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MARIO ABASOLO

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

JUL 22 2021

BY 
VERONICA GONZALEZ, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

MARIO ABASOLO

Plaintiff,

v.

LEAD STAR SECURITY, INC., and DOES 1
through 100, Inclusive,

Defendants.

Case No.:

CIV SB 2121281

COMPLAINT FOR:

1. Failure to Pay Minimum Wages and Overtime (Labor Code §§ 510, 1194; IWC Wage Order 9);
2. Reimbursement of Employment Expenses (Labor Code § 2802);
3. Unlawful Deductions from Wages (Labor Code §§ 221, 223, 224; Wage Order 9);
4. Failure to Provide Meal Periods and to Authorize and Permit Rest Periods (Labor Code § 226.7, 512; Wage Order 9);
5. Failure to Furnish Accurate Wage Statements, and to Otherwise Properly Maintain Employment Records (Labor Code §§ 226, 226.3, 1174; Wage Order 9);
6. Waiting Time Penalties (Labor Code §§ 201-203, 208);
7. Failure to Provide Paid Sick Days;
8. Willful Misclassification; and
9. Violation of the Private Attorney General Act (Lab. Code sections 2698, et seq.)

1 Plaintiff, MARIO ABASOLO, individually and in his representative capacity, alleges as
2 follows:

3 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

4 1. Plaintiff now, and at all relevant times, resides in the City of Colton, County of San
5 Bernardino, State of California.

6 2. At all times alleged herein, plaintiff was employed by defendants LEAD STAR
7 SECURITY, INC., and Does 1 through 50, and each of them, in the City of San Bernardino,
8 County of San Bernardino, State of California, and the defendants' conduct hereinafter alleged
9 occurred in said County and State.

10 3. Plaintiff is informed and believes, and on that basis alleges, that defendants LEAD
11 STAR SECURITY, INC., and Does 1 through 50, inclusive, and each of them, are corporations
12 and/or other business entities form unknown conducting business in the State of California, San
13 Bernardino County.

14 4. Plaintiff is informed and believes, and on that basis alleges, that defendants Does
15 51 through 100, inclusive, and each of them, were at all relevant times individuals residing and
16 working in San Bernardino County, State of California.

17 5. The true names and capacities of defendants named as Does 1 through Doe 100,
18 inclusive, are presently unknown to plaintiff. Plaintiff will amend this complaint, setting forth the
19 true names and capacities of these fictitious defendants when they are ascertained. Plaintiff is
20 informed and believes, and on that basis alleges, that each of the fictitious defendants has
21 participated in the acts alleged in this complaint to have been done by the named defendants.

22 6. Plaintiff is informed and believes, and on that basis alleges that, at all relevant
23 times, each of defendants, whether named or fictitious, was the agent or employee of each of the
24 other defendants, and in doing the things alleged to have been done in the complaint, acted within
25 the scope of such agency or employment, or ratified the acts of the other. Moreover, at all relevant
26 times there existed such a unity of interest and ownership between the corporation and its equitable
27 owner that no separation actually existed and an inequitable result if the acts in question are treated
28

1 as those of the corporation alone.

2 7. At all relevant times, defendants, and each of them, directly controlled and
3 supervised the nature of plaintiff's work as well as the work of other similarly situated and
4 aggrieved employees (past and present security guards) for defendants and each of them. Plaintiff
5 and the other security guards were required to incur various expenses in discharge of their work
6 duties, including, but not limited to uniforms. The security guards are also required to wear badges.
7 All of the security guards were required to take part in training provided by defendants, and each
8 of them. Moreover, they all had defined areas where they were to work and could only service
9 designated areas. Also, defendants and each of them sent text messages to plaintiff and other
10 security guards setting forth their specific work schedules and locations to work. As such, the
11 security guards were not permitted to make their own work schedules, nor come and go as they
12 pleased.

13 8. In addition, defendants, and each of them, monitored plaintiff and other security
14 guards by providing instruction and criticism as to the details of their work. Plaintiff and other
15 aggrieved security guards do not receive overtime pay despite, at times, working for 16 or more
16 hours in a day. They similarly did not and do not receive meal or rest breaks.

