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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Cheyenne Preston, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
UNLIMITED JURISDICTION

JOANN BAMBA, an individual;

Plaintiff;

vs.

SECUR IT GUARD COMPANY, a Delaware
stock corporation; IAN TOMINSKI, an
individual; MICHAEL R. LOUMOS, an
individual; ERIKA CITRA, an individual; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: 37-2023-00016139-CU-OE-CTL

COMPLAINT

Plaintiff JOANN BAMBA hereby alleges the following:

PARTIES

1. Plaintiff JOANN BAMBA ("Plaintiff") is, and at all times mentioned herein, an individual residing in San Diego, CA.

2. Defendant SECUR IT GUARD COMPANY ("Secur It") is, and at all times mentioned herein, a Delaware stock corporation. Its registered address is 113 West G Steet #5044, San Diego, CA 92101.

1 3. Defendant IAN TOMINSKI (“Tominski”) is, and at all times mentioned herein, an
2 individual residing in San Diego, CA. Plaintiff is informed and believe and thereon alleges that
3 Tominski is a person acting on behalf of Secur It as understood under Labor Code section 558.1.

4 4. Defendant MICHAEL R. LOUMOS (“Loumos”) is, and at all times mentioned herein, an
5 individual residing in San Diego, CA. Plaintiff is informed and believe and thereon alleges that Loumos
6 is a person acting on behalf of Secur It as understood under Labor Code section 558.1. Loumos is also
7 the licensee for Secur It and therefore is legally responsible for the conduct of the employees and
8 managers pursuant to Business and Professions Code section 7582.15

9 5. Defendant ERIKA CITRA (“Citra”) is, and at all times mentioned herein, an individual
10 residing in San Diego, CA. Plaintiff is informed and believe and thereon alleges that Citra is a person
11 acting on behalf of Secur It as understood under Labor Code section 558.1.

12 6. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES
13 1 through 100 (the “DOE Defendants”) and therefore, sues these defendants by such fictitious
14 names. Plaintiff will amend the Complaint to insert DOE Defendants’ true names and capacities when
15 ascertained. Plaintiff is informed and believes and therefore alleges that each of these fictitiously named
16 defendants is legally responsible for the events and happenings referred to herein, and legally hereinafter
17 alleged were proximately caused by the acts of such defendants, and each of them.

18 7. Secur It, Tominski, Loumos, Citra, and DOE Defendants, will be collectively referred to
19 as “Defendants” hereafter.

20 8. Plaintiff is informed and believes and on that basis alleges that at all times mentioned
21 herein, each of the defendants was the agent and employee of the remaining defendants, and was acting
22 within the scope and purpose of such agency and employment in doing the acts herein alleged.

23 9. Plaintiff is informed and believes and thereon alleges that some of the entities named as
24 defendants herein including, but not limited to, Secur It and DOES Defendants (hereinafter occasionally
25 collectively referred to as the “Alter Ego Entities”), and each of them, were at all times relevant the alter
26 ego of Tominski, Loumos, Citra, and DOES Defendants (hereinafter occasionally collectively referred
27 to as the “Individual Defendants”) by reason of the following:
28

- 1 a. Plaintiff is informed and believes and thereon alleges that said Individual
2 Defendants, at all times herein mentioned, dominated, influenced, and controlled
3 each of the Alter Ego Entities and the officers thereof as well as the business,
4 property, and affairs of each of said corporations.
- 5 b. Plaintiff is informed and believes and thereon alleges that, at all times herein
6 mentioned, there existed and now exists a unity of interest and ownership between
7 said Individual Defendants and each of the Alter Ego Entities; the individuality
8 and separateness of said Individual Defendants and each of the Alter Ego Entities
9 have ceased.
- 10 c. Plaintiff is informed and believes and thereon alleges that, at all times since the
11 incorporation of each, each of the Alter Ego Entities has been and now is a mere
12 shell and naked framework which said Individual Defendants used as a conduit
13 for the conduct of their personal business, property, and affairs.
- 14 d. Plaintiff is informed and believes and thereon alleges that, at all times herein
15 mentioned, each of the Alter Ego Entities was created and continued pursuant to a
16 fraudulent plan, scheme and device conceived and operated by said Individual
17 Defendants, whereby the income, revenue and profits of each of the Alter Ego
18 Entities were diverted by said Individual Defendants to themselves.
- 19 e. Plaintiff is informed and believes and thereon alleges that, at all times herein
20 mentioned, each of the Alter Ego Entities was organized by said Individual
21 Defendants as a device to avoid individual liability and for the purpose of
22 substituting financially irresponsible corporations in the place and instead of said
23 Individual Defendants, and each of them, and accordingly, each of the Alter Ego
24 Entities was formed with capitalization totally inadequate for the business in
25 which said entities was engaged.

