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Superior Court of California

County of Fresno

By: Kenia Clemente, Deputy

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF FRESNO**

NAOMI MENDOZA, on behalf of herself and  
all others similarly situated,

Plaintiffs,

v.

AMERIGUARD SECURITY SERVICES, INC.,  
a California Corporation; and DOES 1-50,  
inclusive.

Defendants.

CASE NO.: 23CECG03540

**FIRST AMENDED CLASS AND PAGA  
ACTION COMPLAINT:**

- (1) FAILURE TO PAY MINIMUM WAGES;
- (2) FAILURE TO PAY OVERTIME WAGES;
- (3) FAILURE TO PAY SICK PAY WAGES;
- (4) MEAL PERIOD VIOLATIONS;
- (5) REST PERIOD VIOLATIONS;
- (6) WAGE STATEMENT VIOLATIONS;
- (7) WAITING TIME PENALTIES;
- (8) FAILURE TO REIMBURSE BUSINESS EXPENSES;
- (9) UNFAIR COMPETITION; and
- (10) PAGA PENALTIES

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Naomi Mendoza and Kahari Theron Senegal (collectively, “Plaintiffs”), on behalf  
2 of themselves and all other similarly situated non-exempt employees, allege and complain of  
3 Defendant AmeriGuard Security Services, Inc., (“Defendant”), a California Corporation and DOES  
4 1 to 50 (collectively, “Defendants”) and each of them, as follows:

### 5 **INTRODUCTION**

6 1. Defendant is a Fresno-based private security contractor providing security services to  
7 commercial, residential, government, and military clients across California.

8 2. Plaintiffs bring this class and PAGA representative action against Defendants for  
9 alleged violations of the California Labor Code and Business and Professions Code.

10 3. As set forth below, Plaintiffs allege that Defendants deprived Plaintiffs and other non-  
11 exempt employees of all minimum wages for all hours worked and failed to pay for all overtime and  
12 sick pay wages by failing to calculate the “regular rate of pay” properly. Moreover, Plaintiffs allege  
13 that Defendants’ meal and rest period policies and practices failed to provide them and all other  
14 similarly situated employees with compliant meal and rest periods or pay premium at the “regular  
15 rate of pay” in lieu thereof.

16 4. Finally, Plaintiffs allege that Defendants failed to provide non-exempt employees with  
17 accurate written itemized wage statements and timely pay all final wages upon separation of  
18 employment.

19 5. Based on these alleged Labor Code violations, Plaintiffs now bring this class and  
20 PAGA representative action to recover unpaid wages, restitution, penalties, and other related relief  
21 for themselves and all others similarly situated.

### 22 **JURISDICTION AND VENUE**

23 6. This class action is brought pursuant to the California Code of Civil Procedure § 382.

24 7. Plaintiffs, on behalf of themselves and all other similarly situated employees, hereby  
25 bring this class action for recovery of unpaid wages and penalties under California Labor Code §§  
26 200-204, 210, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199, and  
27 applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to seeking  
28 declaratory relief and restitution pursuant to California Business and Professions Code § 17200, *et*.

1 *seq.*

2 8. This Court has jurisdiction over Defendants' violations of the California Labor Code  
3 and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional  
4 minimum.

5 9. Venue is proper in this judicial district pursuant to California Code of Civil Procedure  
6 §§ 395(a) and 395.5. Defendants own, maintain offices, transact business, have an agent or agents  
7 within Fresno, California, and/or otherwise are found within the County of Fresno, and Defendants  
8 are within the jurisdiction of this Court for purposes of service of process.

9 **PARTIES**

10 10. At all relevant times herein, Plaintiffs, who are over 18, were and currently are  
11 California residents residing in the State of California. Defendants employed Plaintiffs and other  
12 similarly situated employees as non-exempt employees in California in the County of Fresno and  
13 nearby counties.

14 11. Plaintiffs are informed and believe and thereon allege that Defendant is a California  
15 corporation authorized and doing business in Fresno County, California, and is and/or was the legal  
16 employer of Plaintiffs and the Class Members during the applicable statutory periods.

17 12. Defendants' policies and/or practices outlined herein have deprived Plaintiffs and  
18 other similarly situated non-exempt employees of the rights afforded to them by California Labor  
19 Code §§ 201-203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 246, 510, 512, 1194, 1197.1, 1199,  
20 2802-2804, and California Business and Professions Code § 17200 *et seq.*, and applicable Wage  
21 Order(s).

22 13. Plaintiffs are informed and believe, and based thereon alleges, that during the four  
23 years preceding the filing of the Complaint and continuing to the present, Defendants did (and  
24 continue to do) business in the State of California, County of Fresno. Defendants, each of them, own  
25 and/or operate in Fresno, California.

26 14. Plaintiffs does not know the true names or capacities, whether individual, partner, or  
27 corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said  
28 Defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to

1 amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed  
2 and believe, and thereon allege, that each of said fictitious Defendants, whether individual, partners,  
3 or corporate, were responsible in some manner for the acts and omissions alleged herein and  
4 proximately caused Plaintiffs and the Classes to be subject to the unlawful employment practices  
5 alleged herein.