17 9. Despite the foregoing blatant examples of the control exercised by defendants and
18 each of them over plaintiff and the other security guards (which are not intended to be all-inclusive
19 and will be subject to discovery), defendants and each of them, have misclassified plaintiff and
20 other similarly aggrieved employees as described herein as independent contractors and not
21 employees. Such misclassification is unlawful particularly under the California Supreme Court's
22 adopted worker-friendly standard in *Dynamex Operations West v. Superior Court* (2018) 4 Cal.5th
23 903, 916-917.

24 10. Plaintiff has complied with and exhausted all administrative remedies by filing a
25 complaint with the PAGA (Private Attorney General's Act of 2004) Administrator (Case No.:
26 LWDA-CM-830280-21) and also his employers, defendants, and each of them. Plaintiff also
27 submitted the \$75 filing fee to the LWDA. A true and correct copy of plaintiff's letter, dated March
28

23, 2021, is attached herewith as Exhibit 1.

**FIRST CAUSE OF ACTION FOR FAILURE TO PAY MINIMUM WAGES AND
OVERTIME (LABOR CODE §§ 510, 1194; IWC WAGE ORDER 9)
AGAINST ALL DEFENDANTS**

11. Plaintiff incorporates each and every other allegation of this Complaint as though fully set forth herein.

12 By misclassifying plaintiff and other aggrieved employees as independent contractors, defendants, and each of them, have required them to work without receiving minimum wages and overtime. An employee receiving less than the legal minimum wage or legal overtime compensation "is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." (Lab.C. § 1194.).

**SECOND CAUSE OF ACTION FOR REIMBURSEMENT OF EMPLOYMENT
EXPENSES (LABOR CODE § 2802) AGAINST ALL DEFENDANTS**

13. Plaintiff incorporates each and every other allegation of this Complaint as though fully set forth herein.

14. Defendants' misclassification has also resulted in them having failed to reimburse plaintiff and other aggrieved employees for all employment-related expenses which, as set forth above, its employees were necessarily required to incur. For instance, if an employer requires that an employee wear a uniform, the employer must pay the cost of the uniform. (Labor Code § 2802, Industrial Welfare Commission Orders, Section 9.) The term "uniform" includes wearing apparel and accessories of distinctive design and color. Under Labor Code § 2802, an employer must indemnify its employees "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties ..." (Lab.C. § 2802(a).)

15. The elements of a § 2802(a) cause of action are: "(1) the employee made

1 expenditures or incurred losses; (2) the expenditures or losses were incurred in direct consequence
2 of the employee's discharge of his or her duties, or obedience to the directions of the employer;
3 and (3) the expenditures or losses were necessary." (*Cassady v. Morgan, Lewis & Bockius LLP*
4 (2006) 145 Cal.App.4th 220, 230; *USS-POSCO Industries v. Case* (2016) 244 Cal.App.4th 197,
5 205.)

6 16. The purpose of §2802 is "to prevent employers from passing their operating
7 expenses on to their employees." (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cl.4th 554,
8 562; *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 11 37, 1144.) Defendants,
9 and each of them, required plaintiff and other similarly aggrieved employees to incur business-
10 related expenses and failed to reimburse them for such expenses.

11
12 **THIRD CAUSE OF ACTION FOR UNLAWFUL DEDUCTIONS FROM WAGES**

13 **(LABOR CODE §§ 221, 223, 224; WAGE ORDER 9)**

14 **AGAINST ALL DEFENDANTS**

15 17. Plaintiff incorporates each and every other allegation of this Complaint as though
16 fully set forth herein.

17 18. Having misclassified plaintiff and other similarly aggrieved employees, defendants,
18 and each of them, made unlawful deductions from wages, such as, but not limited to, airport and
19 dispatch fees. Defendants' unlawful deductions from wages has even resulted in the security
20 guards, at times, owing defendants, and each of them, money in lieu of a proper paycheck.

21
22 **FOURTH CAUSE OF ACTION FOR FAILURE TO PROVIDE MEAL PERIODS AND**

23 **TO AUTHORIZE AND PERMIT REST PERIODS (LABOR CODE § § 226.7, 512;**

24 **WAGE ORDER 9) AGAINST ALL DEFENDANTS**

25 19. Plaintiff incorporates each and every other allegation of this Complaint as though
26 fully set forth herein.

