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Attorneys for Plaintiff Marcel McGee

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

MARCEL MCGEE;

Plaintiff,

vs.

INTER-CON SECURITY SYSTEMS, INC.,
a corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: 22CV402993

COMPLAINT FOR DAMAGES

1. FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS
2. FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS
3. FAILURE TO FURNISH COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS
4. FAILURE TO PAY ALL WAGES DUE AT END OF EMPLOYMENT
5. RETALIATION (LAB. CODE, § 98.6)
6. RETALIATION (LAB. CODE, § 1102.5)

JURY TRIAL DEMANDED

Plaintiff Marcel McGee brings this action against Inter-Con Security Systems, Inc., a corporation; and Does 1 through 100, for violations of the Labor Code.

PARTIES

1. Plaintiff Marcel McGee ("McGee" or "Plaintiff") at all times relevant herein was employed in Santa Clara County, California, and was an "employee" as defined by the Labor Code and applicable California Industrial Wage Commission ("IWC") Wage Order(s).

2. Defendant Inter-Con Security Systems, Inc. (aka “Inter-Con” or “Defendant”) is a California corporation, formed under the laws of California, and at all times relevant was an “employer” as defined by the Labor Code and applicable IWC Wage Order(s).

3. Inter-Con and Does 1-100 are collectively referred to as Defendants.

4. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

5. Plaintiff is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

VENUE AND JURY TRIAL DEMAND

6. Venue is proper in this court because the unlawful acts alleged herein took place in Santa Clara County, California and Plaintiff's place of employment with Defendants was within Santa Clara County. Plaintiff demands a jury trial.

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1 **GENERAL ALLEGATIONS**

2 7. McGee was hired by Inter-Con in October 2021 as a security guard. During his
3 employment with Inter-Con, McGee provided security services at a construction site, as well as
4 different Amazon data centers, in Santa Clara, California.

5 8. McGee was classified properly as a non-exempt employee, eligible for overtime as
6 well as rest and meal periods under California law. McGee's workshifts were typically between
7 eight and twelve hours.

8 9. Inter-Con failed to provide McGee with rest and meal periods, as required by the
9 Labor Code and applicable Wage Orders of the Industrial Welfare Commission. McGee was never
10 relieved of duty and given the opportunity to take an uninterrupted, ten-minute rest period, free of
11 all duty, for every work period of four hours. There was no "rover" guard or equivalent that
12 relieved McGee and other security guards of duty so that rest periods could be taken.

13 10. Similarly, McGee was not relieved of all duty and given the opportunity to take an
14 uninterrupted, thirty-minute meal period for every workshift of more than five hours. Furthermore,
15 the nature of McGee's work did not prevent him from being relieved of all duty and permitted to
16 take a meal period.

17 11. Additionally, McGee was not paid an hour of pay at his "regular rate of
18 compensation" for every rest and meal period that was not authorized and permitted.

19 12. Because of the aforementioned rest and meal period violations, the itemized wage
20 statements furnished to McGee failed to accurately show the gross wages and net wages earned.

21 13. McGee retained legal counsel in 2022. On February 2, 2022, McGee's attorneys
22 requested copies of his payroll and personnel records, as was his right under, *inter alia*, Labor
23 Code sections 226 and 1198.5. (**Exhibit 1.**) Inter-Con received this letter. Catie R. Johnson
24 ("Johnson"), Assistant General Counsel for Inter-Con, responded to this letter via email, but
25 produced only an alleged arbitration agreement; with regards to the requested records, Johnson said
26 "[a]ll personnel records and wage statements are available to Mr. McGee via Paycom [an employee
27 portal]." (**Exhibit 2.**) Inter-Con did not produce the records requested.

14. On April 2, 2022, counsel for McGee emailed Johnson and pointed out, accurately, that the statutory deadlines to produce the records had passed (and that the Labor Code had been violated); counsel requested that the records be produced within four days. (*Id.*)

15. On April 6, 2022, Inter-Con finally produced McGee's records. Unfortunately McGee was summarily terminated *that same day* from his employment with Inter-Con. His badge was taken, he was not permitted to enter the worksite, and he was given no reason for termination. McGee was informed that corporate would contact him with regards to his termination, but this never happened. He called corporate to inquire about his termination and left messages, but Inter-Con refused to respond. McGee was retaliated against and terminated because his counsel, on his behalf, complained about violations of the Labor Code, *supra*.

16. At no point did Inter-Con pay McGee the full balance of unpaid meal and rest break premiums, *supra*.

17. The foregoing list of misconduct is a partial list only and set forth by way of mere example.

FIRST CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS
(Lab. Code, §§ 226.7, 512)
Against Defendants

18. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

19. Labor Code section 226.7 requires employers to provide employees meal periods as mandated by Order of the Industrial Welfare Commission. It states:

- a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission,

1 the employer shall pay the employee one additional hour of pay at the
2 employee's regular rate of compensation for each work day that the meal or
3 rest period is not provided.

