

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

DAVTYAN LAW FIRM, INC.
EMIL DAVTYAN, Esq. (SBN-299363)
emil@davtyanlaw.com
880 E. Broadway
Glendale, CA 91205
Tel: (818) 875-2008, Fax: (818) 722-3974

Attorneys for Plaintiff and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

TRISTAN MARTIN, an individual, on behalf
of himself and others similarly situated

PLAINTIFF,

v.

AMERICAN CUSTOM PRIVATE
SECURITY, INC.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. STK-CV-UOE-2021-0008213

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
2. Failure to Provide Rest Breaks Pursuant to Labor Code § 226.7
3. Violation of Labor Code § 2802
4. Failure to Pay Reporting Time Pay
5. Violation of Labor Code § 226(a)
6. Penalties Pursuant to Labor Code § 203
7. Violation of Business & Professions Code § 17200
8. Penalties Pursuant to Labor Code § 2699, et seq.

FILED

2021 NOV 10 AM 10:52

BRANDON E. RILEY, CLERK

BY IRVING JIMENEZ
DEPUTY

1 Plaintiff TRISTAN MARTIN, an individual, on behalf of himself, all others similarly
2 situated (“Plaintiff”), and on behalf of the people of the State of California and as an “aggrieved
3 employee” under Labor Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter
4 “PAGA”), complains of Defendant AMERICAN CUSTOM PRIVATE SECURITY, INC.
5 (“Defendant”) and each of them, as follows:

6 **I.**

7 **INTRODUCTION**

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

10 All persons who are employed or have been employed as an hourly
11 employee by American Custom Private Security, Inc., in the State
12 of California who worked one or more pay periods since four (4)
13 years prior to the filing of this action to the present plus any
14 additional time during which the statutes of limitation for the causes
of action herein were tolled pursuant to Emergency Rule 9 of the
California Rules of Court, the ‘Emergency Rules Related to
COVID-19’. (“Proposed Class”)

15 2. Any limitations period referenced in this complaint is extended pursuant to
16 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the
17 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of
18 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
19 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
20 that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the
21 relevant time period or statute of limitations referenced in this complaint is extended into the past
22 by the number of days in which this tolling was in effect.

23 3. From at least four (4) years prior to the filing of this action and continuing to the
24 present, Defendant has had a consistent policy of failing to apprise Plaintiff and the Proposed Class
25 of their rights associated with meal periods and failing to provide compliant meal periods as
26 required by law. Defendant maintains an unlawful policy of requiring Plaintiff and the Proposed
27 Class to remain on the premises during meal periods in violation of *Augustus v. ABM Security*
28 *Services, Inc.*, 2 Cal.5th 257, 269 (2016) (an employer that limits where an employee can take a

break does not “relinquish control over how employees spend their time”). As Such, Defendant failed to provide Plaintiff and the Proposed Class with compliant meal periods. Additionally, Defendant failed to pay one (1) hour of pay at the employees’ regular rate of compensation for each workday that the first meal period was not provided within the first five (5) hours of the shift. Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. Here, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512. Defendant failed to apprise Plaintiff and the Proposed Class of their rights associated with meal periods and failed to provide compliant meal periods.

4. From at least four (4) years prior to the filing of this action and continuing to the present, Defendant has had a consistent policy of failing to provide Plaintiff and the Proposed Class with all required rest breaks. As with meal periods, Defendant has had a consistent policy of failing to permit Plaintiff and the Proposed Class to leave Defendant’s business premises during rest breaks in violation of *Augustus*. In addition, as with meal period premiums, Defendant failed to pay rest period premiums in violation of *Ferra* and as required by California state wage and hour laws for non-compliant rest breaks.

5. From at least four (4) years prior to the filing of this action and continuing to the present, Plaintiff and the Proposed Class members were required to incur substantial expenses in direct consequent of the discharge of their duties for Defendant without reimbursement. Specifically, Defendant has failed to reimburse Plaintiff and the Proposed Class the cost of using their personal cell phones for business related purposes. Defendant required that Plaintiff and the Proposed Class members be available by cell phone, use their cell phone to clock in and out of scheduled shifts, and answer/use their cell phones while working. All of this was necessary to perform their job duties. These cell phones were not provided by Defendant and Defendant failed

1 to reimburse Plaintiff and the Proposed Class members for the costs associated with using their
2 personal cell phones.