27 20. Under California law (which is much more generous to employees than federal
28

1 law), if an employee is a non-exempt worker (such as is the case here), he/she is entitled to meal
2 and rest breaks as follows: a 30-minute meal break if the employee worked more than 5 hours in
3 a workday, and 10 minutes breaks for every 4 hours he/she works. Plaintiff and other aggrieved
4 employees are entitled to one extra hour of regular pay for each day on which a meal break
5 violation occurred, and another extra hour of regular pay for each day on which a rest break
6 violation occurred. Defendants and each of them failed to provide complaint meal and rest periods
7 to plaintiff and other aggrieved employees.

8
9 **FIFTH CAUSE OF ACTION FOR FAILURE TO FURNISH ACCURATE WAGE**
10 **STATEMENTS, AND/OR PROPERLY MAINTAIN EMPLOYMENT RECORDS**
11 **(LABOR CODE §§ 226, 226.3, 1174; WAGE ORDER 9)**

12 **AGAINST ALL DEFENDANTS**

13 21. Plaintiff incorporates each and every other allegation of this Complaint as though
14 fully set forth herein.

15 22. Defendants' misclassification of aggrieved employees' employment status has also
16 resulted in a violation of their obligation to provide accurate wage statements and other
17 employment records.

18 23. Among other recordkeeping requirements under state law, employers must keep
19 records of the names and addresses of all employees, the ages of any minors working, and daily
20 hours worked, and wages paid to all employees. (Lab.C. § § 226, 1174.) Such records must be
21 maintained for a minimum of two years-three years for records showing wage deductions-and
22 employers must allow inspection by the employee and the DLSE. (Lab.C. § § 226(a), 1174(d).)

23 24. The employer must provide an employee or former employee copies of his or her
24 payroll records within 21 days after a request or permit the employee to inspect those records.
25 (Failure to comply results in a \$750 fine, and the employee may sue to obtain the information and
26 recover costs and fees.) (Lab.C. § 226(c), (f) & (g).)

27 25. The following information must be furnished on the pay stub when wages are paid:
28

1 employer's name and address (and the name and address of the legal entity that secured the services
2 of the employer if the employer is a farm labor contractor); employee's name and the last four
3 digits of the employee's Social Security number; inclusive dates for which the employee is being
4 paid; gross wages earned; the applicable hourly rate and total hours worked for nonexempt
5 employees (for employees paid on a piece rate basis, the applicable piece rate and units earned);
6 all deductions; net wages earned; and if the employer is a temporary services employer, the rate of
7 pay and total hours worked for each temporary services assignment. (See Lab.C. § 226(a); *Morgan*
8 *v. United Retail Inc.* (2010) 186 Cal.App.4th 1136, 1146 [statement listing regular and overtime
9 hours, although not added together, showed "total hours worked"].)

10 26. An employee is deemed to suffer injury if the employer fails to provide a wage
11 statement or provides a wage statement that is inaccurate and the employee cannot promptly and
12 easily determine, without reference to other documents or information, any of the following: the
13 employer's name and address or, if the employer is a farm labor contractor, the name and address
14 of the legal entity that secured the employer's services during the pay period; the amount of gross
15 wages or net wages paid; the number of piece-rate units earned and the applicable rate if paid on
16 a piece-rate basis; the aggregate deduction amount or which deductions were made from gross
17 wages to determine the net wages paid during the pay period; all applicable hourly rates in effect
18 during the pay period and the corresponding number of hours worked at each hourly rate by the
19 employee; or the employee's name and last four digits of his or her Social Security number or
20 employee identification number. (Lab.C. § 226(e)(2).)

21 27. Employees may obtain injunctive relief and if the employer's violation is "knowing
22 and intentional," also the greater of all actual damages or \$50 for the initial pay period in which a
23 violation occurs and \$100 per employee for each violation in a subsequent pay period, not
24 exceeding an "aggregate penalty" of \$4,000. Employees may also recover costs and reasonable
25 attorney fees. (Lab.C. § 226(e)(2), (g).)

