

Case Management Conference
2024-06-17 8:30AM in 11B

STK-CV-UOE-2023-0013693

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

MARTIN CARRILLO-REYES,

Plaintiff,

vs.

**AMERICAN GUARD SERVICES, INC., and
DOES 1-100, inclusive,**

Defendants.

Case No.:

**COMPLAINT FOR DAMAGES AND
PENALTIES**

- 1. FAILURE TO PAY MINIMUM WAGE**
- 2. FAILURE TO PAY OVERTIME**
- 3. FAILURE TO PROVIDE REST BREAKS**
- 4. FAILURE TO FURNISH ACCURATE
WAGE STATEMENTS**
- 5. TO COLLECT UNPAID WAGES**
- 6. PAGA (Labor Code § 2698 et seq.)**
- 7. FAILURE TO REIMBURSE BUSINESS
EXPENSES**

JURY TRIAL DEMANDED

Plaintiff Martin Carrillo-Reyes brings this action for unpaid wages, penalties and damages, against Defendant American Guard Services, Inc., and Does 1 through 100, for violations of the California Labor Code.

PARTIES

1. Martin Carrillo-Reyes ("Plaintiff" or "Carrillo-Reyes") is and at all times relevant herein was employed in San Joaquin County, California, and is an "employee" of Defendants herein, as defined by the California Labor Code ("Labor Code") and the applicable California Industrial Wage Commission ("IWC") Order(s).

2. American Guard Services, Inc. ("AGS") is a California corporation which does business in California, and with its principal place of business in Garden Grove, California.

3. At all times relevant herein, AGS has been an "employer" as defined by the California Labor Code ("Labor Code") and the applicable California Industrial Wage Commission ("IWC") Order(s).

4. AGS and Does 1-100 are collectively referred to as Defendants.

5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sue such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

6. Plaintiff is informed and believe and thereupon allege that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

JURISDICTION, VENUE AND JURY TRIAL DEMAND

7. This Court is the proper Court, and this action is properly filed in the Superior Court of California for the County of San Joaquin because AGS conducts business, and has its principal place of business, in this County and Plaintiff has performed work for AGS in this County. Plaintiff hereby demands a jury trial.

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GENERAL ALLEGATIONS

8. Plaintiff was hired by AGS in October of 2022, to work as a security guard. As such, he was, and is, assigned to guard facilities and properties of AGS' clients. Plaintiff is paid by the hour and is paid weekly.

9. As a non-exempt employee, Plaintiff was, and is entitled to be paid for every hour worked and overtime as appropriate.

10. Plaintiff in fact has not been paid for all time he has worked, or for all overtime wages he has earned. Attached hereto as Exhibit "A" and incorporated by this reference, is an October 13, 2023, letter to the State of California Labor and Workforce Development Agency on behalf of Plaintiff. In Exhibit "1" to Exhibit "A", Plaintiff worked 16 hours, which should have resulted in 4 hours of double time. However, he was only paid regular overtime for those 4 hours. In addition, Exhibit "1" shows how Defendants had a practice of recording shifts, rather than the actual time employees worked, which does not accurately represent the actual time worked.

11. For example, Plaintiff was required to stay at his assignment until relieved by the next shift. It was not uncommon for other relief shifts to be late to work, resulting in the shift being extended beyond 8 hours. However, in such instances, Plaintiff was not compensated for the time he spent waiting for untimely relief, and would only be paid for 8 hours.

12. Plaintiff was not afforded compliant rest breaks because he was required to be on call during his rest breaks. Consequently, Plaintiff was not relieved of his duties as required by law. Plaintiff was not paid any premium wages as required by California law, when he did not receive compliant meal or rest breaks.

13. As a result of these problems, Defendants' wage statements were inaccurate, as they failed to accurately disclose:

- a. The gross wages earned, in violation of section 226(a)(1);
- b. The total hours worked, in violation of section 226(a)(2);
- c. The net wages earned, in violation of section 226(a)(5); and
- d. All applicable hourly rates in effect during the pay period; and
- e. The corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

1 14. Defendants require Plaintiff to use his cellular phone and commonly contacted him
2 during work hours to address work related matters. However, Defendants did not reimburse Plaintiff
3 for cell phone or cellular phone charges. Labor Code section 2802 requires employers to reimburse
4 employees for expenses employees incur on behalf of the employer in the course and scope of the
5 employment relationship. Plaintiff is not paid a stipend or otherwise reimbursed for his cell phone or
6 cell phone usage. Nor was he issued a cell phone for use by Defendants.

