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**ELECTRONICALLY FILED**
Superior Court of California,
County of Imperial
**05/25/2023 at 01:00:53 PM**
By: Angela Jantz, Deputy Clerk

Assigned for all purposes, including trial, to Judge L. Brooks Anderholt

Attorneys for Plaintiff LLOYD RODRIGUEZ, in a Representative capacity only, and on behalf of other members of the general public similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF IMPERIAL**

LLOYD RODRIGUEZ, in a Representative capacity only, and on behalf of other members of the general public similarly situated,

Plaintiff,

v.

LEAD STAR SECURITY, INC., a California Corporation; and DOES 1-10, inclusive

Defendants

CASE NO. ECU002939

**COMPLAINT FOR:**

1. **MEAL AND REST PERIOD VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
2. **MINIMUM WAGE VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
3. **OVERTIME VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
4. **WAGE STATEMENT VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
5. **FAILURE TO REIMBURSE PURSUANT TO LABOR CODE § 2698 *et seq.***
6. **FAILURE TO PAY WAGES UPON SEPARATION PURSUANT TO LABOR CODE § 2698 *et seq.***

***Demand for Jury Trial***

COMES NOW Plaintiff LLOYD RODRIGUEZ ("Plaintiff"), in a Representative capacity only, on behalf of all aggrieved employees, and on behalf of other members of the general public similarly situated, and alleges for his complaint as follows:

## PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA") may **not** be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).

2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff's injuries occurred in the County of Imperial, State of California.

3. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant LEAD STAR SECURITY, INC., (Referred to herein as "Defendants" or "LEAD STAR"), was and is a Corporation doing business throughout the state, including the County of Imperial, State of California.

4. Plaintiff is presently unaware of the true names, capacities and liability of Defendants named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.

5. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is responsible in some manner for the wrongs and damages as herein alleged, and in so acting was functioning as the agent, servant, partner, and employee of the co-defendants, and in doing the actions mentioned below, was acting within the course and scope of his or her

authority as such agent, servant, partner, and employee with the permission and consent of the co-defendants. Plaintiff's injuries as herein alleged were proximately caused by said defendants. Wherever it is alleged herein that any act or omission was done or committed by any specially named Defendant or Defendants, Plaintiff intends thereby to allege and does allege that the same act or omission was also done and committed by each and every defendant named as a DOE, both separately and in concert with the named Defendant or Defendants.

6. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, including DOES 1 through 10, are and at all times herein mentioned were either individuals, sole proprietorships, partnerships, registered professionals, corporations, alter egos or other legal entities which were licensed to do and/or were doing business in the County of Imperial, State of California at all times relevant to the subject matter of this action.

## FACTUAL BACKGROUND

7. On or about September 28, 2021, Plaintiff commenced working for Defendants. Plaintiff's employment with Defendants lasted until August 5, 2022. Throughout his employment with Defendants, Plaintiff performed his job in a capable and competent manner and was commended for doing so.

8. Throughout the term of his employment, Plaintiff and all other aggrieved employees were, and currently are, denied the benefits and protections of the Labor Code due to Defendants' institutionalized pay practices, standard as to all of Defendants' California-based employees.

9. On March 20, 2023, counsel for Plaintiff prepared and submitted via online filing a letter to the California Labor & Workforce Development Agency ("LWDA"). Plaintiff also mailed a courtesy copy of this letter to the LWDA via USPS Mail. A copy of the letter was mailed to Defendant, via USPS Certified Mail. The letter contained the specific provisions of the California Labor Code and Business and Professions Code violated by Defendants, as well as the facts and theories in support of Plaintiff's claims. (Please see **Exhibit 1**, a true and correct copy of this letter.)

10. The statutory time period for the LWDA to investigate and/or respond, and for the employer to respond, has concluded.

## REPRESENTATIVE ALLEGATIONS

11. As more specifically set forth below, Plaintiff brings this action in a representative capacity on behalf of all current and former aggrieved employees of Defendants who performed work for Defendants in California only. Code Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code due to Defendants' standard practices. Throughout their employment, Plaintiff and all other aggrieved employees were and are denied full and accurate compensation, including overtime compensation, in violation of, *inter alia*, Labor Code sections 510, 1194, and 1197. Plaintiff and the other aggrieved employees were and are denied Meal and Rest Periods and Meal and Rest Period payments, in violation of, *inter alia*, Labor Code sections 226.7 and 512. Defendants failed to furnish accurate itemized wage statements in violation of, *inter alia*, Labor Code section 226. Defendants failed to reimburse Plaintiff and other aggrieved employees for necessary business expenditures in violation of, *inter alia*, Labor Code section 2802. Defendants failed to provide all compensation due at termination of employment in violation of, *inter alia*, Labor Code sections 201 through 203.

