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ARMANDO BURQUEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ARMANDO BURQUEZ, an individual;
Plaintiff,

vs.

KMK REAL ESTATE SERVICES, INC., a
California corporation;
Defendant.

Case No. 23STCV27658

**PLAINTIFF ARMANDO BURQUEZ'S
FIRST AMENDED COMPLAINT FOR
DAMAGES AND CIVIL PENALTIES
UNDER THE CALIFORNIA LABOR
CODE PRIVATE ATTORNEYS GENERAL
ACT**

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Los Angeles

01/16/2024

David W. Slayton, Executive Officer / Clerk of Court

By: P. Aranda Deputy

1 Plaintiff ARMANDO BURQUEZ (“Plaintiff” or “Mr. Burquez”) brings this action
2 against Defendant KMK MANAGEMENT (“Defendant” or “KMK”) and alleges as follows:

3 **NATURE OF ACTION**

4 1. Plaintiff brings this action against Defendant, his former employer, for damages,
5 including for unpaid wages, interest, lost wages, and, where applicable, attorney’s fees and costs,
6 resulting from Defendant’s unlawful employment practices in violation of the California Labor
7 Code and the applicable Industrial Welfare Commission Wage Order.

8 2. Plaintiff also brings this action for civil penalties on behalf of himself, other
9 aggrieved employees and the California Labor and Workforce Development Agency under the
10 California Labor Code Private Attorneys General Act of 2004 (PAGA).

11 **THE PARTIES**

12 3. Plaintiff ARMANDO BURQUEZ is, and at all relevant times herein, was an
13 individual residing within Los Angeles County, California.

14 4. Defendant KMK REAL ESTATE SERVICES, INC. is, and at all relevant times
15 herein was, a corporation organized under the laws of the State of California with a principal
16 place of business in the county of Los Angeles, California.

17 **JURISDICTION AND VENUE**

18 5. This action is properly filed in Los Angeles County because the acts and
19 omissions that give rise to the claims against Defendant took place in Los Angeles County,
20 California, because Plaintiff was employed by Defendant in Los Angeles County, California,
21 because the injuries to Plaintiff occurred in Los Angeles County, California, and because
22 Defendant transact business in Los Angeles County, California.

23 **FACTUAL ALLEGATIONS**

24 6. KMK provides property management services for multi-family homes, including
25 homes owned directly by KMK and homes owned by KMK customers who lease their properties
26 to tenants.
27

7. Mr. Burquez was hired by Property Management Personnel Inc., a temporary services agency, in or about July 2017 and assigned as a temporary employee to KMK until December 15, 2017, at which time he became a regular full-time employee of KMK.

8. Mr. Burquez worked for KMK as a maintenance technician. At no time during his employment with KMK was Mr. Burquez paid a base salary that was two times the California minimum wage.

9. During his employment with KMK, Mr. Burquez was subjected to various practices by KMK that violated California law.

10. By way of example, despite not being paid two times minimum wage by KMK, Mr. Burquez and other maintenance technicians were required to bring their own tools to perform their job duties for KMK.

11. Mr. Burquez and other employees, for instance, were required to bring the following personal tools to use in connection with their technician jobs for KMK: impact drills; hammer drills; regular drills; roto hammers; skill saws; sawzalls; jigsaws; oscillating tools; screwdrivers; wrenches; pliers; strippers; wire cutters; nut drivers; sockets; ratchets; manifold gauges; multimeters; electrical testers; digital thermometers; and moisture meters.

12. Mr. Burquez had purchased some of these tools prior to commencing his employment with KMK but was required to purchase some such tools during his employment with KMK for use in the performance of his job duties.

13. In addition, during Mr. Burquez's employment with KMK, various of these tools that Mr. Burquez owned and was required to use in the performance of his job duties were damaged or "burned out" and Mr. Burquez had to replace them at his own expense.

14. KMK was aware that Mr. Burquez and the other maintenance technicians were not reimbursed for the business use of their personal tools and that they were not adequately

1 compensating the employees pursuant to the applicable Industrial Welfare Commission Wage
2 Order to require that they bring their own personal hand tools to use at work.

3 15. Indeed, in 2023, Mr. Burquez's manager, Juan Carlos Delgado, told Mr. Burquez
4 that since KMK was not supplying the employees the tools needed to perform their job duties,
5 there was a "California tool wage" law that required KMK to pay the technicians more in base
6 wages than they were actually paying them.

