

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: HAMMER HEAD SECURITY, INC., a
(**AVISO AL DEMANDADO**): California corporation; HAMMER HEAD
SECURITY SERVICES, INC., a California corporation; and DOES 1-50, inclusive

YOU ARE BEING SUED BY PLAINTIFF: PETER BARRERA, JR., on behalf of
(**LO ESTÁ DEMANDANDO EL DEMANDANTE**): himself and all others similarly
situated, and as an "aggrieved employee" on behalf of other "aggrieved employees"
under the labor Code Private Attorneys General Act of 2004

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

Electronically Filed
1/21/2021 10:14 AM
Superior Court of California
County of Stanislaus
Clerk of the Court
By: Kimberly Mean, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of Stanislaus
801 10th Street
Modesto, California 95354

CASE NUMBER:
(Número del Caso): CV-21-000268

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: David Spivak, Esq.
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

The Spivak Law Firm
16530 Ventura Blvd., Ste. 203, Encino, CA 91436

DATE: 1/21/2021 10:14 AM
(Fecha)

Clerk, by _____, Deputy
(Secretario) _____ (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

Kimberly Mean

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David Spivak, Esq./Carl Kaplan, Esq. SBN: 179684/285680 The Spivak Law Firm 16530 Ventura Blvd., Ste. 203, Encino, CA 91436 TELEPHONE NO.: 818-582-3086 FAX NO.: 818-582-2561 ATTORNEY FOR (Name): Peter Barrera		FOR COURT USE ONLY Electronically Filed 1/21/2021 10:14 AM Superior Court of California County of Stanislaus Clerk of the Court By: Kimberly Mean, Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS STREET ADDRESS: 801 10th Street MAILING ADDRESS: 801 10th Street CITY AND ZIP CODE: Modesto, 95354 BRANCH NAME: City Towers Courthouse (Civil)			
CASE NAME: PETER BARRERA, JR., et al., v. HAMMER HEAD SECURITY, INC., et al.			
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)		Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: CV-21-000268
		JUDGE: DEPT:	

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. ☒ Large number of separately represented parties | d. ☒ Large number of witnesses |
| b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☒ Substantial amount of documentary evidence | f. ☐ Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): Seven (7)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 01 / 19 / 2021

Carl Kaplan, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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5 THE SPIVAK LAW FIRM

6 16530 Ventura Blvd., Suite 203

7 Encino, CA 91436

8 Telephone (818) 582-3086

9 Facsimile (818) 582-2561

10 Attorneys for Plaintiff,

11 PETER BARRERA, JR., and all others similarly situated

12 (Additional attorneys for Plaintiff on following page)

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

14 **FOR THE COUNTY OF STANISLAUS**

15 **(UNLIMITED JURISDICTION)**

16 PETER BARRERA, JR., on behalf of himself
17 and all others similarly situated, and as an
18 "aggrieved employee" on behalf of other
19 "aggrieved employees" under the labor Code
20 Private Attorneys General Act of 2004,

21 *Plaintiff(s),*

22 vs.

23 HAMMER HEAD SECURITY, INC., a
24 California corporation; HAMMER HEAD
25 SECURITY SERVICES, INC., a California
26 corporation; and DOES 1-50, inclusive,

27 *Defendant(s).*

Electronically Filed

1/21/2021 10:14 AM

Superior Court of California

County of Stanislaus

Clerk of the Court

By: Kimberly Mean, Deputy

\$1,435 PD

Case No.: CV-21-000268

CLASS ACTION

COMPLAINT FOR:

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

JURY TRIAL DEMANDED

Sandhu, Sonny S.

This case has been assigned to Judge

Department Dept. 24 for all purposes including Trial.



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ADDITIONAL ATTORNEY FOR PLAINTIFF

Walter Haines (SBN 71075)
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1 Plaintiff PETER BARRERA, JR. (hereafter “Plaintiff”), on behalf of himself and all
2 others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

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

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

24 **JURISDICTION AND VENUE**

25 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff
26 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, Plaintiff asserts claims on behalf of himself 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 Stanislaus County pursuant to California Code of Civil



1 Procedure § 395(a) and § 395.5 in that liability arose in Stanislaus 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 PETER BARRERA, JR. is a resident of California.

6 8. Defendant HAMMER HEAD SECURITY INC. is a corporation organized and
7 existing under the laws of California based on Plaintiff's information and belief.

8 9. Defendant HAMMER HEAD SECURITY SERVICES INC. is a corporation
9 organized and existing under the laws of California based on Plaintiff's information and belief.

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

16 11. Plaintiff is informed and believes and thereon alleges that, at all relevant times
17 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
18 remaining Defendants, and in doing the things hereinafter alleged, were acting within the course
19 and scope of such agency or employment, and with the approval and ratification of each of the
20 other Defendants.

