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August 8, 2025

Via E-filing:
California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Professional Security Consultants
11454 San Vicente Blvd.
Los Angeles, CA 90049

Re: PAGA Notice Pursuant to California Labor Code §2698 *et seq.*

Claimant(s): Jose Diaz Rodriguez
Employer(s): Professional Security Consultants

Dear Sir or Madam:

Jose Diaz Rodriguez ("Claimant") has retained Nazo Koulloukian, Esq. of Koul Law Firm, APC, to represent Claimant, and all other aggrieved employees, for conditions of employment and wage and hour claims against former employer, Professional Security Consultants (hereafter "Employer").

Employer operates a Security Guard Service. Claimant worked for Employer from December 21, 2023 until August 17, 2024 as a security guard at Employer's Los Angeles location. Claimant worked as an hourly, nonexempt employee earning approximately $17.00 per hour at the time of separation.

Claimant alleges herein the specific provisions of California law that Employer has violated, requiring this Notice, including but not limited to: California Labor Code sections 201-203, 204, 208, 216, 221-223, 226, 226.2, 226.7, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

During Claimant's employment, Claimant personally experienced the Labor Code violations described below. We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act on behalf of the Labor and Workforce and development Agency and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§200, 204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.,* IWC Wage Orders)

The Wage Orders define "hours worked" as "the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so." Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked based on the employees regular rate of pay, as more fully set forth below. Employer has also failed to pay the required minimum wage for all hours worked, and has failed to pay all wages owed twice per month.

Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has also violated §§1198 and 1199. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

<u>Off-the-Clock Hours Worked</u>

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer's control but not compensated for their time.

Claimant and his coworkers were required to carry radios and work phones at all times, including during meal and rest breaks. Employees frequently experienced interrupted or late meal breaks due to the radios and work phones. For example, Claimant recalls his meal breaks being interrupted by his radio and work phone at least 2 times per month. Employees were required to answer their phones even while off the clock. For example, Claimant recalls answering incoming calls lasting 10-15 minutes before clocking in, an average of twice per month.

Further, employees frequently had to wait for the security guard they were relieving to arrive at their post. For example, at least twice per week, Claimant spent twenty minutes waiting for the on-duty security guard to arrive at the designated post and transfer equipment before Claimant was permitted to clock in. This waiting time was consistently off the clock. Employer prohibited employees from clocking in before receiving the work phone from the prior guard.

Employees were also on-call on weekends when the Company had parties. Employees were not paid for waiting on standby. When employees were called into work over the weekend, they were paid the base rate.

<u>Unpaid Wages – Rounding</u>

Employer rounds Claimant and aggrieved employee timecards in a manner that favors Employer. Indeed, with Employer's strict policies against arriving to work late, as well as against returning from meal periods late, Claimant and aggrieved employees clock in before their start time and this consistently benefitted Employer. However, Claimant's wage statements consistently show hours rounded down.

Employer used the ADP App to keep track of time. Employees clocked in and out using their phone. Despite the precision of the timeclock, Employer periodically changed employees time clock records after employees clocked in and out.

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512.

Claimant and his coworkers were required to keep their radios and work phones on at all times, including during meal breaks. Employees frequently experienced interrupted or late meal breaks due to being on call via radios and work phones. For example, Claimant recalls his meal breaks being interrupted at least 2 times per month.

On-Call Time

Claimant and his coworkers were often required to remain "on call" during weekends. This time was not paid despite the fact that employees were substantially limited in their activities and were required to respond immediately if called in.

Improper Calculation of Overtime Rate – Failure to Pay Overtime Wages

(Cal. Lab. Code §§218, 510 et. seq., 1194)

Employer pays additional compensation such as shift premiums for working holidays and/or nondiscretionary bonuses to its hourly, non-exempt employees. It is well established that nondiscretionary bonuses retroactively increase the employee's "regular rate" of pay for purposes of calculating overtime. (Labor Code §207) The "regular rate" is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee's regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Employer pays shift premiums and other forms of compensation. These nondiscretionary payments were not incorporated into aggrieved employees' regular rate of pay for purposes of calculating overtime, sick pay, vacation wages, or meal and rest period premium pay.

Failure to Properly Calculate and Pay Sick Leave Wages- Regular Rate

Cal. Labor Code §§246, 2698 *et seq*

Employers must calculate paid sick leave for non-exempt employees in one of two ways:

> (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the

> employee uses paid sick time, whether or not the employee actually works overtime in that workweek; [or]
>
> (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee'stotal hours worked in the full pay periods of the prior 90 days of employment.
>
> Labor Code § 246 (l)

Claimant and aggrieved employees were paid sick leave wages at their base hourly rates of pay, which is less than required under either of the two alternative methods of calculation provided by Labor Code section 246(l).