7 16. During the COVID pandemic, in addition to his regular base pay, Mr. Burquez
8 also was paid hazard pay per hour worked. When Mr. Burquez received overtime compensation
9 (and sick pay), however, KMK failed to include the hazard pay (which was \$2.00 per hour) into
10 the regular rate of pay for purposes of calculating the overtime compensation (and sick pay) to
11 which Mr. Burquez was entitled.

12 17. There were occasions where, as a result of the extensive workload assigned to
13 him to complete in a workday, Mr. Burquez was unable to take a meal period to which he was
14 entitled under California law. On those occasions, Mr. Burquez was still required to state on his
15 itemized wage statement that he took California-compliant meal periods. He thus was not paid
16 for all hours worked and worked through his meal periods on such occasions.

17 18. There were occasions where, as a result of the extensive workload assigned to
18 him to complete in a workday, Mr. Burquez was unable to take a rest period to which he was
19 entitled under California law.

20 19. On the occasions when Mr. Burquez was unable to take a California compliant
21 meal period or rest period to which he was entitled, there was no mechanism for Mr. Burquez
22 to report that he had not received such a compliant meal or rest period and Mr. Burquez was not
23 provided with a meal period premium or rest period premium payment by KMK.
24
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20. Mr. Burquez notified his supervisor verbally on Friday, July 28, 2023 that he was giving a weeks' notice of his intent to resign. On Monday, July 31, 2023, Mr. Burquez provided written notice of his intent to resign effective Friday, August 4, 2023.

21. Mr. Burquez's employment with KMK ended on August 4, 2023.

22. Since that time, Mr. Burquez has not received all wages to which he is entitled, including but not limited to the overtime compensation that he should have received based on his actual regular rate of pay and meal and rest period premiums to which he was entitled throughout his employment.

FIRST CAUSE OF ACTION

Failure to Pay Wages for All Hours Worked

23. Plaintiff re-alleges and incorporates herein by reference Paragraphs 1 through 22 above, as though each such Paragraph were fully set forth herein.

24. During his employment with Defendant, Plaintiff was not properly paid for all hours that he worked for Defendant as he was not paid overtime compensation at the proper rate of pay in violation of the California Labor Code.

25. Defendant accordingly owes Plaintiff unpaid wages and interest thereon from the date payment thereof should have been tendered to Plaintiff.

26. In addition, Plaintiff was forced to retain attorneys to pursue his unpaid wages from Defendant and is entitled to attorney's fees under the California Labor Code in addition to receiving back wages owed and interest thereon.

SECOND CAUSE OF ACTION

Failure to Pay All Wages at Termination

27. Plaintiff re-alleges and incorporates herein by reference Paragraphs 1 through 22 above, as though each such Paragraph were fully set forth herein.

28. Under California law, upon the voluntary termination of employment, all wages owing and due to the employee must be paid to the employee on his termination date or, if no notice of termination was provided, within 72 hours of the employee's notice.

29. If an employer does not provide involuntarily terminated employees with all wages then owing and due to the employee, the employee's wage shall continue as a "waiting time penalty" for no more than thirty calendar days.

30. The effective date of the termination of Plaintiff's employment was August 4, 2023. As of that date and continuing to the date of the filing of this Complaint, Defendant has not paid Plaintiff all wages due to him.

31. Plaintiff's voluntary termination occurred over thirty days from the date of this Complaint's filing and, accordingly, Plaintiff is entitled to thirty days of additional compensation at his final rate of pay as a waiting time penalty.

32. In addition, Plaintiff was forced to retain attorneys to pursue his claim for unpaid wages and is entitled to attorney's fees under the California Labor Code in addition to receiving the waiting time penalty for Defendant's non-payment of wages at the time of Plaintiff's termination.

THIRD CAUSE OF ACTION

Failure to Provide Accurate Itemized Wage Statements

33. Plaintiff re-alleges and incorporates herein by reference Paragraphs 1 through 22 above, as though each such Paragraph were fully set forth herein.

34. Under California law, Defendant was required to provide Plaintiff with an itemized wage statement to accompany each of his paychecks that complied with California Labor Code section 226(a).