4 20. Labor Code section 512(a) and the applicable wage order provide that an employer
5 may not employ a person for a work period of more than five hours per day without providing that
6 employee a meal period of not less than thirty minutes, except that if the total work period per day
7 is no more than six hours, the meal period may be waived by mutual consent of both the employer
8 and employee. An employer may not employ a person for a work period of more than ten hours
9 per day without providing an employee with a second meal period of not less than thirty minutes,
10 except that if the total work period per day of the employee is no more than twelve hours, the meal
11 period may be waived by mutual consent of both the employer and the employee, and if the first
12 meal period was not waived.

13 21. During the relevant time period, Plaintiff was not provided with meal breaks as
14 required by law and did not receive an additional hour of premium pay for each missed meal
15 period.

16 22. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

17 **SECOND CAUSE OF ACTION**
18 **FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS**
19 **(Lab. Code, § 226.7)**
20 **Against Defendants**

21 23. Plaintiff hereby realleges and incorporates by reference each and every allegation
22 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
23 allegations of this cause of action.

24 24. Labor Code section 226.7 requires employers to provide employees rest periods as
25 mandated by Order of the Industrial Welfare Commission. It states:

- 26 a. No employer shall require any employee to work during any meal or rest
27 period mandated by an applicable order of the Industrial Welfare
28 Commission.

b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

25. Section 11 of the applicable IWC Wage Order provides:

“(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees' immediate work area.

(B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.”

26. During the relevant time period, Plaintiff was not provided with rest breaks as required by law and did not receive an additional hour of premium pay for each missed rest break.

27. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

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THIRD CAUSE OF ACTION
FAILURE TO FURNISH COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS
(Lab. Code, § 226(a))
Against Defendants

28. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

29. Pursuant to Labor Code section 226(a) “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each temporary services assignment.”

30. An employee suffering injury as a result of the knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees. (Lab. Code, § 226, subd. (e)(1).)

31. An employee is deemed to suffer injury if the employer fails to provide a wage statement or if the employer fails to provide accurate and complete information as required by any one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and

1 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
2 during the pay period or any of the other information required to be provided pursuant to Labor Code
3 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
4 and address of the employer and iv) the name of the employee and the last four digits of his or her
5 social security number or employee identification number. (Lab. Code, § 226, subds. (e)(2)(A), (B)(i)-
6 (iv).) “Promptly and easily determine” means a reasonable person would be able to readily ascertain
7 the information without reference to other documents or information. (Lab. Code, § 226, subd.
8 (e)(2)(C).)

9 32. As set forth above, Defendants intentionally and willfully failed to furnish accurate
10 itemized wage statements which complied with Labor Code section 226.

11 33. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
12 provided.

13 **FOURTH CAUSE OF ACTION**
14 **FAILURE TO PAY ALL WAGES DUE AT END OF EMPLOYMENT**
15 **(Lab. Code, § 201, *et seq.*)**
16 **Against Defendants**

17 34. Plaintiff hereby realleges and incorporates by reference each and every allegation set
18 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
19 allegations of this cause of action.

20 35. Labor Code section 201 provides that if an employer discharges an employee, the wages
21 earned and unpaid at the time of discharge are due and payable immediately.

22 36. Labor Code section 202 requires an employer to pay an employee all earned wages
23 within 72 hours of the employee quitting his or her employment, or immediately at the time of quitting
24 if the employee has given 72 hours previous notice of his or her intention to quit.

25 37. As set forth above, Plaintiff was not timely paid all earned but unpaid wages when her
26 employment with Defendants ended.

27 38. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
28 provided.

FIFTH CAUSE OF ACTION
RETALIATION
(Lab. Code, § 98.6)
Against Defendants

39. Plaintiff hereby realleges and incorporates by reference each and every paragraph set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

40. Labor Code section 98.6, subdivision (a) provides that “[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.”

41. Nevertheless, as set forth above, Defendants retaliated against Plaintiff because of exercising of rights provided under the Labor Code.

42. The acts taken toward Plaintiff were carried out by and/or ratified by Defendants and/or managing agents/employees of Defendants acting in an oppressive, fraudulent and malicious manner in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

43. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

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SIXTH CAUSE OF ACTION
RETALIATION
(Lab. Code, § 1102.5)
Against Defendants

41. Plaintiff hereby realleges and incorporates by reference each and every paragraph set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

42. Labor Code section 1102.5, subdivision (b) provides that “[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.

43. Nevertheless, as set forth above, Defendants violated Labor Code section 1102.5.

44. Defendants’ actions towards Plaintiff were committed or ratified by Defendants, and/or their managing agents and/or employees in an oppressive, fraudulent, and malicious manner in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

45. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. That this Court award compensatory damages, both general and special;
2. That this Court award exemplary or punitive damages;

3. That this Court award injunctive relief, including that available under Labor Code sections 226(h);
4. That this Court award unpaid wages, including meal and rest break premiums;
5. That this Court award statutory penalties including, but not limited to, those available under Labor Code sections 203, 226, and 1102.5;
6. That this Court award statutory attorneys' fees and costs under Labor Code sections 218.5, 226(e)(1) and (h), and 1102.5, as well as those available under Code of Civil Procedure section 1021.5;
7. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law; and
8. That this Court award such other and further relief as the court deems just and proper.