21 12. At all relevant times, in perpetrating the acts and omissions alleged herein,
22 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
23 of a practice which resulted in Defendants not paying Plaintiff and the Class in accordance with
24 applicable California labor laws as alleged herein.

25 13. Plaintiff is informed and believes and thereon alleges that each and every one of
26 the acts and omissions alleged herein were performed by, and/or are attributable to, all
27 Defendants, each acting as agents and/or employees, and/or under the direction and control of
28 each of the other Defendants, and that said acts and failures to act were within the course and
scope of said agency, employment, and/or direction and control.

CLASS ALLEGATIONS

14. This action has been brought and may be maintained as a class action pursuant to



1 California Code of Civil Procedure § 382 because there is a well-defined community of interest
2 among the persons who comprise the readily ascertainable class defined below and because
3 Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class
4 action.

5 15. **Class Definition:** The Class is defined as follows: all individuals Defendants
6 employed in California and paid on an hourly basis, including but not limited to security guards
7 and workers employed in comparable positions, at any time during the period beginning four
8 years prior to the filing of this action and ending on the date that final judgment is rendered in
9 this action.

10 16. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
11 right to amend or modify the class definitions with greater specificity, by further division into
12 subclasses and/or by limitation to particular issues.

13 17. **Numerosity:** The Class is so numerous that the joinder of each individual class
14 member is impractical. While Plaintiff does not currently know the exact number of the Class,
15 Plaintiff is informed and believes that the actual number exceeds the minimum required for
16 numerosity under California law.

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

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

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

24 C. Whether Defendants failed to compensate the Class Members at one
25 hour's pay on days when Defendants failed to provide them with one or more rest periods in a
26 workday.

27 D. Whether Defendants failed to compensate the Class Members at one
28 hour's pay on days when Defendants failed to provide them with one or more off-duty meal
periods in a workday;

E. Whether Defendants failed to pay all wages earned to Class Members for
all hours worked at the correct rates of pay;



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1 F. Whether Defendants failed to indemnify Plaintiff and the Class for all
2 necessary business expenditures incurred in the discharge of their duties;

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

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

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

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

11 K. Whether the Class Members are entitled to prejudgment interest; and

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

13 19. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
14 Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice, or
15 a lack of a policy which resulted in Defendants failing to comply with the California Labor Code
16 and the Business and Professions Code as alleged herein.

17 20. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
18 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
19 class. Plaintiff is dedicated to vigorously prosecuting this action on behalf of the Class. Plaintiff
20 will fairly and adequately represent and protect the interests of the Class.

21 21. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in
22 that they have no known conflicts of interest with Plaintiff or absent Class Members, are
23 experienced in class action litigation and are dedicated to vigorously prosecuting this action on
24 behalf of Plaintiff and the absent Class.

25 22. **Superiority:** A class action is vastly superior to other available means for fair and
26 efficient adjudication of class' claims and would be beneficial to the parties and the Court. Class
27 action treatment will allow a number of similarly situated persons to simultaneously and
28 efficiently prosecute their common claims in a single forum without the unnecessary duplication
of effort and expense that numerous individual actions would entail. In addition, the monetary
amounts due to many individual class members are likely to be relatively small and would thus
make it difficult, if not impossible, for individual class members to both seek and obtain relief.



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Moreover, a class action will serve an important public interest by permitting class to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

STATEMENT OF FACTS

23. In approximately February of 2018, Defendants first employed Plaintiff to work in California as an hourly security guard. Plaintiff continuously worked for Defendants in this capacity or as an hourly lead from his hire date until on or about March 15, 2020, when his employment ended.

24. At all relevant times, Defendants employed Plaintiff and the Class Members at an hourly rate of pay and issued their paychecks on a bi-weekly basis. At all relevant times, Defendants classified Plaintiff and the Class as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order. At all relevant times, Defendants scheduled Plaintiff and the Class to work shifts of twelve or more hours.

25. At all relevant times, Defendants scheduled Plaintiff and the Class to work shifts during which only one the Class Members was on duty. As a result of Defendants' staffing choices, Defendants failed to provide Plaintiff and the Class 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 before the end of the tenth hour worked on workdays of over ten hours. Defendants required Plaintiff and the Class to remain at their workstations during their meal and rest periods. As a result of Defendants' understaffing, Defendants frequently required Plaintiff and the Class to interrupt their meal periods and rest breaks in order to assist with cash drops and customer disturbances. Defendants required Plaintiff and the Class Members to sign on-duty meal period agreements even though the nature of their work as private security guards did not prevent them from taking off-duty meal periods.

