



**VIA ELECTRONIC FILING**

**December 2, 2024**

California Labor & Workforce Development Agency (LWDA)  
Attn. PAGA Administrator  
800 Capitol Mall, MIC-55  
Sacramento, California 95814

**VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)**

Rita Kirk, Inc.  
Attn: Agop Kirkorian  
725 S. Glendale Ave., Suite #A  
Glendale, CA 91205

Agop Kirkorian  
725 S. Glendale Ave., Suite #A  
Glendale, CA 91205

**AHMED ELMOETY V. RITA KIRK, INC.**

**RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE**

To Whom It May Concern:

Please be informed that our client, Mr. Ahmed Elmoety (hereinafter “our client” or “Mr. Elmoety”) seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid employees (“aggrieved employees”) who worked for **RITA KIRK, INC.** (hereinafter “Rita Kirk”) at any of their California locations during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same. Individuals AGOP KIRKORIAN is being included in this PAGA notice pursuant to Labor Code Section 558.1 as he was and is an owner/director/managing agent of RITA KIRK, INC., was involved in the day-to-day operations of the shop, including the 2 Bros Smoke Shop & Vape, and as such, controlled the wages, hours, and working conditions of Mr. Elmoety and other similarly situated aggrieved employees. RITA KIRK, INC. was Mr. Elmoety’s and other employees’ employer and operated all California owned shop locations during the PAGA period.



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Mr. Elmoety started working for Rita Kirk as a full-time employee on or around August of 2021, he worked there for over three years. Mr. Elmoety is classified as an hourly, non-exempt employee. Mr. Elmoety and others were compensated every week.

In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves and others. The statute also states that an “aggrieved employee” is “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.” Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas’ motion.

In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is our position that Mr. Elmoety can equivocally bring the following labor code violations on behalf of all other employees, including hourly, non-exempt employees who were not specifically in the same position as himself.

It is our position that Rita Kirk has committed the following labor code violations against our client and other hourly, non-exempt employees who worked for Rita Kirk at any of their California locations during the relevant PAGA period:

Rita Kirk did not provide Mr. Elmoety and other similarly situated aggrieved employees with the minimum wages to which they were entitled for all work performed and did not compensate him and others for all hours worked pursuant to California Labor Code sections 1194, 1197 and 1197.1. Mr. Elmoety and others were not paid for all hours worked and consistently worked “off the clock.” This is so also to the extent employees such as Mr. Elmoety and others worked through their meal and rest periods. Those meal and rest periods were interrupted and/or not provided at all, as such they were not compensated for that time, which would be akin to a minimum wage violation.





Due to the above “off the clock” violations and independently as a matter of company policy, Rita Kirk also violated Labor Code §510 because it failed to pay our client and other similarly situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Mr. Elmoety’s and others’ actual work hours, which included the “off the clock” work as described above, entitled them to overtime, however, it was not company policy to keep accurate track of all hours worked and to pay employees all due overtime, as such Rita Kirk did not accurately calculate employees’ true regular rate of pay for purposes of deciphering their correct overtime rate of pay. Notably, Mr. Elmoety and others routinely exceeded eight hours of work per day and/or forty hours per week, yet Rita Kirk paid the entire weekly hours worked at regular rate rather than overtime, thereby circumventing their legal obligations to pay overtime as mandated by Labor Code §510.

Rita Kirk violated Labor Code § 226.7 along with Industrial Welfare Commission Wage Order no. 5 because it failed to provide our client and other similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. Rita Kirk did not completely relieve our client of all duty during said rest periods. Rita Kirk did not pay to our client one additional hour of pay at our client’s regular rate of compensation for each workday that one or more statutory rest periods was not provided. Rest breaks were not authorized or enforced at the shops. In fact, it was not part of Rita Kirk’s culture for employees such as Mr. Elmoety and others to take at least one 10-minute rest break every day wherein they are relieved of all work duties. Mr. Elmoety and others were too busy to be able to take rest breaks because there was no coverage for them at the shop. Taking rest breaks meant leaving the store unattended and that could not happen. As such, rest breaks were not enforced and not a policy or practice of the shops. In fact, Mr. Elmoety did not receive a single timely, uninterrupted rest break throughout his employment tenure.

Rita Kirk also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare Commission Wage Order No. 5 because it failed to provide our client and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment, and our client did not validly waive said meal periods. Rita Kirk did not completely relieve our client of all duties during said meal periods. Rita Kirk did not pay to our client one additional hour of pay at our client’s regular rate of compensation for each workday that one or more statutory meal periods was not provided. If Rita Kirk had Mr. Elmoety sign a meal period waiver, it would not be valid and enforceable since Mr. Elmoety and others generally worked more than a 6-hour shift. If Rita Kirk had Mr. Elmoety sign an on-duty meal period agreement wherein Mr. Elmoety agreed to work through his meal period, it would also be invalid and unenforceable because the nature of Mr. Elmoety’s job does not prevent him from taking a meal period, had there been proper staffing. As such, Mr. Elmoety and others did not receive statutory, timely meal periods during their employment. In other words, there was rarely an uninterrupted and timely 30-minute meal period for any employees, including Mr. Elmoety. As was the case with rest periods, meal breaks were definitively not part of the Rita Kirk’s culture,





especially in a shop setting and environment. The meal periods were not authorized and were not enforced. Moreover, even if Mr. Elmoety was somehow able to get a meal period, it would be untimely and be interrupted by work-related tasks. Furthermore, even if Rita Kirk did in fact provide meal period penalties, which it did not, to Mr. Elmoety and others for late, short, interrupted, or no meal periods, that does not absolve Rita Kirk of PAGA penalties. In Kirby v. Immoos Fire Protection, Inc. (2012) 53 Cal.4th 1244, 1256, the Court stated that “section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay” (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. See also Wert v. U.S. Bancorp (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at \*4).

Furthermore, during the relevant time period, Rita Kirk failed to pay our client and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including the minimum wages and overtime as described above as well as meal/rest break premiums. Rita Kirk was also in violation of California Labor Code section 226(a) by not providing access to paystubs and failing to include pertinent information on the wage statements, including but not limited to, all hours worked, gross wages earned, net wages earned, all deductions, premium payments for meal and rest breaks, the correct legal name and address of the employer, the correct beginning and end of the pay period, all applicable hourly rates, and/or all identifying employee information, among other items. As such, Rita Kirk did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

Rita Kirk violated Labor Code § 203 because it willfully failed to pay Mr. Elmoety and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked including minimum wages and overtime compensation, and premiums for the missed meal and rest breaks.

During the relevant time period, Rita Kirk also failed to keep accurate and complete payroll records showing the actual hours worked per day (including the time for meal and rest periods) and the wages paid to our client and other aggrieved employees pursuant to California Labor Code sections 1174(d).

Additionally, during the relevant time period, Mr. Elmoety and others incurred necessary, business-related expenses and costs that were not reimbursed by Rita Kirk. These costs include, but are not limited to, reimbursement for use of personal cell phones for work purposes. Accordingly, Rita Kirk was in violation of California Labor Code sections 2800 and 2802. Moreover, Rita Kirk failed to provide sick pay in violation of Labor Code Sections 233 and 246.



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Each of the aforementioned violations, except the Labor Code section 226(a) violations, is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please note, Mr. Elmoety's claims also include retaliation, including retaliation for complaining about labor code violations, wrongful constructive termination, harassment, defamation as well as any other claims associated therewith or arising therefrom.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, our client also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.

Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by Rita Kirk.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you in advance for your attention to this matter.

Sincerely,

Patil T. Derderian, Esq.



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