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ENDORSED
FILED
ALAMEDA COUNTY

AUG 04 2020

CLERK OF THE SUPERIOR COURT

By *Neel Patel* Deputy

Attorneys for Plaintiff,

TAJE WILLIAMS, ALEXANDER DELEON, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FOR THE COUNTY OF ALAMEDA
(UNLIMITED JURISDICTION)**

TAJE WILLIAMS and ALEXANDER
DELEON, on behalf of themselves, and all
others similarly situated, and as "aggrieved
employees" on behalf of other "aggrieved
employees" under the Labor Code Private
Attorneys General Act of 2004;

Plaintiff(s),

vs.

SECURITY ENFORCEMENT ALLIANCE,
INC., a California corporation; and DOES 1-50,
inclusive,

Defendant(s).

Case No.: RG20069008

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512, and 1198);
2. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
3. Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201-203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
7. Civil Penalties.

JURY TRIAL DEMANDED

BY FAX



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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3 Plaintiffs TAJE WILLIAMS and ALEXANDER DELEON (collectively, “Plaintiffs”), on
4 behalf of themselves and all others similarly situated, complain and allege as follows:

5
6 **INTRODUCTION**

7 1. Plaintiffs brings this class and representative action based on alleged violations of
8 the California Labor Code, Industrial Welfare Commission Order No. 4-2001 (hereafter the
9 “Wage Order”) and the Business and Professions Code against defendants SECURITY
10 ENFORCEMENT ALLIANCE, INC., a California corporation; and DOES 1 through 50,
11 inclusive (collectively “Defendants”).

12 2. As set forth in more detail below, Plaintiffs allege that Defendants are liable to
13 them, the State of California, and current and former employees who worked in California as
14 hourly, non-exempt employees, including security guards and other employees of Defendants in
15 comparable positions, at any time during the period beginning four years prior to the filing of this
16 action to the present, for civil penalties and other related relief. These claims are based on
17 Defendants’ alleged failures to (1) provide all rest and meal periods, (2) indemnify Plaintiffs and
18 the below-described Class for reasonable expenses incurred during the course of performing their
19 duties, (3) pay Plaintiffs and the Class all wages for all hours worked, (4) provide accurate written
20 wage statements, (5) timely pay wages upon termination of employment, and (6) fairly compete.
21 Additionally, Plaintiffs seek civil penalties under the California Labor Code Private Attorneys
22 General Act, Labor Code §§ 2698, *et seq.* (“PAGA”). Accordingly, Plaintiffs now seek to recover
23 civil penalties, unpaid wages, and related relief through this class action.

24 **JURISDICTION AND VENUE**

25 3. This Court has subject matter jurisdiction because the aggregate claims of
26 Plaintiffs and the Class Members, inclusive of all relief, place more than \$25,000 in controversy.

27 4. There is no basis for federal question subject matter jurisdiction in this case.
28 Specifically, Plaintiffs assert claims on behalf of themselves, the State of California, and the
Class Members that solely arise under California law, rather than federal law.

5. There is also no basis for federal diversity jurisdiction in this case.

6. Venue is proper in Alameda County pursuant to California Code of Civil



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1 Procedure § 395(a) and § 395.5 in that liability arose in Alameda County because at least some
2 of the transactions that are the subject matter of this Complaint occurred therein and/or because
3 each defendant is found, maintains offices, transacts business, and/or has an agent therein.

4 ///

PARTIES

5 7. Plaintiff TAJE WILLIAMS is a resident of California.

6 8. Plaintiff ALEXANDER DELEON is a resident of California.

7 9. At all relevant times, Plaintiffs were “employees” within the meaning of Title 8
8 California Code of Regulations Section 11160 and “aggrieved employees” within the meaning
9 of Labor Code Section 2699(c).

10 10. Defendant SECURITY ENFORCEMENT ALLIANCE, INC. is a corporation
11 organized and existing under the laws of California based on Plaintiffs’ information and belief.

12 11. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
13 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
14 are informed and believe and thereon allege that said defendants are legally responsible for the
15 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
16 Plaintiffs will amend the Complaint to allege the true names and capacities of the DOE
17 defendants when ascertained.

18 12. The Class Members are all persons Defendants employed in California and paid
19 on an hourly basis, including but not limited to security guards and comparable positions, at any
20 time during the period beginning four years prior to the filing of this action and ending on the
21 date that final judgment is rendered in this action.

22 13. Plaintiffs are informed and believe and thereon allege that, at all relevant times
23 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
24 remaining Defendants, and in doing the things hereinafter alleged, were acting within the course
25 and scope of such agency or employment, and with the approval and ratification of each of the
26 other Defendants.

27 14. At all relevant times, in perpetrating the acts and omissions alleged herein,
28 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
of a practice which resulted in Defendants not paying Plaintiffs and the Class in accordance with



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1 applicable California labor laws as alleged herein.

2 15. Plaintiffs are informed and believe and thereon allege that each and every one of
3 the acts and omissions alleged herein were performed by, and/or are attributable to, all
4 Defendants, each acting as agents and/or employees, and/or under the direction and control of
5 each of the other Defendants, and that said acts and failures to act were within the course and
6 scope of said agency, employment, and/or direction and control.

7 **CLASS ALLEGATIONS**

8 16. This action has been brought and may be maintained as a class action pursuant to
9 California Code of Civil Procedure § 382 because there is a well-defined community of interest
10 among the persons who comprise the readily ascertainable class defined below and because
11 Plaintiffs are unaware of any difficulties likely to be encountered in managing this case as a class
12 action.

13 17. **Class Definition:** The Class is defined as follows: All persons Defendants
14 employed in California and paid on an hourly basis, including but not limited to security guards
15 and comparable positions, at any time during the period beginning four years prior to the filing
16 of this action and ending on the date that final judgment is rendered in this action.

17 18. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiffs reserve the
18 right to amend or modify the class definitions with greater specificity, by further division into
19 subclasses and/or by limitation to particular issues.

