

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Rosemary C. Khoury (SBN 331307)

rkhoury@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Facsimile: (619) 595-3000

MASHIRI LAW FIRM, APC

Alex Asil Mashiri (SBN 283798)

alex@mashirilawfirm.com

11251 Rancho Carmel Drive #500694

San Diego, CA 92150

Telephone: (858) 348-4938

Facsimile: (858) 348-4939

Attorneys for Plaintiff Elizabeth Juarez Ayala, on behalf of herself
and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ELIZABETH JUAREZ AYALA, on behalf
of herself and all other aggrieved
employees,

Plaintiff,

v.

UNIVERSAL PROTECTION SERVICE,
LP, a California Limited Partnership; and
DOES 1 through 10, Inclusive,

Defendants.

Case No. 37-2023-00007399-CU-OE-CTL

REPRESENTATIVE ACTION

**FIRST AMENDED COMPLAINT
FOR CIVIL PENALTIES PURSUANT TO
PRIVATE ATTORNEYS GENERAL ACT
("PAGA")**

1. PAGA Penalties for Failure to Reimburse
Business Expenses

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

02/27/2023 at 03:24:00 PM

Clerk of the Superior Court
By Ines Quirarte, Deputy Clerk

1 Plaintiff ELIZABETH JUAREZ AYALA, on behalf of herself and all other aggrieved
2 employees, alleges:

3 **INTRODUCTION**

4 1. ELIZABETH JUAREZ AYALA (“Plaintiff”) brings this representative action
5 against UNIVERSAL PROTECTION SERVICE, LP (“Universal”), a California Limited
6 Partnership; and DOES 1 through 10, Inclusive (“Defendants”) to recover civil penalties based
7 on Defendants’ failure to reimburse business-related cell phone expenses.

8 2. Plaintiff gave notice of this claim to the California Labor and Workforce
9 Development Agency (“LWDA”) and Defendants. There was no LWDA intervention within 65
10 days of that notice, and no notice of cure by Defendants. Plaintiff asserts claims for civil
11 penalties as a representative of the State of California, as authorized by the Private Attorneys
12 General Act (“PAGA”), Labor Code sections 2698, *et seq.*, and to the extent permitted by law,
13 on behalf of the aggrieved employees who held the positions identified and suffered one or
14 more of the violations alleged. Labor Code § 2699.3(a)(2)(C). A true and correct copy of the
15 November 23, 2022 Notice showing compliance with Section 2699.3 is attached as **Exhibit 1**
16 and demonstrates Plaintiff is an aggrieved employee and has standing to bring a representative
17 action on behalf of the State and as a private attorney general.

18 3. Plaintiff seeks to represent all current and former non-exempt employees of
19 Defendants, including but not limited to Security Officers (“guards”), who suffered one or
20 more of the alleged violations (“aggrieved employees”) from one year and 65 days before
21 commencement of this action until trial (“the PAGA Period”).

22 **THE PARTIES**

23 4. Plaintiff is a resident of the County of San Diego, California.

24 5. Plaintiff is informed, believes, and alleges Defendant UNIVERSAL
25 PROTECTION SERVICE, LP is a California Limited Partnership and has conducted business,
26 and employed Plaintiff and other aggrieved employees during the PAGA Period, in the County
27 of San Diego.

28 6. True names and capacities of DOES 1 through 10 are unknown to Plaintiff, who

1 sues them by fictitious names. Code of Civil Procedure § 474. Plaintiff is informed, believes,
2 and alleges each DOE Defendant is legally responsible in some manner for unlawful acts
3 alleged. Plaintiff will amend to add names and capacities of DOEs when they become known.

4 7. Plaintiff is informed, believes, and alleges each Defendant acted in all respects
5 relevant to this action as the agent of the other Defendants, carried out a joint scheme, plan, or
6 policy, and the acts of each Defendant are legally attributable to the other Defendants.

7 **JURISDICTION AND VENUE**

8 8. Venue as to each Defendant is proper in this judicial district. Code of Civil
9 Procedure § 395. Defendants conduct business in San Diego County, and each Defendant is
10 within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged
11 have a direct effect on Plaintiff and other aggrieved employees within California and San Diego
12 County.

13 9. As a PAGA representative action, this matter is not subject to removal under 28
14 U.S.C. sections 1332(a)-(d). PAGA civil penalty actions are not subject to federal jurisdiction.

15 **GENERAL ALLEGATIONS**

16 10. Plaintiff re-alleges all preceding paragraphs.

17 11. During the PAGA Period, Defendants conducted business and employed
18 Plaintiff and other aggrieved employees in San Diego County and throughout California.

