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8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA
11 UNLIMITED JURISDICTION
12

13 KENDRA CATO, on behalf of herself, all
14 others similarly situated, and the general
public,

15 *Plaintiff,*

16 vs.

17 ALLIED UNIVERSAL SECURITY
18 SERVICES, a Pennsylvania corporation; and
DOES 1 through 50, inclusive,

19 *Defendants.*
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ENDORSED
FILED
ALAMEDA COUNTY

MAY 11 2020

CLERK OF THE SUPERIOR COURT

BY: 

Deputy

Case No. **HG20062467**

CLASS ACTION

COMPLAINT

Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

REPRESENTATIVE ACTION COMPLAINT

Filed By Fax

1 Plaintiff KENDRA CATO (referred to as "Plaintiff"), on behalf of herself, all others
2 similarly situated, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendant ALLIED UNIVERSAL
5 SECURITY SERVICES, a Pennsylvania corporation and DOES 1 through 50, inclusive
6 (collectively referred to as "Defendants") for alleged violations of the Labor Code and Business and
7 Professions Code. As set forth below, Plaintiff alleges that Defendants have:

- 8 (1) failed to provide her and all other aggrieved employees with meal periods;
- 9 (2) failed to provide them with rest periods;
- 10 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 11 (4) failed to pay them premium wages for missed meal and/or rest periods at the
12 regular rate of pay;
- 13 (5) failed to pay them at least minimum wage for all hours worked;
- 14 (6) failed to pay them overtime wages at the correct rate;
- 15 (7) failed to pay them overtime and/or double time wages by failing to include all
16 applicable remuneration in calculating the regular rate of pay;
- 17 (8) failed to reimburse them for all necessary business expenses;
- 18
- 19 (9) failed to pay them double time wages at the correct rate;
- 20 (10) failed to provide them with accurate written wage statements; and
- 21 (11) failed to pay them all of their final wages following separation of
22 employment.

23 Based on these alleged Labor Code violations, Plaintiff now brings this class action to
24 recover unpaid wages, restitution and related relief on behalf of herself, all others similarly
25 situated, and the general public.

26 **JURISDICTION AND VENUE**

27 2. This Court has subject matter jurisdiction to hear this case because the monetary
28 damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal

jurisdiction of the Superior Court of the State of California.

3. Venue is proper in the County of Alameda pursuant to Code of Civil Procedure sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices, transacts business and/or has an agent therein.

4. Venue is proper in Alameda County because Defendants' principal place of business is in Ohio, is incorporated under the laws of Delaware, does business in Santa Clara County, and has not registered a California place of business with the California Secretary of State. As such, venue is proper in any county in California.

PARTIES

5. Plaintiff KENDRA CATO is, and at all relevant times mentioned herein, an individual residing in the State of California.

6. Plaintiff is informed and believes, and thereupon alleges that Defendant ALLIED UNIVERSAL SECURITY SERVICES is, and at all relevant times mentioned herein, a Pennsylvania corporation doing business in the State of California.

7. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants when ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously named defendants are responsible in some manner for the occurrences, acts and omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE defendants when ascertained.

8. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some or all of the defendants were the representatives, agents, employees, partners, directors, associates, joint venturers, principals or co-participants of some or all of the other defendants, and in doing the things alleged herein, were acting within the course and scope of such relationship and with the full knowledge, consent and ratification by such other defendants.

9. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and conspired with one another, and aided and abetted one another to accomplish the occurrences, acts and omissions alleged herein.

GENERAL ALLEGATIONS

10. Plaintiff worked for Defendants as a non-exempt, hourly employee from approximately August 2018 through June 14, 2019.

Late Meal Periods

11. Plaintiff and the aggrieved employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Not scheduling a meal period as a part of each work shift (2) Defendants policy of not allowing employees to take their meal period until they are released by their supervisors; (3) understaffing in a manner that made it difficult to provide employees with a timely meal period as there always had to be somebody on duty at assigned posts; and (4) an overall work atmosphere did not give any sort of priority towards ensuring employees were able to take their meal periods in a timely manner.

12. Specifically, Plaintiff and the aggrieved employees were not able to take their meal periods until they were released to do so by their supervisors and relief was provided to watch their guard posts. The timing of the meal periods were exceedingly sporadic with Plaintiff and the putative class not receiving their meal period until over six hours of work at least once per week.

13. As a result of Defendants' policy, Plaintiff and the aggrieved employees were regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours worked due to complying with Defendants' policies that required Plaintiff and the aggrieved employees to work until their supervisors released them for their meal periods.