20 19. **Numerosity:** The Class is so numerous that the joinder of each individual class
21 member is impractical. While Plaintiffs do not currently know the exact number of the Class,
22 Plaintiffs are informed and believe that the actual number exceeds the minimum required for
23 numerosity under California law.

24 20. **Commonality and Predominance:** Common questions of law and fact exist as
25 to all class members and predominate over any questions which affect only individual class
26 members. These questions include, but are not limited to:

27 A. Whether Defendants failed to provide the Class with all rest periods as
28 required by section 11 of the Wage Order;

B. Whether Defendants failed to provide the Class with all off-duty meal
periods as required by section 12 of the Wage Order;



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1 C. Whether Defendants failed to compensate the Class at one hour's pay on
2 days when Defendants failed to provide them with one or more off-duty meal periods in a
3 workday.

4 D. Whether Defendants failed to compensate the Class at one hour's pay on
5 days when Defendants failed to provide them with one or more rest breaks in a workday;

6 E. Whether Defendants failed to indemnify the Class for the all necessary
7 business expenditures incurred in the discharge of their duties;

8 F. Whether Defendants failed to pay all wages earned to Class Members for
9 all hours worked at the correct rates of pay, including regular wages, overtime wages, and double
10 time wages;

11 G. Whether Defendants knowingly and intentionally failed to provide the
12 Class Members with accurate wage statements;

13 H. Whether Defendants failed to timely pay final wages upon termination of
14 the Class Members' employment;

15 I. Whether Defendants engaged in unfair competition within the meaning of
16 Business and Professions Code §§ 17200, *et seq.*, with respect to the Class;

17 J. Whether the Class Members are entitled to restitution of money or
18 property that Defendants may have acquired from them through alleged Labor Code violations;

19 K. Are the Class Members entitled to prejudgment interest; and

20 L. Are the Class Members entitled to attorneys' fees?

21 21. **Typicality:** Plaintiffs' claims are typical of the other Class Members' claims.
22 Plaintiffs are informed and believe and thereon allege that Defendants have a policy, practice, or
23 a lack of a policy which resulted in Defendants failing to comply with the California Labor Code
24 and the Business and Professions Code as alleged herein.

25 22. **Adequacy of Class Representative:** Plaintiffs are adequate class representatives
26 in that they have no interests that are adverse to, or otherwise in conflict with, the interests of
27 absent class. Plaintiffs are dedicated to vigorously prosecuting this action on behalf of the Class.
28 Plaintiffs will fairly and adequately represent and protect the interests of the Class.

29 23. **Adequacy of Class Counsel:** Plaintiffs' counsel are adequate class counsel in
30 that they have no known conflicts of interest with Plaintiffs or absent Class Members, are



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1 experienced in class action litigation and are dedicated to vigorously prosecuting this action on
2 behalf of Plaintiffs and the absent Class.

3 24. **Superiority:** A class action is vastly superior to other available means for fair and
4 efficient adjudication of class' claims and would be beneficial to the parties and the Court. Class
5 action treatment will allow a number of similarly situated persons to simultaneously and
6 efficiently prosecute their common claims in a single forum without the unnecessary duplication
7 of effort and expense that numerous individual actions would entail. In addition, the monetary
8 amounts due to many individual class members are likely to be relatively small and would thus
9 make it difficult, if not impossible, for individual class members to both seek and obtain relief.
10 Moreover, a class action will serve an important public interest by permitting class to effectively
11 pursue the recovery of monies owed to them. Further, a class action will prevent the potential for
12 inconsistent or contradictory judgments inherent in individual litigation.

12 **STATEMENT OF FACTS**

13 25. On or about January 10, 2019, Defendants first employed Plaintiff Williams to
14 work in California as an hourly, non-exempt security guard. Plaintiff Williams continuously
15 worked for Defendants from that date until approximately August 1, 2019, when Defendants
16 relocated him to another worksite in Vallejo, California. At the time of his relocation, Defendants
17 informed Plaintiff Williams that his new worksite had no open shifts for him to work. Defendants
18 further informed Plaintiff Williams that, despite being unable to provide him with work shifts, if
19 Plaintiff Williams wished to end his employment with Defendants, he would have to resign.
20 Plaintiff Williams currently remains assigned to the Vallejo worksite with no scheduled work
21 shifts.

22 26. In or about January of 2017, Defendants first employed Plaintiff DeLeon to work
23 in California as an hourly, non-exempt security guard. Plaintiff DeLeon continuously worked for
24 Defendants as a full-time employee from that time until approximately February of 2019, when
25 he began to work for Defendants on a part-time basis. Plaintiff DeLeon currently remains a part-
26 time employee of Defendants.

27 27. At all relevant times, Defendants employed Plaintiffs at an hourly rate of pay and
28 issued their paychecks on a semi-monthly basis. At all relevant times, Defendants classified
Plaintiffs as non-exempt employees entitled to the protections of both the Labor Code and Wage



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Order.

28. At all relevant times as a result of its staffing choices, Defendants failed to provide Plaintiffs and the Class with an off-duty, 30-minute meal period before the end of the fifth hour worked, or with a second off-duty, 30-minute meal period on workdays of over ten hours. Further, at all relevant times, Defendants failed to authorize and permit Plaintiffs and the Class to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof, nor did Defendants seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Defendants typically scheduled Plaintiffs and the Class to work shifts during which only one (or at most two) of them were on duty. As a result of this understaffing, Defendants prohibited Plaintiffs and the Class from taking off-duty meal periods and rest periods. On information and belief, Defendants did not enter into on-duty meal period agreements with Plaintiffs or any of the Class Members, nor did the nature of their work require on-duty meal periods or rest breaks.

29. Defendants required Plaintiffs and the Class to travel between company worksites for company business while clocked out for work. Defendants failed to pay all regular and overtime wages for this time spent traveling between company locations while clocked out for work. Additionally, Defendants failed to reimburse Plaintiffs and the Class for their mileage-related expenses. At relevant times within the applicable limitations period, Defendants frequently required Plaintiffs and the Class to travel approximately 30 miles in the same workday while clocked out for work.

