employers have violated Cal. Labor Code §§1198 and 2802, as well as the Industrial Welfare Commission Wage Orders. Employer is liable for civil penalties under PAGA pursuant to Cal. Labor Code §2699 *et seq.*

Failure to Pay Wages, Including Overtime and Penalty Wages

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 2699 *et seq.*)

Section 2(K) of Wage Order 4 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” Employer has been engaged in many unlawful employment practices which resulted in underpayment of wages each pay period.

Labor Code § 510 and California IWC Wage Order 4 §3(A)(1) require employers to pay employees one-and-one-half (1-1/2) times the regular hourly rate of all those hours worked in excess of eight (8) hours in one workday and in excess of forty (40) hours in one workweek, and double-time for hours over 12 in one day and in excess of eight hours on the seventh consecutive day.

Labor Code §1198 requires, “the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees.”

Claimant’s wage statements indicate that he is underpaid overtime hours worked, listing the incorrect rate of pay for double time. This underpayment impacted Claimant and aggrieved employees every pay period. Additionally, Claimant was required to work extended hours over the holidays, up to 36 hours straight. He was not paid all overtime owed as required by California law.

Employer has a policy and practice of rounding time entries to scheduled start and scheduled end times, regardless of when employees actually started working. As the wage statement above illustrates, all hours worked are rounded to the scheduled start time at the start of the hour. The California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a “rounding policy only ‘if the rounding policy is fair and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.’” (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from the hours worked by Claimant and aggrieved employees.

When employees like Claimant and aggrieved employees earning at or near minimum wage do not receive payment for all hours worked, including time shaved from their timecards due to employer rounding, the result is that they are earning less than the statutory minimum wages for all hours worked in violation of Labor Code §1197.

Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked

Failure to Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*; Wage Order 4

In his 3.5 years of employment, working 7 days per week, Claimant never received a rest break. There was also no place to take a break as required under Wage order 4-2001 (13), which requires employers to provide rest facilities. Claimant was not provided with rest facilities of any kind.

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512, 1198, and Wage Order 4-2001 12(A). Claimant and aggrieved employees frequently worked shifts of 8 hours or more, and they were denied required first and second rest periods. Critically, when required, they were denied all third rest periods.

Employer failed to pay claimants and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods.

As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required rest period penalties calculated at the regular rate of pay, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 2699 *et seq.*; Wage Order 4

Claimant never received a meal break. As the only employee stationed for the overnight shift, he was never relieved of duties or permitted to leave his post.

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is

relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

In addition to missing all required first meal periods, Claimant and aggrieved employees also never received a required second meal period when applicable, and they were not paid penalty wages for any missed meal periods.

Employer failed to permit Claimant and aggrieved employees to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7, 512, 1198, and Wage Order 4- 2001(11). As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include all required meal period penalties calculated at the regular rate of pay, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Day of Rest Violations

Labor Code §§551, 552, 558, 1198, 2698 et seq., Wage Order 4

Cal. Lab. Code §§551 and 552, and Wage Order 4 §3(F) require that employers provide employees with ‘one day’s rest in seven.’ The California Supreme Court recently confirmed that “[a] day of rest is guaranteed for each workweek.” (*Mendoza v. Nordstrom, Inc.* (2017) 2 Cal.5th 1074, 1078.) However, Claimant and aggrieved employees were frequently scheduled to work and did work seven days in a workweek. Claimant worked seven days per week every week. He didn’t take a single day off during a calendar month. In addition, during holidays, he was asked to work even more, once asked to work 36 hours straight with no breaks, no meal periods, just work.

This excessive scheduling is in clear violation of California’s day of rest laws. Claimant will testify, and his personnel records reflect, that he was denied the required day or rest mandated by the Labor Code. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202 and 2698 et seq.)

Failure to Pay Wages Due Upon Termination

Claimant and aggrieved employees who ended their employment with Employer during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by Labor Code §§201-203.

Pursuant to Cal. Lab. Code §§ 201 and 202, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if

an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of intention to quit, in which case the employee is entitled to wages at the time of quitting.

During the relevant time period, Employer intentionally and willfully failed to pay Claimant and aggrieved employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §203, Claimant and aggrieved employees are now also entitled to recover up to thirty (30) days of wages due to Employer's "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

Failure to Provide Accurate Itemized Wage Statements

(Cal. Labor Code §§ 226, 226.3, 1174, 2698 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226(a) and 1174. The statements provided to Claimant and aggrieved employees have not accurately reflected total hours worked (that is left blank), actual gross wages earned, including overtime and meal/rest premiums, and reimbursement for business expenses.

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages, overtime, and penalty wages to which they are and were entitled. Employer knowingly and intentionally failed to itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code §§ 226.3 and 2698 *et seq.*

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Koulloukian', with a long horizontal flourish extending to the right.

Nazo Koulloukian, Esq.

Sahag Majarian, II, Esq.

Attorney for Claimant

cc:

Sahag Majarian, Esq.

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