1 35. Specifically, an employer, semimonthly or at the time of each payment of wages,
2 must furnish his or her employees an accurate itemized statement in writing showing (1) gross
3 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned
4 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
5 provided that all deductions made on written orders of the employee may be aggregated and
6 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
7 employee is paid, (7) the name of the employee and only the last four digits of his or her social
8 security number or an employee identification number other than a social security number, (8)
9 the name and address of the legal entity that is the employer, and (9) all applicable hourly rates
10 in effect during the pay period and the corresponding number of hours worked at each hourly
11 rate by the employee.
12

13 36. An employee suffering injury as a result of a knowing and intentional failure by
14 an employer to comply with Labor Code Section 226(a) is entitled to recover the greater of all
15 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
16 one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to
17 exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
18 costs and reasonable attorney's fees.
19

20 37. An employee is deemed to suffer injury for purposes of Labor Code Section 226
21 if (i) the employer fails to provide a wage statement, (ii) the employer fails to provide accurate
22 and complete information as required by any one or more of items (1) to (9), inclusive, of Labor
23 Code Section 226(a) and the employee cannot promptly and easily determine from the wage
24 statement alone the amount of the gross wages or net wages paid to the employee during the pay
25 period or any of the other information required to be provided on the itemized wage statement
26 pursuant to items (2) to (4), inclusive, (6), and (9) of Labor Code Section 226(a).
27
28

38. Defendant did not provide Plaintiff with an itemized wage statement that complied with California Labor Code section 226(a).

39. Plaintiff has been injured as a result of Defendant having provided improper wage statements.

40. Plaintiff has been damaged in an amount that exceeds the jurisdictional minimum of this Court and will be subject to proof at trial.

41. In addition, Plaintiff was forced to retain attorneys to pursue Plaintiff's claim for improper itemized wage statements and is entitled to attorney's fees under the California Labor Code in addition to receiving damages incurred and interest thereon.

FOURTH CAUSE OF ACTION

Failure to Reimburse Business Expenses

42. Plaintiff re-alleges and incorporates herein by reference Paragraphs 1 through 22 above, as though each such Paragraph were fully set forth herein.

43. California Labor Code § 2802 requires that an employer indemnify an employee for all necessary expenses incurred thereby in the direct consequence of the discharge of the employee's duties or of his obedience to the directions of the employer.

44. Plaintiff incurred expenses in the direct consequence of the discharge of Plaintiff's duties and/or of Plaintiff's obedience to the directions of Defendant and was not indemnified by Defendant for those expenditures.

45. The expenses that Plaintiff incurred were necessary to the performance of Plaintiff's job duties for Defendant.

46. Plaintiff has been damaged in an amount that exceeds the jurisdictional minimum of this Court and will be subject to proof at trial.

1 47. In addition, Plaintiff was forced to retain attorneys to pursue Plaintiff's claim for
2 reimbursement of business expenses necessarily incurred on behalf of Defendant and is entitled
3 to attorney's fees under the California Labor Code in addition to receiving reimbursement of the
4 expenses incurred and interest thereon.

5
6 **FIFTH CAUSE OF ACTION**

7 ***Failure to Provide Meal Periods***

8 48. Plaintiff re-alleges and incorporates herein by reference Paragraphs 1 through 22
9 above, as though each such Paragraph were fully set forth herein.

10 49. California law requires that employers provide its employees with a thirty (30)
11 minute uninterrupted meal period when an employee works a shift of more than five (5) hours
12 in a workday.

13 50. California law requires employers who do not provide their non-exempt
14 employees with the requisite meal periods to compensate the employee for each day a meal
15 period is not provided in the additional amount of the equivalent of one hour of pay at the
16 employee's regular rate of pay.

17 51. Plaintiff was not regularly provided meal breaks by Defendant as required by
18 California law on the days when he worked more than five hours.

19 52. As such, Plaintiff was entitled to receive compensation for each workday that
20 Defendant failed to provide him with a thirty (30) minute uninterrupted meal period.

21 53. Defendant did not regularly provide Plaintiff with thirty (30) minute
22 uninterrupted meal periods for each workday in which he worked more than five (5) hours and
23 did not, on such occasions, provide Plaintiff with one hour of additional compensation per
24 workday at his regular rate of pay to compensate Plaintiff for meal periods Defendant did not
25 provide him.
26
27
28

54. As a result of Defendant's actions, Plaintiff has been damaged in an amount that exceeds the jurisdictional minimum of this Court and will be subject to proof at trial.