30. Further, at all relevant times, Defendants assigned Plaintiffs and the Class to work double shifts. Defendants paid Plaintiffs and the Class on a straight time basis for their second shifts, instead of at overtime and double time rates.

31. For the reasons stated herein, Plaintiffs allege the following violations of the California Labor Code and Wage Order:

- A. Defendants failed to provide Plaintiffs and the Class with all off-duty meal periods;
- B. Defendants failed to provide Plaintiffs and the Class with all rest periods as required by law;
- C. Defendants failed to pay Plaintiffs and the Class an additional hour's pay



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1 for days in which Defendants failed to provide them with one or more meal periods in a workday;

2 D. Defendants failed to pay Plaintiffs and the Class an additional hour's pay
3 for days in which Defendants failed to provide them with one or more rest periods in a workday;

4 E. Defendants failed to compensate Plaintiffs and the Class for all hours
5 worked at the correct rates of pay, including, but not limited to, regular and overtime wages for
6 work performed while traveling between company locations, and overtime and double time
7 wages for work performed during second shifts in the same workday;

8 F. Defendants failed to indemnify Plaintiffs and the Class for all necessary
9 business expenditures incurred in the discharge of their duties;

10 G. Defendants failed to indemnify Plaintiffs and the Class for all necessary
11 business expenditures incurred in the discharge of their duties;

12 H. Defendants failed to provide Plaintiffs and the Class with accurate and
13 complete wage statements;

14 I. Defendants failed to timely pay Plaintiffs and the Class all earned and
15 unpaid wages during employment; and

16 J. Defendants failed to timely pay those Class Members who are former
17 employees all earned and unpaid wages at the time of separation from employment.

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

20 **(Lab. Code §§ 226.7, 512, and 1198)**

21 **(By Plaintiffs and the Class against all Defendants)**

22 32. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

23 33. At all relevant times during the applicable limitations period, Plaintiffs and the
24 Class Members have been employees of Defendants and entitled to the benefits and protections
25 of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

26 34. In relevant part, California Labor Code § 1198 states:

27 The maximum hours of work and the standard conditions of labor
28 fixed by the commission shall be the maximum hours of work and
the standard conditions of labor for employees. The employment
of any employee for longer hours than those fixed by the order or
under conditions of labor prohibited by the order is unlawful.



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1 35. In relevant part, In relevant part, California Labor Code § 512 states:

2 An employer shall not employ an employee for a work period of
3 more than five hours per day without providing the employee with
4 a meal period of not less than 30 minutes, except that if the total
5 work period per day of the employee is no more than six hours, the
6 meal period may be waived by mutual consent of both the
7 employer and employee.

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

14 36. In relevant part, Section 12 of the Wage Order states:

15 **Rest Periods**

16 (A) “Every employer shall authorize and permit all employees
17 to take rest periods, which insofar as practicable shall be in the
18 middle of each work period. The authorized rest period time shall
19 be based on the total hours worked daily at the rate of ten (10)
20 minutes net rest time per four (4) hours or major fraction thereof.
21 However, a rest period need not be authorized for employees
22 whose total daily work time is less than three and one-half (3 1/2)
23 hours. Authorized rest period time shall be counted as hours
24 worked for which there shall be no deduction from wages.”

25 (B) If an employer fails to provide an employee a rest period in
26 accordance with the applicable provisions of this Order, the
27 employer shall pay the employee one (1) hour of pay at the
28 employee’s regular rate of compensation for each work day that
the rest period is not provided.”

37. In relevant part, Section 11 of the Wage Order states:

Meal Periods

(A) “No employer shall employ any person for a work period
of more than five (5) hours without a meal period of not less than
30 minutes, except that when a work period of not more than six
(6) hours will complete the day’s work the meal period may be
waived by mutual consent of the employee and the employer.
Unless the employee is relieved of all duty during a 30 minute meal
period, the meal period shall be considered an ‘on duty’ meal



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period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

(B) If an employer fails to provide an employee a meal 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 work day that the meal period is not provided.”

38. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.

39. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiffs and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

40. Pursuant to the Wage Order, Plaintiffs and the Class Members were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

41. Defendants intentionally failed to provide Plaintiffs and the Class Members with all required 30-minute duty free meal periods and 10-minute rest periods in accordance with the



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1 Wage Order. Additionally, Defendants required Plaintiffs and the Class Members to take on duty
2 meal periods without obtaining written consent of Plaintiffs or the Class Members.

3 42. Plaintiffs are informed and believe and thereon allege that, at all relevant times
4 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
5 which resulted in Defendants not providing the Class with all off-duty meal periods and rest
6 breaks required by California law.

7 43. As a result of Defendants' unlawful conduct, Plaintiffs and the Class Members
8 have suffered damages in an amount, subject to proof, to the extent they were not paid the full
9 amount of wages earned during each pay period during the applicable limitations period.

10 44. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiffs and
11 the Class Members are entitled to premium wages for workdays in which one or more off-duty
12 meal periods were not provided to them, and for workdays in which one or more rest breaks were
13 not provided to them.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO INDEMNIFY**

16 **(Lab. Code §§ 1198 & 2802)**

17 **(By Plaintiffs and the Class against all Defendants)**

18 45. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

19 46. At all relevant times, Plaintiffs and the Class Members have been non-exempt
20 employees of Defendants and entitled to the benefits and protections of the California Labor
21 Code § § 1198 and 2802 and the Wage Order.

22 47. In pertinent part, California Labor Code § 2802(a) states:

23 “An employer shall indemnify his or her employee[s] for all
24 necessary expenditures incurred by the employee in direct
25 consequence of the discharge of his or her duties.”

26 48. Section 9(B) of the Wage Order states:

27 When tools or equipment are required by the employer or are
28 necessary to the performance of a job, such tools and equipment
shall be provided and maintained by the employer, except that an
employee whose wages are at least two (2) times the minimum
wage provided herein may be required to provide and maintain
hand tools and equipment customarily required by the trade or



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1 craft.
2 49. California Labor Code § 1198 prohibits employers from employing their
3 employees under conditions prohibited by the Wage Order.