7 15. The Private Attorney General Act ("PAGA"), as set forth at California Labor Code §
8 2698 et seq., is and at all times relevant herein was applicable to Plaintiff's employment.

9 16. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for
10 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
11 ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil action
12 brought by an aggrieved employee on behalf of himself or herself and other current or former
13 employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor Code §
14 2699(a).

15 17. Pursuant to PAGA, an "Aggrieved Employee" is "any person who was employed by
16 the alleged violator and against whom one or more of the alleged violations was committed." Labor
17 Code § 2699(c).

18 18. Plaintiff was, and is employed by Defendants while several of the violations alleged
19 herein were committed against him. Plaintiff is therefore an Aggrieved Employee as defined by Labor
20 Code § 2699(c).

21 19. Defendants other current and former non-exempt employees are also Aggrieved
22 Employees in that one or more of the alleged violations were also committed against them during their
23 time of employment with Defendants.

24 20. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for
25 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
26 ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil action
27 brought by an aggrieved employee on behalf of himself or herself and other current or former
28

1 employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor Code §
2 2699(a).

3 21. Plaintiff hereby realleges and incorporates by reference each and every allegation set
4 forth above as though fully set forth herein.

5 22. As is outlined herein, Defendants violated the Labor Code as to Plaintiff and other
6 Aggrieved Employees it employed and/or employs within California. Specifically, American Guard
7 Services violated Labor Code sections 201-203, 210, 226, 226.7, 510, 512, 1182.12, 1194, 1197, 1198
8 and 2802, as well as the applicable IWC Wage Orders.

9 23. Pursuant to Labor Code § 2699(f), the civil penalty recoverable in a PAGA action is
10 that which is provided for by the Labor Code. When the Labor Code does not provide a civil penalty,
11 the penalty recoverable shall be \$100 for the initial violation per employee per pay period and \$200 for
12 each subsequent violation per employee per pay period.

13 24. Pursuant to Pursuant to California Labor Code § 2699(g), an aggrieved employee may
14 recover the civil penalty on behalf of himself or herself and other current or former employees against
15 whom one or more of the alleged violations was committed. Furthermore, any employee who prevails
16 in any action shall be entitled to an award of reasonable attorney's fees and costs.

17 25. Pursuant to Labor Code § 2699.3, an aggrieved employee, including Plaintiff, may
18 pursue a civil action arising under PAGA after the following requirements have been met:

- 19 a. The aggrieved employee shall give written notice by certified mail to the
20 LWDA and the employer (hereinafter "Employee's Notice") of the specific
21 provisions of California Labor Code alleged to have been violated, including the
22 facts and theories to support the alleged violations;
- 23 b. The LWDA shall provide notice (hereinafter "LWDA's Notice") to the
24 employer and the aggrieved employee by certified mail that it does not intend to
25 investigate the alleged violation within 60 days of the postmark date of the
26 Employee's Notice. Upon receipt of the LWDA's Notice, or if the LWDA does
27 not provide notice with 65 calendar days of the postmark date of the
28 Employee's Notice, the aggrieved employee may commence a civil action

1 pursuant to California Labor Code § 2699 to recover civil penalties in addition
2 to any other penalties to which the employee may be entitled.

3 26. For all alleged violations not enumerated in Labor Code § 2699.5, the employer is
4 given thirty-three (33) days to cure and notify the aggrieved employee by certified mail that the
5 violation has been cured. If the violation is not cured, the aggrieved employee may commence a civil
6 action pursuant to California Labor Code § 2699 to recover civil penalties in addition to any other
7 penalties to which the employee may be entitled.

8 27. On October 13, 2023, Plaintiff provided written notice by certified mail to Defendant
9 AGS and by online filing to the LWDA of the specific provisions of the Labor Code alleged to have
10 been violated, including the facts and theories to support the alleged violations.

