

ENDORSED
FILED
ALAMEDA COUNTY

SEP 18 2017

By SUE PESKO

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12 and the Plaintiff Class

13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF ALAMEDA**

15 TAMIERA REESE, individually, and
16 on behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 CYPRESS SECURITY, LLC., a
20 California limited liability company
21 d/b/a CYPRESS PRIVATE
22 SECURITY, and DOES 1 through 100,
23 inclusive,

24 Defendants.

Case No. **RG178757 25**

CLASS ACTION

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND RESTITUTION**

[Jury Trial Demanded]

25 Representative Plaintiff alleges as follows:

26 **PRELIMINARY STATEMENT**

27 1. This is a class action seeking unpaid compensation for meal and/or rest period
28 violations, interest thereon, reimbursement of business expenses, liquidated damages and other
penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs under,
inter alia, California Labor Code §§ 200-204, inclusive, 226, 226.7, 226.8, 510, 512, 558, 1174,
1174.5, 1194, 1194.2, 1197, 1198, California Business and Professions Code §§ 17200, *et seq.*

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1 and California Code of Civil Procedure § 1021.5. Plaintiff Tamiera Reese (“Representative
2 Plaintiff” or “Plaintiff”) brings this action on behalf of herself and all other persons similarly
3 situated (“Class Members” and/or the “Plaintiff Class”) who are or have been employed by
4 defendants Cypress Security, LLC d/b/a Cypress Private Security and/or Does 1 through 100,
5 inclusive (collectively “Defendant”) as security guards within the State of California within the
6 applicable class period.

7 2. The class period is designated as the time from September 18, 2013, through trial,
8 based upon the allegation that the violations of California’s wage and hour laws, as described
9 more fully below, have been ongoing throughout that time.

10 3. During the class period, Defendant has had a consistent policy of (1) unlawfully
11 denying Plaintiff and Class Members statutorily-mandated meal and rest periods, (2) willfully
12 failing to provide Plaintiff and Class Members with accurate semimonthly itemized wage
13 statements reflecting the total number of hours each worked, the applicable deductions, and the
14 applicable hourly rates in effect during the pay period, and (3) willfully failing to pay
15 compensation in a prompt and timely manner to Plaintiff and those Class Members whose
16 employment with Defendant has terminated.

17
18 **INTRODUCTION**

19 4. Defendant operates a security service within California for which Representative
20 Plaintiff worked as a security guard. The Representative Plaintiff is informed and believes and,
21 on that basis, alleges that, within the Class Period, Defendant employed hundreds of individuals
22 in California in recent years to perform security services, employment positions which did not,
23 and currently do not, meet any known test for exemption from the payment of overtime wages
24 and/or the entitlement to meal or rest periods.

25 5. Despite actual knowledge of these facts and legal mandates, Defendant has and
26 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers
27 by electing not to pay all wages due (missed meal and rest period compensation) and/or all
28 penalties dues (including “waiting time” penalties) to its California based security guards.

1 11. Representative Plaintiff Tamiera Reese is a natural person who was employed by
2 Defendant as a security guard during the Class Period.

3
4 **DEFENDANT**

5 12. Representative Plaintiff is informed and believes and, based thereon, alleges that,
6 at all times herein relevant, defendants Cypress Security, LLC d/b/a Cypress Private Security,
7 and Does 1 through 100, did business within the State of California providing security services.

8 13. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
9 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or
10 each of the remaining defendants. Representative Plaintiff is informed and believes and, on that
11 basis, alleges that at all relevant times herein mentioned, defendants Cypress Security, LLC d/b/a
12 Cypress Private Security, and those identified as Does 1 through 100, inclusive, employed,
13 and/or exercised control over the wages, hours, and/or working conditions of the Representative
14 Plaintiff and Class Members within the State of California.