4 50. At relevant times during the applicable limitations period, Defendants required
5 Plaintiffs and the Class Members to travel between company locations for company business and
6 failed to indemnify them for their mileage-related expenses.

7 51. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
8 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
9 failure to indemnify Plaintiffs and the Class Members for the reasonable expenses they incurred
10 during the course of performing their duties.

11 52. Therefore, pursuant to California Labor Code § 2802(b), Plaintiffs and the Class
12 Members are entitled to reimbursement for all necessary expenditures and losses and interest
13 thereon, due and owing to them within four years of the date of the filing of the Complaint until
14 the entry of judgment.

15 53. Accordingly, with respect to this cause of action, on behalf of themselves and the
16 Class Members, Plaintiffs pray for the above stated relief, costs, and all reasonable attorneys'
17 fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

20 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

21 **(By Plaintiffs and the Class against all Defendants)**

22 54. Plaintiffs incorporate all paragraphs of the Complaint as if fully alleged herein.

23 55. At all relevant times, Plaintiffs and the Class Members have been non-exempt
24 employees of Defendants and entitled to the benefits and protections of California Labor Code §
25 § 510, 1194, 1197, 1198, and the Wage Order.

26 56. Section 2 of the Wage Order defines "hours worked" as "the time during which an
27 employee is subject to the control of an employer, and includes all the time the employee is
28 suffered or permitted to work, whether or not required to do so."

57. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions



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(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

58. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

59. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be

1 compensated at the rate of no less than twice the regular rate of pay
2 of an employee. Nothing in this section requires an employer to
3 combine more than one rate of overtime compensation in order to
4 calculate the amount to be paid to an employee for any hour of
5 overtime work.

6 60. California Labor Code § 1194 invalidates any agreement between an employer and
7 an employee to work for less than the minimum wage required under the applicable Wage Order.

8 61. California Labor Code § 1197 makes it unlawful for an employer to pay an
9 employee less than the minimum wage required under the applicable Wage Order for all hours
10 worked during a payroll period.

11 62. California Labor Code § 1198 makes it unlawful for an employer to employ an
12 employee under conditions that violate the Wage Order.

13 63. In conjunction, these provisions of the California Labor Code require employers
14 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates
15 for all hours worked, including unrecorded hours when the employer knew or reasonably should
16 have known that employees were working during those hours. (See *Morillion v. Royal Packing*
17 *Co.* (2000) 22 Cal.4th 575, 585.)

18 64. At all relevant times, during the applicable limitations period, Defendants failed
19 to compensate Plaintiffs and the Class for all hours worked at the correct rates of pay, including
20 but not limited to all regular and overtime wages for all hours they spent traveling between
21 Defendants' worksites on company business while clocked out for work, and all overtime and
22 double time wages for all hours they spent while working second shifts in the same workday.

23 65. Plaintiffs are informed and believes and thereon alleges that, at all relevant times,
24 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
25 failure to compensate the Class for all hours worked at the correct rate of pay as required by
26 California law.

27 66. As a result of Defendants' unlawful conduct, Plaintiffs and the Class Members
28 have suffered damages in an amount, subject to proof, to the extent that they were not paid the
full amount of wages earned during each pay period during the applicable limitations period,
including minimum, overtime, and double-time wages.

67. Pursuant to California Labor Code § 1194, Plaintiffs, on behalf of themselves and



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1 Class, seek to recover unpaid wages, liquidated damages in amounts equal to the amounts of
2 unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, including
3 interest thereon, as permitted by law, all in amounts subject to proof.

4 ///

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7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

9 **(Lab. Code § 226)**

10 **(By Plaintiffs and the Class against all Defendants)**

11 68. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

12 69. Pursuant to California Labor Code § 226(a), Plaintiffs and the Class Members
13 were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
14 itemized statement showing, among other items, 1) gross wages earned; 2) total hours worked,
15 except for any employee whose compensation is solely based on a salary and who is exempt from
16 payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial
17 Welfare Commission; 3) net wages earned; and 4) all applicable hourly rates in effect during the
18 pay period and the corresponding number of hours worked at each hourly rate by the employee.

19 70. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
20 injury if the employer fails to provide a wage statement. Additionally, an employee is deemed to
21 suffer injury if the employer fails to provide accurate and complete information as required by
22 California Labor Code § 226(a) and the employee cannot "promptly and easily determine" from
23 the wage statement alone one or more of the following:

24 A. The amount of the gross wages or net wages paid to the employee during
25 the pay period or any of the other information required to be provided on the itemized wage
26 statement pursuant to California Labor Code § 226(a);

27 B. Which deductions the employer made from gross wages to determine the
28 net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name



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1 and address of the legal entity that secured the services of the employer during the pay period;
2 and

3 D. The name of the employee and only the last four digits of his or her social
4 security number or an employee identification number other than a social security number.

5 71. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
6 means a reasonable person would be able to readily ascertain the information without reference
7 to other documents or information.

8 72. At all relevant times during the applicable limitations period, Defendants violated
9 California Labor Code § 226 because it did not properly and accurately itemize each Class
10 Member’s gross wages earned, net wages earned, the total hours worked, the corresponding
11 number of hours worked at each rate by the employee, and other requirements of California Labor
12 Code § 226. Defendants failed to state in the wage statements they issued to Plaintiffs and the
13 Class all their hours worked and wages earned, including, but not limited to, minimum, regular
14 overtime, and double time wages for work they performed off-the-clock during their meal periods
15 and while traveling between company locations.

16 73. As a result, Defendants have failed to properly and accurately itemize each
17 employee’s gross wages earned, net wages earned, the total hours worked, the corresponding
18 number of hours worked by employees, and other requirements of California Labor Code § 226.
19 As a result, Defendants have violated California Labor Code § 226.