6 15. Plaintiffs are informed, believe, and thereon allege that at all times mentioned herein,  
7 Defendants were and are the employers of Plaintiffs and all members of the Classes. At all times  
8 herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to  
9 have been done by the named Defendants; and furthermore, the Defendants, and each of them, were  
10 the agents, servants, and employees of each and every one of the other Defendants, as well as the  
11 agents of all Defendants, and at all times herein mentioned were acting within the course and scope  
12 of said agency and employment. Defendants, and each of them, approved of, condoned, and/or  
13 otherwise ratified each and every one of the acts or omissions complained of herein.

14 16. At all times mentioned herein, Defendants, and each of them, were members of and  
15 engaged in a joint venture, partnership, and common enterprise and acting within the course and  
16 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,  
17 Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and all  
18 members of the Classes.

19 **COMMON FACTUAL ALLEGATIONS**

20 17. Defendant is a Fresno-based private security contractor providing security services to  
21 commercial, residential, government, and military clients across California. In addition to  
22 armed/unarmed patrol and security services, Defendants also perform pre-employment and  
23 background checks of employees and offer in-house LiveScan fingerprinting.

24 18. Defendants employed Plaintiff Mendoza as a non-exempt employee with the title of  
25 “Security Officer” beginning on October 10, 2005, until her separation from employment on or about  
26 June 8, 2023.

27 19. Defendants employed Senegal as a non-exempt employee with the title of “Security  
28 Office” beginning on or about April 2022 until his separation from employment on or about February

1 2, 2023.

2 20. Plaintiffs and other non-exempt employees (including security officers, staff, drivers,  
3 technicians, and all other non-exempt positions) were responsible for all aspects of Defendants'  
4 business in California.

5 21. At all relevant times, Plaintiffs and other non-exempt employees regularly worked  
6 various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek.  
7 Plaintiffs allege that other non-exempt employees were also subjected to the same policies,  
8 procedures, practices, working conditions, and corresponding wage and hour violations to which she  
9 was subjected during her employment.

10 22. First, at all relevant times, Defendants have consistently failed to accurately record all  
11 time worked and time under which aggrieved employees were under the employer's control.. This  
12 included a policy and practice of failing to record aggrieved employees' time properly worked,  
13 including, but not limited to, time undergoing security checks and failing to pay for all pre-shift and  
14 post-shift time spent working off-the-clock. As a result of this company-wide practice, Ms. Mendoza  
15 and other aggrieved employees are not compensated for all the hours that they work and all of the  
16 overtime hours they work, in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and  
17 applicable Wage Orders

18 23. Furthermore, at all relevant times, Plaintiffs and other non-exempt employees were  
19 not properly paid at the correct overtime rate for all hours worked in excess of eight (8) hours per  
20 workday and/or forty (40) hours per workweek. Although Plaintiffs and other non-exempt employees  
21 regularly worked overtime hours, they were not compensated at one and one-half times their “regular  
22 rate of pay” because Defendants failed to include all forms of compensation, including, but not  
23 limited to, non-discretionary bonuses, shift differentials, incentive pay, and other forms of  
24 remuneration when calculating the “regular rate of pay” used for payment of overtime wages.

25 24. Under the California Labor Code (as well as the FLSA), courts have consistently held  
26 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in  
27 determining an employee’s “regular rate of pay” for purposes of calculating overtime. (See *Haber v.*  
28 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency

1 bonuses must be included in calculating the “regular rate”]; *Wang v. Chinese Daily News, Inc.* 435 F.  
2 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgment to Plaintiffs under  
3 California and federal law on the grounds that Defendant improperly calculated overtime by  
4 excluding annual bonuses paid to employees from the “regular rate of compensation”].)

5       25. By their policy of requiring Plaintiffs and the other non-exempt employees to work in  
6 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating  
7 them at the lawful rate of one-half (1 1/2) their “regular rate of pay,” Defendants willfully violated  
8 the provisions of Labor Code § 510 and the applicable Wage Orders.

9       26. Accordingly, to the extent permitted by law, Plaintiffs and other non-exempt  
10 employees are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204,  
11 210, 510, 1197.1.

12       27. Similarly, at all relevant times, Defendants also failed in its obligation to provide  
13 Plaintiffs and other non-exempt employees the legally required paid sick days at the legal rate  
14 pursuant to Labor Code §§ 246(a),(b), which requires that “[a]n employee who, on or after July 1,  
15 2015, works in California for the same employer for 30 or more days within a year from the  
16 commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour  
17 per every 30 hours worked, beginning at the commencement of employment.” Labor Code § 246(l)(1)  
18 provides that paid sick time for non-exempt employees must be “calculated in the same manner as  
19 the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not  
20 the employee actually works overtime in that workweek.”

21       28. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated  
22 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total  
23 hours worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i)  
24 requires employers to “provide an employee with written notice that sets forth the amount of paid  
25 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either  
26 the employee’s itemized wage statement described in Section 226 or in a separate writing provided  
27 on the designated pay date with the employee’s payment of wages.”