15 14. The Representative Plaintiff is unaware of the true names and capacities of those
16 defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by
17 such fictitious names. The Representative Plaintiff will seek leave of court to amend this
18 Complaint when such names are ascertained. The Representative Plaintiff is informed and
19 believes and, on that basis, alleges that each of the fictitiously-named defendants was responsible
20 in some manner for, gave consent to, ratified, and/or authorized the conduct herein alleged and
21 that the Representative Plaintiff's and Class Members' damages, as herein alleged, were
22 proximately caused thereby.

23 15. Representative Plaintiff is informed and believes and, on that basis, alleges that, at
24 all relevant times herein mentioned, each of the defendants was the agent and/or employee of
25 each of the remaining defendants and, in doing the acts herein alleged, was acting within the
26 course and scope of such agency and/or employment.

27 **CLASS ACTION ALLEGATIONS**

28

1 16. The Representative Plaintiff brings this action on behalf of herself and as a class
2 action on behalf of all persons similarly situated and proximately damaged by Defendant's
3 conduct including, but not necessarily limited to, the following Plaintiff Class:

4 "All persons employed by Defendant as security guards in
5 California at any time on or after September 18, 2013."

6 17. Defendant's officers and directors are excluded from the Plaintiff Class.

7 18. This action has been brought and may properly be maintained as a class action
8 under California Code of Civil Procedure § 382 because there is a well-defined community of
9 interest in the litigation and the proposed Class is easily ascertainable.

10 a. Numerosity: A class action is the only available method for the fair
11 and efficient adjudication of this controversy. The members of the
12 Plaintiff Class are so numerous that joinder of all members is
13 impractical, if not impossible, insofar as Representative Plaintiff is
14 informed and believes and, on that basis, alleges that there are
15 sufficient Class Members to meet the numerosity requirement.
16 Membership in the Class will be determined upon analysis of
17 employee and payroll, among other, records maintained by
18 Defendant.

19 b. Commonality: The Representative Plaintiff and the Class Members
20 share a community of interests in that there are numerous common
21 questions and issues of fact and law which predominate over any
22 questions and issues solely affecting individual members,
23 including, but not necessarily limited to:

24 1) Whether Defendant violated California Business and
25 Professions Code § 17200, *et seq.* by failing to provide meal
26 and/or rest breaks to Class Members working eligible shifts;

27 2) Whether Defendant violated California Labor Code § 1174 by
28 failing to keep accurate records of employees' hours of work;

 3) Whether Defendant violated California Labor Code §§ 201-
204 by failing to pay wages due and owing at the time that
certain Class Members' employment with Defendant
terminated;

 4) Whether Defendant violated California Labor Code § 226 by
failing to provide semimonthly itemized statements to Class
Members of total hours worked by each and all applicable
hourly rates in effect during the pay period; and

 5) Whether Class Members are entitled to "waiting time"
penalties, pursuant to California Labor Code § 203.

- 1 c. Typicality: The Representative Plaintiff's claims are typical of the
2 claims of Class Members. The Representative Plaintiff and Class
3 Members sustained damages arising out of and caused by
4 Defendant's common course of conduct in violation of law, as
5 alleged herein.
- 6 d. Adequacy of Representation: The Representative Plaintiff in this
7 class action is an adequate representatives of the Plaintiff Class in
8 that the Representative Plaintiff's claims are typical of those of the
9 Plaintiff Class and the Representative Plaintiff has the same
10 interest in the litigation of this case as the Class Members. The
11 Representative Plaintiff is committed to vigorous prosecution of
12 this case and has retained competent counsel who are experienced
13 in conducting litigation of this nature. The Representative Plaintiff
14 is not subject to any individual defenses unique from those
15 conceivably applicable to Class Members as a whole. The
16 Representative Plaintiff anticipates no management difficulties in
17 this litigation.
- 18 e. Superiority of Class Action: Since the damages suffered by
19 individual Class Members, while not inconsequential, may be
20 relatively small, the expense and burden of individual litigation by
21 each member makes or may make it impractical for Class
22 Members to seek redress individually for the wrongful conduct
23 alleged herein. Should separate actions be brought, or be required
24 to be brought, by each individual Class Member, the resulting
25 multiplicity of lawsuits would cause undue hardship and expense
26 for the Court and the litigants. The prosecution of separate actions
27 would also create a risk of inconsistent rulings which might be
28 dispositive of the interests of other Class Members who are not
parties to the adjudications and/or may substantially impede their
ability to adequately protect their interests.