11 28. As of the filing of this Complaint, which is more 65 days after Plaintiff provided
12 written notice, the LWDA has not responded to his notification or otherwise indicated an intention to
13 investigate his claims.

14 29. Accordingly, Plaintiff has satisfied the administrative prerequisites under Labor Code §
15 2699.3 to bring a civil action to recover penalties against Defendant AGS, in addition to other
16 remedies, for the aforementioned violations of California Labor Code sections and applicable IWC
17 Wage Orders.

18 30. Defendants were at all times relevant herein, aware of the requirements of California
19 Labor Code section 226.

20 31. Plaintiff has suffered injury as a matter of law pursuant to Labor Code section
21 226(e)(2)(A), because AGS's failure to comply with California Labor Code section 226(a).

22 **FIRST CAUSE OF ACTION**
23 **FAILURE TO PAY MINIMUM WAGE**
24 **(Violation of Labor Code §§ 1182.12, 1194, 1197, & 1198)**
 Against All Defendants

25 32. Plaintiff hereby realleges and incorporates by reference each and every allegation set
26 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
27 allegations of this cause of action.

1 33. California Labor Code section 1182.12 establishes the minimum wage for California
2 employees from July 1, 2014, to present.

3 34. Labor Code Section 1194 provides, in relevant part:

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

7 Labor Code section 1194.2 provides, in relevant part:

8 In any action under ... Section 1194 to recover wages because of the payment of a wage
9 less than the minimum wage fixed by an order of the commission, an employee shall be
entitled to recover liquidated damages in an amount equal to the wages unlawfully
10 unpaid and interest thereon.

11 35. Labor Code section 1197 provides that the minimum wage for employees fixed by the
12 commission is the minimum wage to be paid to employees, and the payment of a lesser wage is
13 unlawful.

14 36. Pursuant to California Labor Code section 1198, the maximum hours of work and
15 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
16 standard conditions of labor for employees and the employment of any employee for longer hours than
17 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

18 37. During Plaintiff's employment, Defendants failed to pay him a minimum wage rate for
19 all hours worked as required by State of California as set forth above.

20 38. During Plaintiff's employment, Defendants intentionally and willfully failed to pay
21 Plaintiff for every hour worked.

22 39. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
23 provided.

24 **SECOND CAUSE OF ACTION**
25 **VIOLATION OF CALIFORNIA LABOR CODE §§ 510 & 1198**
26 **(Failure to Pay Overtime)**
27 **Against All Defendants**

28 40. Plaintiff hereby realleges and incorporates by reference each and every allegation set
forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
allegations of this cause of action.

41. Pursuant to California Labor Code section 510, any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

42. Pursuant to California Labor Code section 1198, the maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees and the employment of any employee for longer hours than those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

43. During Plaintiff's employment, Plaintiff regularly worked, but was not paid, overtime.

44. During Plaintiff's employment, Defendants intentionally and willfully failed to pay the proper overtime wages due to Plaintiff.

45. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

THIRD CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226.7 and IWC WAGE ORDERS
(Failure to Provide Rest Breaks)
Against All Defendants

46. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

47. Labor Code § 226.7 requires employers to provide employees rest periods as mandated by Order of the Industrial Welfare Commission. It states:

- a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 1 additional hour of pay at the employee's

1 regular rate of compensation for each work day that the meal or rest period is
2 not provided

3 48. The applicable Wage Order(s) provides that every “employer shall authorize and permit
4 all employees to take rest periods, which insofar as practicable shall be in the middle of each work
5 period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten
6 (10) minutes net rest time per four (4) hours or major fraction thereof...” The applicable Wage Order
7 further provides that “[i]f an employer fails to provide an employee rest period in accordance with the
8 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
9 employee’s regular rate of compensation for each workday that the rest period is not provided.”

10 49. During Plaintiff’s employment, Plaintiff was not provided with compliant rest breaks,
11 nor did he receive an additional hour of premium pay for each missed rest break.

12 50. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
13 provided.

14 **FOURTH CAUSE OF ACTION**
15 **VIOLATION OF LABOR CODE § 226(a)**
16 **(Failure to Furnish Accurate Itemized Wage Statements)**
17 **Against All Defendants**

18 51. Plaintiff hereby realleges and incorporates by reference each and every allegation set
19 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
20 allegations of this cause of action.

