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individually and on behalf of all others similarly situated

8
9 **IN THE SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF SAN BERNARDINO**

11 LUIS JAVIER PEREZ DURAN, individually
12 and on behalf of all others similarly situated,

13 Plaintiff(s),

14 v.

15 ELEVATED MANAGEMENT SERVICE INC;
16 and DOES 1 through 100,

17 Defendant(s).

Case No. CIVSB2434835

COMPLAINT

1. Meal Break Violation
2. Rest Break Violation
3. Failure to Pay All Hours Worked
4. Failure to Pay Overtime
5. Failure to Reimburse Work Expenses
6. Wage Statement Violation
7. Waiting Time Penalties
8. Unfair Competition
9. PAGA Allegations
10. Retaliation in Violation of FEHA
11. Wrongful Termination

21 **RELEVANT PARTIES**

22 1. Plaintiff LUIS JAVIER PEREZ DURAN ("Plaintiff") is an adult resident of San Bernardino
23 County, California, and was at all times relevant residing in San Bernardino County, California.

24 2. Defendant ELEVATED MANAGEMENT SERVICE INC ("Defendant") is a California
25 corporation with its principal place of business located in San Bernardino County, California.
26 Defendant is registered to and does conduct business in the State of California and is subject to the
27 laws of the State of California. All acts and omissions of Defendant employees as alleged herein
28 occurred while they were acting within the course and scope of their employment.

1 3. Plaintiff is unaware of the true names or capacities of the Defendants sued herein as DOES 1
2 through 100, inclusive (“Doe Defendants”), and therefore sues said Doe Defendants by such
3 fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to insert the true
4 names and capacities of such Doe Defendants when such information has been obtained. Plaintiff is
5 informed and believes, and based on such information and belief alleges, that each of the fictitiously
6 named Doe Defendants has participated in some way in the wrongful acts and omissions alleged
7 below, and is liable to Plaintiff for damages and other relief to which Plaintiff is entitled. Defendant
8 and Doe Defendants are collectively referred to as “Defendants”.

9 **JURISDICTION AND VENUE**

10 4. This action is properly filed in San Bernardino because the acts and omissions that give rise
11 to Plaintiff’s claims took place in San Bernardino and Defendants transact substantial business in
12 this County.

13 5. This Court has jurisdiction over Defendants because Defendants’ unlawful conduct as
14 alleged herein occurred in San Bernardino, California and Plaintiff suffered damages from such
15 conduct within San Bernardino, California.

16 **FACTUAL ALLEGATIONS**

17 6. At all times relevant, Plaintiff was Defendants’ employee.

18 7. Plaintiff was employed by Defendants from August 10, 2022 to February 18, 2024

19 8. Around November 2023, Plaintiff complained about his missing pay and hours. After
20 reporting the discrepancy in his paychecks, Defendants stopped calling in Plaintiff for work.

21 9. Plaintiff communicated with Defendants his willingness and ability to work. Defendants
22 continued to deny Plaintiff work and thus Plaintiff was deemed terminated.

23 10. Since Plaintiff was terminated in response to him complaining about a Defendant’s unlawful
24 activity of withholding wages for hours worked, this amounted to retaliation.

25 11. Defendants failed to provide Plaintiff with compliant meal breaks because no meal breaks
26 were provided. Plaintiff was required to clock-in and out for meal breaks, but was required to work
27 during said hours. Despite not being provided with compliant meal breaks, Defendant did not pay
28 premium pay for these missed breaks at Plaintiff’s regular rate of pay.

12. Defendant failed to provide Plaintiff with compliant rest breaks because no rest breaks were permitted/provided. Despite not being provided with compliant rest breaks, Defendant did not pay premium pay for these missed breaks at Plaintiff's regular rate of pay.

13. Defendants failed to pay Plaintiff for all hours worked because Plaintiff was required to work off the clock. Plaintiff was required to stay at job sites and continue working until he was relieved, but he was not paid for the time worked passed his scheduled shift time.

14. Defendants failed to pay Plaintiff all overtime owed because Plaintiffs usually worked 8 hours in a day and 40 hours in a week and thus any unpaid time was necessarily overtime.

15. Defendants failed to correctly calculate Plaintiff's regular rate of pay, and as a result, underpaid Plaintiff's overtime pay and premium pay. Specifically, Defendants did not include all non-discretionary pay that Plaintiff earned when calculating Plaintiff's regular rate of pay.