20 74. Defendants’ failure to provide Plaintiffs and the Class Members with accurate
21 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiffs
22 and the Class with accurate wage statements but intentionally provided wage statements that
23 Defendants knew were not accurate.

24 As a result of being provided with inaccurate wage statements by Defendants, Plaintiffs and the
25 Class have suffered injury. Their legal rights to receive accurate wage statements were violated
26 and they were misled about the amount of wages they had actually earned and were owed. In
27 addition, the absence of accurate information on their wage statements prevented immediate
28 challenges to Defendants’ unlawful pay practices, has required discovery and mathematical
computations to determine the amounts of wages owed, has caused difficulty and expense in
attempting to reconstruct time and pay records and/or has led to the submission of inaccurate



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1 information about wages to state and federal government agencies. Further, Plaintiffs and the
2 Class Members were not able to ascertain from the wage statements whether Defendants
3 complied with their obligations under California Labor Code § 226(a).

4 **FIFTH CAUSE OF ACTION**

5 **WAITING TIME PENALTIES**

6 **(Lab. Code §§ 201-203)**

7 **(By Plaintiffs and the Class against all Defendants)**

8 75. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

9 76. At all relevant times during the applicable limitations period, Plaintiffs and the
10 Class Members have been non-exempt employees of Defendants and entitled to the benefits and
11 protections of California Labor Code §§ 201-203 and the Wage Order.

12 77. California Labor Code § 201 provides that all earned and unpaid wages of an
13 employee who is discharged are due and payable immediately at the time of discharge.

14 78. California Labor Code § 202 provides that all earned and unpaid wages of an
15 employee who quits after providing at least 72-hours notice before quitting are due and payable
16 at the time of quitting and that all earned and unpaid wages of an employee who quits without
17 providing at least 72-hours notice before quitting are due and payable within 72 hours.

18 79. By failing to pay earned regular, overtime, and double time wages to Plaintiffs
19 and the Class Members, Defendants failed to timely pay them all earned and unpaid wages in
20 violation of California Labor Code § 201 or § 202.

21 80. Plaintiffs are informed and believe that Defendants' failures to timely pay all final
22 wages to them and the Class Members have been willful in that Defendants have the ability to
23 pay final wages in accordance with California Labor Code §§ 201 and 202 but have intentionally
24 adopted policies or practice that are incompatible with those requirements.

25 81. California Labor Code § 203 provides that the wages of an employee continue on
26 a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned
27 and unpaid wages to the employee in accordance with California Labor Code § 201 or § 202.

28 82. Plaintiffs are informed and believe that Defendants' failures to timely pay
Plaintiffs and the Class Members all of their earned and unpaid wages have been willful in that,
at all relevant times, Defendants have deliberately maintained policies and practices that violate



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1 the requirements of the Labor Code and the Wage Order even though, at all relevant times, they
2 have had the ability to comply with those legal requirements.

3 83. Pursuant to California Labor Code § 203, Plaintiffs seek waiting time penalties
4 on behalf of the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties
5 for each Class Member.

6 **SIXTH CAUSE OF ACTION**

7 **UNFAIR COMPETITION**

8 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

9 **(By Plaintiffs and the Class against all Defendants)**

10 84. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

11 85. At all relevant times, Plaintiffs and the Class Members have been employees of
12 Defendants and entitled to the benefits and protections of the Business and Professions Code §§
13 17200, *et seq.*

14 86. The unlawful conduct of Defendants alleged herein amounts to and constitutes
15 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
16 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
17 gained a competitive advantage over other comparable companies doing business in California
18 that comply with their legal obligations to, among other things, pay their employees premium
19 wages for workdays in which they did not provide employees with one or more meal and rest
20 period, reimburse their employees for reasonable expense incurred during the course of
21 performing their duties, and pay them all wages earned.

22 87. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and the
23 Class Members have suffered injuries in fact and have lost money or property. Defendants
24 deprived Plaintiffs and the Class Members of regular wages, overtime wages, double time wages,
25 premium wages for all workdays one or more meal periods was not provided, premium wages
26 for all workdays a rest period was not provided, and reimbursement for expenses that Plaintiffs
27 and the other Class Members incurred during the course of performing their duties.

28 88. Pursuant to California Business & Professions Code § 17203, Plaintiffs and the
Class Members are entitled to restitution of all monies rightfully belonging to them that
Defendants did not pay them or otherwise retained by means of their unlawful and unfair business



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1 practices.

2 89. Plaintiffs and the Class are entitled to reasonable attorneys' fees in connection
3 with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the
4 substantial benefit doctrine and/or the common fund doctrine.

5 90. Accordingly, with respect to this cause of action, on behalf of themselves and the
6 Class, Plaintiffs pray for the herein stated relief, and an award of all reasonable costs and
7 attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

8 **SEVENTH CAUSE OF ACTION**

9 **CIVIL PENALTIES**

10 **(By Plaintiffs and the Class against all Defendants)**

11 91. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

12 92. The "Aggrieved Employees" are all members of the above-defined Class whom
13 Defendants employed during the period beginning May 28, 2019 and ending on the date that final
14 judgment is entered in this action.

15 93. Labor Code § 204 states

16 (a) All wages, other than those mentioned in Section 201, 201.3, 201.4, or
17 204.2, earned by any person in any employment are due and payable twice during
18 each calendar month, on days designated in advance by the employer as the
19 regular paydays. Labor performed between the 1st and 15th days, inclusive, of
20 any calendar month shall be paid for between the 16th and 26th day of the month
21 during which the labor was performed, and labor performed between the 16th and
22 last day, inclusive, of any calendar month, shall be paid between the 1st and 10th
23 day of the following month. . . .

24 (b) (1) Notwithstanding any other provision of this section, all wages
25 earned for labor in excess of the normal work period shall be paid no later than
26 the payday for the next regular payroll period.