21 52. Pursuant to California Labor Code section 226(a) “every employer shall, semimonthly
22 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable
23 part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are
24 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
25 earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and
26 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages
27 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
28 employee and only the last four digits of his or her social security number or an employee
identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all

1 applicable hourly rates in effect during the pay period and corresponding number of hours worked at
2 each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate
3 of pay and the total hours worked for each temporary services assignment.”

4 53. An employee suffering injury as a result of the knowing and intentional failure by an
5 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
6 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
7 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate
8 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
9 attorney’s fees. Labor Code § 226(e)(1).

10 54. An employee is deemed to suffer injury if the employer fails to provide a wage
11 statement or if the employer fails to provide accurate and complete information as required by any one
12 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
13 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
14 during the pay period or any of the other information required to be provided pursuant to Labor Code
15 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the
16 name and address of the employer and iv) the name of the employee and the last four digits of his or
17 her social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-
18 (iv). “Promptly and easily determine” means a reasonable person would be able to readily ascertain
19 the information without reference to other documents or information. Labor Code § 226(e)(2)(C).

20 55. As set forth above, Defendants intentionally and willfully failed to furnish any wage
21 statements to Plaintiff.

22 56. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
23 provided.

24 **FIFTH CAUSE OF ACTION**
25 **(FOR UNPAID WAGES PURSUANT TO LABOR CODE §218)**
26 **(To Collect Unpaid Wages)**
Against All Defendants

27 57. Plaintiff hereby realleges and incorporates by reference each and every allegation set
28 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
allegations of this cause of action.

58. For reasons set forth above, Defendants have failed to pay to Plaintiff all wages due to him, including premium wages, unpaid minimum wages, and overtime wages.

59. Labor Code § 218 provides, in pertinent part: “Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.”

60. In addition, Labor Code § 218.5, a wage claimant may recover reasonable fees and costs in an action to obtain unpaid wages.

61. Wherefore, Plaintiff seeks all unpaid wages during his employment, reasonable attorney's fees and costs.

SIXTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA LABOR CODE §§ 2698 *ET SEQ*
(Private Attorneys General Act)
Against All Defendants

62. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

63. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by American Guard Services during the applicable statutory period, and suffered one or more of the Labor Code violations outlined herein. Other current and former employees are also aggrieved employees in that one or more of the alleged violations were also committed against them during their time of employment with American Guard Services.

64. Plaintiff seeks to recover, on behalf of and as a proxy for the Labor and Workforce Development Agency (the “LWDA”), the civil penalties provided by the PAGA through a representative action permitted by the PAGA and *Arias v, Sup. Ct.* (2009) 46 Cal.4th 969. Class certification of the PAGA claims is not required.

65. Plaintiff seeks to enforce the California Labor Code and related regulations and Industrial Wage Order(s) on behalf of the LWDA and pursuant to the PAGA for a number of violations which include, but are not limited to, all of the following: Labor Code sections 201-203, 210, 226, 226.7, 510, 512, 1182.12, 1194, 1197, 1198 and 2802, as well as the applicable IWC Wage Orders.

1 66. Pursuant to Labor Code section 2699(f), the civil penalty recoverable in a PAGA action
2 is that which is provided for by the Labor Code or, where no civil penalty is specifically provided, one
3 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
4 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

5 67. Pursuant to California Labor Code section 2699(g), an aggrieved employee may
6 recover the civil penalty on behalf of himself or herself and other current or former employees against
7 whom one or more of the alleged violations was committed. Furthermore, any employee who prevails
8 in any such action shall be entitled to an award of reasonable attorney's fees and costs.

9 68. As a result of the myriad violations of the Labor Code and applicable IWC Order(s) set
10 forth above, Plaintiff seeks recovery of civil penalties, attorneys' fees and costs pursuant to the PAGA
11 as set forth below.

12 69. Wherefore, Plaintiff and the other Aggrieved Employees have been damaged as set
13 forth above and request relief as hereafter provided.