26 28. An employer who violates Labor Code § 226(a) is subject to civil penalties under
27 Labor Code section 226.3. Penalties may be assessed for "inadvertent" violations. "Inadvertence"

1 does not require any specific state of mind; rather, "(s)ince the word denotes the absence of
2 deliberation or intent, logically, no particular mental state is required." (*Heritage Residential Care,*
3 *Inc. v. Division of Labor Standards Enforcement*, 192 Cal.App.4th 84.)

4 29. Defendants' rest, recovery and meal break violations entitle the employees to an
5 extra hour of pay (wages) per type of violation for as long as the violations continue. Because these
6 extra hours are not reflected as earned on the employee's pay stubs, the rest break and meal break
7 violations also result in pay stub violations, with aggregate penalties up to \$4,000. Likewise,
8 minimum and overtime wages earned by plaintiff and other aggrieved employees are not reflected
9 on the wage statements, in violation of Labor Code § 226.

10
11 **SIXTH CAUSE OF ACTION FOR WAITING TIME PENALTIES (LABOR CODE §§**
12 **201-203, 208) AGAINST ALL DEFENDANTS**

13 30. Plaintiff incorporates each and every other allegation of this Complaint as though
14 fully set forth herein.

15 31. Defendants' misclassification of plaintiff's and other aggrieved employees'
16 employment status has likewise resulted in violation of Labor Code section 203.. This statute
17 obligates an employer who willfully fails to pay wages due an employee who is discharged or quits
18 to pay the employee, in addition to the unpaid wages, a penalty equal to the employee's daily wages
19 for each day, not exceeding 30 days, that the wages are unpaid. (*Caliber Bodyworks, Inc. v. Sup.Ct.*
20 *(Herrera)* (2005) 134 Cal.App.4th 365, 377.)

21 32. Defendants and each of them have similarly violated Labor Code section 208,
22 which establishes defendants' statutory obligation to properly deliver final pay.

23
24 **SEVENTH CAUSE OF ACTION FOR FAILURE TO PROVIDE PAID SICK DAYS**
25 **AGAINST ALL DEFENDANTS**

26 33. Plaintiff incorporates each and every other allegation of this Complaint as though
27 fully set forth herein.

1 34. California's "Healthy Workplaces, Healthy Families Act of 2014" (Lab.C. § 245 et
2 seq.) requires most employers to provide eligible employees with at least 24 paid hours or three
3 paid sick days per year, whichever is greater. (Lab.C. § 246(b)(3)-(4).) Defendants and each of
4 them, through their misclassification, failed to provide this benefit to plaintiff and other similarly
5 aggrieved employees, as identified herein.

6
7 **EIGHTH CAUSE OF ACTION FOR WILLFUL MISCLASSIFICATION**
8 **AGAINST ALL DEFENDANTS**

9 35. Plaintiff incorporates each and every other allegation of this Complaint as though
10 fully set forth herein.

11 36. Voluntarily and knowingly misclassifying an individual as an independent
12 contractor will subject an employer to substantial penalties. (Lab.C. § 226.8; see *Noe v. Sup.Ct.*
13 (*Levy Premium Foodservice Ltd. Partnership*) (2015) 237 Cal.A pp.4th 31 6, 329.) As set forth
14 above, defendants and each of them misclassified plaintiff and similarly situated security guards.
15 Such misclassification was willful given defendants' continuous efforts to misclassify its workers
16 as independent contractors simply to cut costs and engage in what amounts to wage theft.

17 37. For the reasons set forth above, defendants and each of them misclassified plaintiff
18 and other aggrieved employees in violation of Labor Code § 226.8.

19
20 **NINTH CAUSE OF ACTION FOR VIOLATION OF THE**
21 **PRIVATE ATTORNEY GENERAL ACT (LABOR CODE SECTIONS 2698, ET SEQ.)**
22 **AGAINST ALL DEFENDANTS**

23 38. Plaintiff incorporates each and every other allegation of this Complaint as though
24 fully set forth herein.