Shortened Meal Periods

14. Plaintiff and the aggrieved employees were not provided uninterrupted duty-free meal periods of at least 30 (thirty) minutes for each five hour work period due to Defendants policy of subjecting the time spent on meal periods to forfeiture. Specifically, in the event the

1 Plaintiff and the aggrieved employees returned to their posts late after their rest period before
2 their meal period, Defendants would dock fifteen minutes from their meal period when it was
3 time for them to take it. As a result, Plaintiff and the aggrieved employees would frequently get
4 meal periods of only fifteen minutes as a punishment for their returning to their posts even at little
5 as thirty seconds late from their rest periods.

6 15. As a result of Defendants' policy, Plaintiff and the aggrieved employees were
7 regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five
8 (5) hours worked due to Defendants policy of subjecting employees meal periods to unlawful
9 forfeiture.

10 **Rest Periods**

11 16. Plaintiff and the aggrieved employees were not provided with rest periods of at
12 least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
13 Defendants policy of combining both rest periods into one 20 (twenty) minute rest break to be
14 taken before their meal periods; (2) understaffing issues that made it impossible for employees to
15 take rest periods unless they were provided with someone to relieve them from their posts; (3)
16 Defendants policy that the guard posts were to be occupied by employees at all times; and (4)
17 Defendants policy that employees were not allowed to leave their posts unless another employee
18 relieved them (5) no formal written rest period policy that encouraged employees to take their rest
19 periods.

20 17. Plaintiff and the aggrieved employees were provided a single 20 (twenty) minute rest
21 period some time between the second and third hour of their shifts. Outside of this twenty minute
22 rest period, Plaintiff and the aggrieved employees were not permitted to take any duty free rest
23 period for the remainder of their shifts. Consequently, Plaintiff and the aggrieved employees would
24 be made to work at their posts without any relief, even to use the restroom, after they had taken
25 their meal period. Plaintiff and the aggrieved employees at no point ever received a rest period after
26 their meal period.

27 18. As a result of Defendants' policy, Plaintiff and the aggrieved employees were
28 regularly not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4)

1 hours worked due to complying with Defendants' rest period policy not allowing for any rest
2 breaks for employees after their meal periods.

3 **Regular Rate of Pay**

4 19. The regular rate of pay under California law includes all remuneration for
5 employment paid to, on behalf of, the employee. This requirement includes, but is not limited, to,
6 meal and rest break premiums, commissions, and non-discretionary bonuses.

7 20. During the applicable limitations period, Defendants violated the rights of
8 Plaintiff and the aggrieved employees under the above-referenced Labor Code sections by
9 failing to pay them overtime wages for all overtime hours worked in violation of Labor Code §§
10 510, 1194, and 1198 as a result of not correctly calculating their regular rate of pay to include all
11 applicable remuneration, including, but not limited to meal and rest break premiums.

12 **Expense Reimbursement**

13 21. Plaintiff and the aggrieved employees were required to utilize their own personal
14 tools to perform their job duties. Specifically, Plaintiff and the aggrieved employees were
15 required to purchase all black shoes and a security guard belt at their own expense as a
16 necessary precondition of employment.

17 22. Plaintiff and the aggrieved employees were not reimbursed for business expenses
18 incurred in purchasing the required shoes and belts.

19 23. Defendants failed to reimburse Plaintiff and the aggrieved employees for such
20 necessary business expenses incurred by them.

21 **Wage Statements**

22 24. Plaintiff and the aggrieved employees were not provided with accurate wage
23 statements as mandated by law pursuant to Labor Code section 226.

24 25. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
25 earned" were not accurately reflected in that: all hours worked, including overtime and meal/rest
26 break premiums, were not included.

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26. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours worked by the employee" were not accurately reflected in that: all hours worked, including overtime and meal/rest break premiums, were not included.

27. Defendants failed to comply with Labor Code section 226(a)(5) as "net wages earned" were not accurately reflected in that: all hours worked, including overtime and meal/rest break premiums, were not included.

28. Defendants failed to comply with Labor Code section 226(a)(9) as "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee" were not accurately reflected in that: all hours worked, including overtime and meal/rest break premiums, were not included."

