

FILED
Superior Court Of California,
Sacramento
03/08/2023
rbloxson
By....., Deputy
Case Number:
34-2023-00335822

Timothy B. Del Castillo (SBN: 277296)
tdc@castleemploymentlaw.com
Kent L. Bradbury (SBN: 279402)
kb@castleemploymentlaw.com
Castle Law: California Employment Counsel, PC
2999 Douglas Blvd., Suite 180
Roseville, CA 95661
Telephone: (916) 245-0122
Attorneys for Plaintiff JESUS GARCIA-GUTIERREZ

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

JESUS GARCIA-GUTIERREZ,

Plaintiff,

vs.

CRITTER CONTROL OPERATIONS,
INC., a Delaware Corporation; ROLLINS,
INC., a Delaware Corporation; and DOES
1 through 20, inclusive,

Defendants

Case No.

COMPLAINT FOR DAMAGES:

1. Failure to Pay Minimum Wage
2. Failure to Pay Overtime Wages
3. Failure to Provide Meal and Rest Periods
4. Failure to Provide Accurate Wage Statements
5. Failure to Pay Final Wages
6. Failure to Provide Reimbursement of Expenses
7. Violation of Labor Code § 213
8. Retaliation in Violation of Labor Code § 1102.5
9. Wrongful Termination in Violation of Public Policy
10. Failure to Produce Pay Records
11. Failure to Produce Personnel File
12. Unfair Competition (Business & Professions Code § 17200 *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff JESUS GARCIA-GUTIERREZ ("Plaintiff") hereby files this Complaint against
2 Defendants CRITTER CONTROL OPERATIONS, INC, a Delaware Corporation; ROLLINS,
3 INC., a Delaware Corporation; and DOES 1 through 20, inclusive, (hereinafter collectively
4 referred to as "Defendants"). Plaintiff alleges the following:

5 **PARTIES AND JURISDICTION**

6 1. Plaintiff JESUS GARCIA-GUTIERREZ is an individual over the age of eighteen (18)
7 and is now and/or at all times mentioned in this Complaint was a resident of the State of California.

8 2. Plaintiff was an employee of Defendants, where he worked as a Service Manager.

9 3. Plaintiff is informed and believes, and thereon alleges, that Defendant CRITTER
10 CONTROL OPERATIONS, INC. is a Delaware Corporation registered and doing business in
11 California, including in Sacramento County.

12 4. Plaintiff is informed and believes, and thereon alleges, that Defendant ROLLINS, INC. is
13 a Delaware Corporation registered and doing business in California, including in Sacramento
14 County.

15 5. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
16 herein was, at all times relevant to this action, the agent, employee, or joint employer or joint
17 venturer of the remaining defendants and was acting within the course and scope of that relationship.
18 Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein
19 gave consent to, ratified and authorized the acts alleged herein to each of the remaining defendants.
20 The true names and capacities of the defendants named herein Does 1 through 20, inclusive, whether
21 individual, corporate, associate, or otherwise are unknown to Plaintiff, who therefore sues such
22 defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff
23 will amend this complaint to show such true names and capacities of Does 1 through 20, inclusive,
24 when they have been determined.

25 6. The Sacramento County Superior Court has jurisdiction in this matter due to alleged
26 violations of California Labor Code §§ 201, 203, 226, 226.7, 510, 512, 1194, 2802, Business and
27 Professions Code § 17200 *et seq.*, and the applicable Wage Order.
28

1 7. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of
2 the wrongful acts and violations of law asserted herein occurred within Sacramento County.

3 **FACTS COMMON TO ALL CAUSES OF ACTION**

4 8. Plaintiff worked for Defendants as misclassified an exempt employee in California.
5 Plaintiff was paid on salary basis, without pay for all regular and overtime hours worked. Plaintiff
6 was given the title of "Service Manager" but actually had no authority to hire or fire other employees
7 and spent the majority of his working time performing non-exempt tasks. Thus, Plaintiff was
8 improperly classified as exempt and was not provided with all the benefits and protections that he
9 should have been entitled to as a non-exempt employee, such as pay for all hours worked, overtime
10 pay, and meal and rest breaks.

11 9. Plaintiff has still not been accurately paid all his final wages because of his
12 misclassification and was not provided with accurate itemized wage statements during his
13 employment.

14 10. Plaintiff was also not reimbursed for mileage and cell phone expenses.