COMMON FACTUAL ALLEGATIONS

19 19. As described herein, for years, Defendant has knowingly failed to adequately
20 compensate those employees within the class definition identified above for all wages earned
21 (including premium wages such as compensation for missed meal and/or rest periods) under the
22 California Labor Code and the applicable IWC Wage Order, thereby enjoying a significant
23 competitive edge over other service providers.

24 20. Defendant has declined to pay these wages, even upon a Class Member's
25 termination or resignation from employment, in blatant violation of California Labor Code § 201
26 and/or § 202.

27 21. California Labor Code §§ 201 and 202 require Defendant to pay severed
28 employees all wages due and owed to the employee immediately upon discharge or within 72

1 hours of resignation of their positions, in most circumstances. California Labor Code § 203
2 provides that an employer who willfully fails to timely pay such wages must, as a penalty,
3 continue to pay the subject employees' wages until the back wages are paid in full or an action is
4 commenced, and the payment of such penalty shall continue for a period of time up to 30 days.

5 22. Moreover, according to Defendant's policies, Class Members were required to
6 incur business expenses related to the operations of Defendant.

7 23. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class
8 Members' entitlement to compensation for all hours worked, Defendant violated California
9 Labor Code § 1174(d) by failing to provide or require the use, maintenance, or submission of
10 time records by members of the Plaintiff Class. Defendant also failed to provide the
11 Representative Plaintiff and Class Members with accurate semimonthly itemized statements of
12 the total number of hours worked by each, and all applicable hourly rates in effect, during the
13 pay period, in violation of California Labor Code § 226. In failing to provide the required
14 documents, Defendant has not only failed to pay its workers the full amount of compensation due
15 but the company has also, until now, effectively shielded itself from its employees' scrutiny by
16 concealing the magnitude and financial impact of its wrongdoing that such documents might
17 otherwise have led workers to discover.

18 24. Representative Plaintiff and all persons similarly situated are entitled to unpaid
19 compensation, yet, to date, have not received such compensation despite many of the same
20 having been terminated by and/or resigned from Defendant's employ. More than 30 days have
21 passed since certain Class Members have left Defendant's employ.

22 25. As a consequence of Defendant's willful conduct in not paying former employees
23 compensation for all hours worked in a prompt and timely manner, Representative Plaintiff and
24 certain Class Members are entitled to up to 30 days wages as a penalty under California Labor
25 Code § 203, together with attorneys' fees and costs.

26 26. As a direct and proximate result of Defendant's unlawful conduct, as set forth
27 herein, Representative Plaintiff and Class Members have sustained damages, as described above,
28 including compensation for loss of earnings for hours worked on behalf of Defendant, in an

1 amount to be established at trial. As a further direct and proximate result of Defendant's
2 unlawful conduct, as set forth herein, certain Class Members are entitled to recover "waiting
3 time" penalties (pursuant to California Labor Code § 203) and penalties for failure to provide
4 semimonthly statements of hours worked and all applicable hourly rates (pursuant to California
5 Labor Code § 226) in an amount to be established at trial. As a further direct and proximate
6 result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and Class
7 Members are also entitled to recover costs and attorneys' fees pursuant to California Code of
8 Civil Procedure § 1021.5, among other authorities.