3 6. For at least four (4) years prior to the filing of this action and continuing to the
4 present, Defendant has had a consistent policy of requiring Plaintiff and the Proposed Class to
5 report to the work place for their shifts and requiring them to leave the work place after they
6 worked less than one-half their scheduled shift. Despite working less than one-half of their
7 scheduled shift, Plaintiff and the Proposed Class were not paid reporting time pay for half the usual
8 or scheduled day's work in violation of California law.

9 7. For at least one (1) year prior to the filing of this action continuing to the present,
10 Defendant has failed to comply with Industrial Welfare Commission ("IWC") Wage Order 4-2001
11 and Labor Code § 226(a) by failing to issue Plaintiff and the Proposed Class accurate itemized
12 wage statements that show all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate by the employee.

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

17 9. Plaintiff, on behalf of himself and all Proposed Class members brings this action
18 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 512, and 2802; Wage Order 4-2001; and
19 California Code of Regulations, Title 8, Section 11040, seeking meal and rest period penalties,
20 unreimbursed expenses, reporting time pay, all wages due upon termination, other penalties,
21 injunctive and other equitable relief, and reasonable attorneys' fees and costs.

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

25 11. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
26 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
27 PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph
28 2 above, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim

1 pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved employees presently or
2 formerly employed by Defendant during the liability period as defined in his PAGA notice letter
3 (see Exhibit “1”), brings this representative action pursuant to Labor Code §2699, et seq. seeking
4 penalties for Defendant’s failure to provide lawful meal and rest periods, failure to keep accurate
5 records, failure to reimburse for business-related expenses, failure to pay reporting time pay,
6 failure to provide accurate itemized wage statements, and failure to pay all wages due at the time
7 of termination.

8 **II.**

9 **JURISDICTION AND VENUE**

10 12. This Court has subject matter jurisdiction over all causes of action asserted herein
11 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
12 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
13 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
14 State of California or is subject to adjudication in the courts of the State of California.

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

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

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

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III.
PARTIES

A. PLAINTIFF

16. Plaintiff TRISTAN MARTIN is a resident of California.

17. Plaintiff and all Proposed Class members, were regularly required to:

a. Work without being provided compliant meal periods;

b. Work without being provided compliant rest periods;

c. Work without being reimbursed business-related expenses;

d. Work without being provided reporting time pay;

e. Work without being provided accurate itemized wage statements as required by California law; and,

18. Defendant willfully failed to compensate Plaintiff and all Proposed Class members for wages at the termination of their employment with Defendant.

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

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

B. DEFENDANTS

21. Defendant AMERICAN CUSTOM PRIVATE SECURITY, INC. is believed to be a California corporation operating within the State of California. Defendant’s corporate address is believed to be 446 E Vine Street, Stockton, CA 95202. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

22. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants

1 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
2 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
3 capacities of the Defendants designated hereinafter as DOES when such identities become known.

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

9 24. Furthermore, Defendants acted in all respects as the employers or joint employers
10 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
11 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
12 engaged, thereby creating a common law employment relationship, with the Proposed Class.
13 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

14 IV.

15 FACTUAL BACKGROUND

16 25. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
17 classified as non-exempt employees by Defendant. Defendant hires employees who work as
18 hourly employees who are paid on an hourly basis.

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

22 27. Defendant failed to inform Plaintiff and the members of the Proposed Class of their
23 right to take compliant meal periods by way of a lawful policy.

24 28. Plaintiff and all Proposed Class Members have been forced by Defendant to work
25 over five (5) hours in one day without being provided a thirty (30) minute uninterrupted meal break
26 and not being compensated one (1) hour of pay at the regular rate of compensation for each
27 workday that a meal period was not provided or provided after five (5) hours, all in violation of
28 California labor laws, regulations, and Industrial Welfare Commission Wage Orders. Plaintiff and

1 the Proposed Class have been required to work shifts where they were not permitted to leave
2 Defendant's business premises during meal breaks. Defendant failed to pay meal premiums in
3 lieu of compliant meal breaks as required by California law.

4 29. Defendant failed to inform Plaintiff and the members of the Proposed Class of their
5 right to take compliant rest periods by way of a lawful policy.