15 11. Plaintiff was also required to receive his final pay in the form of a pay card, without his
16 authorization, which is a violation of the Labor Code.

17 12. Defendants violated Labor Code sections 226, 432, 247.5, and 1198.5 by refusing to
18 produce Plaintiff's employment records within the statutory time frames. Specifically, on January 4,
19 2023, Plaintiff requested these records from Critter Control Operations, Inc. through his counsel via
20 certified mail, but as of March 7, 2023, no records have been received by Plaintiff or his counsel.

21 13. Plaintiff was unlawfully terminated after he complained about Defendants' illegal
22 practices with respect to reducing employees' pay and complaints about Defendants violating the
23 law in the trapping of animals and spraying of pesticides. His retaliatory termination was a violation
24 of Labor Code section 1102.5.

25 14. Plaintiff and his coworkers were also required to work under dangerous working
26 conditions, such as working on roofs without proper PPE or harnesses. One of Plaintiff's
27
28

1 technicians was forced to go into an attic with live electrical wires. Plaintiff complained about these
2 illegal practices to the company, and these safety hazards were also reported to Cal OSHA.

3 15. Additionally, during his employment Plaintiff became aware that a supervisor, Justin
4 Holden, was illegal cutting hours from technicians' pay. One of these technicians, Niko Bird, filed a
5 lawsuit against Defendants as well. Mr. Holden also cut Plaintiff's pay illegal when he was
6 performing work remotely. Plaintiff complained about these illegal practices and spoke up for the
7 technicians. Plaintiff also reported these illegal practices to Defendants' Human Resources
8 department, and on information and belief, Defendants' Human Resources department determined
9 that the illegal pay practice had in fact occurred.

10 16. Plaintiff and other employees, including Mr. Bird, also complained about safety
11 violations at the company and about the illegality of some animal trappings. Eventually, Plaintiff
12 was terminated in retaliation for complaining about illegal animal trap and release programs,
13 unlicensed pest control activities, and illegal timecard reductions resulting in wage theft.

14
15 **FIRST CAUSE OF ACTION**
16 **(Failure to Pay Minimum Wage for All Hours Worked)**
17 **(As to All Defendants)**

18 17. Plaintiff hereby incorporates by reference the Paragraphs above as if fully set forth
19 herein, and for a cause of action alleges as follows:

20 18. Defendants were required to compensate Plaintiff with at least the State's minimum wage
21 for all hours worked. *See* Cal. Labor Code § 1194; MW Order-2014; MW Order-2017.

22 19. Defendants were aware of their obligation to pay the minimum wages but failed to do so.

23 20. Defendants' conduct described herein violates California Labor Code section 1194, and
24 Wage Orders. As a proximate result of Defendants' conduct, Plaintiff has been damaged and
25 deprived of minimum wages, in an amount to be established at trial. Plaintiff now seeks these
26 wages, liquidated damages pursuant to California Labor Code section 1194.2, attorney's fees and
27 costs, and interest pursuant to California Labor Code sections 1194.
28

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(As to All Defendants)

21. Plaintiff hereby incorporates by reference the Paragraphs above as if fully set forth herein, and for a cause of action alleges as follows:

22. During the period Plaintiff was employed by Defendants, Defendants were required to compensate her one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See* California Labor Code §§ 510, 1194. Although Plaintiff regularly worked in excess of eight (8) hours a day and/or forty (40) hours per week, Defendants failed to pay all overtime wages owed to her.

23. Plaintiff was a non-exempt employee under the administrative, executive, or professional exemptions of the applicable Wage Order and California Labor Code section 510.

24. Defendants' conduct described herein violates California Labor Code sections 510 and 1194, and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff has been damaged and deprived of overtime wages, in an amount to be established at trial. Plaintiff now seeks these wages, attorney's fees and costs, and interest pursuant to California Labor Code sections 1194.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(As to All Defendants)

25. Plaintiff hereby incorporates by reference the Paragraphs above as if fully set forth herein, and for a cause of action alleges as follows:

26. An employer must provide an employee a meal period and/or rest period in accordance with the applicable Wage Order and Labor Code sections 226.7 and 512.

27. Labor Code section 510 and Wage Order 2-2001, section 11(A) require an employer to provide a meal period of not less than thirty (30) minutes for each work period of more than five (5) hours. If an employee works longer than ten (10) hours in a workday, the employer must provide a second meal period.