25 39. Plaintiff, on behalf of himself and other similarly situated aggrieved employees,
26 seeks recovery of penalties under the Private Attorney General Act of 2004 ("PAGA"), Labor
27 Code sections 2698, et seq.

40. An “aggrieved employee” may maintain a civil action to recover civil penalties for Labor Code violations “on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed.” (Labor Code section 2699(g)(1).)

41. Plaintiff is an aggrieved employee because he is employed by defendants, and each of them and the alleged violations were committed by defendants against plaintiff as alleged herein. Other aggrieved employees include those employees of defendants who were security guards.

42. Plaintiff, as set forth above, has complied with the PAGA notice provision by providing a certified letter to defendants and to the LWDA containing the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support such violations. Plaintiff has not received any response from defendants within the requisite safe harbor period that anything has been corrected or that defendants dispute the allegations raised in plaintiff's notice.

43. Plaintiff requests civil penalties against defendants for their violations of the Labor Code, plus attorneys' fees and costs, in amounts to be proved at trial.

REQUEST FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays:

For appropriate civil penalties under Labor Code sections 558, 351, and 2699;

1. For an award of unpaid minimum wages and overtime, meal period and rest period compensation subject to proof at trial;

2. For an award of statutory penalties, liquidated damages, and restitution of all amounts owed to Plaintiff in an amount according to proof;

- 1 3. For Injunctive relief;
- 2 4. For prejudgment and post-judgment interest, as provided by law;
- 3 5. For reasonable attorney's fees, including but not limited to expert fees and fees
- 4 pursuant to Labor Code sections 218.5 and 1194.2, C.C.P. section 1021.5 and any other applicable
- 5 law;
- 6 6. For costs of suit; and
- 7 7. For such other and further relief as the court may deem proper.

8
9 DATED: July 21, 2021

Respectfully submitted,
SANFORD A. KASSEL
A Professional Law Corporation



SANFORD A. KASSEL
GAVIN P. KASSEL
Attorneys for Claimant
Mario Abasolo

EXHIBIT 1

Sanford A. Kassel
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April 26, 2021

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Lead Star Security, Inc.
2400 Glendale Lane, Suite F.
Sacramento, CA 95825

RE: *PAGA Notice pursuant to California Labor Code Section 2699*

Dear Sir or Madam:

Please be advised that this office represents **Mario Abasolo** in connection with his employment claims against Lead Star Security, Inc. ("Lead Star Security") and its related entities, including but not limited to: Lead Star Security Los Angeles, Inc., Lead Star Security International, Inc., Lead Star Security Franchise Corporation, Lead Star Security Orange County, Inc., Blackstreet Capital Holdings, LLC, and DOES 1-50, entities not yet fully and completely ascertained. For ease of reference, these entities will be collectively referred to as "Lead Star Security." The purpose of this letter is to advise you of Lead Star Security's flagrant violations of the Labor Code and the Private Attorneys General Act of 2004. This letter is submitted on behalf of Mr. Abasolo and all other similarly situated and aggrieved former and/or current employees of Lead Star Security who, pursuant to Labor Code § 2699(c), suffered one or more of the violations alleged herein. This includes, but is not limited to persons who, like Mr. Abasolo, were Security Guards for the company.

At all times, Lead Star Security has directly controlled and supervised the nature of Mr. Abasolo's work as well as the work of other similarly situated and aggrieved employees (past and present Security Guards) for Lead Star Security. Mr. Abasolo and the other Security Guards were required to incur various expenses to perform their work duties, including, but not limited to, uniforms (shirt, pants, shoes, jackets, equipment, etc.). The Security Guards were/are also required to wear badges. Moreover, they all had defined site locations where they were to work and could only work these designated sites.

The Security Guards did/do not receive overtime pay despite, at times, working for 16 or more hours in a day. They similarly did/do not receive meal or rest breaks.

Lead Star Security, Inc.