26. At relevant times, Defendants also failed to authorize and permit Plaintiff and the Class to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. On information and belief, Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Defendants further failed to pay premium wages for days on which it failed to provide Plaintiff and the Class with all timely off-duty meal and rest periods.

27. At all relevant times, Defendants required Plaintiffs and the Class to work off-the-



1 clock and without pay. For example, Defendants required Plaintiff and the Class to arrive to their
2 worksites before their scheduled start times in order to participate in “pass downs,” in which
3 Plaintiff and the Class Members would receive briefings from employees on the preceding shift.
4 Such pass downs typically took ten to fifteen minutes to complete.

5 28. Additionally, at all relevant times, Defendants failed to pay Plaintiff and the Class
6 all wages owed for all hours worked at the correct rates of pay. Although Defendants regularly
7 scheduled Plaintiff and the Class to work shifts exceeding twelve hours in length, it paid the
8 majority of Plaintiff’s and the Class Members’ wages earned for work performed after the eighth
9 hour of work in cash, and failed to include such wages in Plaintiff’s and the Class Members’
10 wage statements. Further, Defendants’ cash payments to Plaintiff and the Class failed to include
11 double time wages for work performed after the twelfth hour of work. Instead, Defendants
12 underpaid for such time worked at overtime rates of 1½ times the regular rate of pay.

13 29. Defendants also failed to reimburse Plaintiffs and the Class for necessary, work
14 related expenses. At all relevant times within the applicable limitations period, Defendants
15 required Plaintiff and the Class to use their personal mobile phones to clock in and out from
16 work. Defendants also frequently contacted Plaintiff and the Class Members on their personal
17 mobile phones at the beginning and end of their shifts. Defendants did not provide Plaintiff and
18 the Class with mobile phones and failed to reimburse them for such mobile phone use.

19 30. For the reasons stated herein, Plaintiff alleges the following violations of the
20 California Labor Code and Wage Order:

21 A. Defendants failed to provide Plaintiff and the Class with all off-duty meal
22 periods;

23 B. Defendants failed to provide Plaintiff and the Class with all rest periods as
24 required by law;

25 C. Defendants failed to pay Plaintiff and the Class an additional hour’s pay
26 for days on which Defendants failed to provide them with one or more meal periods in a workday;

27 D. Defendants failed to pay Plaintiff and the Class an additional hour’s pay
28 for days on which Defendants failed to provide them with one or more rest periods in a workday;

E. Defendants failed to compensate Plaintiff and the Class for all hours
worked at the correct rates of pay, including, but not limited to, all regular, overtime, and double
time wages for work performed while off-the-clock and double time wages for work performed



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1 after the twelfth hour of work;

2 F. Defendants failed to indemnify Plaintiff and the Class for all necessary
3 business expenditures incurred in the discharge of their duties;

4 G. Defendants failed to provide Plaintiff and the Class with accurate and
5 complete wage statements;

6 H. Defendants failed to timely pay Plaintiff and the Class all earned and
7 unpaid wages during employment; and

8 I. Defendants failed to timely pay Plaintiff and those Class Members who
9 are former employees all earned and unpaid wages at the time of separation from employment.

10 **FIRST CAUSE OF ACTION**

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

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

13 **(By Plaintiff and the Class against all Defendants)**

14 31. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 32. At all relevant times during the applicable limitations period, Plaintiff and the
16 Class Members have been employees of Defendants and entitled to the benefits and protections
17 of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

18 33. In relevant part, California Labor Code § 1198 states:

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

24 34. In relevant part, In relevant part, California Labor Code § 512 states:

25 An employer shall not employ an employee for a work period of
26 more than five hours per day without providing the employee with
27 a meal period of not less than 30 minutes, except that if the total
28 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 shall 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



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period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

35. 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 work day that the rest period is not provided.”

36. 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 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.”

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



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(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.

38. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff 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.

39. Pursuant to the Wage Order, Plaintiff 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.

40. Defendants intentionally failed to provide Plaintiff and the Class Members with all required off-duty 30-minute duty free meal periods and 10-minute rest periods in accordance with the Wage Order.

41. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class with all off-duty meal periods and rest breaks required by California law.

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

43. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more off-duty

1 meal periods were not provided to them, and for workdays in which one or more rest breaks were
2 not provided to them.

3 **SECOND CAUSE OF ACTION**

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

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

6 44. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

7 45. At all relevant times, Plaintiff and the Class Members have been non-exempt
8 employees of Defendants and entitled to the benefits and protections of California Labor Code §
9 § 510, 1194, 1197, 1198, and the Wage Order.

10 46. Section 2 of the Wage Order defines “hours worked” as “the time during which an
11 employee is subject to the control of an employer, and includes all the time the employee is
12 suffered or permitted to work, whether or not required to do so.”