27 (2) An employer is in compliance with the requirements of subdivision (a) of
28 Section 226 relating to total hours worked by the employee, if hours worked in
excess of the normal work period during the current pay period are itemized as
corrections on the paystub for the next regular pay period. Any corrections set out
in a subsequently issued paystub shall state the inclusive dates of the pay period
for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining
agreement that provides different pay arrangements, those arrangements shall
apply to the covered employees.



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(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

94. Defendants paid wages to employees on semimonthly intervals. Defendants failed to pay Plaintiffs on such intervals for all wages earned and all hours worked. On information and belief, Plaintiffs allege that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

95. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

96. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

A. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of Defendants’ violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts: For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each aggrieved employee for initial violations and one thousand dollars (\$1,000.00) for each aggrieved employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

D. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for initial violations and one hundred dollars (\$100.00) for each aggrieved employee for each subsequent violation, per pay period (penalty amounts

1 established by California Labor Code § 558).

2 E. For violations of California Labor Code § 1174, five hundred dollars
3 (\$500.00) for each aggrieved employee for each violation (penalty amounts established by
4 California Labor Code § 1174.5).

5 F. For violations of California Labor Code § 1197, one hundred dollars
6 (\$100.00) for each aggrieved employee per pay period for each initial and intentional violation
7 and two hundred fifty dollars (\$250.00) for each aggrieved employee per pay period for each
8 subsequent violation (regardless of whether the initial violations were intentionally committed)
(penalty amounts established by California Labor Code § 1197.1).

9 G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
10 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for
11 each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
12 period for each subsequent violation (penalty amounts established by California Labor Code §
13 2699(f)(2)).

14 97. Plaintiff has complied with the procedures for bringing suit specified in California
15 Labor Code § 2699.3. By letters dated May 28, 2020, Plaintiffs each filed written notice online
16 with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by
17 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
18 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
19 each accompanied their individual letters with fees in the amount of \$75.00. True and correct
20 copies of Plaintiffs’ written notices to the LWDA, both dated May 28, 2020, are collectively
attached hereto as **Exhibit A**. The LWDA has not responded to Plaintiffs’ letters.

21 98. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
22 Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in
23 connection with their claims for civil penalties.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for relief and
26 judgment against Defendants as follows:

- 27 A. An order that the action be certified as a class action;
28 B. An order that Plaintiffs be appointed class representatives;



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- C. An order that counsel for Plaintiffs be appointed class counsel;
- D. Unpaid wages;
- E. Actual damages;
- F. Statutory damages;
- G. Liquidated damages;
- H. Restitution;
- I. Declaratory relief;
- J. Equitable relief;
- K. Statutory penalties;
- L. Civil Penalties;
- M. Pre-judgment and post-judgment interest;
- N. Costs of suit;
- O. Interest;
- P. Reasonable attorneys' fees; and
- Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM



Dated: August 3, 2020

By: _____
DAVID SPIVAK
CARL KAPLAN
Attorneys for Plaintiffs, TAJE WILLIAMS and
ALEXANDER DELEON, and all others
similarly situated



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

May 28, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Taje Williams / Security Enforcement Alliance, Inc.*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Taje Williams (hereafter “Williams”) provides notice on behalf of himself and all individuals currently and formerly employed or contracted with in California as hourly security guard employees and individuals in comparable positions, who performed similar duties or were paid by the hour (hereafter “Aggrieved Employees”) by Security Enforcement Alliance, Inc., a California corporation (hereafter “Security Alliance”), of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198, and 2802.

At all relevant times, Security Alliance has employed persons, conducted business in and engaged in illegal payroll practices and policies in California. Williams and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter the “Wage Order”), paragraph 2.F and “aggrieved employees” within the meaning of California Labor Code § 2699(c).

/

/

Statement of Facts

On or about January 10, 2019, Security Alliance first employed Williams to work in California as an hourly security guard. Williams continuously worked for Security Alliance in this capacity until on or about August 1, 2019, when Security Alliance relocated him to another worksite in Vallejo, California. At the time of his relocation, Security Alliance informed Williams that his new worksite had no open shifts for him to work. Security Alliance further informed Williams that, despite being unable to provide Williams with work shifts, if he wished to end his employment with Security Alliance, he would have to resign. Williams currently remains assigned to the Vallejo worksite with no scheduled work shifts.

At all relevant times, Security Alliance employed Williams and the Aggrieved Employees at an hourly rate of pay and issued their paychecks on a semi-monthly basis. At all relevant times, Security Alliance classified Williams and the Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, as a result of its staffing choices, Security Alliance failed to provide Williams and the Aggrieved Employees with an off-duty, 30-minute meal period when before the end of the fifth hour worked, or with a second off-duty, 30-minute meal period on workdays of over ten hours. Security Alliance typically scheduled Williams and the Aggrieved Employees to work shifts during which only one (or at most two) of them was on duty. As a result of this understaffing, Security Alliance prohibited Williams and the Aggrieved Employees from taking off-duty meal periods and rest periods. Security Alliance did not enter into on-duty meal period agreements with Williams or any of the Aggrieved Employees, nor did the nature of their work require on-duty meal breaks or rest periods.

At all relevant times, Security Alliance also failed to authorize and permit Williams and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof, nor did Security Alliance seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement.

Security Alliance further failed to pay Williams and the Aggrieved Employees premium wages for occasions on which they worked during their meal breaks and rest periods.

Security Alliance further required Williams and the Aggrieved Employees to travel between worksites for company business while clocked out for work. Security Alliance failed to pay all regular and overtime wages for this time spent traveling between company locations while clocked out for work. Additionally, Security Alliance failed to reimburse Williams and the Aggrieved Employees for their mileage-related expenses. At relevant times within the applicable limitations period, Security Alliance frequently required Williams and the Aggrieved Employees to travel approximately 30 miles in the same workday while clocked out for work.

Further, at all relevant times, Security Alliance assigned Williams and the Aggrieved Employees to work double shifts. Security Alliance paid Williams and the Aggrieved Employees on a straight time basis for their second shifts, instead of at overtime and double time rates.