16. Defendants failed to reimburse Plaintiff for all work-related expenses because Plaintiff was required to purchase security uniform and equipment in order to perform their work duties, but Defendants did not reimburse Plaintiff for these expenses.

17. Defendants failed to provide Plaintiff with accurate wage statements because the wage statements issued to Plaintiff did not accurately list total wages owed and hours worked, among other things.

18. Due to Defendants' failure to pay all wages due to Plaintiff during their employment, it follows that Defendant failed to pay all wages due at the conclusion of Plaintiff's employment as well. Therefore, Defendants are liable to Plaintiff for waiting time penalties.

PAGA ALLEGATIONS

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

20. Pursuant to Labor Code section 2699.3, an aggrieved employee may pursue a civil action under PAGA after the following requirement have been met:

1 21. The aggrieved employee has provided written notice by online filing to the LWDA and by
2 certified mail to the employer (hereinafter "Employee's Notice") of the specific provisions of the
3 Labor Code alleged to have been violated, including the facts and theories to support the alleged
4 violations; and

5 22. The LWDA has provided notice (hereinafter "LWDA's Notice") to the employer and the
6 aggrieved employee by certified mail that it does not intend to investigate the aggrieved employee's
7 claims. Upon receipt of the LWDA's Notice, or if the LWDA does not provide such Notice within
8 65 calendar days of the postmark date of the Employee's Notice, the aggrieved employee may
9 commence a civil action pursuant to Labor Code section 2699 to recover civil penalties in addition
10 to any other penalties to which the employee may be entitled.

11 23. On June 21, 2024, Plaintiff provided written notice by online filing to the LWDA and by
12 certified mail to Defendants of specific provisions of the Labor Code alleged to have been violated
13 by Defendants, including the facts and theories to support the alleged violations.

14 24. The 65-day notice period has elapsed, and the LWDA did not provide Plaintiff with written
15 notice that it intends to investigate the alleged violations of the Labor Code. Thus, Plaintiff seeks
16 PAGA Penalties on behalf of all Aggrieved Employees.

17 25. The Aggrieved Employees are defined as "All other nonexempt, hourly employees, current
18 and former, who were employed by Defendants within one year prior to June 21, 2024 through final
19 disposition of this action."

20 **EXHAUSTION OF ADMINISTRATIVE PROCEEDINGS**

21 26. On November 19, 2024, prior to initiating this complaint, Plaintiff filed with the California
22 Civil Rights Department (hereinafter "CCRD"), a Complaint of Retaliation against Defendant. On
23 November 19, 2024 the CCRD issued a Notice of Case Closure and Right-to-Sue letter to Plaintiff,
24 authorizing Plaintiff to file a private lawsuit against Defendant in order to enforce their rights under
25 FEHA.

26 27. Plaintiff has therefore exhausted all administrative remedies required by FEHA as a
27 prerequisite to filing this action.

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1 **FIRST CAUSE OF ACTION**

2 **Failure to Provide Compliant Meal Periods**

3 **By Plaintiff Against All Defendants**

4 28. Plaintiff incorporates by reference the paragraphs above.

5 29. Labor Code section 512 and the Wage Orders provide that “an employer shall not employ an
6 employee for a work period of more than five hours per day without providing the employee with a
7 meal period of not less than 30 minutes” or “for a work period of more than 10 hours per day
8 without providing the employee with a second meal period of not less than 30 minutes”.

9 30. An employer provides compliant meal breaks to its employees “if it relieves its employees
10 of all duty, relinquishes control over their activities and permits them a reasonable opportunity to
11 take an uninterrupted 30-minute break.” (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th
12 1004, 1040 (2012)).

13 31. Not only must an employer affirmatively relieve its employees of all duty during their meal
14 breaks, it also must not “impede or discourage” its employees from taking compliant meal breaks.
15 (*Brinker*, supra).

16 32. Defendants failed to provide Plaintiff with compliant meal breaks as alleged herein.

17 33. Plaintiff was required to clock-in and -out for meal break while being required to continue
18 working. Plaintiff was required to be on call, on duty, and on premises at all times.

19 34. For each day that Defendants failed to provide Plaintiff with a compliant meal break,
20 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
21 one additional hour of pay at Plaintiff’s regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,
22 11 Cal. 5th 858 (2021)).