13 47. Section 3 of the Wage Order states:

14 **(A) Daily Overtime - General Provisions**

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

27 (a) One and one-half (1 ½) times the employee’s regular rate of
28 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



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1 nonexempt full-time salaried employee shall be computed by using
2 the employee's regular hourly salary as one-fortieth (1/40) of the
employee's weekly salary.

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

6 49. Labor Code section 510 states:

7 Eight hours of labor constitutes a day's work. Any work in excess
8 of eight hours in one workday and any work in excess of 40 hours
9 in any one workweek and the first eight hours worked on the
10 seventh day of work in any one workweek shall be compensated at
11 the rate of no less than one and one-half times the regular rate of
12 pay for an employee. Any work in excess of 12 hours in one day
13 shall be compensated at the rate of no less than twice the regular
14 rate of pay for an employee. In addition, any work in excess of
15 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. Nothing in this section requires an employer to
combine more than one rate of overtime compensation in order to
calculate the amount to be paid to an employee for any hour of
overtime work.

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

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

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

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

27 54. At all relevant times during the applicable limitations period, Defendants failed to
28 compensate Plaintiff and the Class for all hours worked at the correct rates of pay, including, but



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1 not limited to all regular, overtime, and double time wages for all hours they spent working while
2 clocked out for work, and all double time wages for work performed after the twelfth hour of
3 work in a workday which Defendants compensated at overtime rates.

4 55. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
5 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
6 failure to compensate the Class for all hours worked at the correct rate of pay as required by
7 California law.

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

12 57. Pursuant to California Labor Code § 1194, Plaintiff, on behalf of himself and Class
13 Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of
14 unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, including
15 interest thereon, as permitted by law, all in amounts subject to proof.

16 **THIRD CAUSE OF ACTION**
17 **FAILURE TO INDEMNIFY**
18 **(Lab. Code §§ 1198 & 2802)**

19 58. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

20 59. At all relevant times, Plaintiff and the class have been employees of Defendants
21 and entitled to the benefits and protections of the California Labor Code §§ 1198, 2802 and the
22 Wage Order.

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

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

28 62. At all relevant times during the applicable limitations period, Defendants required
Plaintiff and the Class to use their personal mobile telephones to clock in and out from work and
to communicate with Defendants as a necessary condition of employment. Defendants failed to
indemnify Plaintiff and the Class for expenses associated with this mobile phone use both during



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1 and after their employment ended.

2 63. By reason of the above, Plaintiff and the members of the class are entitled to
3 reimbursement for all necessary expenditures and losses and interest due and owing to within four
4 years (4) of the date of the filing of the Complaint until the date of entry of judgment pursuant to
5 California Labor Code § 2802(b). Further, Plaintiff, on behalf of himself and the members of the
6 Class seek reasonable attorney's fees pursuant to Labor Code § 2802(c).

7 **FOURTH CAUSE OF ACTION**

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

9 **(Lab. Code § 226)**

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

11 64. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

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

19 66. 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
and address of the legal entity that secured the services of the employer during the pay period;



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1 and

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

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

7 68. At all relevant times during the applicable limitations period, Defendants violated
8 Labor Code § 226 because they did not properly and accurately itemize each Class Member’s
9 gross wages earned, net wages earned, the total hours worked, the corresponding number of hours
10 worked at each rate by the employee, and other requirements of California Labor Code § 226.
11 Defendants failed to state in the wage statements they issued to Plaintiff and the Class all their
12 hours worked and wages earned, including but not limited to all regular, overtime, and double
13 time wages, as alleged herein.

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

18 70. Defendants’ failure to provide Plaintiff and the Class Members with accurate
19 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
20 the Class with accurate wage statements but intentionally provided wage statements that
21 Defendants knew were not accurate.

22 71. As a result of being provided with inaccurate wage statements by Defendants,
23 Plaintiff and the Class have suffered injury. Their legal rights to receive accurate wage statements
24 were violated and they were misled about the amount of wages they had actually earned and were
25 owed. In addition, the absence of accurate information on their wage statements prevented
26 immediate challenges to Defendants’ unlawful pay practices, has required discovery and
27 mathematical computations to determine the amounts of wages owed, has caused difficulty and
28 expense in attempting to reconstruct time and pay records and/or has led to the submission of
inaccurate information about wages to state and federal government agencies. Further, Plaintiff
and the Class Members were not able to ascertain from the wage statements whether Defendants
complied with their obligations under California Labor Code § 226(a).



