



CASTLE LAW

CALIFORNIA EMPLOYMENT COUNSEL, PC

KENT L. BRADBURY
KB@CASTLEEMPLOYMENTLAW.COM
916-245-0122

2999 DOUGLAS BLVD.
SUITE 180
ROSEVILLE, CA 95661

November 11, 2024

For Online Filing:

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Darrell Phillips v. Garuda Labs, Inc. DBA Instawork, Advantage Workforce Services, LLC*

Dear Labor Commissioner,

As counsel for, and on behalf of, Darrell Phillips (hereinafter referred to as “Claimant”), I am writing to provide you and the following employer(s) (hereafter “Defendant”) notice pursuant to California Labor Code section 2699.3:

Garuda Labs, Inc. dba Instawork
548 Market St PMB 63152
San Francisco, CA 94104-5401

Advantage Workforce Services, LLC
548 Market St PMB 63152
San Francisco, CA 94104-5401

I am setting forth the facts and theories to support each of the counts found within this letter. Please notify us of your intent to investigate any or all of the claims alleged herein against any of the above identified Defendant(s). Should you decide not to investigate, we request that you allow us to seek civil penalties on behalf of the Labor Commissioner, Claimant, and all similarly situated current and former aggrieved employees, pursuant to California Labor Code section 2699(a). A \$75.00 filing fee is being submitted to Department of Industrial Relations, Accounting Unit, 455 Golden Gate Avenue, 10th Floor, San Francisco, CA 94102.

A. FACTS

Claimant and similarly situated employees worked for Defendants as non-exempt employees in California. Claimant and similarly situated employees were paid on hourly basis. Defendants own and

operate a business providing temporary workers to various businesses. Claimant worked as a non-exempt employee for Defendants and a number of business establishments in Northern California, including the Golden One Center in Sacramento, UC Berkeley, Kimpton Sawyer Hotel, Queen of the Valley Medical Center, Banner Island Ballpark, Sheraton Grand Sacramento, Four Seasons Hotel Napa, and many others. Claimant worked in various roles for Defendants and these businesses, including Line Cook, Bartender, General Labor, Event Server, and many others. Claimant began working for Defendants on approximately April 17, 2023, and has worked over 409 shifts for Defendants and various businesses in Northern California.

During his employment with Defendants and these many businesses, Claimant and similarly situated employees were not provided with legally compliant wage statements noting, among other things, total hours worked, gross wages earned, the applicable hourly rates in effect during the pay period, the address and name of the employer, and the corresponding number of hours worked at each hourly rate. The regular wage statements made it impossible for Claimant, and similarly aggrieved employees, to determine whether they were paid correctly, or what their correct regular rate of pay was. See *Magadia v. Wal-Mart Assocs., Inc.*, 319 F. Supp. 3d 1180, 1190–91 (N.D. Cal. 2018). The wage statements provided to Claimant simply provided a partial street address, with no further information.

At various times, depending on the shift type or other factors, Claimant and similarly situated employees have been alternately considered a W2 employee, or a W9 independent contractor. This occurs even when working the same type of shift performing the same duties at the same employer business location. Defendants seemingly assign at random certain shifts to be considered a W2 employee shift, and others to be considered a W9 independent contractor shift.

As such, Defendants intentionally misclassified Claimant and similarly situated employees as independent contractors. See *Dynamex Operations W., Inc. v. Superior Court*, 4 Cal. 5th 903, 916, 416 P.3d 1, 7 (2018) (“[T]he wage order’s suffer or permit to work definition must be interpreted broadly to treat as ‘employees,’ and thereby provide the wage order’s protection to, all workers who would ordinarily be viewed as working in the hiring business.”) (original emphasis). The California Supreme Court’s recent *Dynamex* test holds that a hiring entity can prove that a worker is not an employee only if it meets three conditions: “(A) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact; (B) that the worker performs work that is outside the usual course of the hiring entity’s business; and (C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.” *Dynamex*, 4 Cal. 5th at 916–17. Defendants’ employees who were misclassified as independent contractors were not free from Defendants’ direction and control; their work was and is integrally involved with the business of Defendants and the hiring employers; and they were and are not engaged in an independently established trade or business.

While Defendants misclassified their employees as independent contractors, Defendants saved money, but their employees suffered significant financial loss. They were underpaid wages, including minimum and overtime wages, were forced to pay for their own business expenses, and did not have the benefit of employer sponsored benefits and contributions.

Defendants failed to provide Claimant and similarly situated employees a 30-minute, duty-free meal period before the end of the fifth hour of work as required under the law. Defendants also failed to provide a second meal period to their employees who work ten hours or more in a given shift. Defendants' employees regularly missed their meal and rest periods and/ or they were provided late. Defendants also failed to provide rest periods to their employees for every 4 hours worked or major fraction thereof. Defendants' management staff were aware this was occurring and did not ensure meal and/ or rest periods were provided their employees in compliance with California law. Defendants also failed to pay the missed meal period and missed rest period premiums of one hour of pay at the employees' regular rate of pay.