19 12. At all times during the PAGA Period, Plaintiff and other aggrieved employees
20 were covered by the protections of the California Labor Code.

21 13. During the PAGA Period, Plaintiff and other aggrieved employees who were
22 guards were practically required to use their personal cell phones for work. Radios provided to
23 them often did not work, and when these radios did work, they could only be used to
24 communicate with other guards on shift who had them. Plaintiff and other guards routinely
25 exchanged cell phone numbers on site and Plaintiff's supervisors routinely requested her cell
26 phone number, which she provided. Plaintiff's supervisor regularly called Plaintiff off-the-
27 clock to discuss scheduling. Further, Plaintiff and other guards were required to report incidents
28 using their cell phones, and sometimes took pictures to accompany these reports. Incidents

1 happened almost every day. Plaintiff was also asked by Defendants to download an Ehub
2 application on her phone, which she did, to check her schedule. Plaintiff checked Ehub almost
3 daily due to frequent schedule changes. Despite this, Defendants did not reimburse Plaintiff and
4 guards for their cell phones expenses, in violation of Labor Code section 2802.

5 **FIRST CAUSE OF ACTION**

6 **PAGA Penalties for Failure to Reimburse Business-Related Expenses**
7 **(By Plaintiff and Aggrieved Employees Against Each Defendant)**

8 14. Plaintiff re-alleges all preceding paragraphs.

9 15. California employers must reimburse all business-related expenses which are
10 reasonable under the circumstances if they know or have reason to know the expenses were
11 incurred. Labor Code § 2802; *Grissom v. Vons Companies, Inc.* (1991) 1 Cal.App.4th 52, 58
12 (“necessary” under section 2802 means reasonable under the circumstances); *Stuart v.*
13 *Radioshack Corp.* (N.D. Cal. April 30, 2009) 641 F.Supp.2d 901, 904 (duty to reimburse is
14 triggered when employer knows or has reason to know of expense).

15 16. “[A]ny provision of this code that provides for a civil penalty to be assessed and
16 collected by the Labor and Workforce Development Agency or any of its departments,
17 divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an
18 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
19 himself or herself and other current or former employees pursuant to the procedures specified
20 in Section 2699.3.” Labor Code § 2699(a).

21 17. “For all provisions of this code except those for which a civil penalty is
22 specifically provided, there is established a civil penalty for a violation of these provisions []
23 (2) If, at the time of the alleged violation, the person employs one or more employees, the civil
24 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
25 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
26 subsequent violation.” Labor Code § 2699(f)(2).

27 18. Section 2699.3(a) applies to any alleged violation of Labor Code section 2802
28 and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

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19. As alleged herein, Defendants failed to reimburse business-related cell phone expenses during the PAGA Period. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation.

PRAYER FOR RELIEF

Plaintiff Elizabeth Juarez Ayala, on behalf of herself and all other aggrieved employees, prays for judgment, according to proof, as follows:

A. That this action be maintained as a PAGA Representative Action, and Plaintiff and her counsel be provided with enforcement capability as if the action were brought by the DLSE;

B. For recovery of all civil penalties available under the PAGA for the violations alleged herein;

C. For all civil penalties to be distributed 75% to the LWDA and 25% to the aggrieved employees, subject to approval by the Court. Labor Code section 2699(i);

D. For reasonable attorneys' fees and costs; and

E. For such other relief the Court deems just and proper.

COHELAN KHOURY & SINGER
MASHIRI LAW FIRM, APC

Dated: February 27, 2023

By:



Michael D. Singer, Esq.

Rosemary C. Khoury, Esq.

Attorneys for Plaintiff Elizabeth Juarez Ayala, on behalf
of herself and all others aggrieved

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC•

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

ATTORNEYS AT LAW

605 "C" STREET, SUITE 200
SAN DIEGO, CALIFORNIA 92101-5305

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

www.ckslaw.com

JEFF GERACI
MARTA MANUS
ROSEMARY C. KHOURY

November 23, 2022

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE SECTIONS 2698, *et seq.*

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Via Certified U.S. Mail with Return Receipt

Universal Protection Service, LP
161 Washington Street, Suite 600
Eight Tower Bridge
Conshohocken, PA 19428-2083

Re: Notice by Elizabeth M. Juarez Ayala (Employee No. 7009850), on behalf of herself and all other aggrieved employees of Universal Protection Service, LP, as an individual and as a proposed Representative of the State of California

Dear PAGA Administrator:

Elizabeth M. Juarez Ayala ("Claimant") intends to bring a Private Attorneys General Act ("PAGA") action against Universal Protection Service, LP ("Universal") on behalf of all other aggrieved employees. In this notice, "aggrieved employees" means all non-exempt California employees subject to the policies and practices described below, including, but not limited to, Security Officers.