6 30. Plaintiff and the Proposed Class have been required to work shifts where they were
7 not permitted to leave Defendant's business premises during rest breaks. Defendant failed to pay
8 rest premiums in lieu of compliant rest breaks as required by California law.

9 31. Defendant has failed to reimburse Plaintiff and the Proposed Class the cost of using
10 their personal cell phones for business related purposes. Defendant required that Plaintiff and the
11 Proposed Class be available by cell phone, use their cell phone to clock in and out of their
12 scheduled shift, and answer/use their cell phones while working, and this was necessary to perform
13 their job duties. These cell phones were not provided by Defendant and Defendant failed to
14 reimburse Plaintiff and the Proposed Class for the costs associated with using these personal cell
15 phones.

16 32. Defendant failed to properly pay reporting time pay. Plaintiff and the Proposed
17 Class were not properly compensated for half the usual or scheduled day's work for each day they
18 reported to work, but worked less than one-half (1/2) their scheduled shift.

19 33. Defendant has failed to comply with Industrial Welfare Commission ("IWC")
20 Wage Order 4-2001(7) and Labor Code § 226(a). Defendant failed to issue Plaintiff and the
21 Proposed Class accurate itemized wage statements that show all applicable hourly rates in effect
22 during the pay period and the corresponding number of hours worked at each hourly rate by the
23 employee.

24 34. Defendant willfully failed to pay wages and compensation, when Plaintiff and all
25 Proposed Class members quit or were discharged. This failure was willful, without legal
26 justification, and interfered with Plaintiff's and Class Members' rights.

27 35. As a result of the facts alleged above, Defendant has engaged in unfair competition
28 and unlawful business practices.

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

V.

CLASS ACTION ALLEGATIONS

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

All persons who are employed or have been employed as an hourly employee by American Custom Private Security, Inc., in the State of California who worked one or more pay periods since four (4) years prior to the filing of this action to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“Proposed Class”)

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

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

A. NUMEROSITY

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

41. Plaintiff alleges that Defendant’s employment records would provide information as to the number and location of all Proposed Class members. Joinder of all members of the Proposed Class is not practicable.

B. COMMONALITY

42. There are questions of law and fact common to the Proposed Class that predominate

over any questions affecting only individual Proposed Class members. These common questions of law and fact include, without limitation:

a. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 4-2001 or other applicable IWC Wage Orders by failing to provide required meal periods throughout the term of employment and/or failing to compensate said employees one (1) hour of wages at their regular rate of compensation in lieu of meal periods;

b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 4-2001 or other applicable IWC Wage Orders by failing to provide required rest periods throughout the term of employment and/or failing to compensate said employees one (1) hour of wages at their regular rate of compensation in lieu of rest periods;

c. Whether Defendant violated Labor Code § 2802 by failing to reimburse Plaintiff and the Proposed Class out of pocket expenses for the cost of personal cell phones;

d. Whether Defendant violated Labor Code §§ 1198, 1199, and Wage Order 4-2001 or other applicable IWC Wage Orders by failing to compensate Plaintiff and the Proposed Class at least two (2) hours of wages for each day they reported to work, but worked less than one-half their scheduled shift;

e. Whether Defendant violated Labor Code § 226(a) and Wage Order 4-2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing to provide accurate itemized wage statements that show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;

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

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

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

i. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the

acts alleged herein.

C. TYPICALITY

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

D. ADEQUACY OF REPRESENTATION

44. Plaintiff will fairly and adequately represent and protect the interests of the members of the Proposed Class.

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

E. SUPERIORITY OF CLASS ACTION

46. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Proposed Class members is not practicable, and questions of law and fact common to the Proposed Class predominate over any questions affecting only individual members of the Proposed Class. Each member of the Proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or practice of failing to provide meal and rest periods, failing to reimburse business-related expenses, failing to pay reporting time pay, and failing to pay all wages upon resignation or termination.

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

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1 **VI.**

2 **FIRST CAUSE OF ACTION**

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

4 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

5 **LABOR CODE § 226.7 AND LABOR CODE § 512**

6 48. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
7 by reference all previous paragraphs.