28       29. Here, at all relevant times, Defendants failed in their obligation to provide Plaintiffs

1 and other non-exempt employees the legally required paid sick days at the legal rate, including all  
2 forms of compensation, pursuant to Labor Code §§ 246(a),(b). As such, Defendants paid sick time  
3 below her base rate of pay, rather than the “regular rate of pay” as required by Labor Code §§  
4 246(l)(1-2).

5 30. Next, at all relevant times, Plaintiffs and other non-exempt employees were denied  
6 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to  
7 Defendants’ uniform meal period policies/practices, operational requirements, and work demands,  
8 Plaintiffs and other non-exempt employees were often unable to take timely and uninterrupted 30-  
9 minute first meal periods before the end of the fifth hour of work. Further, when Plaintiffs and other  
10 non-exempt employees worked more than 10.0 hours in a shift, they were not always allowed and  
11 permitted to take a mandated second meal period before the end of the tenth hour of work in violation  
12 of the Labor Code and applicable Wage Orders.

13 31. Additionally, for each missed or non-compliant meal period, Defendants failed to  
14 maintain a mechanism by which non-exempt employees were paid meal period premiums at the  
15 “regular rate of pay” pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor  
16 Code § 226.7. Accordingly, due to Defendants’ uniform meal period practices, Plaintiffs and other  
17 non-exempt employees were also regularly denied legally compliant meal periods in violation of  
18 Labor Code 226.7, 510, 516, and applicable IWC Wage Orders.

19 32. Moreover, at all relevant times, Plaintiffs and other non-exempt employees were not  
20 provided with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due  
21 to Defendants’ uniform rest period policies/practices, operational requirements, and work demands.  
22 As a result, Plaintiffs and other non-exempt employees were and are often unable to take a net 10-  
23 minute duty-free rest period for every major fraction of four hours worked. This includes a second  
24 rest period for shifts in excess of six hours and a third rest period for shifts in excess of 10.0 hours in  
25 a workday. To the extent non-exempt employees were permitted to take rest periods, the rest periods  
26 were often cut short or interrupted for work reasons. Making matters worse, Defendants have a  
27 policy/practice that requires non-exempt employees to remain on-premises and not leave the job  
28 during rest periods.

1           33. By not relieving all non-exempt employees of all duties during rest periods,  
2 Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services,*  
3 *Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve  
4 employees of all duties and relinquish control over how employees spend their time.”]. In *Augustus*,  
5 the California Supreme Court expressly rejected the employer’s assertion that it could provide an on-  
6 duty rest period to employees who worked as security guards and further explained: “that employers  
7 [must] relinquish any control over how employees spend their break time and relieve their employees  
8 of all duties.” *Id.* at 273.

9           34. Each time Plaintiffs and other non-exempt employees could not take a compliant rest  
10 period, Defendants failed to adequately pay rest period premium payments at the “regular rate of pay”  
11 as required by Labor Code § 226.7.

12           35. Accordingly, due to Defendants’ uniform rest period policies/practices and work  
13 demands, Plaintiffs and other non-exempt employees were also regularly denied legally compliant  
14 rest breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

15           36. As a result of Defendants’ failure to pay Plaintiffs and other non-exempt employees  
16 for all minimum wages, overtime wages, sick pay wages at the appropriate legal rate, and Defendants’  
17 failure to pay for meal and rest period premiums at the “regular rate of pay,” Defendants issued wage  
18 statements which failed to identify the gross wages earned accurately, the total hours worked, the net  
19 wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation  
20 of Labor Code § 226(a)(1, 2, 5, and 9).

21           37. Defendants also issued wage statements that failed to include all applicable hourly  
22 rates in effect worked and the corresponding number of hours worked at each hourly rate, violating  
23 Labor Code § 226(a)(9). For example, on Plaintiffs’ wage statement dated 06/09/2023, there is an  
24 incorrect hourly rate and no corresponding number of hours worked for “Swing Shift Dif.”

25           38. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of  
26 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per  
27 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for  
28 each violation in a subsequent citation, for which the employer fails to provide the employee a wage

1 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

2 39. Thus, for the violations of Labor Code § 226 described above, Plaintiffs and other  
3 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of  
4 Labor Code § 226(a).

5 40. As a further result of Defendants’ failure to pay for all hours worked, including all  
6 minimum, sick pay and overtime wages, and meal and rest period premiums at the “regular rate of  
7 pay,” Defendants also failed and continues to fail to pay the non-exempt employees all wages owed  
8 at their time of separation from employment in violation of Labor Code §§ 201-203.