Factual Statement

Claimant has worked as a Security Officer for Universal at a Juvenile Detention Facility in San Diego from approximately October or November 2019 through the present.

At all times during her employment, and at least one year prior to the date of this notice, Claimant was subjected to a uniform policy and practice of unlawful time rounding. That is, Universal rounded her and other aggrieved employees' hours worked to the nearest quarter hour, which over time, unlawfully favored Universal and resulted in time lost to the employees, including Claimant. This rounding policy was not neutral on its face nor in application, and resulted in a cumulative loss of time to the employees. Universal had the ability to pay for the precise hours worked, but opted instead to utilize the rounding policy with no apparent benefit other than to benefit Universal and deprive employees of payment for all hours worked. Strict rules regarding punctuality also favored Universal. For instance, Claimant and other aggrieved employees were told they must clock in exactly at the start of their shift, or they would be considered late. To avoid being late, Claimant and other aggrieved employees sometimes

clocked in a few minutes early. As a result, Claimant and other employees were not paid all minimum and regular wages for all hours worked. When the employees worked overtime, the rounding policy also resulted in the failure to pay all overtime wages for all overtime hours worked.

Universal subjected all aggrieved employees to policies and practices which failed to provide compliant meal and rest periods. Claimant and other aggrieved employees were not provided an opportunity each shift to take a timely, thirty-minute, uninterrupted, off-duty meal period before the end of the fifth hour of work. Rather, Claimant and other aggrieved employees were required to take unpaid, on-duty meal periods. On-duty meal periods are only allowed when there is a valid written agreement, the nature of the work prevents an off-duty meal period, and the meal period is paid. These conditions were not met by Universal, including because it did not pay for on-duty meal periods, Claimant has routinely worked shifts with three other guards who could have relieved her, and the agreement Claimant signed was facially invalid. Claimant and other aggrieved employees were not informed of their right to take 10-minute off-duty uninterrupted rest periods, and Claimant did not take them. Universal did not provide meal and rest period premiums when it failed to provide compliant meal and rest periods to Claimant and other aggrieved employees.

Universal did not provide accurate itemized wage statements containing all required categories of information to Claimant and other aggrieved employees. For instance, because of the Universal's failure to pay all wages—including wages due to rounding, for time on-duty during meal periods, and meal and rest period premium wages—the wage statements issued by Universal did not contain the correct amount of gross wages earned, net wages earned, total hours worked, nor all applicable hourly rates of pay and all hours worked at each rate.

Furthermore, Universal failed to record (and maintain records) reflecting when the employees began and ended each work period and meal period.

Additionally, Claimant and other aggrieved employees were practically required to use their personal cell phones for work. Radios provided to them often did not work, and when these radios did work, they could only be used to communicate with other guards on shift who had them. Claimant and other aggrieved employees routinely exchanged cell phone numbers on site and Claimant's supervisors routinely requested her cell phone number, which she provided. Claimant's supervisor regularly called Claimant off-the-clock to discuss scheduling. Further, Claimant and other aggrieved employees were required to report incidents using their cell phones, and sometimes took pictures to accompany these reports. Incidents happened almost every day. Claimant was also asked by Universal to download an Ehub application on her phone, which she did, to check her schedule. Claimant checked Ehub almost daily due to frequent schedule changes.

Universal further maintained a regular practice of failing to pay separated employees all wages owed within the time requirements of Labor Code sections 201- 202 because it did not pay all wages earned when due as set forth herein. Universal also did not pay a day's wages for every day final pay was not paid through the date final wages were paid, as required by Labor Code section 203. Claimant is informed and believes that Universal has no policy and/or practice

to comply with Labor Code sections 201, 202, and 203 as to all separated employees in California by timely paying final wages and paying waiting time penalty wages when failing to timely pay final wages.

Claimant further alleges, based on personal experience and observations, that the violations of the Labor Code described herein were suffered by other aggrieved employees of Universal.

Summarizing the claims on behalf of Ms. Juarez Ayala and all other aggrieved employees, Universal failed to:

1. Provide minimum, regular, and overtime wages;
2. Provide meal periods;
3. Authorize and permit rest periods;
4. Provide compliant wage statements;
5. Maintain accurate records;
6. Reimburse business-related expenses; and
7. Timely pay all wages owed at separation from employment.