8 49. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
9 compensation for each meal period the employer fails to provide. Employees are entitled to a first
10 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the
11 first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts
12 over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after
13 no more than ten (10) hours of work. Defendant failed to maintain a policy informing Plaintiff
14 and the Proposed Class of these rights.

15 50. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.
16 Defendant failed to provide Plaintiff and the Proposed Class with proper meal periods of not less
17 than thirty (30) minutes within the first five (5) hours of the shift as required by the Labor Code
18 during the relevant time period.

19 51. Defendant maintains an unlawful policy of requiring Plaintiff and the Proposed
20 Class to remain on the premises during meal periods in violation of *Augustus v. ABM Security*
21 *Services, Inc.*, 2 Cal.5th 257, 269 (2016) (an employer that limits where an employee can take a
22 break does not “relinquish control over how employees spend their time”). As Such, Defendant
23 failed to provide Plaintiff and the Proposed Class members with compliant meal periods.

24 52. Defendant failed to pay one (1) hour of pay at the employees’ regular rate of
25 compensation for each workday that the first meal period was not provided within the first five (5)
26 hours of the shift. Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the
27 California Supreme Court set forth the formula for calculating the one extra hour of premium pay
28 that employees are owed if an employer fails to provide a compliant meal period or rest break.

Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

53. Defendant failed to apprise Plaintiff and the Proposed Class members of their rights associated with meal periods and failed to provide compliant meal periods.

54. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum to be proven at trial.

VII.

SECOND CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

FAILURE TO PROVIDE REST PERIODS PURSUANT TO

LABOR CODE § 226.7

55. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

56. Labor Code § 226.7 and IWC Wage Order 4 require an employer to provide rest periods or to pay an additional one (1) hour of wages for each rest period the employer fails to provide. Employees are entitled to a ten (10) minute rest break for every four (4) hours worked or major fraction thereof.

57. Defendant maintained a consistent policy of failing to provide Plaintiff and the Proposed Class with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of this right. Plaintiff and the Proposed Class have been required to work four hour increments (or major fractions thereof) without being provided with a ten (10) minute rest period.

58. Defendant maintains an unlawful policy of requiring Plaintiff and the Proposed Class to remain on the premises during rest periods in violation of *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 269 (2016) (an employer that limits where an employee can take a

break does not “relinquish control over how employees spend their time”). As Such, Defendant failed to provide Plaintiff and the Proposed Class members with compliant rest periods.

59. Defendant failed to pay one (1) hour of pay at the employees’ regular rate of compensation for each workday that all compliant rest periods were not provided within the first five (5) hours of the shift. Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. Here, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

60. Pursuant to Labor Code § 226.7, Plaintiff and the Class are entitled to damages in an amount equal to one (1) hour of wages at the regular rate of compensation per missed rest break, per day in a sum to be proven at trial.

VIII.

THIRD CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

FAILURE TO REIMBURSE EXPENSES PURSUANT TO

LABOR CODE § 2802

61. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

62. Labor Code § 2802 requires employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of his or her duties.

63. On a regular and consistent basis, Defendant has failed to reimburse Plaintiff and the Proposed Class the cost of using their personal cell phones for business related purposes. Defendant required that Plaintiff and the Proposed Class be available by cell phone and use their cell phones to clock in and out of their scheduled shift. This was required by Defendant and

1 necessary to perform their job duties.

2 64. These cell phones were not provided by Defendant and Defendant failed to
3 reimburse Plaintiff and the Proposed Class for the costs associated with using their personal cell
4 phones.

5 65. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have
6 been deprived of reimbursement in the amounts to be determined at trial, and are entitled to
7 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

8 **IX.**

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REPORTING TIME PAY PURSUANT TO LABOR CODE §§**

11 **1198, 1199, AND IWC WAGE ORDER 4-2001**

12 66. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
13 by reference all previous paragraphs.

14 67. Labor Code § 1199 prohibits an employer from causing any employee to work
15 under conditions of labor prohibited by an order of the Industrial Welfare Commission (IWC) or
16 from violating, refusing, or neglecting to comply with any order of the commission's orders
17 regarding wages, hours, and working conditions. Labor Code § 1198 states that the standard
18 conditions of labor fixed by the commission shall be the standard conditions of labor for employees
19 and forbids the employment of any employee under conditions of labor prohibited by the
20 commission's wage orders.