9 41. Finally, at all relevant times, Defendants required Plaintiffs and other non-exempt  
10 employees to incur necessary business expenses associated with using their personal cell phones for  
11 work-related purposes but did not reimburse aggrieved employees adequately for these necessary  
12 expenditures in violation of Labor Code §§ 2802-2804. *See Cochran v. Schwan’s Home Service, Inc.*,  
13 (2014) 228 Cal.App.4th 1137, 1144 “[i]f an employee is required to make work-related calls on a  
14 personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does  
15 not matter whether the phone bill is paid for by a third person or at all...To show liability under section  
16 2802, an employee need only show that he or she was required to use a personal cell phone to make  
17 work-related calls, and he or she was not reimbursed”]. Here, Defendants uniformly failed to  
18 reimburse aggrieved employees for a reasonable portion of cell phone bills and other necessary costs  
19 incurred in discharging their duties for those aggrieved employees. Accordingly, due to Defendant’s  
20 uniform failure to adequately reimburse for necessary business expenditures in violation of Labor  
21 Code §§ 2800-2802.

22 **CLASS ACTION ALLEGATIONS**

23 42. Plaintiffs bring this action on behalf of themselves and the following Classes pursuant  
24 to § 382 of the Code of Civil Procedure:

25 All non-exempt employees who worked or worked for Defendants in  
26 California during the four years immediately preceding the filing of  
the Complaint through the date of trial. (the “Class”);

27 All non-exempt employees who worked for Defendants in California  
28 and worked overtime hours during at least one shift during the four  
years immediately preceding the filing of the Complaint through the

1 date of trial. (“Overtime Subclass”);

2 All non-exempt employees who work or worked for Defendants in  
3 California for one year immediately preceding the filing of the  
4 Complaint through the date of trial. (“Wage Statement Subclass”)

5 All non-exempt delivery driver employees who work or worked for  
6 Defendants in California and who left their employment during the  
7 three years immediately preceding the filing of the Complaint through  
8 the date of trial. (“Waiting Time Penalty Subclass”)

9 (collectively “the Classes”)

10 43. **Numerosity/Ascertainability:** The members of the Classes are so numerous that  
11 joinder of all members would be unfeasible and not practicable. The membership of the Classes is  
12 unknown to Plaintiffs at this time; however, it is estimated that the Classes consist of at least one  
13 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of  
14 Defendants’ employment and payroll records.

15 44. **Common Questions of Law and Fact Predominate/Well-Defined Community of**  
16 **Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly situated  
17 employees, which predominate over questions affecting only individual members, including, without  
18 limitation to:

- 19 1. Whether Defendants failed to pay all minimum wages to members of the Classes;
- 20 2. Whether Defendants failed to separately pay for all non-productive time and rest  
21 periods for commission-based employees;
- 22 3. Whether Defendants failed to pay overtime and sick pay at the appropriate legal rate  
23 to members of the Classes;
- 24 4. Whether Defendants provided legally compliant meal and rest periods or proper  
25 compensation at the “regular rate of pay” in lieu thereof to members of the Classes;
- 26 5. Whether Defendants furnished legally compliant wage statements to members of the  
27 Classes pursuant to Labor Code § 226(a);
- 28 6. Whether the timing and amount of payment of final wages to members of the Class  
at the time of separation from employment were unlawful; and

1           7.           Whether Defendants reimbursed Plaintiffs and other members of the Class for all  
2 necessary business expenditures in compliance with Labor Code §§ 2802-2804.

3           45.       **Predominance of Common Questions:** Common questions of law and fact  
4 predominate over questions that affect only individual members of the Classes. The common  
5 questions of law set forth above are numerous and substantial and stem from Defendants' policies  
6 and/or practices applicable to each individual class member, such as, Defendants' failure to separately  
7 pay for all non-productive time and rest periods for commission-based employees, Defendants'  
8 policy/practice of failing to pay overtime and sick pay at the appropriate premium rate, Defendants'  
9 uniform policy of failing to provide compliant meal and rest periods or adequate compensation in  
10 lieu thereof, and, Defendants' failure to reimburse all necessary business expenditures, Defendants'  
11 resulting failure to provide accurate itemized wage statements and to pay for all wages due upon  
12 separation of employment. As such, the common questions predominate over individual questions  
13 concerning each class member's showing as to his or her eligibility for recovery or the amount of his  
14 or her damages.

15           46.       **Typicality:** The claims of the Plaintiffs are typical of the claims of the Classes because  
16 Defendants employed the Plaintiffs as a non-exempt employee in California during the statute(s) of  
17 limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,  
18 Plaintiffs, like the members of the Classes, was deprived of all minimum wages, overtime, and sick  
19 pay wages, was deprived of meal and rest period premium wages at the "regular rate of pay," was  
20 subject to Defendants' uniform policies/practices, was not provided accurate itemized wage  
21 statements, was not reimbursed for all necessary business expenditures, and was not paid all wages  
22 owed at the time of her separation of employment.

23           47.       **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary steps  
24 to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiffs'  
25 attorneys are ready, willing, and able to fully and adequately represent the members of the Classes.  
26 Plaintiffs' attorneys have prosecuted and are actively litigating several wage-and-hour class actions  
27 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the  
28 members of the Classes.