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1 72. Pursuant to California Labor Code § 226(e), Plaintiff and the Class Members are
2 entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial
3 pay period in which a violation of California Labor Code § 226(a) occurred and one hundred
4 dollars for each violation of California Labor Code § 226(a) in a subsequent pay period, not to
5 exceed an aggregate penalty of four thousand dollars (\$4,000) per class member, and are also
6 entitled to an award of costs and reasonable attorneys' fees.

7 **FIFTH CAUSE OF ACTION**

8 **WAITING TIME PENALTIES**

9 **(Lab. Code §§ 201-203)**

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

11 73. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

12 74. At all relevant times during the applicable limitations period, Plaintiff and the
13 Class Members have been non-exempt employees of Defendants and entitled to the benefits and
14 protections of California Labor Code §§ 201-203 and the Wage Order.

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

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

21 77. By failing to pay all earned wages to Plaintiff and the Class Members as alleged
22 herein, Defendants failed to timely pay them all earned and unpaid wages in violation of
23 California Labor Code § 201 or § 202.

24 78. Plaintiff is informed and believes that Defendants' failures to timely pay all final
25 wages to him and the Class Members have been willful in that Defendants have the ability to pay
26 final wages in accordance with California Labor Code §§ 201 and 202 but have intentionally
27 adopted policies or practice that are incompatible with those requirements.

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

80. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff



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1 and the Class Members all of their earned and unpaid wages have been willful in that, at all
2 relevant times, Defendants have deliberately maintained policies and practices that violate the
3 requirements of the Labor Code and the Wage Order even though, at all relevant times, they have
4 had the ability to comply with those legal requirements.

5 81. Pursuant to California Labor Code § 203, Plaintiff seeks waiting time penalties
6 on behalf of himself and the Class, in amounts subject to proof not to exceed 30 days of waiting
7 time penalties for each Class Member.

8 **SIXTH CAUSE OF ACTION**

9 **UNFAIR COMPETITION**

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

11 **(By Plaintiff and the Class against all Defendants)**

12 82. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

13 83. At all relevant times, Plaintiff and the Class Members have been employees of
14 Defendants and entitled to the benefits and protections of the Business and Professions Code §§
15 17200, *et seq.*

16 84. The unlawful conduct of Defendants alleged herein amounts to and constitutes
17 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
18 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
19 gained a competitive advantage over other comparable companies doing business in California
20 that comply with their legal obligations to, among other things, pay their employees premium
21 wages for workdays in which they did not provide employees with one or more meal and rest
22 period, pay them all wages earned for all hours worked at the correct rates of pay, and indemnify
23 them for all necessary business expenditures.

24 85. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
25 Class Members have suffered injuries in fact and have lost money or property. Defendants
26 deprived Plaintiff and the Class Members of regular wages, overtime wages, double-time wages,
27 premium wages for all workdays one or more meal periods was not provided, and premium wages
28 for all workdays a rest period was not provided. Defendants also deprived the Plaintiff and the
Class Members of full and adequate reimbursement for all expenses related to personal mobile
phone use that they incurred.

86. Pursuant to California Business & Professions Code § 17203, Plaintiff and the



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1 Class Members are entitled to restitution of all monies rightfully belonging to them that
2 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
3 practices.

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

7 88. Accordingly, with respect to this cause of action, on behalf of himself and the
8 Class, Plaintiff prays for the herein stated relief, and an award of all reasonable costs and
9 attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

10 **SEVENTH CAUSE OF ACTION**

11 **CIVIL PENALTIES**

12 **(By Plaintiff and the Class against all Defendants)**

13 89. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 90. The "Aggrieved Employees" are all members of the above-defined Class whom
15 Defendants employed during the period beginning September 18, 2019 and ending on the date
16 that final judgment is entered in this action.

17 91. Labor Code § 204 states

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

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

(2) An employer is in compliance with the requirements of subdivision (a) of
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



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1 agreement that provides different pay arrangements, those arrangements shall
2 apply to the covered employees.

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

6 92. Defendants paid wages to employees on weekly intervals. Defendants failed to
7 pay Plaintiff on such intervals for all wages earned and all hours worked. On information and
8 belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
9 intervals for all wages earned and all hours worked.

10 93. During the applicable time period, Defendants violated California Labor Code §§
11 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198, and 2802.

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

15 95. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
16 entitled to recover civil penalties for each of Defendants' violations of California Labor Code §§
17 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198, and 2802 during the applicable
18 limitations period in the following amounts:

19 A. For violations of California Labor Code § 204, one hundred dollars
20 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
21 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
22 (penalty amounts established by California Labor Code § 210).

23 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
24 (\$250.00) for each aggrieved employee for initial violations and one thousand dollars (\$1,000.00)
25 for each aggrieved employee for each subsequent violation (penalty amounts established by
26 California Labor Code § 226.3).