28. Labor Code section 510 and Wage Order 2-2001 section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

29. Plaintiff alleges that Defendants failed to provide Plaintiff with meal breaks of at least thirty (30) minutes for several work periods that Plaintiff worked more than five (5) hours in a day, or to take a second meal break of at least thirty (30) minutes for several work periods that Plaintiff worked more than ten (10) hours in a day.

30. Plaintiff further alleges that Defendants failed to provide rest breaks of at least ten (10) minutes for each work period that she worked more than four (4) hours.

31. As a proximate cause of Defendants' failure to provide meal and rest periods, Plaintiff is entitled to one (1) hour of pay at the regular rate of compensation for each meal period or rest period not provided, as a wage, from three (3) years of the filing of this action, in an amount to be established at trial. *See* Labor Code § 226.7 and Wage Order 2-2001 §§ 11(B), 12(B).

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS
(As to All Defendants)

32. Plaintiff hereby incorporates by reference the Paragraphs above as if fully set forth herein, and for a cause of action alleges as follows:

33. According to Labor Code section 226(a), an employer must provide an itemized statement to an employee, semi-monthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 the last four digits of his or her social security number or an employee identification number other than a social security

1 *number, (8) the name and address of the legal entity that is the*
2 *employer and, if the employer is a farm labor contractor, as defined*
3 *in subdivision (b) of Section 1682, the name and address of the legal*
4 *entity that secured the services of the employer, and (9) all*
5 *applicable hourly rates in effect during the pay period and the*
6 *corresponding number of hours worked at each hourly rate by the*
7 *employee. The deductions made from payment of wages shall be*
8 *recorded in ink or other indelible form, properly dated, showing the*
9 *month, day, and year, and a copy of the statement and the record of*
10 *the deductions shall be kept on file by the employer for at least three*
11 *years at the place of employment or at a central location within the*
12 *State of California.*

13 34. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
14 itemized statement or failed to provide an accurate and complete itemized statement showing the
15 requirements set forth in Labor Code section 226(a). Due to Defendants' timekeeping policies
16 during Plaintiff's employment that resulted in failing to document accurately all hours worked,
17 especially when Plaintiff was misclassified as an independent contractor, Defendants did not
18 properly itemize all hours worked.

19 35. Additionally, Plaintiff alleges he suffered injury as a result of Defendants' failure to
20 provide accurate and complete information as required by any one or more of items (1) to (9),
21 inclusive, of Labor Code section 226, subdivision (a), and Plaintiff cannot promptly and easily
22 determine (*i.e.* a reasonable person in each Plaintiff's position would not be able to readily ascertain
23 the information without reference to other documents or information) from the wage statement
24 alone. Moreover, pursuant to Labor Code section 226(e)(2), Plaintiff is deemed to have suffered
25 injury whenever Defendants failed to provide a wage statement, which happened for the majority of
26 the time Plaintiffs worked for Defendants.

27 36. Plaintiff is entitled to, and does hereby seek, injunctive relief requiring Defendant to
28 comply with Labor Code §§ 226(a) and 1174(d), and the greater of all actual damages or fifty dollars
 (\$50.00) for the initial pay period in which a violation occurs and one hundred dollars (\$100.00) in
 each subsequent pay period, pursuant to Labor Code § 226(e).

FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to All Defendants)

37. Plaintiff hereby incorporates by reference the Paragraphs above as if fully set forth herein, and for a cause of action alleges as follows:

38. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. Labor Code § 201.

39. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 must pay the employee a waiting time penalty of up to thirty (30) days. California Labor Code § 203.

40. Plaintiff did not receive all wages owed, including bonuses and/ or commissions, at his termination from employment.

41. Defendants knew of their obligation to pay Plaintiff for all hours worked and for all wages owed because they had knowledge Plaintiff was, at all times, an employee, working exclusively for Defendants, and was owed wages under the agreement with Plaintiff. Thus, Defendants' failure to pay for all hours worked and/ or all wages earned was in complete disregard of their obligations. Such conduct shows Defendants' knowledge of their obligation to pay all wages owed upon termination and willful refusal.

42. As a proximate result of the Defendants' conduct, Plaintiff has been damaged and deprived of his wages and thereby seeks an appropriate daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due, in an amount to be established at trial.