1           48.     **Superiority:** The California Labor Code is broadly remedial in nature and serves an  
2 important public interest in establishing minimum working conditions and standards in California.  
3 These laws and labor standards protect the average working employee from exploitation by  
4 employers who have the responsibility to follow the laws and who may seek to take advantage of  
5 superior economic and bargaining power in setting onerous terms and conditions of employment. The  
6 nature of this action and the format of laws available to Plaintiffs and members of the Classes make  
7 the class action format a particularly efficient and appropriate procedure to redress the violations  
8 alleged herein. If each employee were required to file an individual lawsuit, Defendants would  
9 necessarily gain an unconscionable advantage since they could exploit and overwhelm the limited  
10 resources of each individual Plaintiff with their vastly superior financial and legal resources.

11           49.     Moreover, requiring each member of the Classes to pursue an individual remedy  
12 would also discourage the assertion of lawful claims by employees who would be disinclined to file  
13 an action against their former and/or current employer for real and justifiable fear of retaliation and  
14 permanent damages to their careers at subsequent employment. Further, the prosecution of separate  
15 actions by the individual class members, even if possible, would create a substantial risk of  
16 inconsistent or varying verdicts or adjudications with respect to the individual class members against  
17 Defendants herein; and which would establish potentially incompatible standards of conduct for  
18 Defendants; and/or legal determinations with respect to individual class members which would, as a  
19 practical matter, be dispositive of the interest of the other class members not parties to adjudications  
20 or which would substantially impair or impede the ability of the class members to protect their  
21 interests. Further, the claims of the individual members of the class are not sufficiently large to  
22 warrant vigorous individual prosecution, considering all of the concomitant costs and expenses  
23 attending thereto. As such, the Classes identified in Paragraph 39 are maintainable as Classes under  
24 § 382 of the Code of Civil Procedure.

25  
26  
27                                   **FIRST CAUSE OF ACTION**

28                                   **FAILURE TO PAY MINIMUM WAGES**

**(AGAINST ALL DEFENDANTS)**

50. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

51. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

52. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful practice of rounding time entries, resulting in a failure to pay for all hours worked. Accordingly, Plaintiffs and members of the Classes were not compensated for all hours worked, including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and applicable Wage Orders.

53. Labor Code § 1198 makes the employment of an employee unlawful under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

54. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiffs and the Classes have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and applicable Wage Orders.

55. Defendants' practices/policies and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiffs and members of the Classes in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit

1 according to Labor Code §§ 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PAY OVERTIME WAGES**

4 **(AGAINST ALL Defendants)**

5 56. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

6 57. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and  
7 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours  
8 worked and provide a private right of action for the failure to pay all overtime compensation for  
9 overtime work performed.

10 58. At all times relevant herein, Defendants were required to properly pay Plaintiffs and  
11 members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code  
12 § 1194 and the applicable Wage Orders.

13 59. Section 3 of the applicable Wage Order requires an employer to pay an employee “one  
14 and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per  
15 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an  
16 employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve  
17 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in  
18 the workweek.

19 60. Defendants failed to conform their pay practices to the requirements of the law. This  
20 unlawful conduct includes but is not limited to, Defendants’ uniform and unlawful policy/practice of  
21 failing to pay for all hours worked and of failing to include all forms of compensation in calculating  
22 the “regular rate of pay,” which resulted in the Classes not being paid all overtime wages owed.

23 61. The foregoing policies and practices are unlawful and create an entitlement to recovery  
24 by Plaintiffs and the members of the Overtime Subclass in a civil action for the unpaid amount of  
25 overtime wages, including interest thereon, statutory penalties, attorney’s fees, and costs of suit  
26 according to Labor Code §§ 204, 210. 510, 1194, and 1198, the applicable Wage Orders, and Code  
27 of Civil Procedure § 1021.5.

28 **THIRD CAUSE OF ACTION**

1 **FAILURE TO PAY SICK TIME**

2 **(AGAINST ALL Defendants)**

3 62. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

4 63. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,  
5 1198, and 1199, which provide that non-exempt employees are entitled to have their sick time paid  
6 at the “regular rate of pay,” including all forms of compensation/remuneration.

7 64. At all times relevant herein, Defendants were required to properly pay Plaintiffs and  
8 members of the Class for all accrued sick leave taken, pursuant to California Labor Code § 246.

9 65. Defendants failed to conform their pay practices to the requirements of the law. This  
10 unlawful conduct includes but is not limited to Defendants’ uniform and unlawful policy/practice of  
11 failing to include all forms of compensation, including but not limited to shift differentials, non-  
12 discretionary bonuses, and other forms of remuneration into the calculation of the “regular rate of  
13 pay,” which resulted in Plaintiffs and the Classes not being paid all sick time wages owed.

14 66. The foregoing policies and practices are unlawful and create an entitlement to recovery  
15 by Plaintiffs and the members of the Classes in a civil action for the unpaid amount of sick time  
16 wages, including interest thereon, statutory penalties, attorney’s fees, and costs of suit according to  
17 Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, the applicable Wage Orders, and Code of Civil  
18 Procedure § 1021.5.

