

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Mark Mooney

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES**
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11 RENE IVAN GARCIA, on behalf of all
12 others similarly aggrieved,

13 Plaintiff,

14 vs. NON-STOP SECURITY SERVICES,
15 LLC, a California limited liability company, a
California corporation, HECTOR OMAR
16 SOTELO, an individual, and DOES 1 through
10, inclusive,

17 Defendants.
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CASE NO. **21STCV45361**

COMPLAINT FOR VIOLATION OF
PRIVATE ATTORNEYS GENERAL ACT

JURY TRIAL DEMANDED

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2. On information and belief, defendant NON-STOP SECURITY SERVICES LLC is a California limited liability company duly licensed to conduct business in the State of California.

4. Plaintiff is unaware of the names and capacities of those defendants sued as DOES 1 through 10 but will amend this complaint when that information becomes known. Plaintiff is not aware and believes and thereon alleges that, at all relevant times, each of the defendants, including the DOE defendants, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged herein was acting in the course and scope of, and in furtherance of, such relationship. Unless otherwise specified, Plaintiff will refer to all defendants as “Defendant,” and each allegation herein applies to each defendant.

6. Defendant employed Plaintiff in California as a non-exempt employee during the entire time period until his employment terminated in and around September 2021. Plaintiff filed this complaint under the Private Attorneys General Act of 2004, Labor Code sections 2698, et seq., (“PAGA”), as a representative action on behalf of the State of California regarding

1 violations of the Labor Code as to all similarly aggrieved individuals employed by Defendant as
2 non-exempt employees, however titled, in the State of California, from the date one year prior to
3 submission of Plaintiff's PAGA notice letters. This action is brought solely under PAGA and
4 seeks no relief beyond that available under PAGA.

5 7. During the period beginning one-year period preceding the filing of the required
6 PAGA notice with the Labor Workforce & Development Agency, and continuing through the
7 present, as alleged herein, Defendant violated Labor Code sections 201-203, 204, 210, 221-
8 223, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 1199, and all applicable Wage Orders, as
9 to Plaintiff and all other similarly aggrieved employees employed by Defendant in California.
10 These violations subject Defendant to civil penalties as set forth in the foregoing statutes as
11 well as other provisions of the Labor Code, including without limitation Labor Code sections
12 203, 210, 225.5, 226.3, 256, 1174.5, 1194.2, 1197.1, and 2699, and section 20 of all
13 applicable IWC Wage Orders.

14 FIRST CAUSE OF ACTION

15 (Violation of Private Attorneys General Act – Labor Code §§ 2698, et seq.)

16 8. Plaintiff incorporates by reference the allegations contained in paragraphs 1
17 through 7.

18 9. California law mandates that employees in California be paid for all hours worked,
19 up to 40 per week or 8 per day, at a regular rate no less than the mandated minimum wage.
20 Defendant violated California minimum wage laws by failing to pay Plaintiff and other aggrieved
21 employees for all hours worked. For example, Plaintiff and other aggrieved employees employed
22 as security guards had to remain at their assigned post beyond the scheduled end of a shift until
23 their relief arrived and, if the relief was late, they were not permitted to record any hours worked
24 beyond the scheduled end of their shift and were not paid for such time. Additionally, Plaintiff
25 and other aggrieved employers were required to remain on call during their meal periods but were
26 not paid for such time, and/or had meal periods routinely interrupted and cut short but were not
27 paid for such time. Accordingly, Plaintiff and similarly aggrieved employees were not being paid
28 for all hours worked causing minimum wage violations pursuant to Labor Code sections 1194-

1 1199, and all applicable Wage Orders, including Wage Order 4-2001. These violations subject
2 Defendant to civil penalties under the foregoing Labor Code sections and other applicable Labor
3 Code sections, including without limitation Labor Code sections 1197.1 and 2699. Each violation
4 of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a
5 separate civil penalty.

6 10. California law requires employers to pay overtime equal to one and one-half times
7 the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each
8 hour worked beyond forty (40) hours per work week. Employers must pay overtime equal to
9 double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday
10 and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a
11 work week.

12 11. Defendant has violated California's overtime laws by, among other things, failing
13 to correctly calculate, or record at all, the total number of hours worked by Plaintiff and similarly
14 aggrieved employees. Plaintiff and other aggrieved employees employed as security guards had to
15 remain at their assigned post beyond the scheduled end of a shift until their relief arrived and, if
16 the relief was late, they were not permitted to record any hours worked beyond the scheduled end
17 of their shift and were not paid for such time. Additionally, Plaintiff and other aggrieved
18 employers were required to remain on call during their meal periods but were not paid for such
19 time, and/or had meal periods routinely interrupted and cut short but were not paid for such time.
20 As a result, Defendant failed to pay Plaintiff and the aggrieved employees for all overtime hours
21 worked at the appropriate premium rate. Plaintiff and similarly aggrieved employees often
22 worked more than 8 hours in a day and/or 40 hours in a week for which they were not properly
23 compensated. This conduct results in violations of Labor Code sections 510, 1198-1199, and IWC
24 Wage Order 4-2001 (and all applicable Wage Orders), § 12(A). These violations subject
25 Defendant to civil penalties under Labor Code section 2699, and Wage Order 4-2001 (and all
26 applicable Wage Orders), § 20. Each violation of each Labor Code section and Wage Order
27 provision results in a separate civil penalty, for each aggrieved employee, for each pay period
28 during which the referenced statutes and Wage Order provisions were violated.