26 10. By virtue of the foregoing, adherence to the fiction of the separate corporate existence of
27 each of the Alter Ego Entities would, under the circumstances, sanction a fraud and promote injustice in
28 that Plaintiff would be unable to realize upon any judgment in her favor.

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12. This Court has subject matter jurisdiction over this Complaint as the action arises under the California Labor Code and associated provision. This Court has original jurisdiction over the matter. (Cal. Const., art VI § 10.)

14. This is an unlimited jurisdiction matter as the amount in controversy is over \$25,000 as understood under Code of Civil Procedure section 85.

15. Plaintiff was an employee of Defendant.

16. Plaintiff began working for Defendants on or about February 20, 2021, as a security guard at the homeowner's association hereinafter referred to as "Lakeview." From February 20, 2021, to December 10, 2021, Plaintiff made \$14.00 per hour. From December 11, 2021, to December 31, 2022, Plaintiff made \$15.00 per hour. From January 1, 2023, to present, Plaintiff made \$16.30 per hour.

17. At the time she was hired, Plaintiff was informed that she would receive an additional \$2.00 per hour in "Performance Pay." Plaintiff's performance pay would be multiplied by the number of hours she worked per pay period and added onto her paystub as a "Bonus." This new pay rate constituted her regular rate of pay.

18. However, Defendants were not applying the performance pay to her overtime wages. Instead of calculating overtime based off Plaintiff's regular rate of pay of \$17.00 per hour, Defendant would calculate Plaintiff's overtime rate based off \$15.00 per hour. Therefore, Plaintiff was underpaid \$3.00 an hour for every hour of overtime worked.

19. While working, Plaintiff is the lone security guard at Lakeview, so she is unable to take rest breaks and meal breaks during her shifts wherein she is fully relieved of all her duties.

20. Plaintiff receives text messages from the Human Resources team for Defendants every shift telling her when to take her rest and meal breaks. However, these warnings and notices were

1 pointless. Defendants are fully aware that there is no one available to relieve Plaintiff. In fact, Plaintiff
2 would be reprimanded for not being 100% available at all times when residents needed assistance.
3 Therefore, to comply with Human Resources' demands, and to fulfil her obligations as a security guard,
4 Plaintiff would be clocked out to take her "break," even though she was not fully relieved of all of her
5 duties.

6 21. Furthermore, Plaintiff noticed that the time keeping software knew exactly when she
7 would clock in, but the actual time credited on her paycheck would always round her time down. Many
8 times, she would have to stay late to wait for the new security guard to come and relieve her from her
9 post. Instead of recording the time worked, it would only credit her for the time she was scheduled to
10 work. The rounding was not neutral as it always decreased the amount of time she was credited for.

11 22. In February 2022 and April 2022, Plaintiff was asked to utilize her own personal vehicle
12 during her shift because the security guard vehicle designated for Lakeview was undergoing repairs. She
13 obliged and incurred gasoline expenses and a maintenance expense for her vehicle during that time.
14 Plaintiff submitted her receipts to Defendants and to date has not received reimbursement for these out
15 of pocket business related expenses.

16 23. On January 30, 2023, Plaintiff, through her attorneys, demanded compensation for her
17 claims for Unpaid Regular Time Wages, Liquidated Damages, Unpaid Overtime, Unpaid Double Time,
18 Failure to Provide Rest Breaks, Failure to Provide Meal Breaks, Failure to Pay Past Due Wages,
19 Inaccurate Wage Statement Penalties, and Failure to Reimburse for Business Expenses.

20 24. Shortly after Defendants received this demand, Plaintiff received an email from Citra
21 stating that Plaintiff's performance pay was decreased from \$3.00 per hour of performance pay to \$0.70
22 per hour of performance pay.

23 25. On February 23, 2023, Plaintiff was approached by Tominski who offered Plaintiff a
24 deal. Tominski offered to restore Plaintiff's performance pay in exchange for her to drop her wage and
25 hour claims against Defendants.

1 **FIRST CAUSE OF ACTION**

2 **Failure to Pay Wages**

3 **(Against all Defendants)**

4 26. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

5 27. California law requires an employer to pay its employees for all hours worked.