Claimant and other employees of Defendants were nominated for and hired as "Captains" in which they worked as a supervisor of other employees of Defendants placed at an employer for a particular event or shift. Defendants also randomly considered these "Captain" shifts either as a W2 employee shift or a W9 independent contractor shift, even though the Captains worked as a supervisor for Defendants in all instances.

These practices of Defendant have also resulted in unpaid minimum and overtime wages.

In addition, Defendants routinely required Claimant and similarly situated employees to work more than eight (8) hours per day, and/or forty (40) hours per week, for which no overtime pay was provided.

Additionally, Claimant and similarly situated employees were required to use their personal cell phones for work purposes but were not reimbursed for this business expense.

Defendant also did not provide Claimant and similarly situated aggrieved employees all wages, including, without limitation, unpaid meal and rest break premium pay, owed upon their termination or within seventy-two (72) hours of their separation from employment.

Additionally, Defendant failed to supply Claimant and similarly situated aggrieved employees legally compliant wage statements that accurately reflected, among other things, the total hours worked, gross and net wages earned, the name of the employee, the name of the employer and the last four digits of his or her social security number or an employee identification number other than a social security number, the name and address of the legal entity that is the employer, the amount of meal and rest period premium pay owed to them, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. As a result, Claimant and similarly situated employees were deprived of the information necessary to determine the total wages owed to them from their wage statements alone. See *Naranjo v. Spectrum Sec. Servs., Inc.*, 13 Cal. 5th 93, 121 (2022).

Defendants also failed to provide paid sick leave to their employees, and retaliated against Claimant and similarly situated employees when they needed to take time off due to an illness.

B. VIOLATIONS OF THE LABOR CODE EXPERIENCED BY CLAIMANT AND SIMILARLY SITUATED EMPLOYEES

Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order No. 5-2001, § 4 (Failure to Pay Minimum Wages)

During the period Claimant and similarly situated employees were employed by Defendant they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. See, e.g., IWC Wage Order MW-2014, MW-2017; IWC Wage Order No. 5-2001, section (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendant did not pay Claimant and similarly situated employees at least minimum wage for all hours worked. Thus, Claimants and similarly situated employees were not paid at least the applicable state minimum wage for all hours worked in violation of the Labor Code.

Violation of Labor Code §§ 510, 1194; IWC Wage Order No. 4-2001, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees overtime for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay overtime for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Claimant and similarly situated employees worked over eight (8) hours per day and forty (40) hours per week and were not paid overtime wages. Claimant and all similarly situated employees are entitled to recover all unpaid overtime wages.

Violation of Labor Code § 1174 (Failure to Keep Accurate Time Records)

Labor Code section 1174(d) requires employers to keep "payroll records showing the hours worked daily by and the wages paid to . . . employees . . . These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years." Defendant did not keep accurate information regarding all hours worked by Claimants and similarly situated employees, largely by failing to accurately record all time worked on their time records. This was in violation of the Labor Code.

Violation of Labor Code § 226.7 and IWC Wage Order No. 4-2001, § 11(A) (Failure to Provide Meal Periods)

Labor Code section 226.7 and IWC Wage Order No. 4-2001, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked. For the reasons stated above, Claimant and similarly situated employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay meal period premiums for its failure to provide meal periods.

Violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001, § 12(A) (Failure to Provide Rest Periods)

Labor Code section 226.7 and IWC Wage Order No. 5-2001, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Claimant and similarly situated employees were not authorized and permitted to take legally compliant rest periods pursuant to California law in violation of the Labor Code. Defendants also failed to pay rest period premiums for their failure to provide rest periods.

Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” For the reasons stated above, Defendants failed to comply with these requirements with respect to Claimant and similarly situated employees in violation of the Labor Code.

Violation of Labor Code §§ 201–203, 256 (Failure to Pay Final Wages)

Labor Code sections 201–203 require that all wages, including minimum wages and meal and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Claimant and similarly situated employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201–203. This is in violation of the Labor Code.

Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” For the reasons stated above, Defendants failed to pay required reimbursements to Claimants and similarly situated employees for required business expenses in violation of the Labor Code.

Violation of Labor Code §§ 246, 246.5 (Failure to Provide Paid Sick Leave)

Labor Code section 246.5 prohibits an employer from denying an employee the right to use accrued sick days. Defendants failed to provide sick leave to Claimant and similarly situated employees, and retaliated against Claimant and similarly situated employees when they needed to take time off due to an illness. This is in violation of the Labor Code.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact my office. Pursuant to Labor Code section 2699.3, please notify Defendant(s) and this law office within 60 calendar days of the postmark date of this notice whether the Agency intends to investigate the alleged violations.

Very truly yours,

Castle Law: California Employment Counsel, PC

By:  _____
Kent L. Bradbury

cc: Garuda Labs, Inc. dba Instawork
548 Market St PMB 63152
San Francisco, CA 94104-5401

Advantage Workforce Services, LLC
548 Market St PMB 63152
San Francisco, CA 94104-5401