19 **FOURTH CAUSE OF ACTION**

20 **MEAL PERIOD VIOLATIONS**

21 **(AGAINST ALL Defendants)**

22 67. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

23 68. Plaintiffs is informed and believes, and based thereon alleges, that Defendants failed  
24 in their affirmative obligation to provide all of their hourly non-exempt employees, including  
25 Plaintiffs and members of the Class, with all required meal periods in accordance with the mandates  
26 of the California Labor Code and applicable Wage Orders, for the reasons set forth in the Common  
27 Allegations section of this Complaint. Despite Defendants’ violations, Defendants have not paid an  
28 additional hour of pay at the “regular rate of pay” to Plaintiffs and Class members at their respective

1 regular rates of pay for each violation, per California Labor Code § 226.7.

2 69. As a result, Defendants are responsible for paying premium compensation for meal  
3 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the  
4 applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

5 **FIFTH CAUSE OF ACTION**

6 **REST PERIOD VIOLATIONS**

7 **(AGAINST ALL Defendants)**

8 70. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

9 71. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516  
10 establishes the right of non-exempt employees to be provided with a rest period of at least ten (10)  
11 minutes for each four (4) hour period worked or major fraction thereof.

12 72. Due to their unlawful rest period policy and practices, Defendants did not authorize  
13 and permit Plaintiffs and members of the Class to take code-compliant rest periods to which they  
14 were legally entitled, including, but not limited to, failing to relieve employees of all duties and  
15 relinquishing all control over employees during their rest periods. Despite Defendants' violations,  
16 Defendants have not paid an additional hour of pay at the "regular rate of pay" to Plaintiffs and Class  
17 members at their respective regular rates of pay for each violation, per California Labor Code § 226.7.

18 73. The foregoing violations create an entitlement to recovery by Plaintiffs and members  
19 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest  
20 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§  
21 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

22 **SIXTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

24 **(AGAINST ALL Defendants)**

25 74. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

26 75. Labor Code 226(a) states in pertinent part the following:

27 "(a) An employer, semimonthly or at the time of each payment of wages, shall  
28 furnish to his or her employee, either as a detachable part of the check, draft, or

1 voucher paying the employee's wages, or separately if wages are paid by personal  
2 check or cash, an accurate itemized statement in writing showing (1) gross wages  
3 earned, (2) total hours worked by the employee, except as provided in subdivision  
4 (j), (3) the number of piece-rate units earned and any applicable piece rate if the  
5 employee is paid on a piece-rate basis, (4) all deductions, provided that all  
6 deductions made on written orders of the employee may be aggregated and shown  
7 as one item, (5) net wages earned, (6) the inclusive dates of the period for which the  
8 employee is paid, (7) the name of the employee and only the last four digits of his  
9 or her social security number or an employee identification number other than a  
10 social security number, (8) the name and address of the legal entity that is the  
11 employer and, if the employer is a farm labor contractor, as defined in subdivision  
12 (b) of Section 1682, the name and address of the legal entity that secured the services  
13 of the employer, and (9) all applicable hourly rates in effect during the pay period  
14 and the corresponding number of hours worked at each hourly rate by the  
15 employee."

16 76. As set forth above, during the Class Period, Defendants issued and continue to issue  
17 wage statements to its employees, including Plaintiffs and members of the Wage Statement Subclass,  
18 which are inadequate under Labor Code Section 226(a).

19 77. As a result of Defendants' failure to pay Plaintiffs and the Wage Statement Subclass  
20 for all minimum, overtime, and sick pay wages at the appropriate legal rate and missed meal and rest  
21 period premiums at the "regular rate of pay," Defendants failed to include required information on  
22 Plaintiffs and the Classes' wage statements, including, but not limited to, the gross wages earned, the  
23 net wages earned in violation of Labor Code section 226(a)(1, 2, 5, 9).

24 78. Defendants' failure to comply with section 226(a) of the Labor Code was knowing and  
25 intentional.

26 79. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiffs  
27 and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor  
28 Code, Plaintiffs and members of the Wage Statement Subclass are each entitled to recover an initial  
penalty of \$50 and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty  
of \$4,000 per Plaintiffs and per every member of the Wage Statement Subclass from Defendants  
pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

## **SEVENTH CAUSE OF ACTION**

### **WAITING TIME PENALTIES**

1 (AGAINST ALL Defendants)

2 80. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

3 81. The actionable period for this cause of action is three years before the filing of this  
4 Complaint through the present and ongoing until the violations are corrected or the class is certified.

5 82. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing  
6 to Plaintiffs and the Waiting Time Penalty Subclass during the actionable period for this cause of  
7 action at or around the time their employment is terminated or ended.

8 83. Labor Code § 203 provides that if an employer willfully fails to pay compensation  
9 promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, the  
10 employer is liable for penalties for continued compensation up to thirty (30) workdays.

11 84. Defendants willfully failed to pay Plaintiffs and the members of the Waiting Time  
12 Penalty Subclass for all minimum wages, overtime, and sick pay wages, and their meal and rest period  
13 premiums at the “regular rate of pay” before or upon termination or separation from employment  
14 with Defendants as required by Labor Code §§ 201 and 202.