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DATED: August 11, 2022

MAYALL HURLEY P.C.

By



JOHN P. BRISCOE
Attorneys for Plaintiff
MARCEL MCGEE

EXHIBIT 1

LAW OFFICES
MAYALL HURLEY
A PROFESSIONAL CORPORATION

SOUTHERN CALIFORNIA OFFICE
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91203
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VLADIMIR J. KOZINA
RACHAEL ALLGAIER

OF COUNSEL
J. ANTHONY ABBOTT

February 2, 2022

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Inter-Con Security Systems, Inc.
210 South De Lacey Avenue
Pasadena, CA 91105

Re: McGee, Marcel (DOB: 08/13/1983 / SSN: XXX-XX-7081)

To Whom It May Concern:

This office has been retained by Marcel McGee in connection with claims arising out of his employment with Inter-Con Security Systems, Inc. Through the enclosed authorization, we hereby request the following records regarding your former employee:

1. Mr. McGee's itemized wage statements, pursuant to Labor Code § 226(b);
2. All documents signed by Mr. McGee relating to the obtaining or holding of his employment, pursuant to Labor Code § 432;
3. Mr. McGee's personnel records, pursuant to Labor Code § 1198.5(b);
4. All records documenting the hours worked and paid sick days accrued and used by Mr. McGee, pursuant to Labor Code § 247.5(a); and
5. Mr. McGee's payroll records pursuant to Labor Code section 1174 and 29 C.F.R. §§ 516.2.

Please feel free to contact me if you wish to discuss any of the foregoing requests

Regards,

MAYALL HURLEY P.C.

By



ROBERT J. WASSERMAN

Enclosure

SOUTHERN CALIFORNIA OFFICE

450 N. BRAND BLVD., SUITE 600
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SHANE M. HOOVER
KEVIN B. ARMONIO

Employee Records Request

I, Marcel McGee (SSN: xxx-xxx-7081; DOB: 08/13/1983), am represented by Mayall Hurley P.C. Pursuant to California Labor Code sections 226(b), 247.5, 432, and 1198.5 and 29 C.F.R. 516 *et seq.*, I hereby authorize Inter-Con Security Systems, Inc. to release copies of my payroll records, records of paid/accrued sick days, personnel records and personnel file to Mayall Hurley P.C. Please send my records to –

Robert J. Wasserman, Esq.

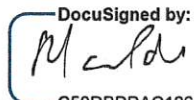
Mayall Hurley P.C.

2453 Grand Canal Blvd.

Stockton, CA 95207

rwasserman@Mayalllaw.com

Dated: 2/2/2022

DocuSigned by:


C50DBDDAC12645A

Signature

EXHIBIT 2

Lindsay Riley

From: John Briscoe
Sent: Friday, April 1, 2022 4:21 PM
To: Caitlin Johnson; Robert Wasserman
Cc: Lindsay Riley
Subject: RE: McGee, Marcel - Response to Request for Records

Ms. Johnson:

I am co-counsel with Robert Wasserman on this matter. The deadlines to produce Mr. McGee's payroll and personnel records, pursuant to Labor Code sections 226 and 1198.5, respectively, have both passed. All the same, I ask that said documents be produced no later than Wednesday, April 6. Otherwise we will seek the applicable penalties under Labor Code sections 226 and 1198.5.

Sincerely,
John P. Briscoe
Attorney at Law
Mayall Hurley P.C.
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From: Caitlin Johnson <CJohnson@icsecurity.com>
Sent: Tuesday, February 22, 2022 9:37 AM
To: Robert Wasserman <RWasserman@mayallaw.com>
Subject: McGee, Marcel - Response to Request for Records

Mr. Wasserman,

Inter-Con Security Systems, Inc. is in receipt of a request for records relating to your client, Marcel McGee. At this time, we are producing the Mutual Agreement to Arbitrate Claims as executed by Mr. McGee. All personnel records and wage statements are available to Mr. McGee via Paycom.

Thank you.

Catie R. Johnson

Assistant General Counsel (Litigation)

Inter-Con Security Systems, Inc.

210 S. De Lacey Avenue, Pasadena, CA 91105

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W: www.icsecurity.com



Inter-Con Security Systems, Inc. is an Equal Employment/Affirmative Action Employer.

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