14 **SEVENTH CAUSE OF ACTION**
15 **VIOLATION OF LABOR CODE §2802**
16 **(Failure to Reimburse Expenses)**
 Against All Defendants

17 70. Plaintiff hereby realleges and incorporates by reference each and every allegation set
18 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
19 allegations of this cause of action.

20 71. Labor Code §2802 requires employers to indemnify and/or reimburse employees for
21 reasonably incurred in direct consequence of the employees duties for the employer.

22 72. As set forth above, Plaintiff was, and is, required to use his own personal phone and
23 cellular service as part of his regular guard duties for Defendants.

24 73. Nevertheless, Defendants have failed to reimburse Plaintiff as required by law.

25 74. Plaintiff has suffered economic harm because of Defendants' failure to reimburse
26 Plaintiff.

27 75. Wherefore, Plaintiff seeks relief as set forth below.
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

As to the First Cause of Action:

1. For compensatory damages, including wages for all hours worked, in an amount according to proof;
2. For liquidated damages pursuant to Labor Code § 1194.2;
3. For statutory attorney's fees and costs, including but not limited to those available under Labor Code §§ 218.5, and 1194;
4. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Civil Code §§ 3287(a) and 3289(b), Labor Code §§ 218.6 and 1194; and
5. For such other and further relief as the court deems just and proper.

As to the Second Cause of Action:

1. For compensatory damages, including overtime, and double time wages for all hours worked in excess of 8 hours per day, or 40 hours per week, in an amount according to proof;
2. For statutory attorney's fees and costs, including but not limited to those available under Labor Code §§ 218.5, and 1194;
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Civil Code §§ 3287(a) and 3289(b), Labor Code §§ 218.6 and 1194; and
4. For such other and further relief as the court deems just and proper.

As to the Third Cause of Action:

1. For compensatory damages, including wage premium penalties, for each instance Defendants failed to provide a compliant rest period, pursuant to Labor Code § 226.7;
2. For statutory attorney's fees and costs, including but not limited to those available under Labor Code § 218.5;

3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Civil Code §§ 3287(a) and 3289(b), Labor Code § 218.6; and
4. For such other and further relief as the court deems just and proper.

As to the Fourth Cause of Action:

1. For statutory penalties of \$4,000 under Labor Code § 226(e);
2. For attorney's fees and costs under Labor Code § 226(e);
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Civil Code §§ 3287(a) and 3289(b); and
4. For such other and further relief as the court deems just and proper.

As to the Fifth Cause of Action:

1. For all unpaid wages pursuant to Labor Code § 218;
2. For statutory attorney's fees and costs, including but not limited to those available under Labor Code § 218.5;
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Labor Code § 218.6, Civil Code §§ 3287(a) and 3289(b); and
4. For such other and further relief as the court deems just and proper.

As to the Sixth Cause of Action:

1. For civil penalties, including but not limited to those available under Labor Code §§ 210, 226.3, 558 and 2699(f);
2. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code § 2699(g);
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b), and Labor Code § 218.6; and
4. For such other and further relief as the court deems just and proper.

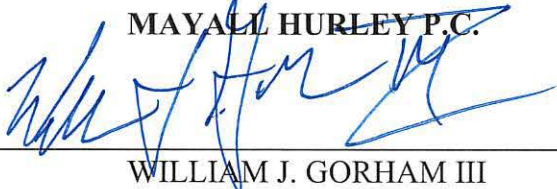
1 **As to the Seventh Cause of Action:**

- 2 1. For reimbursement of all expenses incurred for the business benefit of Defendants
3 pursuant to Labor Code § 2802(a).
4 2. For interest at the applicable legal rate pursuant to Labor Code § 2802(b).
5 3. For legal fees and costs pursuant to Labor Code § 2802(c).
6 4. For such other relief as the court deems just and proper.

7
8 **DATED:** December 18, 2023

MAYALL HURLEY P.C.