27 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
28 (\$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
established by California Labor Code § 558).

D. For violations of California Labor Code § 1174, five hundred dollars



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1 (\$500.00) for each aggrieved employee for each violation (penalty amounts established by
2 California Labor Code § 1174.5).

3 E. For violations of California Labor Code § 1197, one hundred dollars
4 (\$100.00) for each aggrieved employee per pay period for each initial and intentional violation
5 and two hundred fifty dollars (\$250.00) for each aggrieved employee per pay period for each
6 subsequent violation (regardless of whether the initial violations were intentionally committed)
7 (penalty amounts established by California Labor Code § 1197.1).

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

13 96. Plaintiff has complied with the procedures for bringing suit specified in California
14 Labor Code § 2699.3. By letter dated September 18, 2020, Plaintiff filed written notice online
15 with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by
16 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
17 have been violated, including the facts and theories to support the alleged violations. Plaintiff
18 accompanied his individual letter with a fee in the amount of \$75.00. A true and correct copy of
19 Plaintiff’s written notice to the LWDA, dated September 18, 2020, is attached hereto as **Exhibit**
20 **A**. The LWDA has not responded to Plaintiff’s letter.

21 97. 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, Plaintiff, on behalf of himself and the Class, prays 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 Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid wages;
- E. Actual damages;



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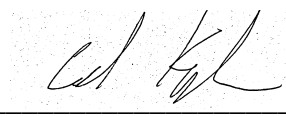
- F. Statutory damages;
- G. Liquidated damages;
- H. Restitution;
- I. Declaratory relief;
- J. Equitable relief;
- K. Statutory penalties;
- L. Civil Penalties;
- M. Pre-judgment and post-judgment interest;
- N. Costs of suit;
- O. Interest;
- P. Reasonable attorneys' fees; and
- Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM



Dated: January 19, 2021

By: _____
DAVID SPIVAK
CARL KAPLAN
Attorneys for Plaintiff, PETER BARRERA,
JR. and all others similarly situated



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

September 18, 2020

Workforce Development Agency

Attn: PAGA Administrator

<http://dir.tflaforms.net>

Via Electronic Submission

RE: *Peter Barrera, Jr. / Hammer Head Security*
LWDA-CM-806951-20

To whom it may concern:

This notice concerns the following employers:

1. Hammer Head Security Inc., a California corporation; and
2. Hammer Head Security Services Inc., a California corporation.

Collectively, the aforementioned employers are herein referred to as “Hammer Head.”

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Peter Barrera, Jr. (hereafter “Barrera”) 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 (hereafter “Aggrieved Employees”) by Hammer Head, of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198, and 2802.

At all relevant times, Hammer Head has employed persons, conducted business in and engaged in illegal payroll practices and policies in California. Barrera 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

In approximately February of 2018, Hammer Head first employed Barrera to work in California as an hourly security guard. Barrera continuously worked for Hammer Head in this capacity or as an hourly lead until on or about March 15, 2020, when his employment ended.

At all relevant times, Hammer Head employed Barrera and the Aggrieved Employees at an hourly rate of pay and issued their paychecks on a bi-weekly basis. At all relevant times, Hammer Head classified Barrera 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, Hammer Head scheduled Barrera and the Aggrieved Employees to work shifts of twelve or more hours.

At all relevant times, Hammer Head scheduled Barrera and the Aggrieved Employees to work shifts during which only one of them was on duty. As a result of Hammer Head’s staffing choices, Hammer Head failed to provide Barrera 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 before the end of the tenth hour worked on workdays of over ten hours. Hammer Head required Barrera and the Aggrieved Employees to remain at their workstations during their meal and rest periods. As a result of Hammer Head’s understaffing, Hammer Head frequently required Barrera and the Aggrieved Employees to interrupt their meal periods and rest breaks in order to assist with cash drops and customer disturbances. Hammer Head required Barrera and the Aggrieved Employees to sign on-duty meal period agreements

even though the nature of their work as private security guards did not prevent them from taking off-duty meal periods.

At relevant times, Hammer Head also failed to authorize and permit Barrera and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. Hammer Head did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor standards Enforcement. Hammer Head further failed to pay premium wages for days on which it failed to provide Barrera and the Aggrieved Employees with all timely off-duty meal and rest periods.

At all relevant times, Hammer Head required Barrera and the Aggrieved Employees to work off-the-clock. Hammer Head required Barrera and the Aggrieved Employees to arrive to their worksites before their scheduled start times in order to participate in “pass downs,” in which Barrera and the Aggrieved Employees would receive briefings from employees on the preceding shift. Such pass downs typically took ten to fifteen minutes to complete.