SIXTH CAUSE OF ACTION
FAILURE TO PAY REIMBURSEMENT EXPENSES
(As to All Defendants)

43. Plaintiff hereby incorporates by reference the Paragraphs above as if fully set forth herein, and for a cause of action alleges as follows:

44. Labor Code section 2802(a) states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even

1 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
2 unlawful.”

3 45. Defendants knew that Plaintiff used his personal cell phone for work purposes, including
4 for calls and texts required for work purposes. However, Defendants did not reimburse Plaintiff for
5 these expenses.

6 46. Plaintiff also was required to drive his personal vehicle to various locations for
7 Defendants as part of the duties of his position. However, Defendants never reimbursed Plaintiff for
8 the use of his personal vehicle.

9 47. Defendants’ conduct described herein violated California Labor Code section 2802. As a
10 proximate result of Defendants’ conduct, Plaintiff has been damaged in an amount to be established
11 at trial, and is entitled to recover these damages, as well as interest and reasonable attorney’s fees
12 and costs, pursuant to statute.

13 **SEVENTH CAUSE OF ACTION**
14 **FORCED PAYMENT OF WAGES VIA PAY CARD**
15 **(As to All Defendants)**

16 48. Plaintiff hereby incorporates by reference the Paragraphs above as if fully set forth
17 herein, and for a cause of action alleges as follows:

18 49. Labor Code section 213(d) allows an employer to pay its employees via direct deposit
19 into the employee’s bank account or via pay card, but only if the employee voluntarily agrees to this
20 form of payment.

21 50. Defendants maintained a policy under which Plaintiff and similarly situated employees
22 were paid their final pay via pay card without their authorization.

23 51. Plaintiff was not provided the option of choosing to be paid via a paper paycheck or other
24 form of payment.

25 52. As such, Defendant violated Labor Code section 213(d). Plaintiff seeks the applicable
26 statutory and civil penalties, and attorney’s fees and costs, in an amount to be proven at trial.

EIGHTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA LABOR CODE SECTION 1102.5
(As to All Defendants)

53. Plaintiff hereby incorporates by reference the Paragraphs above as if fully set forth herein, and for a cause of action alleges as follows:

54. California Labor Code § 1102.5 prohibits retaliation against an employee for disclosing information to a person with authority over the employee, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute or a violation or noncompliance with a state or federal rule or regulation. Labor Code § 1102.5 further prohibits retaliation against an employee for refusing to participate in an activity that would result in a violation of state or federal statute or a violation or noncompliance with a state or federal rule or regulation.

55. Plaintiff informed Defendants as to his concerns regarding their failure to pay him all wages owed, wage theft from other employees, illegal pest control activities, and safety violations.

56. Following Plaintiff's notification to Defendants of the above-referenced concerns, Plaintiff was retaliated against and wrongfully discharged.

57. As a direct, foreseeable, and proximate result of Defendant's retaliatory actions, Plaintiff has suffered and continues to suffer substantial losses in earnings and job benefits, all to his damage herein in an amount not less than the minimal jurisdiction amount of this court, the amount of which will be established at trial.

58. As a direct, foreseeable, and proximate result of Defendant's unlawful actions, Plaintiff has suffered emotional distress, humiliation, shame, and embarrassment, all to the Plaintiff's damage in an amount to be established at trial.

NINTH CAUSE OF ACTION
WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
(As to All Defendants)

59. Plaintiff hereby incorporates by reference the Paragraphs above as if fully set forth herein, and for a cause of action alleges as follows:

60. Plaintiff was employed by Defendants.

1 61. It is, and at all times relevant to this action it has been, the law and fundamental public
2 policy of the state of California that wages due to employees should be properly and promptly paid.
3 These public policies are embodied in statutes, rules, and regulations including, but not limited to the
4 California Labor Code. *See Gould v. Maryland Sound Indus., Inc.*, 31 Cal. App. 4th 1137, 1148
5 (1995) ("California Courts have long recognized wage and hours laws 'concern not only the health
6 and welfare of the workers themselves, but also the public health and general welfare.'") (quoting
7 *Cal. Grape Etc. League v. Indust. Welfare Com.*, 268 Cal. App. 2d 692, 703 (1969)).

8 62. Defendants retaliated against Plaintiff for raising issues with regard to pay practices,
9 safety violations, and illegal pest control activities. Termination of Plaintiff's employment was a
10 violation of public policy (a "nexus" exists between the termination and Plaintiff's protected
11 activity). Accordingly, Plaintiff was unlawfully terminated in violation of the fundamental public
12 policies of the state of California.