9
10 By


WILLIAM J. GORHAM III

VLADIMIR J. KOZINA

Attorneys for Plaintiff Martin Carrillo-Reyes

Exhibit A

NORTHERN CALIFORNIA
118 WEST OAK STREET
LODI, CALIFORNIA 95240
[BY APPT. ONLY - NO SERVICE ACCEPTED]

2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207

SOUTHERN CALIFORNIA
380 EAST 2ND STREET, SUITE 800
LOS ANGELES, CALIFORNIA 90012
[BY APPT. ONLY - NO SERVICE ACCEPTED]



112 SOUTH CHURCH STREET
LODI, CALIFORNIA 95240

TELEPHONE: (209) 477-3833
WWW.MAYALLAW.COM

VLADIMIR F. KOZINA
STEVEN A. MALCOUN
MARK E. BERRY
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NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMANN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA

October 13, 2023

SUBMITTED VIA ONLINE CLAIM NOTICE

<https://dir.tfaforms.net/308>

The State of California Labor and Workforce Development Agency

SENT VIA CERTIFIED MAIL

American Guard Services, Inc.
1125 West 190th St.
Gardena, CA 90248

Re: Martin Carrillo-Reyes

To Whom It May Concern:

This firm represents Martin Carrillo-Reyes ("Carrillo-Reyes") relating to his employment in a non-exempt hourly position as a security guard for American Guard Services, Inc. ("American Guard" or "Employer"). In accordance with California Labor Code § 2699.3, this letter shall serve as Mr. Carrillo-Reyes's written notice regarding the following violations, and facts and theories supporting the violations, on his behalf and, as a proxy for the Labor and Workforce Development Agency ("LWDA"), on behalf of current and other former California employees of Employer. Notice to the LWDA has been submitted online, in accordance with the process described on the California Department of Industrial Relations' website at <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

Since October of 2022, Plaintiff has been employed by American Guard as a security guard in Stockton, California. He is paid on a weekly basis. Throughout his employment, Plaintiff has been a non-exempt employee. As such, Plaintiff was entitled to be paid for every hour worked and overtime as appropriate.

However, as to Carrillo-Reyes, and other non-exempt employees of Employer, Employer failed to correctly pay its employees for all regular and overtime wages due. By way of example, according to **Exhibit 1**, Carrillo-Reyes worked 16 hours, which should have resulted in 4 hours of double time. However, he was only paid regular overtime for those 4 hours. In addition, **Exhibit 1** shows how American Guard had a practice of recording shifts, rather than the actual time employees worked. In the case of Mr. Carrillo-Reyes, and to his understanding, other current and former guards, were not to leave their post until relieved. Consequently, it was not uncommon for other

LWDA; American Guard
Re: Martin Carrillo-Reyes
October 13, 2023
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relief shifts to be late to work, resulting in the shift being extended beyond 8 hours. However, Carrillo-Reyes, and to his understanding, other current and former guards, were not compensated for the time they spent waiting for untimely relief. As another example of not being paid for all time worked, **Exhibit 2**, shows that even though Mr. Carrillo-Reyes worked 32 hours in the work week, he was only paid for 16 of those hours.

Plaintiff and American Guard's other non-exempt employees were also not consistently authorized or permitted to take rest breaks as required by California law. American Guard required Plaintiff and its other non-exempt employees to work through rest breaks because they were on call and not relieved of their guard duties at any time during their shifts. They were not paid premium wages for these violations as required by California law.

On information and belief, during the last year and beyond, when guards ended their employment with American Guard, they were not paid all minimum wage, overtime, rest break premium wages owed to them.

Because of the violations set forth above, and as evidenced in the sample of Plaintiff's wage statement attached hereto as **Exhibits 1 and 2**, the wage statements furnished to its non-exempt employees violate California Labor Code section 226(a) insofar as they fail to accurately show:

- a. The gross wages earned, in violation of section 226(a)(1);
- b. The total hours worked, in violation of section 226(a)(2);
- c. The net wages earned, in violation of section 226(a)(5); and
- d. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

Employer requires California employees, including Mr. Carrillo-Reyes, to use their cellular phones as they were commonly contacted on the job about work related matters. However, Employer did not reimburse its California employees, or any of them, for cell phones or cellular phone charges. Labor Code section 2802 requires employers to reimburse employees for expenses employees incur on behalf of the employer in the course and scope of the employment relationship. Ms. Carrillo-Reyes was not paid a stipend or otherwise reimbursed for his cell phone or cell phone usage. Nor was he issued a cell phone for use by Employer. On information and belief, Mr. Carrillo-Reyes believes this is true for other California employees, both current and former.

