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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

ARTURO MEJIA AGUAYO, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

HSS INC., a Colorado corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 20CV001107

**FIRST AMENDED PAGA
REPRESENTATIVE ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF LABOR CODE §
2698, *ET SEQ.***

DEMAND OVER \$25,000

1 Plaintiff Arturo Mejia Aguayo (“Plaintiff”), hereby submits this First Amended PAGA
2 Representative Action Complaint (“Complaint”) against Defendant HSS Inc. (“HSS” or
3 “Defendant”), and Does 1-50 (collectively, “Defendants”), on behalf of himself and all other
4 similarly situated current and former employees of Defendants for damages and/or penalties for
5 failure to provide off-duty meal and rest periods, failure to pay all wages owed upon separation
6 of employment, and failure to provide accurate itemized wage statements, in violation of the
7 California Labor Code, as follows:

8 **INTRODUCTION**

9 1. This representative PAGA action is within the Court’s jurisdiction under
10 California Labor Code §§ 201-203, 226, 226.7, 512, and 2698, *et seq.*, and the applicable Wage
11 Orders of the California Industrial Welfare Commission (“IWC”).

12 2. This Complaint challenges systemic illegal employment practices resulting in
13 violations of the California Labor Code against individuals who worked for Defendants.

14 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
15 jointly and severally, have acted intentionally and with deliberate indifference and conscious
16 disregard to the rights of all employees by failing to provide off-duty meal and rest periods,
17 failing to pay all wages owed upon separation of employment, and failing to provide accurate
18 itemized wage statements to Plaintiff and other employees that comply with the California Labor
19 Code.

20 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 have engaged in, among other things a system of willful violations of the California Labor Code
22 by creating and maintaining policies, practices and customs that knowingly deny employees the
23 above stated rights and benefits.

24 5. The policies, practices and customs of defendants described above and below
25 have resulted in unjust enrichment of Defendants and an unfair business advantage over
26 businesses that routinely adhere to the strictures of the California Labor Code.

27 **JURISDICTION AND VENUE**

28 6. The Court has jurisdiction over the violations of the California Labor Code §§

201-203, 226, 226.7, 512, and 2698, *et seq.*

7. Venue is proper in Monterey County because Defendants do business in Monterey County, and Plaintiff worked for Defendants in Monterey County.

PARTIES

8. Plaintiff was employed by Defendants as an hourly, non-exempt employee from in or about 2016 until on or about January 28, 2020. Throughout his employment with Defendants, Plaintiff worked as a security officer/security guard.

9. Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived him of the rights guaranteed by California Labor Code §§ 201-203, 226, 226.7, 512, and 2698, *et seq.*

10. Plaintiff is informed and believes, and based thereon alleges, that Defendant was and is a Colorado corporation doing business in the State of California, and in the County of Monterey. Plaintiff is informed and believes, and based thereon alleges, that Defendant provides security officer services across the United States and in the State of California, including healthcare security services, aviation security services, and government facility security services.

11. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendant and Does 1 through 50, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such, and based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to California Labor Code §§ 201-203, 226, 226.7, 512, and 2698, *et seq.*

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious defendants were responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public to be subject to the illegal employment practices, wrongs and injuries complained of herein.

1 13. At all times herein mentioned, each of said Defendants participated in the doing
2 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
3 Defendants, and each of them, were the agents, servants and employees of each of the other
4 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
5 acting within the course and scope of said agency and employment.

6 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
7 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
8 joint venturer of, or working in concert with each of the other co-Defendants and was acting
9 within the course and scope of such agency, employment, joint venture, or concerted activity.
10 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
11 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
12 Defendants.

13 15. At all times herein mentioned, Defendants, and each of them, were members of,
14 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
15 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

16 16. At all times herein mentioned, the acts and omissions of various Defendants, and
17 each of them, concurred and contributed to the various acts and omissions of each and all of the
18 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
19 herein mentioned, Defendants, and each of them, ratified each and every act or omission
20 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
21 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
22 damages as herein alleged.

23 **FIRST CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

25 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

26 17. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 16 as
27 though fully set for herein.

28 18. Plaintiff brings this cause of action as a proxy for the State of California and in

1 this capacity, seeks penalties on behalf of all Aggrieved Employees from February 18, 2019,
2 through the present, for Defendants' violations of Labor Code §§ 201-203, 226(a), 226.7, and
3 512, arising from Defendants' following misconduct: (a) failure to provide duty-free rest periods
4 in violation of Labor Code § 226.7; (b) failure to provide duty-free meal periods in violation of
5 Labor Code §§ 226.7 and 512; (c) failure to pay all wages owed upon separation of employment
6 in violation of Labor Code §§ 201-203; and (d) failure to provide accurate itemized wage
7 statements in violation of Labor Code § 226(a).