23 35. Defendants failed to pay premium pay at Plaintiff’s regular rate of pay for each day a meal
24 break was missed.

25 36. Plaintiff is therefore entitled to recover premium pay for missed meal breaks, interest,
26 penalties, attorney fees, and costs.

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1 **SECOND CAUSE OF ACTION**

2 **Failure to Provide Compliant Rest Periods**

3 **By Plaintiff Against All Defendants**

4 37. Plaintiff incorporates by reference the paragraphs above.

5 38. Labor Code section 226.7 and the Wage Orders requires employers to authorize and permit
6 its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net
7 per four hours or major fraction thereof.

8 39. Furthermore, “[d]uring rest periods employers must relieve employees of all duties and
9 relinquish control over how employees spend their time.” (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.
10 5th 257, 269 (2016)).

11 40. Defendants failed to provide Plaintiff with compliant rest breaks as alleged herein.

12 41. Plaintiff was not permitted to take any rest break. Plaintiff was required to remain on call
13 and on duty at all times.

14 42. For each day that Defendants failed to provide Plaintiff with a compliant rest break,
15 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
16 one additional hour of pay at Plaintiff’s regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,
17 11 Cal. 5th 858 (2021)).

18 43. Defendants failed to pay premium pay at Plaintiff’s regular rate of pay for each day a rest
19 break was missed.

20 44. Plaintiff is therefore entitled to recover premium pay for missed rest breaks, interest,
21 penalties, attorney fees, and costs.

22 **THIRD CAUSE OF ACTION**

23 **Failure to Pay for All Hours Worked**

24 **By Plaintiff Against All Defendants**

25 45. Plaintiff incorporates by reference the paragraphs above.

26 46. Labor Code sections 558 and 1194 and the Wage Orders require an employer to pay
27 employees minimum wages for all hours worked fewer than eight hours in a day and/or fewer than
28 40 hours in a workweek.

1 47. Defendants failed to pay Plaintiff for all hours worked as alleged herein.

2 48. Plaintiff was required to perform work while off the clock. Specifically, Plaintiff was
3 required to continue working after his shift while waiting for a reliever. The hours worked were
4 rendered off the clock and without pay.

5 49. Plaintiff is therefore entitled to recover all unpaid wages, liquidated damages, interest,
6 penalties, attorney fees, and costs.

7 **FOURTH CAUSE OF ACTION**

8 **Failure to Pay All Overtime Owed**

9 **By Plaintiff Against All Defendants**

10 50. Plaintiff incorporates by reference the paragraphs above.

11 51. Labor Code section 510 provides that “[a]ny work in excess of eight hours in one workday
12 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
13 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
14 one-half times the regular rate of pay for an employee.”

15 52. Defendants failed to pay Plaintiff all overtime wages owed as alleged herein.

16 53. Plaintiff was required to perform work off the clock, it follows that this time was overtime.

17 54. Plaintiff is therefore entitled to recover all unpaid overtime wages, liquidated damages,
18 interest, penalties, attorney fees, and costs.

19 **FIFTH CAUSE OF ACTION**

20 **Failure To Reimburse Work-Related Expenses**

21 **By Plaintiff Against All Defendants**

22 55. Plaintiff incorporates by reference the paragraphs above.

23 56. Pursuant to Labor Code section 2802, an employer shall indemnify his or her employee for
24 all necessary expenditures or losses incurred by the employee in direct consequence of the
25 employee's discharge of his or her duties.

26 57. Defendants failed to reimburse Plaintiff for all work-related expenses as alleged herein.

27 58. Specifically, Plaintiff was required to purchase work uniform and equipment without being
28 reimbursed.

1 59. Plaintiff is therefore entitled to reimbursement for all work-related expenses, penalties,
2 attorney fees, and costs.

3 **SIXTH CAUSE OF ACTION**

4 **Wage Statement Penalties**

5 **By Plaintiff Against All Defendants**

6 60. Plaintiff incorporates by reference the paragraphs above.

7 61. Labor Code section 226(a) requires employers to provide itemized wage statements to its
8 employees that identify accurate information regarding their compensation. Defendants, as a matter
9 of policy and practice, failed in its affirmative obligation to provide accurate itemized wage
10 statements to Plaintiff in violation of Labor Code section 226(a).