12. Plaintiff brings this action on the grounds that he and other current and former aggrieved employees of Defendants were and are improperly denied the mandated wages resulting from the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The number of current and former aggrieved employees is believed to exceed Five Hundred (500) members.

13. The approximately Five Hundred (500) aggrieved employees are comprised of Defendants' current or former California-based employees.

14. The questions of law and fact common to all aggrieved employees arising from Defendants' actions include, among others, the following:

   a. Whether Defendants failed to pay its employees the proper straight-time, overtime, and double time wages due and owing to them;

   b. Whether Defendants failed to pay its employees all compensation due and owing at termination of employment;

c. Whether Defendants failed to provide its employees with statutorily-compliant Meal and/or Rest Periods, in violation of, *inter alia*, California Labor Code section 512 and 226.7, in that Defendants' written policies are not compliant with California law, and Defendants do not allow its employees duty-free Meal and/or Rest Periods on occasion;

d. Whether Defendants failed to properly provide Meal and Rest Period Premiums in accordance with law;

e. Whether Defendants failed to properly calculate and pay its employees overtime compensation or Meal and Rest Period Premiums in accordance with law by failing to properly calculate, into the Regular Rate of Pay, the value of all employee benefits and other non-discretionary compensation; and

f. Whether Defendants failed to properly reimburse its employees for necessary business expenditures for, *inter alia*, cell phone costs and other work supplies, in violation of Labor Code section 2802.

15. At all times mentioned herein, Defendants were subject to the Labor Codes and Industrial Welfare Commission Wage Orders of the State of California, including, but not limited to, California Labor Code section 2698 *et seq*.

16. At all times mentioned herein, Defendants are and were "employers" as that term is used within the relevant sections of the California Labor Code.

17. Plaintiff has exhausted his administrative remedies and pre-filing requirements pursuant to California Labor Code section 2699.3, and has also fulfilled all notice requirements under the statute.

18. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to Defendants' standard practices. Said violations are set forth below.

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## FIRST CAUSE OF ACTION
**Meal and Rest Period Violations Pursuant to Labor Code § 2698 et seq.**
**Representative Action**
**(By Plaintiff against Defendant and DOES 1 through 10)**

19. Plaintiff hereby incorporates by reference paragraphs 1 through 18 as though fully set forth herein.

20. Labor Code section 1198 states:

> The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Defendants violated this section by establishing working conditions below the standard of the applicable Wage Order.

21. Under applicable California law, "No employer shall employ an employee for a work period of more than five (5) hours per day without a meal period of not less than 30 minutes [...]" Lab. Code § 512(a); see also 8 Cal. Code Regs. § 11040 (11)(A).

22. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal Period shall be considered an "on duty" Meal Period and counted as time worked. 8 Cal. Code Regs. § 11040 (11)(A).

23. California law requires employers to provide nonexempt employees with a 10-minute Rest Period for every four hours worked, or "major fraction thereof." 8 Cal. Code Regs. § 11040 (12)(A).

24. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11040 (11), (12).

25. Within the operative time period, Defendants failed to possess compliant Meal and Rest Period policies.

26. For example, Defendants do not possess a legal Meal Period policy or legal Rest Period policy, and makes no attempt to ensure that its employees are either timely or wholly provided Meal

Periods or Rest Periods.

27. Defendants would also pressure employees to either skip, or cut short, Meal Periods and Rest Periods, based on order volume and coverage issues.

28. In addition, Defendants had notice of Plaintiff working outside of his scheduled and/or reported hours, as well as within his Meal and Rest Periods, but failed to provide any compensation for this work-time.

29. Defendants willfully failed and refused to pay Plaintiff and all other aggrieved employees one additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest Period was not provided, as required by Labor Code section 226.7 and IWC Wage Order 4 § (11), (12).