Employer pays additional wages in the form of shift-pay. These nondiscretionary payments were not incorporated into aggrieved employees' regular rate of pay for purposes of calculating overtime, sick pay, vacation wages, or meal and rest period premium pay.

Failure to Pay All Wages Owed Twice Per Month

(Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a).

Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, employees were underpaid for hours worked, including overtime and premium wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Due to these failures, Employer is liable under Labor Code §204, 210 and 2698 *et seq.* for failure to pay wages as required by law.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above. Based on Employer's unlawful conduct described herein, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Orders. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq*.

Employees were not paid the minimum wage. For example, available paystubs show Claimant's hourly rate as $17, which is less than the minimum wage in the city of Los Angeles during Claimant's employment from 2023 until 2024.

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 227.3 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.* For example, Claimant did not receive his final paycheck until two weeks after he was terminated.

Failure to Permit Compliant Meal Periods

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order)

Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes…" Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal… period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11 of the Wage Order provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. When meal periods were noncompliant, Employer failed to pay all premium pay to Claimant and aggrieved employees at their regular rates of pay. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a).

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy; and/or (6) because Employer unlawfully shaved and/or rounded clock in and clock out times for meal periods. Employees were not paid a premium payment, paid as an hour's wage when meal periods were not given to them in compliance with California law.

Claimant and Claimant's coworkers frequently missed first and second meal periods. When meal periods were provided, they were often late, short, and/or interrupted. For example, Claimant took late meal breaks on numerous occasions and recalls his meal breaks being interrupted numerous times.

Employees frequently had to work during their meal breaks. Second meal breaks were not offered when employees worked more than 10 hours. Meal periods were also on-duty because employees were not permitted to turn off their walkie talkies and were required to respond regardless of whether they were on unpaid meal periods.

<u>Rounding Meal Period Time Entries</u>

Meal periods were also noncompliant because Employer rounded and thus altered timeclock entries for meal periods so that they do not show a meal period violation. The California Supreme Court has emphasized the importance of fully compliant meal periods, holding that employers must record meal period time entries to the exact minute, prohibiting rounding or shaving time for employee meal periods. (*Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 67.)

<u>Failing to Allow Employees to Leave Premises</u>

"Employers must afford employees uninterrupted half-hour periods in which they are relieved of any duty or employer control and are *free to come and go as they please*." (*Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685, 705.)

In this case, Employer had a written policy prohibiting employees from leaving the premises during unpaid meal periods, resulting in unpaid on-duty meal periods.

<u>Failure to Provide Rest Breaks</u>

<u>(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq., Wage Orders)</u>

Employer failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that employees frequently missed rest periods as a result of Employer's staffing and business practices, and that rest breaks were not scheduled into daily shifts.

Rest periods were either less than ten minutes, not provided, interrupted or late, "on duty," or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("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 work day that the rest period is not provided"). Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. (*Id.* at 268) (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; *see also, Bufil v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the "onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to their employees.").

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Orders. When breaks were missed Employer failed to pay the 1-hour premium, as required. Claimant and his coworkers frequently missed their rest breaks entirely because Employer failed to provide relief workers, which, given the low hourly rate, Employer could have coordinated relief workers to permit breaks.

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2698 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties. Accordingly, Employers are liable for civil penalties under PAGA §2698 *et seq*.

Claimant and aggrieved employees are required to use their personal cell phones for work related communications, although Employers did not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code.

Further, employees were required to wear uniforms including a white shirt with the company's logo. Claimant's paystubs show a "uniform deduction." Employer did not compensate for the uniforms, nor did they reimburse for uniform maintenance.

Employees were also frequently required to bring their own tools to work, including flashlights, utility belts, and pepper spray to perform their duties.

<u>Failure to Provide Accurate Itemized Wage Statements</u>
<u>(Cal. Labor Code §§ 226, 1174, 2698 *et seq*)</u>

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d).

Derivative of the claims above, the statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross wages earned, including pay for all hours worked and the accurate rate of pay for all hours worked, and overtime pay, sick pay at the correct rate, and pay for meal and rest period premium wages.

§226 (a) requires:

> An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if 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, except as provided in subdivision (j), (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, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (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 other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee…

Such failures called injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked, and the amount of wages to which they are and were entitled.

Employer knowingly and intentionally failed to accurately itemize the gross wages earned, net wages earned, and total hours worked.

Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq*.

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment-related contracts and documents that contained unlawful terms of employment, including invalid meal period waivers resulting from a noncompliant meal period policy and/or practice.

Conclusion

Employer has violated a number of California wage and hour laws and is therefore liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.* Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform Claimant if it does not intend to investigate these violations so that Claimant may pursue these claims as a representative action in civil court.

Sincerely,

Nazo Koulloukian, Esq.
Attorney for Claimant