In light of the above violations, Mr. Carrillo-Reyes is an "aggrieved employee" and has standing under the PAGA to bring an action for civil penalties. As set forth above, American Guard has violated Labor Code sections 201-203 (failure to pay all wages due at cessation of employment and penalty provision), 210 (rest penalties), 226(a) (inaccurate wage statements), 226.3 (penalty provision for inaccurate wage statements), 226.7 (rest break violation), 510 (overtime), 1182.12 (minimum wage), 1194 (minimum wage), 1197 (minimum wage), 2802 (reimbursement of work expenses) and 1198 (minimum wage), as well as and the applicable IWC Wage Orders. Because of these violations, American Guard is subject to civil penalties.

LWDA; American Guard
Re: Martin Carrillo-Reyes
October 13, 2023
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In addition to these penalties, attorneys' fees and costs are to be awarded to legal counsel to a party acting as proxy to the LWDA pursuant to Labor Code § 2699(g), and any other applicable statute providing for such reimbursement of fees and costs.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or to my client, Mr. Carrillo-Reyes.

If the LWDA does not intend to investigate these violations, Mr. Carrillo-Reyes intends to file a civil complaint against Employer pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on his behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention to this matter.

Sincerely,

MAYALL HURLEY P.C.

By

A handwritten signature in blue ink, appearing to read "Wm J Gorham III", is written over a horizontal line.

WILLIAM J. GORHAM, III

Enclosure: Exhibits 1 & 2

cc: client

Exhibit 1

DoW Date	Location	Job	Pay Rate	Pay Type	Comment	In	Out	Hours
Sun 07/23/2023	SJPRC - Robert Cabral Station	C10197	19.0000	Regular		03:00pm	11:00pm	8.00
Sun 07/23/2023	SJPRC - Robert Cabral Station	C10197	25.5000	Overtime		11:00pm	07:00am	4.00
Sun 07/23/2023	SJPRC - Robert Cabral Station	C10197	38.0000	Double Tim		11:00pm	07:00am	4.00
Mon 07/24/2023	SJPRC - Robert Cabral Station	C10197	19.0000	Regular		07:00pm	11:00pm	4.00
Mon 07/24/2023	SJPRC - Robert Cabral Station	C10197	19.0000	Regular		11:00pm	07:00am	4.00
Mon 07/24/2023	SJPRC - Robert Cabral Station	C10197	25.5000	Overtime		11:00pm	07:00am	4.00
Tue 07/25/2023	SJPRC - Robert Cabral Station	C10197	19.0000	Regular		03:00pm	11:00pm	8.00
Tue 07/25/2023	SJPRC - Robert Cabral Station	C10197	25.5000	Overtime		11:00pm	07:00am	4.00
Tue 07/25/2023	SJPRC - Robert Cabral Station	C10197	38.0000	Double Tim		11:00pm	07:00am	4.00
Wed 07/26/2023	SJPRC - Robert Cabral Station	C10197	19.0000	Regular		11:45pm	07:00am	7.25
Thu 07/27/2023	SJPRC - Robert Cabral Station	C10197	19.0000	Regular		07:00am	03:00pm	8.00
Thu 07/27/2023	SJPRC - Robert Cabral Station	C10197	25.5000	Overtime		11:00pm	07:00am	4.00
Thu 07/27/2023	SJPRC - Robert Cabral Station	C10197	38.0000	Double Tim		11:00pm	07:00am	4.00
Fri 07/28/2023	SJPRC - Robert Cabral Station	C10197	19.0000	Regular		03:00pm	11:00pm	0.75
Fri 07/28/2023	SJPRC - Robert Cabral Station	C10197	25.5000	Overtime		03:00pm	11:00pm	7.25
Sat 07/29/2023	SJPRC - Stockton RMP	C10196	25.5000	Overtime	Martin Carrillo	00:00am	03:00am	3.00

PTD hours left: 0.00

Sick hours left: 24.00

Covid-19 hours left: 0.00

Holiday hours left: 0.00

DD W/E 10/22/23

Checking

1926.51

MC-3691

CARRILLO REYES, MARTIN

R15

Regular	40.00	760.00	SSDC	130.61	
Overtime	31.25	890.63	Medicare	30.55	945231
Double Time	12.00	456.00	CA SDI	16.96	