Re: *PAGA Notice pursuant to California Labor Code Section 2699*

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Despite the foregoing blatant examples of Lead Star Security's control over the Security Guards (which are not intended to be all-inclusive and will be subject to discovery), Lead Star Security has misclassified Mr. Abasolo and other similarly aggrieved employees as described herein as independent contractors and not employees. Such misclassification is unlawful particularly under the California Supreme Court's adopted worker-friendly standard in *Dynamex Operations West v. Superior Court* (2018) 4 Cal.5th 903, 916-917. In that case, the Court adopted the new "ABC" test in which a worker is considered an employee under the Wage Orders unless the hiring entity establishes all three of these prongs:

A. the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;

B. the worker performs work that is outside the usual course of the hiring entity's business; and

C. the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

Significantly, the Governor of California signed Assembly Bill No. 5 on September 18, 2019, which codified the above "ABC" test adopted in *Dynamex*. An application of this test demonstrates why Mr. Abasolo and other aggrieved employees were misclassified.

Prong A: "Free From Control and Direction"

The court first discussed the "A" prong, which is akin to the common law control standard. The court concluded that a worker who is, either by contract or by practice, subject to the type and degree of control a business typically exercises over employees should likewise be considered an employee. Accordingly, businesses must now establish that workers are free of such control to meet this part of the test. The court confirmed that a business "need not control the precise manner or details of the work" in order to be found to have maintained the necessary control sufficient to lead to a finding of employee status.

Here, as shown above, Lead Star Security exercised extensive control over Mr. Abasolo and other aggrieved employees, in a manner in which an employer typically exercises control over an employee. It controlled their dress, when they would work, and where they could work.

Prong B: "Outside Usual Course of Business"

Prong "B" seeks to determine whether workers can reasonably be viewed as individuals who are providing services to the business in a role comparable to that of an employee, rather than in a role comparable to that of a traditional independent contractor. Workers

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whose roles are "most clearly comparable" to those of employees include workers whose "services are provided within the usual course of the business" and thus would "ordinarily be viewed by others as working in the hiring entities' business." Thus, this prong expands those within the definition of employee to include almost any worker who engages in the same business as the hiring entity.

The court in *Dynamex* used the example of a retailer that hires a plumber or electrician to perform maintenance at their establishment; such a worker would be hiring someone outside of the company's business and thus would be able to demonstrate independent contractor status. On the other hand, a clothing manufacturer that hires a work-at-home seamstress, or a bakery hiring a cake decorator, would typically not be able to make such a demonstration. *Dynamex Operations West v. Superior Court* (2018) 4 Cal.5th 903, 959-960.

Here, Mr. Abasolo and other aggrieved employees provided the very service which comprises Lead Star Security's business – providing security at designated locations."

Prong C: "Customarily Engaged In Independent Trade"

The "C" prong seeks to identify those workers that have taken steps to create their independent business. If the worker has independently made the decision to go into business for themselves, they are likely to be found as satisfying this third prong. If, on the other hand, they are "simply designated as an independent contractor by the unilateral action of a hiring entity," there is a substantial risk they will be found to be an employee. The Court in *Dynamex* also stated that the simple fact that a company does not prohibit or prevent a worker from engaging in such an independent business is insufficient to establish a worker has independently made the decision to go into business for themselves.

In this case, Mr. Abasolo and the other Security Guards described herein were simply designated as independent contractors by Lead Star Security. The fact that they could elect to be franchisees of Lead Star Security is immaterial as it does not establish that they independently made the decision to go into business for themselves.

Having shown that Lead Star Security misclassified Mr. Abasolo and other similarly aggrieved employees, it is liable for various violations of the Labor Code and other provisions of California law, as set forth below.

(a) Failure to Pay Minimum Wages and Overtime (Labor Code §§ 510, 1194; IWC Wage Order 9)

By misclassifying Mr. Abasolo and other aggrieved employees as independent contractors, Lead Star Security has required them to work without receiving minimum wages and overtime. An employee receiving less than the legal minimum wage or legal overtime compensation "is entitled to recover in a civil action the unpaid balance of the full amount

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of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit." (Lab.C. § 1194.).

(b) Reimbursement of Employment Expenses (Labor Code § 2802)

Lead Star Security's misclassification has also resulted in it having failed to reimburse Mr. Abasolo and other aggrieved employees for all employment-related expenses which, as set forth above, its employees were necessarily required to incur. For instance, if an employer requires that an employee wear a uniform, the employer must pay the cost of the uniform. (Labor Code § 2802, Industrial Welfare Commission Orders, Section 9.) The term "uniform" includes wearing apparel and accessories of distinctive design and color. Under Labor Code § 2802, an employer must indemnify its employees "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties ..." (Lab.C. § 2802(a).)