15 85. Consequently, Defendants are liable to Plaintiffs and the Waiting Time Penalty  
16 Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiffs and the Classes  
17 pursuant to Labor Code § 203. *See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due*  
18 *upon termination entitles an employee to recover waiting time penalties).*

19 **EIGHTH CAUSE OF ACTION**

20 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

21 (AGAINST ALL DEFENDANTS)

22 86. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

23 87. Labor Code 2802(a) states in pertinent part the following: “(a) An employer shall  
24 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in  
25 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions  
26 of the employer, even though unlawful, unless the employee, at the time of obeying the directions,  
27 believed them to be unlawful.”

28 88. As set forth above, Plaintiffs and Class members must be compensated for all

1 necessary business expenditures, including, but not limited to, a reasonable portion of their monthly  
2 personal cell phone bills incurred in discharging their duties. (See *Cochran v. Schwan's Home*  
3 *Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that when employees must use their personal  
4 cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them.  
5 Whether the employees have cell phone plans with unlimited minutes or limited minutes, the  
6 reimbursement owed is a reasonable percentage of their cell phone bills.”); *Ritchie v. Blue Shield of*  
7 *California*, 2014 WL 6982943, at \*21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement  
8 claim and adopting the logic of *Cochran*). In addition, Defendants systematically failed to properly  
9 reimburse Plaintiffs and other non-exempt employees for using their personal vehicles for business  
10 purposes.

11 89. At all relevant times, by failing to reimburse Plaintiffs and the Class for all necessary  
12 business expenditures, Defendants have failed to comply with Labor Code Section 2802 and the  
13 applicable Wage Orders and are thus entitled to repayment of unreimbursed expenses, interests, and  
14 attorneys’ fees and costs.

15 **NINTH CAUSE OF ACTION**

16 **UNFAIR COMPETITION**

17 **(AGAINST ALL Defendants)**

18 90. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

19 91. Defendants have engaged and continue to engage in unfair and/or unlawful business  
20 practices in California in violation of California Business and Professions Code § 17200 *et seq.* by  
21 failing to pay all minimum wages and overtime and sick pay wages at the appropriate legal rate, by  
22 failing to provide all legally required meal and rest periods or pay premium payments at the “regular  
23 rate of pay” in lieu thereof, by failing to provide accurate itemized wage statements, by failing to  
24 reimburse for necessary business expenditures adequately, and by failing to pay all earned wages at  
25 the time of separation from employment.

26  
27 92. Defendants’ utilization of these unfair and/or unlawful business practices deprived  
28 Plaintiffs and continues to deprive members of the Classes of compensation to which they are legally

1 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over  
2 Defendants' competitors who have been and/or are currently employing workers and attempting to  
3 do so in honest compliance with applicable wage and hour laws.

4 93. Because the Plaintiffs are victims of Defendants' unfair and/or unlawful conduct  
5 alleged herein, the Plaintiffs, for themselves and on behalf of the members of the Classes, seek full  
6 restitution of monies, as necessary and according to proof, to restore any and all monies withheld,  
7 acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and  
8 17208.

9 94. The acts complained of herein occurred within the last four years immediately  
10 preceding the filing of the Complaint in this action.

11 95. Plaintiffs were compelled to retain the services of counsel to file this court action to  
12 protect their interests and those of the Classes, to obtain restitution and injunctive relief on behalf of  
13 Defendants' current hourly non-exempt employees, and to enforce important rights affecting the  
14 public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs,  
15 which they are entitled to recover under Code of Civil Procedure § 1021.5.

16 **TENTH CAUSE OF ACTION**

17 **PRIVATE ATTORNEYS GENERAL ACT**

18 **(AGAINST ALL DEFENDANTS)**

19 96. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

20 97. Defendants have committed several Labor Code violations against Plaintiffs and  
21 other similarly aggrieved employees. Plaintiffs, "aggrieved employees" within the meaning of Labor  
22 Code § 2698 *et seq.*, acting on behalf of themselves and other similarly aggrieved employees, bring  
23 this PAGA representative action against Defendants to recover the civil penalties due to Plaintiffs,  
24 other similarly aggrieved employees, and the State of California according to proof pursuant to Labor  
25 Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and (2) \$200  
26 for each subsequent violation per employee per pay period for those violations of the Labor Code for  
27 which no civil penalty is specifically provided based on the following Labor Code violations:

28 a. Failing to pay all overtime and sick wages to Plaintiffs and other similarly Aggrieved

1 Employees at the appropriate legal rate to members;

2 b. Failing to provide Plaintiffs and other similarly situated Aggrieved Employees with  
3 all of their statutorily mandated meal periods in violation of Labor Code §§ 204, 510, 1194, and 1198;

4 c. Failing to authorize and permit Plaintiffs and other similarly situated aggrieved  
5 employees with all of their statutorily mandated rest periods in violation of Labor Code §§ 226.7 and  
6 516.

7 d. Failing to furnish Plaintiffs and other similarly situated employees with complete,  
8 accurate, itemized wage statements in violations of Labor Code § 226(a) and applicable Wage Orders;

9 e. Failing to reimburse Plaintiff and other aggrieved employees with all necessary  
10 business expenditures in violation of Labor Code §§ 2802-2804 and applicable Wage Orders; and

11 f. Failing to pay Plaintiff and similarly aggrieved employees for all minimum wages for  
12 all hours worked or for which they were subject to the employer's control.