Off-The-Clock/Overtime

29. Plaintiff and the aggrieved employees routinely performed off-the-clock work that should have amounted to overtime pay and were at no point compensated for any of this time. Specifically, Plaintiff and the aggrieved employees were told that they were not allowed to work overtime and at the same time were told that they were not allowed to leave their posts until relief arrived for them. Plaintiff and the aggrieved employees would regularly have to wait anywhere from twenty minutes to an hour after they had clocked out on any given shift for their relief to arrive. Due to both scheduling errors on the Defendants part and the failure to arrive on time for scheduled shifts on other employees part, Plaintiff and the aggrieved employees would clock out at the end of their shifts and remain on duty waiting for their relief to arrive.

30. Plaintiff and the aggrieved employees would be made to clock out and continue working while waiting to be relieved of duties at least once and as many as three times per week. Defendants at no point ever compensated Plaintiff and the aggrieved employees for time spent working off-the-clock waiting to be relieved even though they were aware of the practice and either encouraged or otherwise permitted them to do so.

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1 **FIRST CAUSE OF ACTION**

2 **CIVIL PENALTIES**

3 **(Lab. Code §§ 2698, *et seq.*)**

4 31. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
5 herein.

6 32. During the applicable limitations period, Defendants have violated Labor Code §§
7 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197, 1198, and 2802.

8 33. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, of behalf of
9 himself and other current and former employees, to bring a representative civil action to recover
10 civil penalties pursuant to the procedures specified in Labor Code section 2699.3 that may, but need
11 not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

12 34. Plaintiff, as a former employee against whom Defendants committed one or more of
13 the alleged Labor Code violations during the applicable limitations period, is an aggrieved
14 employee within the meaning of Labor Code section 2699(c).

15 35. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
16 section 2699.3.

17 36. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
18 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7,
19 510, 512, 1194, 1197, 1198, and 2802:

20 A. For violations of Labor Code sections 201, 202, 203, 212, 226.7, 1194, and
21 1198, \$100 for each employee per pay period for each initial violation and
22 \$200 for each employee per pay period for each subsequent violation
23 (penalties set by Labor Code section 2699(f)(2));

24 B. For violations of Labor Code section 203, a penalty in an amount not
25 exceeding 30 days pay as waiting time (penalties set by Labor Code section
26 256).

27 C. For violations of Labor Code section 204, \$100 for each employee for each
28 initial violation that was neither willful nor intentional, \$200 for each

1 employee, plus 25% of the amount unlawfully withheld from each employee,
2 for each initial violation that was either willful or intentional, and \$200 for
3 each employee, plus 25% of the amount unlawfully withheld from each
4 employee, for each subsequent violation, regardless of whether the
5 subsequent violation was either willful or intentional (penalties set by Labor
6 Code section 210);

7 D. For violations of Labor Code section 223, \$100 for each employee for each
8 initial violation that was neither willful nor intentional, \$200 for each
9 employee, plus 25% of the amount unlawfully withheld from each employee,
10 for each initial violation that was either willful or intentional, and \$200 for
11 each employee, plus 25% of the amount unlawfully withheld from each
12 employee, for each subsequent violation, regardless of whether the
13 subsequent violation was either willful or intentional (penalties set by Labor
14 Code section 225.5);

15 E. For violations of Labor Code section 226(a), if this action is deemed to be an
16 initial citation, \$250 for each employee for each violation. Alternatively, if an
17 initial citation or its equivalent occurred before the filing of this action,
18 \$1,000 for each employee for each violation (penalties set by Labor Code
19 section 226.3);

20 F. For violations of Labor Code sections 510 and 512, \$50 for each employee
21 for each initial pay period for which the employee was underpaid, and \$100
22 for each employee for each subsequent pay period for which the employee
23 was underpaid (penalties set by Labor Code section 558); and

24 G. For violations of Labor Code section 1197, \$100 for each aggrieved
25 employee for each initial violation of Labor Code section 1197 that was
26 intentional, and \$250 for each aggrieved employee per pay period for each
27 subsequent violation of Labor Code section 1197, regardless of whether the
28 initial violation was intentional (penalties set by Labor Code section 1197.1).

1 37. Pursuant to Labor Code section 2699(g), Plaintiff seeks awards of reasonable costs
2 and attorneys' fees in connection with his claims for civil penalties.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general
5 public, prays for relief and judgment against Defendants as follows:

- 6 A. Pre-judgment interest;
7 B. Statutory penalties;
8 C. Civil penalties;
9 D. Costs of suit;
10 E. Reasonable attorneys' fees; and
11 F. Such other relief as the Court deems just and proper.

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff, on behalf of herself, all others similarly situated, and the general public, hereby
14 demands a jury trial on all issues so triable.

15
16 DATED: April 24, 2020

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22 Attorneys for Plaintiff
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