The elements of a § 2802(a) cause of action are: "(1) the employee made expenditures or incurred losses; (2) the expenditures or losses were incurred in direct consequence of the employee's discharge of his or her duties, or obedience to the directions of the employer; and (3) the expenditures or losses were necessary." (*Cassady v. Morgan, Lewis & Bockius LLP* (2006) 145 Cal.App.4th 220, 230; *USS-POSCO Industries v. Case* (2016) 244 Cal.App.4th 197, 205.)

The purpose of § 2802 is "to prevent employers from passing their operating expenses on to their employees." (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cl.4th 554, 562; *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 11 37, 1144.) Here, Lead Star Security required Mr. Abasolo and other similarly aggrieved employees to incur business-related expenses and failed to reimburse the Security Guards for such expenses.

(c) Unlawful Deductions from Wages (Labor Code §§ 221, 223, 224; Wage Order 9)

Having misclassified Mr. Abasolo and other similarly aggrieved employees, Lead Star Security has made unlawful deductions from wages, such as, but not limited to, uniforms and badges. Lead Star Security's unlawful deductions from wages has even resulted in the Security Guards, at times, owing Lead Star Security money in lieu of a proper paycheck.

(d) Failure to Provide Meal Periods and to Authorize and Permit Rest Periods (Labor Code § § 226.7, 512; Wage Order 9)

Under California law (which is much more generous to employees than federal law), if an employee is a non-exempt worker (such as is the case here), he/she is entitled to meal and rest breaks as follows: a 30-minute meal break if the employee worked more than 5 hours in a workday, and 10 minutes breaks for every 4 hours he/she works. Here, Mr. Abasolo and other aggrieved employees are entitled to one extra hour of regular pay for each day

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on which a meal break violation occurred, and another extra hour of regular pay for each day on which a rest break violation occurred. Lead Star Security failed to provide compliant meal and rest periods to Mr. Abasolo and other aggrieved employees.

(e) Failure to Furnish Accurate Wage Statements, and to Otherwise Properly Maintain Employment Records (Labor Code §§ 226, 226.3, 1174; Wage Order 9)

Lead Star Security's misclassification of aggrieved employees' employment status has also resulted in a violation of its obligation to provide accurate wage statements and other employment records.

Among other recordkeeping requirements under state law, employers must keep records of the names and addresses of all employees, the ages of any minors working, and daily hours worked, and wages paid to all employees. (Lab.C. § § 226, 1174.) Such records must be maintained for a minimum of two years-three years for records showing wage deductions-and employers must allow inspection by the employee and the DLSE. (Lab.C. § § 226(a), 1174(d).)

The employer must provide an employee or former employee copies of his or her payroll records within 21 days after a request or permit the employee to inspect those records. (Failure to comply results in a \$750 fine, and the employee may sue to obtain the information and recover costs and fees.) (Lab.C. § 226(c), (f) & (g).)

The following information must be furnished on the pay stub when wages are paid: employer's name and address (and the name and address of the legal entity that secured the services of the employer if the employer is a farm labor contractor); employee's name and the last four digits of the employee's Social Security number; inclusive dates for which the employee is being paid; gross wages earned; the applicable hourly rate and total hours worked for nonexempt employees (for employees paid on a piece rate basis, the applicable piece rate and units earned); all deductions; net wages earned; and if the employer is a temporary services employer, the rate of pay and total hours worked for each temporary services assignment. (See Lab.C. § 226(a); *Morgan v. United Retail Inc.* (2010) 186 Cal.App.4th 1136, 1146 [statement listing regular and overtime hours, although not added together, showed "total hours worked"].)