30. Any payments made by Defendants for non-compliant Meal Periods were not paid at the employee's regular rate in violation of Labor Code section 226.7 and the operative IWC Wage Orders. Instead, these payments were made at an employee's base rate and did not include the value of, *inter alia*, all actual compensation owed, and/or all employee benefits such as, for example, non-discretionary compensation and other employee benefits.

31. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

32. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

33. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

34. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

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## SECOND CAUSE OF ACTION
**Minimum Wage Violations Pursuant to Labor Code § 2698 et seq.**
**Representative Action**
**(By Plaintiff against Defendant and DOES 1 through 10)**

35. Plaintiff hereby incorporates by reference paragraphs 1 through 34 as though fully set forth herein.

36. Defendants failed to pay its employees all compensation due in violation of, among other statutes, Labor Code section 1197. California law holds that the failure to pay for any work time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.*, (2005) 135 Cal. App.4th 314, 323. These violations were caused by and through Defendants' failure to maintain accurate Time Records (as required by California law), to the detriment of the employees. Specifically, although Defendants would receive "to-the-minute" start and end times (from their employees' mandated timekeeping practices), Defendants would thereafter alter - and deduct time from - the Time Records, prior to payment of compensation to the employees. Additionally, the right to receive the proper minimum wage compensation was impacted by Defendants knowingly failing to consider other work performed by the employees, including all time employees were under Defendants' control. These actions, and instructions, caused the employees to lose compensation, including proper minimum wage compensation and overtime compensation. Moreover, Defendants instructed its employees to "self-round" their actual work-times, with a lack of specific instruction as to how to accurately - and neutrally - perform such a function.

37. As a result of Defendants' failure to comply with the provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

38. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

39. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants

pursuant to Labor Code sections 2699(a) for each of these employees.

40. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

**THIRD CAUSE OF ACTION**
**Overtime Violations Pursuant to Labor Code § 2698 et seq.**
**Representative Action**
**(By Plaintiff against Defendant and DOES 1 through 10)**

41. Plaintiff hereby incorporates by reference paragraphs 1 through 40 as though fully set forth herein.

42. Defendants failed to pay Plaintiff and all other aggrieved employees all compensation, including overtime compensation, due in violation of, among other statutes, Labor Code section 510. These violations occurred due to Defendants' illegal policies, referenced above, whereby employees experienced monetary under-compensation. The systematic failure to provide proper overtime compensation is a violation of California law.

43. Additionally, Defendants also failed to provide the actual Overtime Rate of Pay by ignoring certain compensation when calculating the Regular Rate of Pay including, but not limited to, shift differentials, various forms of bonus and/or incentive pay, and the value of employee benefits and employee discounts, in violation of Labor Code section 510.

44. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proved at trial.

45. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

46. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

47. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code

section 2699(g)(1).

**FOURTH CAUSE OF ACTION**
**Wage Statement Violations Pursuant to Labor Code § 2698 et seq.**
**Representative Action**
**(By Plaintiff against Defendant and DOES 1 through 10)**

48. Plaintiff hereby incorporates by reference paragraphs 1 through 47 as though fully set forth herein.

49. Defendants failed to provide Plaintiff and all other aggrieved employees with accurate itemized wage statements in violation of, among other statutes, Labor Code section 226. These violations include, but are not limited to, Defendants' failure to accurately identify all applicable regular and overtime (including double-time) rates of pay in violation of section 226(a)(9), and providing inaccurate representations of both "gross" and "net wages." Defendants also failed to accurately list "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate," in violation of 226(a)(9). Defendants also failed to provide an accurate showing of the "total hours worked," in violation of Labor Code section 226(a)(2).

50. Further, the Defendants' wage statement listings are confusing and employees cannot readily ascertain their total hours worked, applicable rates, and all gross and net wages. As one example, Defendants are apparently using a time calculating system other than "minutes", but without explanation to the employees within the wage statement.

51. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

52. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

53. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants

pursuant to Labor Code sections 2699(a) for each of these employees.

54. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

**FIFTH CAUSE OF ACTION**
**Failure to Reimburse Pursuant to Labor Code § 2698 et seq.**
**Representative Action**
**(By Plaintiff against Defendant and DOES 1 through 10)**

55. Plaintiff hereby incorporates by reference paragraphs 1 through 54 as though fully set forth herein.

57. Defendants failed to reimburse their employees for all necessary business expenditures incurred in direct consequence of the discharge of their duties in violation of, among other statutes, Labor Code section 2802.These expenditures are the result of, *inter alia*, Defendants' standard policies which require its employees to incur mileage, purchase work supplies, and to use their own cell phones for work-related purposes, without reimbursement.

58. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

59. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

60. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

61. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

**SIXTH CAUSE OF ACTION**
**Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 et seq.**
**Representative Action**
**(By Plaintiff against Defendant and DOES 1 through 10)**

62. Plaintiff hereby incorporates by reference paragraphs 1 through 61 as though fully set forth

herein.

63. Defendants failed to provide Plaintiff and other aggrieved employees with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code sections 201through 203. These violations resulted from, among other unlawful actions, Defendants' willful failure to provide accurate and complete compensation to aggrieved employees under Labor Code sections 226.7, 510, 512, 1197, and 2802, as set forth above.

64. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

65. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

66. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

67. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1), and interest, pursuant to Labor Code section 218.6.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of all aggrieved employees, prays for judgment as follows:

1. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code section 2699(g)(1);
2. For an award of statutory civil penalties pursuant to Labor Code section 2699(f)(2); and
3. For such other relief as the Court deems just and proper.

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## DEMAND FOR JURY TRIAL

Plaintiff hereby requests that this matter be heard and decided by trial by jury.

Dated: May 24, 2023

**SULLIVAN & YAECKEL LAW GROUP, APC**

Eric K. Yaeckel
Ryan T. Kuhn
Karoline D. Kitlowski
Attorneys for Plaintiff LLOYD RODRIGUEZ, in a Representative capacity only, and on behalf of other members of the general public similarly situated

# Exhibit 1

# SULLIVAN & YAECKEL

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March 20, 2023

Labor and Workforce Development Agency
Attn. PAGA Administrator

***Submitted Via Online Filing***

Re: **Lloyd Rodriguez v. Lead Star Security, Inc.**
Our File No.: 7330

Dear Administrator:

Please allow this correspondence to serve as "written notice," as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Lead Star Security, Inc., (hereinafter "Lead Star"), in the above referenced matter. This "written notice" is filed on behalf of Mr. Rodriguez, and all current and former non-exempt employees employed by Lead Star. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Lead Star are as follows:

> CALIFORNIA LABOR CODE SECTIONS 201-203, 226, 226(a), 226.7, 510, 512, 1194, 1197.1, 1198.5 and 2802, as well as IWC Wage Order 4, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11040 *et seq.*

**Facts and theories supporting the allegations:** Mr. Rodriguez has been employed as a non-exempt employee for Lead Star from approximately September 28, 2021, through August 3, 2022.

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Throughout the term of Mr. Rodriguez's employment, Lead Star required Mr. Rodriguez and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

**Minimum Wage and Overtime Violations**

- Lead Star failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 1194, 510, IWC Wage Order 4, and any other applicable wage orders. This illegal action is due, in part, to Lead Star's policies of **(1)** failing to properly retain accurate Time Records, in violation of California law, and **(2)** failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, Lead Star would instruct Mr. Rodriguez to report scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Additionally, Lead Star would often require Mr. Rodriguez to work extended hours (beyond scheduled hours), without compensation. Further, Lead Star would regularly contact Mr. Rodriguez outside of normal work hours (*i.e.*, "after hours" or during lunch) without compensation.

- Additionally, among other issues, Lead Star has notice of Mr. Rodriguez, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Periods, but fails to provide any compensation for this work-time. Mr. Rodriguez was frequently scheduled to be "On Call" outside of when his work shifts ended, but was never compensated for this time. Further, Lead Star failed to properly calculate and pay overtime at the actual overtime rate of pay, as Lead Star ignores certain compensation when calculating the Regular Rate of Pay.

**Failure to Provide Compliant Meal Periods**

- Lead Star failed to provide compliant Meal Periods or requisite Meal Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 4, or any other applicable wage orders. For example, Lead Star does not possess a legal Meal Period policy and makes no attempt to ensure that its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely, or be provided a short or untimely Meal Period. Whether or not an employee was provided a Meal Period was often contingent upon the how busy or understaffed the employees were on a given day. Mr. Rodriguez was frequently interrupted during his Meal Periods by supervisors to discuss work related matters.