6 28. Defendants failed to maintain accurate records of the hours actually worked by Plaintiff.

7 The time keeping software knew exactly when she would clock in, but the actual time credited and
8 accounted for on her paycheck would always round her time down. Many times, she would have to stay
9 late to wait for the new security guard to come and relieve her from her post. The rounding was not
10 neutral as it always decreased the amount of time she was credited for.

11 29. Because of Defendants' conduct, Plaintiff did not receive compensation for all time
12 actually worked for Defendants.

13 30. Defendants' failure to pay permits a civil suit to recover wages due to Plaintiff under
14 Labor Code sections 204, 218.5, 510 and 1194, plus recovery of interest.

15 31. As a direct and proximate cause of Defendants' conduct, Plaintiff has been injured and is
16 entitled to unpaid wages, interest, attorney fees, and other statutory penalties.

17 **SECOND CAUSE OF ACTION**

18 **Liquidated Damages pursuant to Labor Code section 1194.2**

19 **(Against all Defendants)**

20 32. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

21 33. Labor Code section 1194.2 states:

22 In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages
23 because of the payment of a wage less than the minimum wage fixed by an
24 order of the commission or by statute, an employee shall be entitled to
25 recover liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

26 34. When Plaintiff worked for Defendants in 2021, the minimum wage for Defendants'
27 employees in California was \$14.00 per hour. When Plaintiff worked for Defendants in 2022, the
28 minimum wage for Defendants' employees in California was \$15.00. When Plaintiff worked for

1 Defendants in 2023, the minimum wage for Defendants' employees in San Diego, California was \$16.30
2 per hour.

3 35. When minimum wage was \$14.00, \$15.00, and \$16.30, Plaintiff worked several days and
4 received did not receive pay for her time worked. This amount is below the applicable minimum wage.

5 36. Plaintiff is entitled to liquidated damages and all other damages explained in the Prayer
6 for Relief section below.

7 **THIRD CAUSE OF ACTION**

8 **Failure to Pay Overtime Wages**

9 **(Against all Defendants)**

10 37. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

11 38. Labor Code section 510 and Wage Order 7 requires an employee be paid overtime (i.e.,
12 one and a half (1.5) times their regular rate of pay if the employee works (a) more than eight (8) hours in
13 one workday, (b) more than of forty (40) hours in any one workweek, and (c) and the first eight (8)
14 hours worked on the seventh day of work in a workweek.

15 39. California law also requires an employee be paid double time (i.e., two (2) times their
16 regular rate of pay) if the employee works (a) more than twelve (12) hours in one workday, or (b) more
17 than eight (8) hours on the seventh day of a workweek. This overtime must be calculated to include
18 unpaid on-duty mealtime and work performed off-the-clock when employees' hours exceeded eight in a
19 day or forty in a week.

20 40. Labor Code section 1198 states:

21 Notwithstanding any agreement to work for a lesser wage, any employee
22 receiving less than the legal minimum wage or the legal overtime
23 compensation applicable to the employee is entitled to recover in a civil
24 action the unpaid balance of the full amount of this minimum wage or
overtime compensation, including interest thereon, reasonable attorney's
fees, and costs of suit.

25 41. As explained above, Defendants have unlawfully denied Plaintiff the payment of earned
26 overtime compensation in violation of Labor Code sections 510, 558, 1194, 1198, and Wage Order 7.
27 Defendants therefore are liable to Plaintiff for unpaid overtime compensation.
28

1 42. Under Labor Code section 1194, Plaintiff is entitled to recover such unpaid overtime
2 compensation, interest, attorney's fees, and costs.

3 **FOURTH CAUSE OF ACTION**

4 **Failure to Provide Meal Breaks**

5 **(Against all Defendants)**

6 43. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

7 44. Labor Code section 512 states an employer shall not employ an employee for a work
8 period of more than five (5) hours per day without providing the employee with a meal period of not less
9 than thirty (30) minutes. The employee must be completely free from work during this meal break.
10 Failing to provide a meal break entitles the employee to one (1) additional hour of pay at the employee's
11 regular rate of compensation for each workday that the break was not provided. (Lab. Code § 226.7; see
12 also 8 Cal. Code. Regs. §11070, subsec. 11.)

13 45. Defendants failed to provide Plaintiff an opportunity to take a meal break as described
14 above.

15 46. The extra pay for missed breaks constitutes wages under California law. (*Betancourt v.*
16 *OS Restaurant Services, LLC* (2022) 83 Cal.App.5th 132, 134.)