SIXTH CAUSE OF ACTION

Failure to Provide Rest Breaks

55. Plaintiff re-alleges and incorporates herein by reference Paragraphs 1 through 22 above, as though each such Paragraph were fully set forth herein.

56. California law requires that Defendant authorize and permit its employees to take a ten (10) minute rest period for each four-hour work shift.

57. California law requires employers who do not authorize and permit their non-exempt employees to take the requisite rest periods to compensate the employee for each day a rest period is not provided in the additional amount of the equivalent of one hour of pay at the employee's regular rate of pay.

58. Plaintiff was not regularly authorized and permitted by Defendant to take rest breaks as required by California law on occasions when he worked four (4) hours, or major fraction thereof, for Defendant.

59. As such, Plaintiff was entitled to receive additional compensation for each workday that Defendant failed to provide him with a rest break for each four hours worked.

60. On such occasions, however, Defendant did not provide Plaintiff with one hour of additional compensation per workday at his regular rate of pay to compensate him for rest periods not provided.

61. As a result of Defendant's actions, Plaintiff has been damaged in an amount that exceeds the jurisdictional minimum of this Court and will be subject to proof at trial.

1 **SEVENTH CAUSE OF ACTION**

2 ***Violation of California Business & Professions Code Section 17200***

3 62. Plaintiff re-alleges and incorporates herein by reference Paragraphs 1 through 22
4 above, as though each such Paragraph were fully set forth herein.

5 63. California Business and Professions Code section 17200 et seq. prohibits acts of
6 unfair competition, including any “unlawful, unfair, or fraudulent business act or practice.”
7 Plaintiff alleges that Defendant has engaged in unfair business practices in California by the
8 practices alleged herein.
9

10 64. Plaintiff has been injured and sustained damages as a result of Defendant’s
11 violation of California Business & Professions Code section 17200 et seq. and seeks full
12 restitution of said amounts from Defendant.
13

14 **EIGHTH CAUSE OF ACTION**

15 ***Violation of California Labor Code Section 2698 et seq.***

16 65. Plaintiff re-alleges and incorporates herein by reference Paragraphs 1 through 64
17 above, as though each such Paragraph were fully set forth herein.

18 66. Plaintiff brings this cause of action as a representative action on behalf of himself
19 and similarly situated aggrieved employees in the capacity as a private attorney general pursuant
20 to the California Labor Code Private Attorneys General Act of 2004, California Labor Code
21 section 2698, *et seq.* (“PAGA”).
22

23 67. PAGA specifically provides for a private right of action to recover civil penalties
24 for violations of the Labor Code pursuant to California Labor Code Section 2699(a).

25 68. Defendants violated various provisions of the California Labor Code as to the
26 Plaintiff and other California-based non-exempt aggrieved employees employed by the
27 Defendants.
28

69. During all times relevant to this cause of action, Defendants have routinely subjected Plaintiff and the other aggrieved employees to violations of various sections of the California Labor Code by the following actions.

California Labor Code Sections 201 and 202

70. California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) or more hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

71. Defendants failed to pay terminated aggrieved employees all wages due to them within the time period specified by California Labor Code sections 201 and 202 upon the termination of their employment and paid wages late to aggrieved employees. Defendants also failed to pay the aggrieved employees the waiting time penalty upon the late payment of wages.

California Labor Code Section 204

72. California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th of the month during which the labor was performed and that all wages earned by any person in any employment between the 17th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

73. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular

1 payroll period.

2 74. During the employment of the aggrieved employees, Defendants failed to pay
3 them all wages due to them within the time periods required by California Labor Code Section
4 204, including overtime compensation and meal and rest period premium wages.