Additionally, at all relevant times, Hammer Head failed to pay Barrera and the Aggrieved Employees all wages owed for all hours worked at the correct rates of pay. Although Hammer Head regularly scheduled Barrera and the Aggrieved Employees to work shifts exceeding twelve hours in length, it paid the majority of Barrera’s and the Aggrieved Employees wages earned for work performed after the eighth hour of work in cash, and failed to include such wages in Barrera’s and the Aggrieved Employees wage statements. Further, Hammer Head’s cash payments to Barrera and the Aggrieved Employees failed to include double time wages for work performed after the twelfth hour of work. Instead, Hammer Head paid for such time worked at overtime rates of 1½ times the regular rate of pay.

Hammer Head also failed to reimburse Barrera and the Class for necessary, work related expenses. At all relevant times within the applicable limitations period, Hammer Head required Barrera and the Aggrieved Employees to use

their personal mobile phones to clock in and out from work. Hammer Head also frequently contacted Barrera and the Aggrieved Employees on their personal mobile phones at the beginning and end of their shifts. Hammer Head did not provide Barrera and the Aggrieved Employees with mobile phones and failed to reimburse them for such mobile phone use.

For the reasons set forth herein, Barrera alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- a) Hammer Head failed to provide Barrera and the Aggrieved Employees with all off-duty meal periods;
- b) Hammer Head failed to provide Barrera and the Aggrieved Employees with all rest periods as required by law;
- c) Hammer Head failed to pay Barrera 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) Hammer Head failed to pay Barrera 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) Hammer Head failed to compensate Barrera and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular, overtime, and double time wages for work performed while off-the-clock and double time wages for work performed after the twelfth hour of work;
- f) Hammer Head failed to indemnify Barrera and the Aggrieved Employees for all necessary business expenditures incurred in the discharge of their duties;

- g) Hammer Head failed to provide Barrera and the Aggrieved Employees with accurate and complete wage statements;
- h) Hammer Head failed to timely pay Barrera and the Aggrieved Employees all earned and unpaid wages during employment; and
- i) Hammer Head failed to timely pay those Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

Accordingly, Barrera now seeks civil penalties on behalf of himself and the Aggrieved Employees based on Hammer Head 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, Hammer Head employed Barrera and the Aggrieved Employees as security guards and in comparable positions. Accordingly, Barrera 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.

Hammer Head intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Barrera and the Aggrieved Employees as required by law. Further, Hammer Head failed to apply for an exemption from California's rest period law. As a result, Hammer Head violated California Labor Code §§ 226.7, 512 and 1198.

Accordingly, Barrera 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 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, Hammer Head failed to compensate Barrera and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to all regular, overtime, and double time wages for all hours they spent working while clocked out for work, and all double time wages for work performed after the twelfth hour of work in a workday which Hammer Head compensated at overtime rates.

Accordingly, Barrera 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 (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));

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));
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed)(penalties set by California Labor Code § 1197.1).

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 all relevant times during the applicable limitations period, Hammer Head required Barrera and the Aggrieved Employees to use their personal mobile telephones to clock in and out from work and to communicate with Hammer Head as a necessary condition of employment. Hammer Head failed to indemnify Barrera and the Aggrieved Employees for expenses associated with this mobile phone use both during and after their employment ended.

Accordingly, Barrera 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, Hammer Head 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. Hammer Head failed to state in the wage statements it issued to Barrera 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.

Further, Hammer Head omitted from the wage statements it issued to Barrera and the Aggrieved all overtime and double time hours they worked, instead paying Barrera and the Aggrieved Employees in cash for such time worked.

Accordingly, Barrera 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 Hammer Head's failure to pay Barrera 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, Hammer Head failed to timely pay all wages due during employment. As a result, Hammer Head has violated California Labor Code § 204.

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

\$100 for each Aggrieved Employee per pay period for each initial violation of California Labor Code § 204; and \$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.

By failing to pay Barrera and the Aggrieved Employees as set forth above, Hammer Head is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and the Aggrieved Employees, Barrera seeks civil penalties from Hammer Head as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by 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.

Hammer Head 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 Barrera and the Aggrieved Employees during their meal periods, while clocked out for work, and for work performed for which Hammer Head paid in cash. Accordingly, Barrera seeks civil penalties from Hammer Head 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: Peter Barrera, Jr.
Walter Haines, Esq.