17 47. Defendants are liable to Plaintiff for one additional hour of pay at Plaintiff's regular rate
18 of pay for each day that a meal break was not provided, along with costs and attorney's fees.

19 **FIFTH CAUSE OF ACTION**

20 **Failure to Provide Rest Breaks**

21 **(Against all Defendants)**

22 48. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

23 49. Wage Order 7, section 12, provides:

24 Every employer shall authorize and permit all employees to take rest
25 periods, which insofar as practicable shall be in the middle of each work
26 period. The authorized rest period time shall be based on the total hours
27 worked daily at the rate of ten (10) minutes net rest time per four (4) hours
28 or major fraction thereof . . . Authorized rest period time shall be counted
as hours worked for which there shall be no deduction from wages. (8 Cal.
Code. Regs. §11070, subsec. 12.)

50. Failure to provide a rest break entitles the employee to a rest premium equal to one hour of their regular pay rate in addition to the time they already worked. (Lab. Code § 226.7.)

51. Defendants failed to provide Plaintiff an opportunity to take a rest break as required by California law.

52. The extra pay for missed breaks constitutes wages under California law. (*Betancourt v. OS Restaurant Services, LLC* (2022) 83 Cal.App.5th 132, 134.)

53. Defendants are liable to Plaintiff for one additional hour of pay at Plaintiff's regular rate of pay for each day that a rest break was not provided, along with costs and attorney's fees.

SIXTH CAUSE OF ACTION

Waiting Time Penalties pursuant to Labor Code section 203(a)

(Against all Defendants)

54. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

55. Plaintiff resigned from their employment with Defendants. Pursuant to Labor Code section 201, Plaintiff's final wages were due and payable no later than 72 hours after providing notice of Plaintiff's resignation.

56. Defendants had failed to pay all wages due to Plaintiff upon resignation.

57. Labor Code section 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201 , 201.3 , 201.5 , 201.9 , 202 , and 205.5 , 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.

58. In violation of California law, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff for all wages earned and all hours worked upon the end of Plaintiff's employment.

59. Pursuant to Labor Code section 203, Plaintiff is entitled to continuing wages for up to thirty days.

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76. On or about December 15, 2022, Plaintiff provided written notice to the Labor and Workforce Development Agency through the agency's online system. Plaintiff also sent a copy of this notice to Defendants via certified mail.

77. No response was provided from the LWDA to Plaintiff's letter. Plaintiff therefore has exhausted all administrative procedures required under Labor Code section 2698 *et seq.* Plaintiff may bring a claim for civil penalties cause of action under PAGA.

TENTH CAUSE OF ACTION

Retaliation

(Against all Defendants)

78. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

79. Labor Code section 1102.5(b) prohibits an employer from retaliating against an employee that reports information to a supervisor regarding the employee's concern that the employer is violating California law. Additionally, Labor Code section 98.6(a) prohibits an employer from retaliating against an employee for making a written or oral complaint that he or she is owed unpaid wages.

72. As explained above, Plaintiff made a demand for unpaid wages and penalties owed to her. Plaintiff's demand centered on Defendants' illegal conduct of failing to abide by the California Labor Code as previously alleged herein.

73. Shortly after making her complaints, Defendants cut Plaintiff's pay.

74. Defendants then approached Plaintiff and offered Plaintiff to reinstate her pay if she dropped her demand and did not pursue legal action against Defendants.

75. As a direct result of Defendants' conduct, Plaintiff has suffered economic and non-economic damages. Plaintiff is entitled to compensation, as well as applicable statutory penalties and reimbursement of attorney's fees and costs.

76. Defendants were aware of the probable legal consequences of their conduct and willfully and deliberately failed to remedy or prevent against those consequences. This conduct was ratified or supported by Defendants' managing agents. Defendants' conduct constituted malice, oppression or fraud such that Plaintiff is entitled to punitive damages under California Civil Code section 3294 in an amount to punish Defendants or to set an example.

PRAYER OF RELIEF

80. Wherefore, Plaintiff asks the Court for judgment as follows:

- a. For damages according to proof.
- b. For reasonable attorneys and costs as permitted by law.
- c. For costs of suit.
- d. For interest, as permitted by law.
- e. For all applicable statutory penalties according to proof.
- f. For all applicable civil penalties according to proof.
- g. For such other and further relief that the Court may deem just and proper.
- h. For all applicable civil and statutory penalties according to proof.

Dated: April 18, 2023

JUREWITZ LAW GROUP



JAMES JOSEPH
Attorney for Plaintiff