1 12. Under the Labor Code and IWC Wage Orders, Defendant was required to provide
2 Plaintiff and similarly aggrieved employees with one 30-minute meal period free from all duties
3 for all shifts longer than 5 hours, and a second 30-minute meal period free from all duties for all
4 shifts longer than 10 hours. Meal periods can be waived, but only under the following
5 circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more
6 than six (6) hours, the required meal period may be waived by mutual consent of the employer
7 and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no
8 more than twelve (12) hours, the required second meal period may be waived by mutual consent
9 of the employer and employee, but only if the first meal period was not waived. Employers
10 covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one
11 meal period for shifts over five hours (see above), and (2) to record having done so. If the
12 employer fails to properly record a valid meal period, it is presumed no meal period was
13 provided.

14 13. Plaintiff and similarly aggrieved employees regularly worked periods of more than
15 five and ten hours in a workday without being provided mandatory thirty-minute, duty-free meal
16 periods. Upon information and belief, Defendant failed to maintain a company meal period policy
17 compliant with California law. Moreover, as noted above, Plaintiff and other aggrieved
18 employees frequently worked in excess 5 or 10 hours per shift and, thus, they were entitled to
19 uninterrupted thirty minute meal periods before the end of the fifth hour and a second thirty
20 minute meal period before the end of the tenth hour of work. Defendant often required Plaintiff
21 and aggrieved employees to work more than 10 hours in a shift but only provided them with one
22 meal period, and even the one meal period would often be late, short or interrupted. Plaintiff and
23 similarly aggrieved employees also were required to be "on call" during their meal periods and
24 accordingly remained subject to Defendant's control and were never fully relieved of all work
25 duties. Per Defendant's illegal meal period policy/practice, Plaintiff and similarly aggrieved
26 employees were not always relieved of their duties for purposes of taking meal periods.
27 Defendant also failed to pay Plaintiff and similarly aggrieved employees an additional hour of
28 wages at their regular rates of compensation for each workday a meal period was not provided, or

1 was late, short or interrupted.

2 14. Defendant failed to provide Plaintiff and similarly aggrieved employees all
3 required and/or fully compliant rest periods, or compensation in lieu thereof. Defendant employed
4 policies and procedures that ensured Plaintiff and other aggrieved employees would not receive
5 all legally required rest periods, as Defendant did not authorize and permit all required rest
6 periods in strict accordance to, and in compliance with, the timing requirements of all applicable
7 Wage Orders. Plaintiff and other aggrieved employees were provided with only one rest period
8 per shift regardless of the number of hours worked, and were not provided proper rest breaks
9 because purported rest breaks were short, interrupted, untimely, and/or on duty. Defendant further
10 employed policies and procedures ensuring Plaintiff and similarly aggrieved employees did not
11 receive premium wages to compensate them for workdays they did not receive all legally required
12 and fully compliant rest periods.

13 15. California law provides that, at the time of each payment of wages, the employer
14 must provide each employee with an itemized statement showing, inter alia, gross wages earned,
15 total hours worked, all deductions taken, net wages earned, the inclusive dates for which the
16 employee is being paid, the employee's name and last four digits of their social security number,
17 the name and address of the legal entity that it is the employer, and all applicable hourly rates in
18 effect during the pay period and all hours worked at each rate.

19 16. Defendant knowingly and intentionally failed to provide Plaintiff and other
20 aggrieved employees with proper, itemized wage statements as the wage statements provided by
21 Defendant do not accurately reflect, inter alia, gross wages earned, total hours worked, net wages
22 earned, and all applicable hourly rates in effect during each pay period and all hours worked at
23 each applicable hourly rate, for all the reasons herein mentioned. Accordingly, Defendant has
24 violated Labor Code section 226 as to Plaintiff and all similarly aggrieved employees. These
25 violations subject Defendant to civil penalties under the Labor Code, including without limitation
26 Labor Code sections 226.3 and 2699. Each violation of each Labor Code section and Wage Order
27 provision, for each aggrieved employee, results in a separate civil penalty.