08/04/2023

From: 07/23/2023

To: 07/29/2023

37750.63	83.25	2106.63	2851	180.12	1926.51
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0.00	361.16	2367.95	0.00
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MC-3691

945231

THIS IS NOT A CHECK

One Thousand Nine Hundred Twenty-Six Dollars and 51 Cents

08/04/2023

***1926.51

CARRILLO REYES, MARTIN

**DIRECT DEPOSIT SLIP
NON-NEGOTIABLE**

Exhibit 2

3:26

5G 64

Check Totals and Year to Date: 2023

	Hours	Gross	Taxes	Deds	Expns	Net
Total	32.00	\$ 304.00	\$ 48.35	\$ 0.00	\$ 0.00	\$ 255.65
YTD	1953.25	\$ 43,897.13	\$ 4,442.73	\$ 423.49	\$ 0.00	\$ 39,030.91

Earnings

Earning Description	Hours	Amount	YTD
Regular	32.00	\$ 304.00	\$ 25,963.50
Overtime	0.00	\$ 0.00	\$ 10,580.63
Holiday	0.00	\$ 0.00	\$ 684.00
Double Time	0.00	\$ 0.00	\$ 6,669.00

Deductions and Employer Contributions

Description	Employee	YTD	Employer	YTD	Comb. YTD
Garnishment 25% ...	\$ 0.00	\$ 423.49	\$ 0.00	\$ 0.00	\$ 423.49

*All employer amounts are for informational purposes and not included in check totals.

Taxes

Tax	Amount	YTD
FWT	\$ 20.00	\$ 527.00
SWT	\$ 2.35	\$ 141.08
MEDI	\$ 4.41	\$ 636.53
SSEC	\$ 18.85	\$ 2,721.63
SDI	\$ 2.74	\$ 416.49

Pay Distribution : Direct Deposit

Account No.	Amount
****4107	\$ 255.65

Timecards

Summary by Department

Department	Pay Rate	Hours	Exps	Flat Amount	Gross
R35	\$ 0.00	16	\$ 0.00	\$ 0.00	\$ 0.00
R35	\$ 19.00	16	\$ 0.00	\$ 0.00	\$ 304.00

Detail View

Date	Location	Pay Rate	Pay Type	In	Out	Hours	Expns	Cmnt
9/24/2023	SJRR - ...	\$ 19.00	Regular	11:00:00 AM	7:00:00 AM	8	\$ 0.00	
9/25/2023	SJRR - ...	\$ 19.00	Regular	11:00:00 PM	7:00:00 AM	8	\$ 0.00	
9/26/2023	SJRR - ...	\$ 0.00	Regular	11:00:00 PM	7:00:00 AM	8	\$ 0.00	
9/29/2023	SJRR - ...	\$ 0.00	Regular	11:00:00 PM	7:00:00 AM	8	\$ 0.00	




MAYALL HURLEY
EMPLOYMENT LAWYERS
112 S. CHURCH STREET
LODI, CALIFORNIA 95240

UNITED STATES
POSTAL SERVICE®
CERTIFIED MAIL®



9489 0090 0027 6312 4673 91

Label 890-PB, Oct. 2015
Pitney Bowes

FIRST-CLASS



US POSTAGE™

ZIP 95240
02 7H
0006100876
\$ 007.42⁰
OCT 13 2023

American Guard Services, Inc.
1125 West 190th St.
Gardena, CA 90248



October 17, 2023

Dear Julie Zeyen:

The following is in response to your request for proof of delivery on your item with the tracking number:
9489 0090 0027 6312 4673 91.

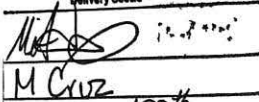
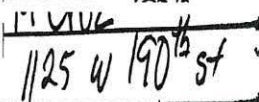
Item Details

Status:	Delivered, Front Desk/Reception/Mail Room
Status Date / Time:	October 16, 2023, 2:01 pm
Location:	GARDENA, CA 90248
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™
	Return Receipt Electronic

Shipment Details

Weight:	1.4oz
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Recipient Signature

Signature of Recipient:	
Address of Recipient:	

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
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