9 27. Representative Plaintiff seeks injunctive relief prohibiting Defendant from
10 engaging in the complained-of illegal labor acts and practices in the future. Representative
11 Plaintiff also seeks restitution of costs incurred by Representative Plaintiff and Class Members
12 under California's Unfair Competition Law. Unless enjoined, Defendant's unlawful conduct will
13 continue unchecked, while Representative Plaintiff and Class Members bear the financial brunt
14 of Defendant's unlawful conduct. As a further direct and proximate result of Defendant's
15 unlawful conduct, as set forth herein, Representative Plaintiff and the Plaintiff Class are also
16 entitled to recover costs and attorneys' fees, pursuant to statute.

17 **FIRST CAUSE OF ACTION**
18 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
19 **(California Labor Code §§ 226.7 and 512)**

20 28. Representative Plaintiff incorporates in this cause of action each and every
21 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
22 herein.

23 29. At all relevant times, Defendant was aware of and was under a duty to comply
24 with California Labor Code § 226.7 and §512.

25 30. California Labor Code § 226.7 provides:

26 (a) No employer shall require any employee to work during
27 any meal or rest period mandated by an applicable order of the
28 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 one additional hour of pay at the employee's regular rate

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

3 31. Moreover, California Labor Code § 512(a) provides:

4 An employer may not employ an employee for a work period of
5 more than five hours per day without providing the employee with
6 a meal period of not less than 30 minutes, except that if the total
7 work period per day of the employee is no more than six hours, the
8 meal period may be waived by mutual consent of both the
9 employer and employee. An employer may not employ an
10 employee for a work period of more than 10 hours per day without
11 providing the employee with a second meal period of not less than
12 30 minutes, except that if the total hours worked is no more than
13 12 hours, the second meal period may be waived by mutual
14 consent of the employer and the employee only if the first meal
15 period was not waived.

16 32. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that
17 employers provide all applicable meal and/or rest periods to non-exempt (including exempt-
18 misclassified) employees.

19 33. Section 11 of the applicable IWC Wage Order provides:

20 (A) No employer shall employ any person for a work period of
21 more than five (5) hours without a meal period of not less than
22 30 minutes...

23 (B) An employer may not employ an employee for a work period
24 of more than ten (10) hours per day without providing the
25 employee with a second meal period of not less than 30
26 minutes...

27 (C) If an employer fails to provide an employee a meal period in
28 accordance with the applicable provisions of this order, the
employer shall pay the employee one (1) hour of pay at the
employee's regular rate of compensation for each workday
that the meal period is not provided.

31. Moreover, Section 12 of the applicable IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to
take rest periods, which insofar as practicable shall be in the
middle of each work period. The authorized rest period time shall
be based on the total hours worked daily at the rate of ten (10)
minutes net rest time per four (4) hours or major fraction thereof
....

(B) If an employer fails to provide an employee a rest period in
accordance with the applicable provisions of this order, the
employer shall pay the employee one (1) hour of pay at the
employee's regular rate of compensation for each workday that the
rest period is not provided.

1 41. Moreover, California Labor Code § 226(e) provides:

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

7 42. Finally, California Labor Code § 1174(d) provides:

8 Every person employing labor in this state shall. . . [k]eep, at a
9 central location in the state...payroll records showing the hours
10 worked daily by and the wages paid to...employees.... These
11 records shall be kept in accordance with rules established for this
12 purpose by the commission, but in any case shall be kept on file for
13 not less than two years.

12 43. Representative Plaintiff seeks to recover actual damages, costs, and attorneys'
13 fees under these provisions on behalf of herself and on behalf of all Class Members.

14 44. Defendant has failed to provide timely, accurate itemized wage statements to the
15 Representative Plaintiff and Class Members in accordance with California Labor Code § 226.
16 Representative Plaintiff is informed and believes and, on that basis, alleges that none of the
17 statements provided by Defendant accurately reflected actual gross wages earned, net wages
18 earned, or the appropriate deductions of such Class Members.