13 98. On or about August 24, 2023, and December 14, 2023, Plaintiffs notified Defendant  
14 AmeriGuard Security Services, Inc. and the California Labor and Workforce Development Agency  
15 (“LWDA”) via email of Defendant’s violations of the California Labor Code § 2698 *et seq.*, with  
16 respect to violations of the California Labor Code identified in Paragraph 97.

17 99. Plaintiffs have exhausted their administrative requirements for bringing a claim under  
18 the Private Attorneys General Act with respect to these violations.

19 100. Plaintiffs were compelled to retain the services of counsel to file this court action to  
20 protect their interests and the interests of similarly aggrieved employees and to assess and collect the  
21 civil penalties owed by Defendants. Plaintiffs have hereby incurred attorneys’ fees and costs, which  
22 they are entitled to receive under California Labor Code § 2699.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiffs pray for judgment for themselves and all others on whose behalf  
25 this suit is brought against Defendants, as follows:

- 26 1. For an order certifying the proposed Classes;  
27 2. For an order appointing Plaintiffs as representatives of the Classes;  
28 3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;

1           4.    Upon the First Cause of Action, for compensatory, consequential, general, and special  
2 damages according to proof pursuant to Labor Code §§ 226.2, 204, 210, 1194, and 1198;

3           5.    Upon the Second Cause of Action, for compensatory, consequential, general, and  
4 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1197, and 1198;

5           6.    Upon the Third Cause of Action, payment of all unpaid sick pay wages and penalties  
6 according to proof pursuant to Labor Code § 246 *et seq.*, and for reasonable attorneys' fees and costs;

7           7.    Upon the Fourth Cause of Action, for compensatory, consequential, general, and special  
8 damages according to proof pursuant to Labor Code §§ 226.7 and 512;

9           8.    Upon the Fifth Cause of Action, for compensatory, consequential, general, and special  
10 damages according to proof pursuant to Labor Code §§ 226.7 and 516;

11          9.    Upon the Sixth Cause of Action, penalties pursuant to Labor Code § 226(a), and  
12 reasonable costs and attorney's fees;

13          10.   Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to  
14 Labor Code §§ 201-203;

15          11.   Upon the Eighth Cause of Action, for unreimbursed expenses, interest, and reasonable  
16 attorneys' fees and costs;

17          12.   Upon the Ninth Cause of Action, for restitution to Plaintiffs and members of the Classes  
18 of all money and/or property unlawfully acquired by Defendants by means of any acts or practices  
19 declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

20          13.   Upon the Tenth Cause of Action, for civil penalties due to Plaintiff, other similarly  
21 Aggrieved Employees, and the State of California according to proof pursuant to Labor Code § 2699  
22 (a) and (f) including, but not limited to (1) \$100.00 for each initial violation and \$200 for each  
23 subsequent violation per employee per pay period for those violations of the Labor Code for which  
24 no civil penalty is specifically provided under the Labor Code;

25          14.   Prejudgment interest on all due and unpaid wages pursuant to California Labor Code §  
26 218.6 and Civil Code §§ 3287 and 3289;

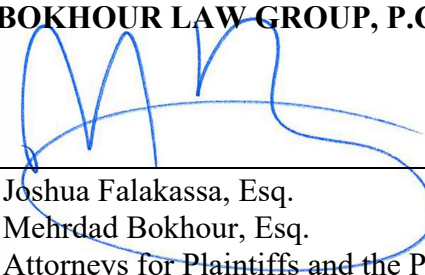
27          15.   On all causes of action, for attorneys' fees and costs as provided by Labor Code §§  
28 218.5, 226, 2802, and Code of Civil Procedure § 1021.5; and

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16. For such other relief that the Court may deem just and proper.

Dated: January 9, 2024

**FALAKASSA LAW, P.C.**  
**BOKHOUR LAW GROUP, P.C.**

By: 

Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiffs and the Putative Classes

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of  
4 eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars,  
Suite 450, Los Angeles, California 90067.

5 On January 17, 2024, I served the following document(s) described as **FIRST**  
6 **AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this  
action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

7 Gregory J. Norvys, Esq.  
gnorvys@ch-law.com  
8 Judith M. Sasaki, Esq.  
jsasaki@ch-law.com  
9 COLEMAN & HOROWITT, LLP  
499 West Shaw Avenue, Suite 116  
10 Fresno, California 93704

11 **Counsel for defendant Ameriguard Security**  
12 **Services, Inc.**

13 **BY ELECTRONIC SERVICE:** I transmitted the above-referenced document(s) via  
14 electronic service provider First Legal to the person(s) identified above at the email address(es)  
15 indicated and did not, within a reasonable time after transmission, receive any message or  
communication indicating that delivery failed or that any other error had occurred which would  
16 delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

17 I declare under penalty of perjury under the laws of the State of California that the foregoing  
18 is true and correct.

19 Executed on January 17, 2024, at Los Angeles, California.

20   
\_\_\_\_\_  
21 Carlos Garcia  
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