5 **California Labor Code Section 226**

6 75. California Labor Code section 226(a) requires employers to make, keep and
7 provide complete and accurate itemized wage statements to their employees. During the
8 relevant time period, Defendants failed to provide the aggrieved employees with complete and
9 accurate itemized wage statements, as the wage statements that Defendants provided to the
10 aggrieved employees did not contain all of the information required to be listed therein per
11 California Labor Code section 226(a).
12

13 76. By way of example, on the wage statements provided by Defendants to the
14 aggrieved employees, the overtime rates of pay for all overtime hours worked by the said
15 aggrieved employees were not properly listed and all hours worked were not listed.
16

17 **California Labor Code Section 226.7 and 512**

18 77. Defendants failed to provide the aggrieved employees with California compliant
19 meal periods on days when they worked shifts of more than 5 hours in violation of California
20 Labor Code section 512(a) and Industrial Welfare Commission Wage Order No. 5-2001, section
21 11.
22

23 78. Defendants failed to provide meal period premiums as required by California
24 Labor Code section 226.7 for each meal period that was not provided to the aggrieved
25 employees.

26 79. California Labor Code section 512 provides that an employer shall not employ
27 an employee for a work period of more than five hours per day without providing the employee
28

1 with a meal period of not less than 30 minutes, except that if the total work period per day of the
2 employee is no more than six hours, the meal period may be waived by mutual consent of both
3 the employer and employee. An employer shall not employ an employee for a work period of
4 more than 10 hours per day without providing the employee with a second meal period of not
5 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second
6 meal period may be waived by mutual consent of the employer and the employee only if the first
7 meal period was not waived.
8

9 80. Defendants failed to provide aggrieved employees with meal periods in
10 compliance with California Labor Code Section 512.

11 **Labor Code Section 246**

12 81. California Labor Code Section 246 requires that employers provide employees
13 with sick leave and provides that paid sick leave for non-exempt employees shall be calculated
14 in the same manner as the regular rate of pay for the workweek in which the employee uses paid
15 sick time.
16

17 82. Defendants failed to provide paid sick leave at the regular rate of pay for non-
18 exempt employees, paying accrued sick leave to aggrieved employees only at their base hourly
19 rate of pay.
20

21 **California Labor Code Sections 510 and 1198**

22 83. California Labor Code sections 510 and 1198 require employers to pay overtime
23 at 1.5 times or 2.0 times their regular rate of pay for any overtime hours and to include all non-
24 discretionary earnings in the regular rate of pay calculation when determining overtime rates.

25 84. Defendants failed to properly compensate employees for all overtime hours
26 worked by (i) having employees work off-the-clock and (ii) not paying overtime compensation
27 at the appropriate overtime rate required by California law.
28

California Labor Code Section 1174

85. California Labor Code Section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees at the respective plants or establishments. These records shall be kept for not less than two years.

86. During the relevant time period, Defendants failed to keep accurate and complete payroll records concerning the compensation paid to aggrieved employees showing the actual hours worked daily and the wages earned by aggrieved employees, including earned and unpaid regular wages and overtime compensation as discussed herein.

California Labor Code Sections 2800 and 2802

87. California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

88. During the relevant time period, Plaintiff and other aggrieved employees incurred necessary business expenses and costs that were not fully reimbursed by Defendants as noted above.

89. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff individually and on behalf of the aggrieved employees and the State of California, requests and is entitled to recover civil penalties under the California Labor Code in sums as provided by the California Labor Code. The exact amount of the applicable penalties, in all, is an amount to be shown according to proof at trial.

90. Plaintiff was compelled to retain the services of counsel to file this court action to protect the interests of the aggrieved employees and to assess and collect the civil penalties

1 owed by Defendants. Plaintiff therefore seeks an award of reasonable attorney's fees and costs
2 pursuant to California Labor Code section 2699(g)(1) and any other applicable statute.

3 **PRAYER FOR RELIEF**

4
5 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 6 1. For payment of compensatory and general damages according to proof;
7 2. For statutory penalties under the California Labor Code;
8 3. For prejudgment interest on all due and unpaid wages;
9 4. For attorneys' fees on all causes of action that allow for the recovery of such;
10 5. For restitution under Business and Professions Code section 17200;
11 6. For costs of suit herein incurred; and
12 7. For such other and further relief as the Court may deem just and proper.

13 Dated: January 16, 2024

ALEXIS LAW FIRM

14
15 By: 

Drew L. Alexis
Attorneys for Plaintiff
ARMANDO BURQUEZ

16
17 **DEMAND FOR JURY TRIAL**

18
19 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

20 Dated: January 16, 2024

ALEXIS LAW FIRM

21
22 By: 

Drew L. Alexis
Wendy K. Shiff

23
24 Attorneys for Plaintiff
ARMANDO BURQUEZ
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