19 45. As a direct and proximate result of Defendant's unlawful conduct, as set forth
20 herein, the Representative Plaintiff and Class Members have sustained damages in an amount to
21 be established at trial, and are entitled to recover attorneys' fees and costs of suit.

22
23
24 **THIRD CAUSE OF ACTION**
FAILURE TO PAY WAGES ON TERMINATION
(California Labor Code § 203)

25 46. Representative Plaintiff incorporates in this cause of action each and every
26 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
27 herein.

28 47. California Labor Code § 203 provides that:

1 If an employer willfully fails to pay, without abatement or reduction, in
2 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
3 employee who is discharged or who quits, the wages of the employee shall
4 continue as a penalty from the due date thereof at the same rate until paid or
5 until an action therefor is commenced; but the wages shall not continue for
6 more than 30 days.

7 48. Plaintiff and numerous Class Members were employed by Defendant during the
8 class period and were thereafter terminated or resigned from their positions, yet they were not
9 paid all premium (overtime) wages due upon said termination or within 72 hours of said
10 resignation of employment therefrom. Said non-payment was the direct and proximate result of a
11 willful refusal to do so by Defendant.

12 49. More than 30 days have elapsed since certain Class Members were involuntarily
13 terminated or voluntarily resigned from Defendant's employ.

14 50. As a direct and proximate result of Defendant's willful conduct in failing to pay
15 said Class Members for all hours worked, affected Class Members are entitled to recover
16 "waiting time" penalties of up to thirty days' wages pursuant to California Labor Code § 203 in
17 an amount to be established at trial, together with interest thereon, and attorneys' fees and costs.

18 **FOURTH CAUSE OF ACTION**
19 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
20 **(California Business & Professions Code §§ 17200-17208)**

21 51. Representative Plaintiff incorporates in this cause of action each and every
22 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
23 herein.

24 52. Representative Plaintiff further brings this cause of action seeking equitable and
25 statutory relief to stop Defendant's misconduct, as complained of herein, and to seek restitution
26 of the amounts Defendant acquired through the unfair, unlawful, and fraudulent business
27 practices described herein.

28 53. Defendant's knowing conduct, as alleged herein, constitutes an unlawful and/or
fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-

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1 17208. Specifically, Defendant conducted business activities while failing to comply with the
2 legal mandates cited herein.

3 54. Defendant has clearly established a policy of accepting a certain amount of
4 collateral damage, as represented by the damages to the Representative Plaintiff and to Class
5 Members herein alleged, as incidental to its business operations, rather than accept the
6 alternative costs of full compliance with fair, lawful, and honest business practices, ordinarily
7 borne by its responsible competitors and as set forth in legislation and the judicial record.

8
9 **RELIEF SOUGHT**

10 **WHEREFORE, the Representative Plaintiff**, on behalf of herself and the proposed
11 Plaintiff Class, prays for judgment and the following specific relief against defendants, and each
12 of them, jointly and separately, as follows:

13 1. That the Court declare, adjudge, and decree that this action is a proper class action
14 and certify the proposed Class and/or any other appropriate subclasses under California Code of
15 Civil Procedure § 382;

16 2. That the Court declare, adjudge, and decree that Defendant willfully violated its
17 legal duties to pay all wages due under the California Labor Code and the applicable California
18 Industrial Welfare Commission Wage Orders;

19 3. That the Court make an award to the Representative Plaintiff and the Class
20 Members of one hour of pay at each employee's regular rate of compensation for each workday
21 that a meal period was not provided;

22 4. That the Court make an award to the Representative Plaintiff and the Class
23 Members of one hour of pay at each employee's regular rate of compensation for each workday
24 that a rest period was not provided;

25 5. That the Court order Defendant to pay restitution to the Representative Plaintiff
26 and the Class Members due to Defendant's unlawful activities, pursuant to California Business
27 and Professions Code §§ 17200-17208;

28