11 62. As alleged herein, the wage statements that Defendants issued to Plaintiff were inaccurate
12 and incomplete.

13 63. Defendants knowingly and intentionally issued wage statements that were inaccurate and
14 incomplete, and the issuance of inaccurate and incomplete wage statements caused injury to
15 Plaintiff in that Plaintiff was unable to accurately verify and/or calculate their wages.

16 64. Plaintiff is therefore entitled to the recovery of wage statement penalties, attorney fees, and
17 costs.

18 **SEVENTH CAUSE OF ACTION**

19 **Waiting Time Penalties**

20 **By Plaintiff Against All Defendants**

21 65. Plaintiff incorporates by reference the paragraphs above.

22 66. Labor Code sections 201 and 202 require that an employer provide an employee with all
23 wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the
24 employee's resignation.

25 67. Labor Code section 203 provides that if an employer willfully fails to pay wages owed in
26 accordance with Labor Code sections 201 or 202, then the wages of the employee continue as a
27 penalty from the due date at the same rate until paid or until an action is commenced, not to exceed
28 thirty days.

1 68. As alleged herein, Defendants willfully did not pay Plaintiff all wages owed at the
2 conclusion of employment.

3 69. Plaintiff is therefore entitled to the recovery of waiting time penalties, interest, attorney fees,
4 and costs.

5 **EIGHTH CAUSE OF ACTION**

6 **Violation of Unfair Competition Law**

7 **By Plaintiff Against All Defendants**

8 70. Plaintiff incorporates by reference the paragraphs above.

9 71. Defendants' conduct described herein constitutes unfair competition.

10 72. Specifically, Defendants have gained an unfair advantage over other similarly situated
11 businesses by unlawfully reducing their overhead costs by not paying their employees what they are
12 owed.

13 73. Pursuant to Business and Professions Code 17203, Plaintiff is entitled to restitution of all
14 wrongfully withheld wages.

15 74. Plaintiff may recover attorney fees pursuant to Code of Civil Procedure section 1021.5.

16 **NINTH CAUSE OF ACTION**

17 **Private Attorneys General Act**

18 **By Plaintiff and the Aggrieved Employees Against All Defendants**

19 75. Plaintiff incorporates by reference the paragraphs above.

20 76. PAGA permits Plaintiff and the Aggrieved Employees to recover civil penalties for the
21 violation(s) of the Labor Code.

22 77. As alleged herein, Defendants' conduct violates numerous sections of the Labor Code.

23 78. With respect to violations of Labor Code sections 226.7 and 558 for Defendants' failure to
24 provide Plaintiff and the Aggrieved Employees with compliant meal periods or compensation in
25 lieu thereof, the penalties in Labor Code sections 558 and 2699 apply.

26 79. With respect to violations of Labor Code section 226.7 for Defendants' failure to provide
27 Plaintiff and the Aggrieved Employees with compliant rest periods or compensation in lieu thereof,
28 the penalties in Labor Code section 2699 apply.

1 80. With respect to violations of Labor Code section 1197 for Defendants' failure to compensate
2 Plaintiff and the Aggrieved Employees for all minimum wages earned, the penalties in Labor Code
3 sections 1197.1 and 2699 apply.

4 81. With respect to violations of Labor Code section 510 for Defendants' failure to compensate
5 Plaintiff and the Aggrieved Employees for all overtime wages earned, the penalties in Labor Code
6 sections 558, 1197.1, and 2699 apply.

7 82. With respect to violations of Labor Code section 226(a) for failure to provide accurate wage
8 statements to Plaintiff and the Aggrieved Employees, the penalties in Labor Code sections 226.3
9 and 2699 apply.

10 83. With respect to violations of Labor Code section 203 for failure to pay all wages due to
11 Plaintiff and the Aggrieved Employees and the conclusion of their employment, the penalties in
12 Labor Code section 2699 apply.

13 84. With respect to violations of Labor Code section 2802 for failure to reimburse Plaintiff and
14 the Aggrieved Employees for all work-related expenses, the penalties in Labor Code section 2699
15 apply.

16 85. Additionally, Plaintiff and the Aggrieved Employees are entitled to attorney's fees pursuant
17 to Labor Code section 2699(g).

18 **TENTH CAUSE OF ACTION**

19 **Violation of California Government Code § 12940 (h) - Retaliation**

20 **By Plaintiff Against All Defendants**

21 86. Plaintiff incorporates by reference the paragraphs above.