21 68. Wage Order 4-2001 requires that an employer pay an employee for half the usual
22 or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours,
23 at the employee's regular rate of pay for each workday an employee is required to report for work
24 and does report, but is not put to work or is furnished less than half said employee's usual or
25 scheduled day's work. This compensation shall not be less than the minimum wage.

26 69. Plaintiff and the Proposed Class consistently reported to work and were furnished
27 less than half of their usual or scheduled work day.

28 70. As a result, Plaintiff and the Proposed Class are entitled to reporting time pay when

1 they presented themselves at the work place, but there was no work to perform, or they worked
2 less than one-half their usual or scheduled shift.

3 71. Plaintiff and the Proposed Class are entitled to up to four (4) hours of wages at their
4 regular rate of pay for each of these shifts.

5 72. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have
6 been deprived of reporting time pay in amounts to be determined at trial.

7 **X.**

8 **FIFTH CAUSE OF ACTION**

9 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

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

11 73. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
12 by reference all previous paragraphs.

13 74. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the
14 time of each payment of wages, furnish each of his or her employees, an accurate itemized
15 statement in writing showing all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee. Defendant issues
17 Plaintiff and the Proposed Class wage statements that do not properly indicate all applicable hourly
18 rates in effect during the pay period and the corresponding number of hours worked at each hourly
19 rate by the employee.

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

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

28 ///

1 **XI.**

2 **SIXTH CAUSE OF ACTION**

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

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

5 77. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
6 by reference all previous paragraphs.

7 78. Numerous members of the Proposed Class including the Plaintiff are no longer
8 employed by Defendant. They were either fired or quit Defendant's employ.

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

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

18 **XII.**

19 **SEVENTH CAUSE OF ACTION**

20 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

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

22 81. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
23 by reference all previous paragraphs.

24 82. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
25 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
26 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
27 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
28 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public

1 interest within the meaning of Code of Civil Procedure § 1021.5.

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

5 84. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
6 practices.

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

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

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

22 88. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
23 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
24 § 17200, *et seq.* of the Business & Professions Code.

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

27 90. Unless restrained, Defendant will continue to engage in the unlawful conduct as
28 alleged above. Pursuant to the Business & Professions Code, this court should make such orders

1 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
2 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
3 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
4 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
5 Proposed Class the money Defendant has unlawfully failed to pay.

6 **XI.**

7 **EIGHTH CAUSE OF ACTION**

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

9 71. Plaintiff, on behalf of himself and all aggrieved employees, realleges and
10 incorporates by reference all previous paragraphs.

11 72. IWC Wage Order 4, ¶ 7 imposes on employers an obligation to record and maintain
12 accurate records of “meal periods.” Labor Code § 1199 prohibits an employer from causing any
13 employee to work under conditions of labor prohibited by an order of the IWC or from violating,
14 refusing, or neglecting to comply with any order of the commission’s orders regarding wages,
15 hours, and working conditions.

16 73. Defendant does not record the time for Plaintiff and the aggrieved employees. As
17 such, Defendant has violated this statute and the Wage Order by failing to keep accurate records.

18 74. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
19 seeks penalties under Labor Code §2699, et seq use of Defendant’s violation of Labor Code §§
20 201, 202, 203, 226(a), 226.7, 512, 1199, 2802; Wage Order 4-2001; and California Code of
21 Regulations, Title 8, Section 11040, which call for civil penalties.

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

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

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

26 76. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
27 twenty-five percent (25%) to the affected employees.

28 77. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the

1 LWDA¹ and mailed a letter by certified mail to Defendant American Custom Private Security,
2 Inc.'s entity address, which is 446 E Vine Street, Stockton, CA 95202, as proscribed by the Code
3 on September 1, 2021, describing Defendant's conduct in violation of Labor Code §§ 201, 202,
4 203, 226(a), 226.7, 512, 1199, and 2802. (see Exhibit "1.") On September 9, 2021, Plaintiff
5 received a signed green return receipt from Defendant, indicating that it received Plaintiff's notice
6 letter. (see Exhibit "2.") Plaintiff also obtained an e-filing confirmation from the LWDA
7 confirming receipt of the notice (see Exhibit "3").