An employee is deemed to suffer injury if the employer fails to provide a wage statement or provides a wage statement that is inaccurate and the employee cannot promptly and easily determine, without reference to other documents or information, any of the following: the employer's name and address or, if the employer is a farm labor contractor, the name and address of the legal entity that secured the employer's services during the pay period; the amount of gross wages or net wages paid; the number of piece-rate units earned and the applicable rate if paid on a piece-rate basis; the aggregate deduction amount or which deductions were made from gross wages to determine the net wages paid during the

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pay period; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; or the employee's name and last four digits of his or her Social Security number or employee identification number. (Lab.C. § 226(e)(2).)

Employees may obtain injunctive relief and if the employer's violation is "knowing and intentional," also the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an "aggregate penalty" of \$4,000. Employees may also recover costs and reasonable attorney fees. (Lab.C. § 226(e)(2), (g).)

An employer who violates Labor Code § 226(a) is subject to civil penalties under Labor Code section 226.3. Penalties may be assessed for "inadvertent" violations. "Inadvertence" does not require any specific state of mind; rather, "(s)ince the word denotes the absence of deliberation or intent, logically, no particular mental state is required." (*Heritage Residential Care, Inc. v. Division of Labor Standards Enforcement*, 192 Cal.App.4th 84.)

Here, rest, recovery and meal break violations entitle the employees to an extra hour of pay (wages) per type of violation for as long as the violations continue. Because these extra hours are not reflected as earned on the employee's pay stubs, the rest break and meal break violations also result in pay stub violations, with aggregate penalties up to \$4,000. Likewise, minimum and overtime wages earned by Mr. Abasolo and other aggrieved employees are not reflected on the wage statements, in violation of Labor Code § 226.

(t) Waiting Time Penalties (Labor Code §§ 201-203, 208)

Lead Star Security's misclassification of Mr. Abasolo 's and other aggrieved employees' employment status has likewise resulted in violation of Labor Code section 203. This statute obligates an employer who willfully fails to pay wages due an employee who is discharged or quits to pay the employee, in addition to the unpaid wages, a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. (*Caliber Bodyworks, Inc. v. Sup.Ct. (Herrera)* (2005) 134 Cal.App.4th 365, 377.) Lead Star Security has similarly violated Labor Code section 208, which establishes Lead Star Security's statutory obligation to properly deliver final pay.

(g) Failure to Provide Paid Sick Days

California's "Healthy Workplaces, Healthy Families Act of 2014" (Lab.C. § 245 et seq.) requires most employers to provide eligible employees with at least 24 paid hours or three paid sick days per year, whichever is greater. (Lab.C. § 246(b)(3)-(4).) Lead Star Security, through its misclassification, failed to provide this benefit to Mr. Abasolo and other similarly aggrieved employees, as identified herein.

(g) Willful Misclassification

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Voluntarily and knowingly misclassifying an individual as an independent contractor will subject an employer to substantial penalties. (Lab.C. §226.8; see *Noe v. Sup.Ct. (Levy Premium Foodservice Ltd. Partnership)* (2015) 237 Cal.A pp.4th 31 6, 329.) As set forth above, Lead Star Security misclassified Mr. Abasolo and similarly situated Security Guards. Such misclassification was willful given Lead Star Security's continuous efforts to misclassify its workers as independent contractors simply to cut costs and engage in what amounts to wage theft.

For the reasons set forth above, Lead Star Security misclassified Mr. Abasolo and other aggrieved employees in violation of Labor Code §226.8.

In sum, Lead Star Security has, in engaging in the aforesaid conduct, violated, and/or has caused to be violated, several Labor Code provisions, and is therefore liable for civil penalties under California Labor Code §2698 et seq. We request that your agency investigate the claims alleged against Lead Star Security. This letter will serve as **NOTICE** of these allegations pursuant to the Private Attorney Generals Act of 2004 ("PAGA"). Cal. Lab. Code §2699.3.

Conclusion

Lead Star Security has violated or has caused to be violated a number of California Labor Code and other provisions. Mr. Abasolo requests that the agency investigate the above allegations and provide notice of the allegations pursuant to PAGA's provisions. Alternatively, Mr. Abasolo requests the agency inform him if it does not intend to investigate these violations so that he may pursue these violations in a civil court of law as discussed in this letter.

Very Truly Yours



Gavin P. Kassel

GPk:lj

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