As set forth below, Williams alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- a) Security Alliance failed to provide Williams and the Aggrieved Employees with all off-duty meal periods;

- b) Security Alliance failed to provide Williams and the Aggrieved Employees with all rest periods as required by law;
- c) Security Alliance failed to pay Williams and the Aggrieved Employees an additional hour's pay for days in which it failed to provide them with one or more meal periods;
- d) Security Alliance failed to pay Williams and the Aggrieved Employees an additional hour's pay for days in which it failed to provide them with one or more rest periods in a workday;
- e) Security Alliance failed to compensate Williams and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, regular and overtime wages for work performed while traveling between company locations, and overtime and double time wages for work performed during second shifts in the same workday;
- f) Security Alliance failed to indemnify Williams and the Aggrieved Employees for all necessary business expenditures incurred in the discharge of their duties;
- g) Security Alliance failed to provide Williams and the Aggrieved Employees with accurate and complete wage statements;
- h) Security Alliance failed to timely pay Williams and the Aggrieved Employees all earned and unpaid wages during employment; and
- i) Security Alliance failed to timely pay those Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

Accordingly, Williams now seeks civil penalties on behalf of himself and the Aggrieved Employees based on Security Alliance alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to “all persons employed in professional, technical, clerical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis.” § 1. Occupations covered by the terms “professional, technical, clerical, mechanical, and similar occupations” include, but are not limited to, “guards.” § 2(O). At all relevant times during the applicable limitations period, Williams was employed by Security Alliance as a security guard. Accordingly, Williams and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Provide Rest Breaks and Meal Periods **(Lab. Code §§ 226.7, 512 and 1198)**

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

- (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.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

...

- (D) If an employer fails to provide an employee a meal 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 meal period is not provided.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the 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 of compensation for each workday that the meal or rest period is not provided.

Section 17 of the Wage Order states:

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and

Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the division.

Security Alliance intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Williams and the Aggrieved Employees as required by law. Additionally, Security Alliance required Williams and the Aggrieved Employees to take on duty meal periods without obtaining written consent of Williams or any of the Aggrieved Employees. Further, Security Alliance failed to apply for an exemption from California's rest period law. As a result, Security Alliance violated California Labor Code §§ 226.7, 512 and 1198.

Accordingly, Williams seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 226.7 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 226.7 occurred (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 512 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 512 occurred in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and

3. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 1198 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 1198 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure To Pay All Wages Earned For All Hours Worked
(Lab. Code §§ 510, 1194, 1197, and 1198)

In relevant part, California Labor Code § 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of

pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ($1 \frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Under Labor Code § 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

At all relevant times during the applicable limitations period, Security Alliance failed to compensate Williams and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to all regular and overtime wages for all hours they spent traveling between Security Alliance’s worksites on company business while clocked out for work, and all overtime and double time wages for all hours they spent while working second shifts in the same workday.

Accordingly, Williams seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code Section 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Indemnify for Expenses
(Lab. Code § 2802)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

At relevant times during the applicable limitations period, Security Alliance required Williams and the Aggrieved Employees to travel between company locations for company business, and failed to indemnify them for their mileage expenses.

Accordingly, Williams seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 2802 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 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.

At all relevant times during the applicable limitations period, Security Alliance violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Security Alliance failed to state in the wage statements it issued to Williams and the Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock during their meal periods and while traveling between company locations.

Accordingly, Williams seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance

by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Security Alliance's failure to pay Williams and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Security Alliance failed to timely pay all wages due during employment. As a result, Security Alliance has violated California Labor Code § 204.

Accordingly, Williams seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee per pay period for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment
(Lab. Code §§ 201, 202 and 203)

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under California Labor Code § 202, if an employee, not having a written contract for a definite period, quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to

his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As alleged herein, Security Alliance failed to provide Williams and the Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided and all regular and overtime wages for work performed off-the-clock during meal periods and while traveling between company locations. As a result, Security Alliance failed to pay Williams and the Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Security Alliance has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Williams seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. 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. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of the Wage Order states:

- (A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Security Alliance has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Williams and the Aggrieved Employees during their meal periods and while traveling between work locations. Accordingly, Williams seeks

civil penalties from Security Alliance on behalf of himself and other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Taje Williams
Walter Haines, Esq.

Security Enforcement Alliance, Inc.
c/o Agent for Service of Process
Juan Garcia
19350 Meekland Ave.
Hayward, CA 94541

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

May 28, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Alexander DeLeon / Security Enforcement Alliance, Inc.*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Alexander DeLeon (hereafter “DeLeon”) provides notice on behalf of himself and all individuals currently and formerly employed or contracted with in California as hourly security guard employees and individuals in comparable positions, who performed similar duties or were paid by the hour (hereafter “Aggrieved Employees”) by Security Enforcement Alliance, Inc., a California corporation (hereafter “Security Alliance”), of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198, and 2802.

At all relevant times, Security Alliance has employed persons, conducted business in and engaged in illegal payroll practices and policies in California. DeLeon and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter the “Wage Order”), paragraph 2.F and “aggrieved employees” within the meaning of California Labor Code § 2699(c).

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Statement of Facts

In or about January of 2017, Security Alliance first employed DeLeon to work in California as a security guard. DeLeon continuously worked for Security Alliance as a full-time employee until approximately February of 2019, when he began to work for Security Alliance on a part-time basis. DeLeon currently remains a part-time employee of Security Alliance.

At all relevant times, Security Alliance employed DeLeon and the Aggrieved Employees at an hourly rate of pay and issued their paychecks on a semi-monthly basis. At all relevant times, Security Alliance classified DeLeon and the Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At relevant times within the applicable limitations period, as a result of its staffing choices, Security Alliance failed to provide DeLeon and the Aggrieved Employees with an off-duty, 30-minute meal period when before the end of the fifth hour worked, or with a second off-duty, 30-minute meal period on workdays of over ten hours. Security Alliance typically scheduled DeLeon and the Aggrieved Employees to work shifts during which only one of them was on duty. As a result of this understaffing, Security Alliance regularly prohibited DeLeon and the Aggrieved Employees from taking off-duty meal periods. Security Alliance did not enter into on-duty meal period agreements with DeLeon or any of the Aggrieved Employees, nor did the nature of their work require on-duty meal breaks or rest periods.