13 63. As a direct, foreseeable and proximate result of Defendants' unlawful actions, Plaintiff
14 has suffered and continues to suffer substantial losses in earnings and other employment benefits and
15 has incurred other economic losses in an amount to be established at trial.

16 64. As a direct, foreseeable, and proximate result of Defendants' unlawful actions, Plaintiff
17 has suffered emotional distress, humiliation, shame, and embarrassment, all to the Plaintiff's damage
18 in an amount to be established at trial.

19 65. Defendants committed the acts herein despicably, maliciously, fraudulently, and
20 oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive
21 amounting to malice, and in conscious disregard of the rights and safety of Plaintiff. Plaintiff is thus
22 entitled to recover punitive damages from Defendants in an amount according to proof.
23
24
25
26
27
28

1 **TENTH CAUSE OF ACTION**
2 **FAILURE TO PRODUCE EMPLOYMENT FILE (CAL. LAB. CODE §1198.5)**
3 **(Against All Defendants)**

4 66. Plaintiff hereby incorporates by reference the Paragraphs above as if fully set forth
5 herein, and for a cause of action alleges as follows:

6 67. Plaintiff, through his counsel, requested a copy of his employment records via certified
7 US Mail, but the records were never produced.

8 68. As such, Defendant violated Labor Code section 1198.5. Plaintiff seeks the applicable
9 statutory and civil penalties, and attorney's fees and costs, in an amount to be proven at trial.

10 **ELEVENTH CAUSE OF ACTION**
11 **FAILURE TO PRODUCE WAGE RECORDS (CAL. LAB. CODE §226(B))**
12 **(Against All Defendants)**

13 69. Plaintiff hereby incorporates by reference the Paragraphs above as if fully set forth
14 herein, and for a cause of action alleges as follows:

15 70. Plaintiff, through his counsel, requested a copy of his wage records via certified US Mail,
16 but the records were never produced.

17 71. As such, Defendant violated Labor Code section 226(b). Plaintiff seeks the applicable
18 statutory and civil penalties, and attorney's fees and costs, in an amount to be proven at trial.

19 **TWELFTH CAUSE OF ACTION**
20 **UNFAIR COMPETITION**
21 **(As to All Defendants)**

22 72. Plaintiff hereby incorporates by reference the Paragraphs above as if fully set forth
23 herein, and for a cause of action alleges as follows:

24 73. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
25 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter
26 1 (commencing with Section 17500) of Part 3 of Division 7 of the California Business and
27 Professions Code. See California Business and Professions ("B&P") Code § 17200.
28

74. Plaintiff was not paid all wages owed during his employment, especially because Defendants misclassified Plaintiff as an independent contractor, or non-employee. Defendants also failed to provide legally compliant paystubs to Plaintiff throughout the employment relationship.

75. Plaintiff is also informed and believes and thereon alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (California Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163 (2000).

76. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff is entitled to restitution as a result of Defendants' unfair business practices, including, but not limited to, public injunctive relief, pursuant to B&P Code § 17203, and interest and penalties pursuant to B&P §§ 17203, 17208, violations of Labor Code §§ 1194, 226, and 226.7, all in an amount as yet unascertained but subject to proof at trial, for up to four (4) years from the filing of this Action.

DAMAGES

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. A jury trial;
2. For compensatory damages, including, but not limited to, lost back pay, plus interest, lost fringe benefits and future lost earnings and fringe benefits, damages for emotional distress and pain and suffering, according to proof allowed by law;
3. For penalties under the California Labor Code according to proof allowed by law;
4. For punitive damages allowed by law;
5. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's fees;
6. For injunctive relief;
7. For an award of prejudgment and post-judgment interest; and
8. For an award to Plaintiff of such other and further relief as the Court deems just and proper.

1 Dated: March 7, 2023

Castle Law: California Employment Counsel, PC

2
3
4 By: _____



Timothy B. Del Castillo

Kent L. Bradbury

Attorneys for Plaintiff

JESUS GARCIA-GUTIERREZ

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: March 7, 2023

Castle Law: California Employment Counsel, PC

By: _____



Kent L. Bradbury
Timothy B. Del Castillo
Attorneys for Plaintiff
JESUS GARCIA-GUTIERREZ