Labor Code §§ 218.5, 510, and 1194, 1197, 1197.1, 1198
(Minimum, Regular, and Overtime Wages)

Several sections of the California Labor Code require employers to pay at least minimum wage for all hours worked, overtime wages for hours worked over eight per day or forty per week, and double time wages for hours over twelve per day. Overtime wages must be paid at one-and-one half times the employees' regular rate.

Universal failed to pay all minimum, regular, and overtime wages to Claimant and other aggrieved employees due to time rounding and to not paying for time on-duty and working during meal periods and time spent communicating with supervisors off-the-clock.

Labor Code §§ 512, 226.7, and 1198 (Meal and Rest Periods and Premium Wages)

Employers must provide employees a 30-minute, uninterrupted meal period after no more than five hours of work and a second such meal period after no more than 10 hours work. Labor Code § 512; *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1049 (2012). If meal breaks are missed, late, short, or interrupted, the employer is liable for an hour of pay at the employee's regular rate ("premium wages"). Labor Code § 226.7. Likewise, employers must authorize and permit a 10-minute, uninterrupted rest period for every 4 hours, or major fraction thereof, that an employee works; if the rest period is too short, interrupted, or not authorized and permitted, the employer is liable for an hour of pay at the employee's regular rate ("premium wages"). Labor Code § 226.7.

Because of Universal's policies and practices, Claimant and other aggrieved employees did not receive compliant meal and rest periods, including second meal periods and third rest periods where applicable. Premium wages were not paid for non-compliant breaks.

Labor Code § 226 (Wage Statements)

California employers are required to provide itemized wage statements showing, among other things, "gross wages earned," "total hours worked by the employee," "net wages earned," and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Labor Code §§ 226(a)(1), (2), (5), (9).

Universal did not provide accurate itemized wage statements containing all required categories of information to Claimant and other aggrieved employees. For instance, because Universal rounded employees' time entries and thus failed to record all hours employees actually worked, the wage statements Universal provided did not show the correct number of hours worked, gross wages earned, net wages earned, and all hourly rates in effect each pay period and the number of hours worked at each rate. Further, Universal did not report meal and rest premiums earned put unpaid on wage statements.

Labor Code §§ 1174 and 1198 (Accurate Records)

An employer must maintain payroll records showing hours worked daily by, and wages paid to, its employees, in accordance with rules established by the Industrial Welfare Commission. Labor Code § 1174. An employer must also maintain time records showing when each work period, and meal period, begins and ends. IWC Wage Order(s), § 7.

As alleged herein, Universal did not maintain accurate time and pay records as to Claimant and other aggrieved employees.

Labor Code § 2802 (Expense Reimbursement)

California employers must reimburse all expenses which are reasonable under the circumstances if they know or have reason to know the expenses were incurred. Labor Code § 2802; *Grissom v. Vons Companies, Inc.* (1991) 1 Cal.App.4th 52, 58 ("necessary" under section 2802 means reasonable under the circumstances); *Stuart v. Radioshack Corp.* (N.D. Cal. April 30, 2009) 641 F.Supp.2d 901, 904 (duty to reimburse is triggered when employer knows or has reason to know of expense).

Universal failed to reimburse Claimant and other aggrieved employees for their reasonable cell phone use for work, despite being aware of it.

Labor Code §§ 201-204 (Wages Due During Employment and Upon Separation)

An employer must pay "[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2... twice during each calendar month, on days designated in advance by the employer as the regular paydays." Labor § 204.

CA Labor & Workforce Development Agency
Universal Protection Service, LP
Re: Elizabeth M. Juarez Ayala
November 23, 2022
Page 5

An employer must pay all wages due to involuntarily terminated employees at the time of termination, or within 72 hours to employees voluntarily terminating. Labor Code §§ 201-202. If an employer willfully fails to timely pay all final wages, the wages continue at the same rate for up to 30 days, until paid. Labor Code § 203.

As a result of its failure to pay all wages earned, as described above, Universal failed to pay all final wages due to Claimant and other aggrieved employees and violated Sections 201-204.

Conclusion

Claimant requests the Labor and Workforce Development Agency (“LWDA”) initiate enforcement for the violations described above against Universal. If the LWDA does not pursue enforcement, Claimant will pursue claims for statutory penalties and seek all remedies available for Universal’s violations of the Labor Code and applicable Industrial Welfare Commission Wage Order(s), including all available penalties set forth in Labor Code section 2699(f).

Sincerely,
COHELAN KHOURY & SINGER



Rosemary C. Khoury, Esq.

cc:

Via Email Only

Michael P. Sousa, Esq.

LAW OFFICES OF MICHAEL P. SOUSA, APC

4455 Morena Blvd., Suite 201

San Diego, CA 92117

msousa@msousalaw.com