Hammer Head Security Inc.
C/O Agent for Service of Process
Lakhvir Singh
2321 W Washington St, Suite L
Stockton, CA 95203

Hammer Head Security Services Inc.
C/O Agent for Service of Process
Balwant S. Lasher
2321 Washington St, Suite L
Stockton, CA 95203

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME, ADDRESS, PHONE, BAR NUMBER)	FOR COURT USE ONLY
COURT GENERATED	FILED
Attorney for:	JAN 21 2021
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS Street Address: City Towers Bldg., 801 10th St, 4 th Floor, Modesto, CA 95354 Civil Clerk's Office: 801 10 th Street, 4 th Floor, Modesto, CA 95354	CLERK OF THE SUPERIOR COURT COUNTY OF STANISLAUS
Plaintiff/Petitioner: BARRERA, PETER, JR Defendant/Respondent: HAMMER HEAD SECURITY INC, ET AL	BY <u></u> DEPUTY
NOTICE OF CASE MANAGEMENT CONFERENCE	CASE NUMBER CV-21-000268

1. NOTICE is given that a **Case Management Conference** has been scheduled as follows:

Date: 05/24/2021 Time: 8:30 AM

This case is assigned to Judge Sonny S. Sandhu, Dept 24, for all purposes, including trial.

*Departments 21 & 22 are located at 801 10th Street, 6th Floor, Modesto, CA 95354

*Departments 23 & 24 are located at 801 10th Street, 4th Floor, Modesto, CA 95354

All filings shall be filed in the Clerk's Office at the City Towers, 4th Floor address.

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You have 30 calendar days to file a written response with this court after the legal papers and the summons were served on you. You must also serve a copy of your written response on the plaintiff.

2. You must file and serve a completed *Case Management Conference Statement* at least **fifteen (15) calendar days** before the case management conference.
3. You must be familiar with the case and be fully prepared to participate effectively in the case management conference.
4. At the case management conference the Court may make pretrial orders, including the following:
 - a. An order establishing a discovery schedule.
 - b. An order referring the case to arbitration.
 - c. An order dismissing fictitious defendants.
 - d. An order scheduling exchange of expert witness information.
 - e. An order setting subsequent conferences and the trial date.
 - f. Other orders to achieve the goals of the Trial Court Delay Reduction Act (Gov. Code, § 68600 et seq.).

Date: 01/21/2021

by  Deputy Clerk

Mandatory Form

KIMBERLY MEAN

CV003

--SANCTIONS--

If you do not file the *Case Management Statement* required by local rule, or attend the case management conference or participate effectively in the conference, the court may impose sanctions (including dismissal of the case, striking of the answer, and payment of money).

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Rule 3.110 of the California Rules of Court.

Time for Service of Complaint, Cross-Complaint, and Response

- (a) [Application] This rule applies to the service of pleadings in civil cases except for collection cases under Rule 3.740 (a), Unlawful detainer actions, proceedings, under the Family Code, and other proceedings for which different service requirements are prescribed by law.
- (b) [Service of complaint] The complaint must be served on all named defendants and proofs of service on those defendants must be filed with the court within 60 days after the filing of the complaint. When the complaint is amended to add a defendant, the added defendant must be served and proof of service must be filed within 30 days after the filing of the amended complaint.
- (c) [Service of cross-complaint] A cross-complaint against a party who has appeared in the action must be accompanied by proof of service of the cross-complaint at the time it is filed. If the cross-complaint adds new parties, the cross-complaint must be served on all parties and proofs of service on the new parties must be filed within 30 days of the filing of the cross-complaint.
- (d) [Timing of responsive pleadings] The parties may stipulate without leave of court to one 15-day extension beyond the 30-day time period prescribed for the response after service of the initial complaint.
- (e) [Modification of timing: application for order extending time] The court, on its own motion or on the application of a party, may extend or otherwise modify the times provided in (b) - (d). An application for a court order extending the time to serve a pleading must be filed before the time for service has elapsed. The application must be accompanied by a declaration showing why service has not been completed, documenting the efforts that have been made to complete service, and specifying the date by which service is proposed to be completed.
- (f) [Failure to serve] If a party fails to serve and file pleadings as required under this rule, and has not obtained an order extending time to serve its pleadings, the court may issue an Order to Show Cause why sanctions shall not be imposed.
- (g) [Request for entry of default] If a responsive pleading is not served within the time limits specified in this rule and no extension of time has been granted, the plaintiff must file a request for entry of default within 10 days after the time for service has elapsed. The court may issue an Order to Show Cause why sanctions should not be imposed if the plaintiff fails to timely file the request for the entry of default.
- (h) [Default judgment] When a default is entered, the party who requested the entry of default must obtain a default judgment against the defaulting party within 45 days after the default was entered, unless the court has granted an extension of time. The court may issue an Order to Show Cause why sanctions should not be imposed if that party fails to obtain entry of judgment against a defaulting party or to request an extension of time to apply for a default judgment within that time.
- (i) [Order to Show Cause] Responsive papers to an Order to Show Cause issued under this rule must be filed and served at least 5 calendar days before the hearing.