- Lead Star would pressure its employees to either skip, or cut short, a Meal Period as employees were expected to respond to supervisors at all times. Lead Star has never provided a compliant Meal Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions when employees ***were*** paid Meal Period penalties (*i.e.* California Meal Period Premiums), such payments do not "cure" the stated Labor Code violation under section 226.7. The California Supreme Court held that "An employer's failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer's provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of section 226.7." (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, italics added.). Even more recently, a 2020 California Supreme Court ruling stated that, "The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy 'does not excuse a section 226.7 violation.'" *Kim v. Reins International California, Inc.*, (2020) 9 Cal.5th 73. To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Finally, Lead Star failed to pay Meal Period Premiums at the proper rate, as Lead Star fails to either **(1)** pay a full hours worth of pay, or **(2)** properly calculate the regular rate of pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal.5th 858.

- Lead Star required its employees to constantly monitor their cell phones/radios and be "on-call" at all times, specifically during Meal Periods. On occasion, Lead Star would interrupt, or cut short, its employees' Meal Periods and require them to return to work. Lead Star was frequently understaffed, this would result in Mr. Rodriguez being required to respond to emergencies and supervisors about work related matters during his Meal Periods.

- Lead Star illegally retained control over its employees during Meal Periods. For example, Lead Star required its employees to "remain on the premises," and to remain "On Call" (*i.e.* monitor their phones/radios) at all times, including during Meal Periods.

**<u>Failure to Provide Compliant Rest Periods</u>**

- Lead Star failed to provide compliant Rest Periods or requisite Rest Period penalty payments, in violation of, *inter alia,* Labor Code sections 226.7, 512, and IWC Wage Order 4, and any other applicable wage orders. For example, Lead Star does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. Lead Star makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. Lead Star would pressure its employees to either skip, or cut short, a Rest Period as employees were expected to respond to clients and supervisors at all times. Mr. Rodriguez often was required to work during Rest Periods in order to complete his daily duties before he ended his shift for the day. Lead Star has never provided a compliant Rest Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions in which Lead Star would provide a Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.

- Lead Star required its employees to constantly monitor their cell phones and be "on-call" at all times, specifically during Rest Periods. On occasion, Lead Star would interrupt, or cut short, its employees' Rest Periods and require them to return to work. When Mr. Rodriguez was able to take a Rest Period, his Rest Periods were often interrupted by supervisors and work related emergencies.

- Finally, Lead Star illegally retained control over its employees during Rest Periods. For example, Lead Star required its employees to "remain on the premises," and to remain "On Call" (*i.e.* monitor their phones) at all times, including during Rest Periods.

**Wage Statement Violations**

- Lead Star violated Labor Code section 226(a)**(2)** by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Mr. Rodriguez, and other employees were not compensated for all hours worked (due in part to Lead Star's requirement that employees list only *scheduled* work-times, not actual work-times.)

- Lead Star violated Labor Code section 226(a)**(5)** by failing to furnish an accurate showing of the net wages earned by its employees. For example, Lead Star **(a)** would not provide compensation for all hours and minutes worked, **(b)** would use an improper (and lesser) Overtime Rate of Pay, and **(c)** would fail to pay Meal and/or Rest Period penalties when due. Lead Star failed to properly calculate and pay overtime at the actual overtime rate of pay, as Lead Star ignores certain compensation when calculating the Regular Rate of Pay. Further, on the rare occasions in which Lead Star would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.

- Lead Star violated Labor Code section 226(a)**(9)** by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Mr. Rodriguez, and the other employees were not compensated for all hours worked (due in part to Lead Star requiring employees to list only *scheduled* work-times, not actual work-times to include "on-call" hours). Lead Star does not explain how its' system describes "time worked" on the "Earnings Statement" itself. Additionally, Lead Star does not use "minutes," to describe the amount of time worked, on the "Earnings Statement. As an example, for the pay period ending July 23, 2022, Lead Star states that it paid Mr. Rodriguez for "68.58" total hours of Regular Pay. (Please see **Exhibit A**). However, Mr. Rodriguez cannot "readily ascertain" what 68.58 means without "reference to other documents or information." Additionally, Lead Star does not use "minutes," to describe the amount of time worked, on the "Earnings Statement." As an example, .58 is not an accurate representation of minutes worked, but an altered representation of those minutes. (i.e., 25 minutes of work could be represented as .25, and 50 minutes of work could be represented as .50, however .93 minutes of work cannot be represented as .93 as there are not 93 minutes within one hour.) This is because Lead Star is apparently using a time-calculating system other than "minutes," but without explanation to the employees within the wage statement. As minutes are measured on a scale of 1 through 60, it is not apparent what these figures are meant to represent. Without an explanation for how these figures were arrived at, employees cannot "readily ascertain" their total hours worked. Therefore, Lead Star failed to provide an accurate showing of the "total hours worked" by its employees pursuant to section 226(a)(2), due to all the aforesaid reasons.