22 87. Government Code § 12940(h) makes it unlawful for an employer to discriminate against any
23 employee who opposes or makes a complaint for practices forbidden by FEHA.

24 88. Plaintiff engaged in protected activity under § 12940(h) as set forth herein.

25 89. Plaintiff complained about his missing pay and hours. After raising his complaint,
26 Defendants stopped calling Plaintiff in for work, constructively terminating his employment.

27 90. Defendants retaliated against Plaintiff in violation of California Government Code §
28 12940(h).

1 91. The actions of Defendants against Plaintiff constitute unlawful retaliation, in violation of
2 FEHA. Such violations were a proximate cause in Plaintiff's damage as stated below.

3 **ELEVENTH CAUSE OF ACTION**

4 **Wrongful Termination in Violation of Public Policy**

5 **By Plaintiff Against All Defendants**

6 92. Plaintiff incorporates by reference the paragraphs above.

7 93. At all times mentioned in this complaint, it was a fundamental policy of the State of
8 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of
9 race, national origin, ancestry, physical disability, mental disability, medical condition, sex, and/or
10 engagement in protected activity.

11 94. Based on the actions described above, Defendants constructively terminated Plaintiff for
12 engaging in protected activity.

13 95. Defendants actions were in violation of California Public Policy.

14 96. As a proximate result of the acts of Defendants, and each of them, Plaintiff has suffered and
15 will continues to suffer damages, as stated below.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

18 **First Cause of Action**

- 19 1. Damages and/or penalties pursuant to Labor Code section 226.7
20 2. Interest
21 3. Attorneys' fees
22 4. Costs
23 5. Other relief the court deems proper

24 **Second Cause of Action**

- 25 1. Damages and/or penalties pursuant to Labor Code section 226.7
26 2. Interest
27 3. Attorneys' fees
28 4. Costs

1 5. Other relief the court deems proper

2 Third Cause of Action

3 1. Damages and/or penalties pursuant to Labor Code sections 558, 1194, 1197, and 1197.1

4 2. Liquidated damages

5 3. Interest

6 4. Attorneys' fees

7 5. Costs

8 6. Other relief the court deems proper

9 Fourth Cause of Action

10 1. Damages and/or penalties pursuant to Labor Code sections 510, 558, and 1194

11 2. Interest

12 3. Attorneys' fees

13 4. Costs

14 5. Other relief the court deems proper

15 Fifth Cause of Action

16 1. Reimbursement of all work-related expenses

17 2. Attorneys' fees

18 3. Costs

19 4. Other relief the court deems proper

20 Sixth Cause of Action

21 1. Penalties pursuant to Labor Code section 226

22 2. Attorneys' fees

23 3. Costs

24 4. Other relief the court deems proper

25 Seventh Cause of Action

26 1. Penalties pursuant to Labor Code section 203

27 2. Attorneys' fees

28 3. Costs

1 4. Other relief the court deems proper

2 Eighth Cause of Action

3 1. Restitution of all wrongfully withheld wages

4 2. Attorneys' fees

5 3. Costs

6 4. Other relief the court deems proper

7 Ninth Cause of Action

8 1. All applicable civil penalties available pursuant to Labor Code section 2698, et seq.

9 2. Public injunctive relief in the form of an Order enjoining Defendants from continuing to
10 violate the California Labor Code in the manner alleged herein, as well as restitution and
11 disgorgement of all unpaid wages and penalties due and owing to the Aggrieved Employees

12 3. Attorneys' fees

13 4. Costs

14 5. Other relief the court deems proper

15 Tenth Cause of Action

16 1. Compensatory damages

17 2. Punitive damages

18 3. Attorneys' fees

19 4. Costs

20 5. Other relief the court deems proper

21 Eleventh Cause of Action

22 1. Back pay and front pay

23 2. Interest on the above amounts

24 3. Compensatory damages

25 4. Punitive damages

26 5. Attorneys' fees

27 6. Costs

28 7. Other relief the court deems proper

1
2 DATED: November 19, 2024

FRONTIER LAW CENTER

3 /s/ Daniel Ginzburg

4 Daniel Ginzburg

5 Attorneys for Plaintiff
6 LUIS JAVIER PEREZ DURAN,
7 individually and on behalf of all others
8 similarly situated
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