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

13 **RELIEF REQUESTED**

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

15 1. For compensatory damages in the amount of Plaintiff's and each Proposed Class
16 members' hourly wage at the appropriate regular rate of compensation for each meal/rest period
17 missed, not provided in full, or taken late from at least four (4) years prior to the filing of this
18 action to the present as may be proven;

19 2. For compensatory damages in the amount of Plaintiff's and each Proposed Class
20 Members' unreimbursed out of pocket expenses as a requirement of employment;

21 3. For compensatory damages in the amount of Plaintiff's and each Proposed Class
22 Member's reporting time pay in the amount of half the usual or scheduled day's work, but in no
23 event for less than two (2) hours nor more than four (4) hours for each shift they reported for work
24 but worked less than one-half of their usual or scheduled shift;

25 4. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)
26 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one

27 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

1 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
2 an aggregate penalty of four thousand dollars (\$4,000);

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

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

6 7. An order enjoining Defendant and its agents, servants, and employees, and all
7 persons acting under, in concert with, or for it from providing Plaintiff with proper meal periods,
8 rest periods, reimbursement of expenses, reporting time pay, and wages upon
9 termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 512, 1198, 1199,
10 2802, and IWC 4-2001;

11 8. For restitution for unfair competition pursuant to Business & Professions Code
12 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

13 9. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
14 Code §§ 201, 202, 203, 226(a), 226.7, 512, 1199, 2802, and Wage Order 4-2001;

15 10. An award providing for payment of costs of suit;

16 11. An award of attorneys' fees; and

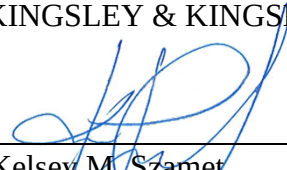
17 12. Such other and further relief as this Court may deem proper and just.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.
20

21 DATED: November 9, 2021

KINGSLEY & KINGSLEY, APC

22
23 By: 

24 Kelsey M. Szamet
25 Attorneys for Plaintiff TRISTAN MARTIN and the
26 Proposed Class
27
28

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

September 1, 2021

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

American Custom Private Security, Inc.
446 E Vine Street
Stockton, CA 95202

Re: Tristan Martin v. American Custom Private Security, Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

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

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by American Custom Private Security, Inc., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Likewise, the Wage Orders (4-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

September 1, 2021

Page 2 of 4

with meal periods and failed to provide compliant meal periods as required by law. Defendant maintains an unlawful policy of requiring Plaintiff and the aggrieved employees to remain on the premises during meal periods in violation of *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 269 (2016) (an employer that limits where an employee can take a break does not “relinquish control over how employees spend their time”). As Such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant meal periods. Additionally, Defendant failed to pay one (1) hour of pay at the employees’ regular rate of compensation for each workday that the first meal period was not provided within the first five (5) hours of the shift. Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. Here, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512. Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods.

Further, IWC Wage Order 4, ¶ 7 imposes on employers an obligation to record and maintain accurate records of “meal periods.” Labor Code § 1199 prohibits an employer from causing any employee to work under conditions of labor prohibited by an order of the IWC or from violating, refusing, or neglecting to comply with any order of the commission’s orders regarding wages, hours, and working conditions. Defendant does not record the time for Plaintiff and the aggrieved employees. As such, Defendant has violated this statute and the Wage Order by failing to keep accurate records.

Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to maintain a policy informing Plaintiff and the aggrieved employees of this right. Plaintiff and all aggrieved employees have been required to work four hour increments (or major fractions thereof) without being provided with a ten (10) minute rest period. In addition, just as with meal periods, Defendant maintains an unlawful policy of requiring Plaintiff and the aggrieved employees to remain on the premises during rest periods in violation of *Augustus*. As Such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period in violation of *Ferra* and as required by Labor Code § 226.7. As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. Here, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

September 1, 2021

Page 3 of 4

In addition, Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. Defendant required that Plaintiff and the aggrieved employees be available by cell phone, use their cell phone to clock in and out of scheduled shifts, and answer/use their cell phones while working, and this was necessary to perform their job duties. These cell phones were not provided by Defendant and Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones for business related purposes..

Industrial Welfare Commission (“IWC”) Wage Order 4-2001 requires that an employer pay an employee for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work. This compensation shall not be less than the minimum wage. Defendant has had a consistent policy of requiring Plaintiff and the aggrieved employees to report to work but failing to furnish them with work constituting half of their usual shift. Defendant failed to pay reporting time pay in lieu thereof in violation of California law.

Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant issues Plaintiff and all aggrieved employees wage statements that do not properly indicate all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant’s failure to provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a regular and consistent basis.

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

(continued on next page)

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

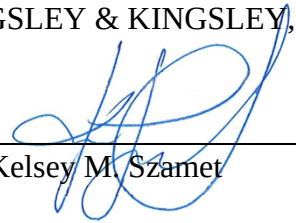
September 1, 2021

Page **4** of **4**

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 245.5, 246, 512, 1198, 1199, 2802, and Wage Order 4-2001 (IWC Cal. Code Regs. § Title 8, § 11140) with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/km

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. AMERICAN CUSTOM PRIVATE SECURITY, INC. via USPS Certified Mail # 7019 1640 0000 8115 0836

EXHIBIT "2"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

American Custom Private Security, Inc.
446 E Vine Street
Stockton, CA 95202



9590 9402 6114 0209 6137 68

2. Article Number (Transfer from service label)

7019 1640 0000 8115 0836

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Shrout C-19

☒ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

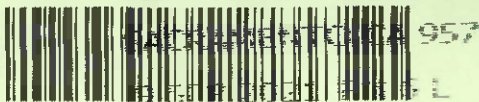
9-9-71

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

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

USPS TRACKING#



SACRAMENTO CA 957

9590 9402 6114 0209 6137 68

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

United States
Postal Service

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

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

PAGA LETTER
AMERICAN CUSTOM PRIVATE SECURITY, INC.

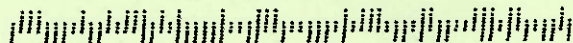


EXHIBIT "3"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley

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

Your Email Address *

service@kingsleykingsley.

Your Street Name, Number and Suite/Apt *

16133 Ventura Boulevard

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California ▼

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Tristan Martin

Plaintiff/Aggrieved Employee Occupation *

Security

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Corporation ▼

Employer Name *

American Custom Private Security, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

446 E Vine Street

Employer City *

Stockton

Employer State *

California



Employer Zip/Postal Code *

95202

Employer Industry *

Other



Employer Industry for "Other" *

Private Security

Add additional defendants

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

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply *

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

Child Labor – Specify Ages

Provide Details of Other Violation *

Other(Maybe Multiple)

- ☒ Other Violation

Provide Details of Other Violation *

Other(Maybe Multiple)

☒ Other Violation

Provide Details of Other Violation *

Violation of Labor Code 245.5 and 246

PAGA Claim Type – Check All that Apply *

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

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.

Billing Phone

Billing Street Name, Number and Suite/Apt *

16133 Ventura Boulevard Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

Master Card

Credit Card Number *

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

 PAGA Letter– A...rity, Inc..pdf

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

 No file chosen[Add Another Attachment](#)

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

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

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

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

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Wednesday, September 1, 2021 10:52 AM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

9/1/2021

LWDA Case No. LWDA-CM-843173-21
Law Firm : Kingsley & Kingsley
Plaintiff Name : Tristan Martin
Employer: American Custom Private Security, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:
https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=04%7C01%7CJulie%40kingsleykingsley.com%7C2c157dca0f3b4ec664ca08d96d712b71%7C121a7875db eb4c0fb25c5baf6c6ac7a5%7C0%7C0%7C637661155129572214%7CUnknown%7CTWFpbGZsb3d8eyJWljo iMC4wLjAwMD AiLCJQIjo iV2luMzliLCJBTiI6I k1haWwiLCJXVCi6Mn0%3D%7C1000& sdata=2W9WCS1czoBjxN0DfGBQ7SixAnqa4H4%2 FVx1iBi8%2FfyY%3D&reserved=0

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Wednesday, September 1, 2021 10:52 AM
To: Service Email
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

Thank you for your payment.

Order Information
Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-843173-21
Order Number: ORD-000133392
Total:\$75.00
Card Type: Master Card
Date: 9/1/2021

Billing Information
Name: Eric Kingsley
Email: service@kingsleykingsley.com
Billing Address:
16133 Ventura Boulevard Suite 1200
Encino, California
91436