28 17. California law requires employers to keep "accurate and complete" payroll records

1 showing, among other things, the hours worked daily by all non-exempt employees. The
2 applicable IWC Wage Order similarly requires employers to keep time records showing, inter
3 alia, when the employees begins and end each work period and reflecting the times during which
4 all owed meal periods are provided each day. At all relevant times, Defendant has failed, and
5 continues to fail, to keep the required time records by, including but not limited to, by failing to
6 accurately record hours worked when Plaintiff and other aggrieved employees had to remain on
7 duty while waiting for their replacement to arrive at the work location, and failing to record hours
8 worked when lunch periods were interrupted and/or less than 30 minutes.

9 18. Defendant's failure to keep "accurate and complete" payroll records for Plaintiff
10 and other similarly aggrieved employees violates Labor Code sections 1174, 1198-99, and Wage
11 Order 4-2001 (and all applicable Wage Orders), section 7. These violations subject Defendant to
12 civil penalties under the Labor Code, including without limitation sections 1174.5 and 2699.
13 Each violation of each Labor Code section and Wage Order provision, for each aggrieved
14 employee, results in a separate civil penalty.

15 19. Labor Code sections 1198 and 1199 make it unlawful to employ any individual
16 under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to
17 comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174,
18 1197, and 1198, or other order or ruling of the IWC. Defendant's violations with respect to
19 minimum wages and/or overtime wages, as alleged herein, result in separate violations of Labor
20 Code sections 1198 and 1199, and subject Defendant to civil penalties under the Labor Code,
21 including without limitation Labor Code sections 1197.1 and 2699. Each violation of each Labor
22 Code section and Wage Order provision, for each aggrieved employee, results in a separate civil
23 penalty.

24 20. California Labor Code section 204 requires an employer to pay employees all
25 wages due and payable at least twice each calendar month. For reasons discussed herein,
26 Defendant failed to comply with Labor Code section 204 by failing to timely pay twice during
27 each calendar month all wages due and payable to Plaintiff and other similarly aggrieved
28 employees. Defendant's violations of Labor Code section 204 subject Defendant to civil

1 penalties, including but not limited to the penalties set forth in California Labor Code sections
2 210 and 2699. Each violation results in a separate civil penalty, for each aggrieved employee for
3 each pay period during which the statutory provisions were violated.

4 21. Labor Code section 201 requires employers to pay all wages earned and unpaid at
5 the time of discharge, immediately upon discharge. Labor Code section 202 states similar
6 provisions with respect to employees who resign. For all aggrieved employees no longer
7 employed by Defendant, Defendant still has not paid such aggrieved employees all wages earned
8 and unpaid at the time of discharge, in that Defendant has not paid for, all minimum and overtime
9 wages. These violations subject Defendant to civil penalties under the Labor Code, including
10 without limitation Labor Code sections 203, 256 and 2699. Each violation results in a separate
11 civil penalty, for each aggrieved employee for each pay period during which the statutory
12 provisions were violated.

13 22. Plaintiff complied with the procedures for bringing suit specified in Labor Code
14 Sections 2699.3 and 2699.5. By letter dated and postmarked October 4, 2021, Plaintiff gave
15 written notice to the California Labor & Workforce Development Agency (“LWDA”) via
16 electronic submission at PAGAfilings@dir.ca.gov, and via certified mail to Defendant, of the
17 specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts
18 and theories to support the alleged violations.

19 23. Under Labor Code Section 2699.3, the LWDA must give written notice by
20 certified mail to the parties it intends to investigate the alleged violations within 65 days of the
21 date of the complainant's written notice. As of the filing of this Complaint, the LWDA has not
22 provided the parties any notice of its intention to investigate Plaintiff s claims on behalf of
23 himself and other aggrieved employees, nor has Defendant responded to Plaintiff’s PAGA
24 notices in an attempt to cure. According, Plaintiff has exhausted all administrative remedies
25 required by law.

26 24. Under Labor Code Section 2699(g), Plaintiff is entitled to an award of
27 reasonable attorney's fees and costs in connection with his claims for civil penalties.

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1 PRAYER

2 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
3 as follows:

- 4 1. For civil penalties according to proof;
5 2. For reasonable attorney's fees and costs of suit; and
6 3. For such other and further relief as the Court deems just and proper.

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8 Dated: December 13, 2021

LAW OFFICES OF J. KIRK DONNELLY, APC

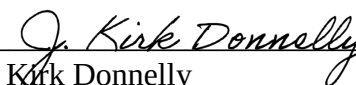
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11 J. Kirk Donnelly
12 Attorneys for Plaintiff Rene Ivan Garcia

13 DEMAND FOR JURY TRIAL

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15 Plaintiff hereby demands a trial by jury on all claims so triable.

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17 Dated: December 13, 2021

LAW OFFICES OF J. KIRK DONNELLY, APC

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19 
20 J. Kirk Donnelly
21 Attorneys for Plaintiff Rene Ivan Garcia