At relevant times within the applicable limitations period, Security Alliance also failed to authorize and permit DeLeon and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof, nor did Security Alliance seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement.

Security Alliance further failed to pay DeLeon and the Aggrieved Employees premium wages for occasions on which they worked during their meal breaks and rest periods.

Security Alliance further required DeLeon and the Aggrieved Employees to travel between worksites for company business while clocked out for work. Security Alliance failed to pay all regular and overtime wages for this time spent traveling between company locations while clocked out for work. Additionally, Security Alliance failed to reimburse DeLeon and the Aggrieved Employees for their mileage-related expenses. At relevant times within the applicable limitations period, Security Alliance frequently required DeLeon and the Aggrieved Employees to travel approximately 30 miles in the same workday while clocked out for work.

Further, at all relevant times, Security Alliance assigned DeLeon and the Aggrieved to work double shifts. Security Alliance paid DeLeon and the Aggrieved Employees on a straight-time basis for their second shifts, instead of at overtime and double time rates.

As set forth below, DeLeon alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- a) Security Alliance failed to provide DeLeon and the Aggrieved Employees with all off-duty meal periods;
- b) Security Alliance failed to provide DeLeon and the Aggrieved Employees with all rest periods as required by law;
- c) Security Alliance failed to pay DeLeon and the Aggrieved Employees an additional hour's pay for days in which it failed to provide them with one or more meal periods;

- d) Security Alliance failed to pay DeLeon and the Aggrieved Employees an additional hour's pay for days in which it failed to provide them with one or more rest periods in a workday;
- e) Security Alliance failed to compensate DeLeon and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, regular and overtime wages for work performed while traveling between company locations, and overtime and double time wages for work performed during second shifts in the same workday;
- f) Security Alliance failed to indemnify DeLeon and the Aggrieved Employees for all necessary business expenditures incurred in the discharge of their duties;
- g) Security Alliance failed to provide DeLeon and the Aggrieved Employees with accurate and complete wage statements;
- h) Security Alliance failed to timely pay DeLeon and the Aggrieved Employees all earned and unpaid wages during employment; and
- i) Security Alliance failed to timely pay those Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

Accordingly, DeLeon now seeks civil penalties on behalf of himself and the Aggrieved Employees based on Security Alliance alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to “all persons employed in professional, technical, clerical, mechanical, and similar occupations whether paid on a time, piece rate,

commission, or other basis.” § 1. Occupations covered by the terms “professional, technical, clerical, mechanical, and similar occupations” include, but are not limited to, “guards.” § 2(O). At all relevant times during the applicable limitations period, DeLeon was employed by Security Alliance as a security guard. Accordingly, DeLeon and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Provide Rest Breaks and Meal Periods
(Lab. Code §§ 226.7, 512 and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

- (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.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

...

- (D) If an employer fails to provide an employee a meal 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 meal period is not provided.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the 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 of compensation for each workday that the meal or rest period is not provided.

Section 17 of the Wage Order states:

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division

in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the division.

At relevant times, Security Alliance intentionally failed to provide rest breaks and/or meal periods free from any work duties to DeLeon and the Aggrieved Employees as required by law. Additionally, Security Alliance required DeLeon and the Aggrieved Employees to take on duty meal periods without obtaining written consent of DeLeon or any of the Aggrieved Employees. Further, Security Alliance failed to apply for an exemption from California's rest period law. As a result, Security Alliance violated California Labor Code §§ 226.7, 512 and 1198.

Accordingly, DeLeon seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 226.7 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 226.7 occurred (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 512 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 512 occurred in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 1198 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 1198 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure To Pay All Wages Earned For All Hours Worked

(Lab. Code §§ 510, 1194, 1197, and 1198)

In relevant part, California Labor Code § 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Under Labor Code § 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

At all relevant times during the applicable limitations period, Security Alliance failed to compensate DeLeon and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for all hours s they spent traveling between Security Alliance's worksites on company business while clocked out for work, and all overtime

and double time wages for all hours they spent while working second shifts in the same workday.

Accordingly, DeLeon seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code Section 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Indemnify for Expenses

(Lab. Code § 2802)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

At relevant times during the applicable limitations period, Security Alliance required DeLeon and the Aggrieved Employees to travel between company locations for company business, and failed to indemnify them for their mileage expenses.

Accordingly, DeLeon seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 2802 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 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.

At all relevant times during the applicable limitations period, Security Alliance violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Security Alliance failed to state in the wage statements it issued to DeLeon and the Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock during their meal periods and while traveling between company locations.

Accordingly, DeLeon seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Security Alliance's failure to pay DeLeon and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Security Alliance failed to timely pay all wages due during employment. As a result, Security Alliance has violated California Labor Code § 204.

Accordingly, DeLeon seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee per pay period for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment
(Lab. Code §§ 201, 202 and 203)

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under California Labor Code § 202, if an employee, not having a written contract for a definite period, quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As alleged herein, Security Alliance failed to provide DeLeon and the Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided and all regular and overtime wages for work performed off-the-clock during meal periods and while traveling between company locations. As a result, Security Alliance failed to pay DeLeon and the Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Security Alliance has violated California Labor Code §§ 201, 202 and 203.

Accordingly, DeLeon seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. 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. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of the Wage Order states:

- (A) Every employer shall keep accurate information with respect to each employee including the following:
 - (1) Full name, home address, occupation and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.

- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Security Alliance has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by DeLeon and the Aggrieved Employees during their meal periods and while traveling between work locations. Accordingly, DeLeon seeks civil penalties from Security Alliance on behalf of himself and other Aggrieved Employees as follows:

- 1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and

2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

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cc: Alexander DeLeon
Walter Haines, Esq.

Security Enforcement Alliance, Inc.

c/o Agent for Service of Process

Juan Garcia

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