**Failure to Provide Compliant Expense Reimbursement Payments**

- Lead Star failed to provide compliant expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802, by failing to provide payments for expenses incurred by Mr. Rodriguez, and other non-exempt employees, including expenses for cell-phone costs, necessary work supplies, and mileage.

**Willful Failure to Provide All Compensation to Ex-Employees**

- Lead Star failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due, in part, to the fact that Lead Star failed to provide proper compensation for all hours worked, and failed to pay full Meal or Rest Period penalties, as discussed above.

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To confirm, Lead Star is a "person" as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,

Eric K. Yaeckel, Esq.

cc: *Via Certified U.S. Mail*

**Brian Clay**
*Via Certified U.S. Mail*
*Agent of Service of Process for*
LEAD STAR SECURITY, INC
3230 Arena Blvd. Ste. 245-141
Sacramento, CA 95834

# Exhibit A

| Company Code | Loc/Dept | Number | Page |
|---|---|---|---|
| KF / G6H 25061629 | 01/301 | 3080304 | 1 of 1 |

Lead Star Security Inc
937 Enterprise Drive
Sacramento, CA 95825

# Earnings Statement

Period Starting: 07/10/2022
Period Ending: 07/23/2022
Pay Date: 07/29/2022

Taxable Filing Status: Single
Exemptions/Allowances:
Federal: Std W/H Table
State: 0
Local: 0
Social Security Number: XXX-XX-4294

Tax Override:
Federal:
State:
Local:

Lloyd Rodriguez
1330 Ramona Court
Imperial, CA 92251

| Earnings | rate | hours/units | this period | year to date |
|---|---|---|---|---|
| Regular | 25.0000 | 68.58 | 1714.50 | 28092.25 |
| Overtime | 37.5000 | 3.50 | 131.25 | 2298.01 |
| Holiday Worked | | | 0.00 | 936.00 |
| Sick 1 Regular CA | | | 0.00 | 400.00 |
| Gross Pay | | | $1,845.75 | $31,726.26 |

| Statutory Deductions | this period | year to date |
|---|---|---|
| Federal Income | 0.00 | 587.53 |
| Social Security | -114.44 | 1967.03 |
| Medicare | -26.76 | 460.03 |
| California State Income | -57.45 | 1162.46 |
| California State DI | -20.30 | 348.99 |

| Voluntary Deductions | this period | year to date |
|---|---|---|
| Child support 1 | -594.46 | 9170.67 |

| Net Pay Adjustments | this period | year to date |
|---|---|---|
| *Mileage reimbursement | 140.05 | 2300.44 |

| Net Pay | $1,172.39 |
|---|---|

| Other Benefits and Information | this period | year to date |
|---|---|---|
| Sick | | |
| - Carry Over | | 16.35 |
| - Accrued Hours | 2.41 | 55.93 |
| - Taken Hours | 0.00 | 16.00 |
| - Balance | | 39.93 |
| Total Hours Worked | 72.08 | 1209.93 |

**Deposits**

| account number | transit/ABA | amount |
|---|---|---|
| XXXXXX0190 | XXXXXXXXX | 1172.39 |

**Important Notes**

Basis of pay: Hourly
If no CA SPSL 22 is listed, you have used zero hours.

Your federal taxable wages this period are $1,845.75
* Excluded from Federal taxable wages
The accrued hours on your Sick Plan may not be available until your 90th day of employment

Lead Star Security Inc
937 Enterprise Drive
Sacramento, CA 95825

Pay Date: 07/29/2022

| Deposited to the account | account number | transit/ABA | amount |
|---|---|---|---|
| Checking DirectDeposit | XXXXXX0190 | XXXXXXXXX | 1172.39 |

THIS IS NOT A CHECK

Lloyd Rodriguez
1330 Ramona Court
Imperial, CA 92251