8 19. Labor Code § 226.7 requires an employer to provide a duty-free, 10-minute rest
9 period for every 4 hours worked, or major fraction thereof. Plaintiff and other Aggrieved
10 Employees regularly worked shifts of three and one-half (3.5) hours or more per day, and
11 accordingly had a right to take a 10-minute rest period each day. In addition, Plaintiff and other
12 Aggrieved Employees who worked shifts of seven and one-half (7.5) hours or more per day had
13 a right to take a second 10-minute rest period.

14 20. Furthermore, pursuant to Labor Code §§ 226.7 and 512, an employer is also
15 required to provide a duty-free, 30-minute meal period within the first five (5) hours for shifts in
16 excess of five (5) hours per day. An employer has the obligation to provide a second duty-free,
17 30-minute meal period for shifts in excess of ten (10) hours per day. Plaintiff and Aggrieved
18 Employees regularly worked in excess of five (5) hours per day and accordingly had a right to
19 take a 30-minute meal period each day worked in excess of five (5) hours. Furthermore, Plaintiff
20 and Aggrieved Employees who worked in excess of ten (10) hours per day had a right to take a
21 second 30-minute meal period each day worked in excess of ten (10) hours.

22 21. Specifically, Defendants violated Labor Code § 226.7 by failing to provide off-
23 duty rest breaks to Plaintiff and Aggrieved Employees. As a pattern and practice, Defendants
24 suffered and permitted Plaintiff and Aggrieved Employees to work through legally required rest
25 breaks and denied Plaintiff and Aggrieved Employees the opportunity to take off-duty rest
26 breaks. In particular, during their employment with Defendants, Plaintiff and Aggrieved
27 Employees were required to remain on work premises, keep employer-issued radios on during
28 their rest breaks, as well as respond to any radio calls received during their rest breaks. Plaintiff

1 and Aggrieved Employees were subject to being called back to work during their rest breaks. As
2 a result, Plaintiff and Aggrieved Employees remained on-duty during these purported rest breaks
3 and were not paid the premium compensation for missed rest breaks pursuant to California law.

4 22. As another violation, Defendants also violated Labor Code §§ 226.7 and 512 by
5 failing to provide off-duty meal breaks to Plaintiff and Aggrieved Employees. At all relevant
6 times, Plaintiff and Aggrieved Employees were suffered and permitted to work through legally
7 required meal breaks and were denied the opportunity to take their off-duty meal breaks. This
8 included, without limitation, Defendants requiring Plaintiff and Aggrieved Employees to remain
9 on work premises during meal periods, to keep their employer-issued radios on during such meal
10 breaks, to respond to calls during these breaks, and to return to work if requested during these
11 breaks. As such, Plaintiff and Aggrieved Employees were denied legally compliant off-duty
12 meal periods, and were not paid the premium compensation for missed meal breaks pursuant to
13 California law.

14 23. Given that Defendants owe unpaid premium compensation for missed rest breaks
15 and missed meal breaks to Plaintiff and Aggrieved Employees, Plaintiff and Aggrieved
16 Employees did not receive all of their earned wages upon termination of employment. Thus, this
17 violates Labor Code §§ 201-203 as Defendants have failed to pay all wages owed upon
18 separation of employment.

19 24. Lastly, Defendants failed in their affirmative obligation to provide accurate
20 itemized wage statements in violation of Labor Code § 226(a). Labor Code § 226(a) requires
21 employers to provide itemized wage statements to its employees that identify accurate
22 information, including without limitation, total hours worked by the employee, gross wages
23 earned, net wages earned, and all applicable hourly rates of pay and hours worked.

24 25. Here, Plaintiff and Aggrieved Employees were not provided accurate itemized
25 wage statements that listed the requirements under Labor Code § 226(a). In particular, as a result
26 of the meal and rest period violations alleged above, the wage statements issued to Plaintiff and
27 Aggrieved Employees failed to identify the correct number of hours worked, gross wages earned,
28 net wages earned, total hours worked, as well as wages for premium pay for missed meal and

rest periods and/or improper on-duty meal periods.

26. On or about February 18, 2020, Plaintiff sent written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-203, 226(a), 226.7, and 512, pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act ("PAGA"). To date, the LWDA has not responded to Plaintiff's written notice. In addition to the LWDA, Plaintiff also sent his PAGA notice to Defendant via certified mail according to Labor Code § 2699.3.

27. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violations of Labor Code §§ 201-203, 226(a), 226.7, and 512, for the time period described above, on behalf of himself and other Aggrieved Employees.

PRAYER FOR RELIEF

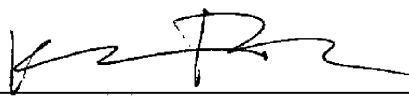
WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for the full amount of civil penalties pursuant to California Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees; and

2. For such other and further relief the Court may deem just and proper.

DATED: September 22, 2020

DIVERSITY LAW GROUP, P.C.

By: 
Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiff and the Aggrieved
Employees

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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

On October 8, 2020, I served the following document(s) described as: **FIRST AMENDED PAGA REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

Bryanne J. Lewis
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, California 90071
Attorneys for Defendant HSS Inc.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 8, 2020, at Los Angeles, California.

Erika Mejia