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12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF SACRAMENTO**

14 SHANI McELROY, ANGELA JENKINS,
15 BARBARA SANCHEZ, individually, and
16 on behalf of all others similarly situated,

17 Plaintiffs,

18 vs.

19 UNIVERSAL PROTECTION SERVICE,
20 LP, a California Limited Partnership, d.b.a.
21 ALLIED UNIVERSAL SECURITY
22 SERVICES; and DOES 1 through 100,
23 inclusive,

24 Defendants.

Case No. 34-2020-00290233

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES, DECLARATORY AND
INJUNCTIVE RELIEF, PENALTIES AND
RESTITUTION**

[JURY TRIAL DEMANDED]

25 Representative Plaintiffs allege as follows:

INTRODUCTION

26 1. This is a class and representative action seeking unpaid compensation for wages,
27 meal and/or rest period violations, interest thereon, liquidated damages and other penalties,
28 reimbursement for business-related expenses incurred, injunctive and other equitable relief, and
reasonable attorneys' fees and costs under, *inter alia*, California Labor Code §§ 200-204, 210, 218,
et seq., 223, 225.5, 226, *et seq.*, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, *et seq.*, 1197,

1 1197.1, 1198, 2698, *et seq.*, 2800, 2802, California Business and Professions Code §§ 17200, *et*
2 *seq.* and California Code of Civil Procedure § 1021.5.

3 2. Representative Plaintiffs Shani McElroy, Angela Jenkins and Barbara Sanchez
4 (“Representative Plaintiffs” or “Plaintiffs”) bring this action on behalf of themselves and all other
5 persons similarly situated (“Class Members” and/or the “Plaintiff Class”) who are or have been
6 employed by defendants Universal Protection Service, LP and/or Does 1 through 100, inclusive
7 (collectively “Defendants”) as non-exempt security professionals and/or in similar security guard
8 positions in the State of California at any time on or after February 2, 2020.

9 3. The relevant “class period” begins on February 2, 2020 and extends through trial,
10 based upon the allegation that the violations of California’s wage and hour laws, as described more
11 fully below, have been ongoing throughout that time. The relevant period for recovery of penalties
12 under California’s Private Attorneys General Act also begins on February 2, 2020 and extends
13 through trial (i.e., the “PAGA period”), based upon the allegation that the violations of California’s
14 wage and hour laws, as described more fully below, have been ongoing throughout that time.

15 4. None of the claims herein-alleged, nor the damages, penalties or other remedies
16 sought either encompass, “relate back” to and/or are predicated upon any events or violations
17 occurring prior to February 2, 2020.

18 5. Representative Plaintiffs and those persons working for Defendants in California
19 as non-exempt security professionals and/or in similar security guard positions at any time between
20 February 2, 2020 and trial, inclusive, are referred to herein as “Class Members,” “Aggrieved
21 Employees” or both.

22 6. Throughout the class and PAGA periods, Defendants have had a consistent policy
23 of (1) unlawfully denying Representative Plaintiffs, Aggrieved Employees and Class Members
24 statutorily-mandated meal and rest periods, (2) failing to pay these workers’ wages in the event of
25 such failures, (3) willfully failing to pay these workers at least the minimum wage for all hours
26 worked, (4) willfully failing to pay these workers’ overtime wages at the correct rate, (5) willfully
27 failing to reimburse these workers for all necessary business-related expenses, (6) willfully failing
28 to provide these workers with accurate semimonthly itemized wage statements reflecting the total

1 number of hours each worked, the applicable deductions, and the applicable hourly rates in effect
2 during the respective pay periods, and (7) willfully failing to pay compensation in a prompt and
3 timely manner to those workers whose employment with Defendants have terminated.

4 7. Defendants operate/operated a security service within California for which
5 Representative Plaintiffs worked as non-exempt security professionals and/or in similar security
6 guard positions. Representative Plaintiffs are informed and believe and, on that basis, allege that,
7 within the class and PAGA periods, Defendants employed thousands of individuals in California
8 to perform security services, employment positions which did not, and currently do not, meet any
9 known test for exemption from the payment of overtime wages, wages at or above the state-
10 mandated minimum level(s) each relevant year, reimbursements for business-related expenses
11 incurred and/or the entitlement to meal or rest periods.

12 8. Despite actual knowledge of these facts and legal mandates, Defendants have
13 enjoyed and continue to enjoy an advantage over their competition and a resultant disadvantage to
14 their workers by electing not to pay all wages due (including missed meal and rest period
15 premiums) and/or all penalties due (including "waiting time" penalties) to their California-based
16 non-exempt security professionals (and/or persons occupying similar security guard positions).

17 9. Representative Plaintiffs are informed and believe and, on that basis, allege that
18 Defendants' officers knew of these facts and legal mandates yet, nonetheless, repeatedly
19 authorized and/or ratified the violation of the laws cited herein.

20 10. Despite Defendants' knowledge of their workers' entitlements in these respects,
21 Defendants failed to provide same to Representative Plaintiffs, Aggrieved Employees and/or Class
22 Members, in violation of California state statutes, the applicable California Industrial Welfare
23 Commission Wage Order, and Title 8 of the California Code of Regulations. This action is brought
24 to redress and end this prolonged pattern of unlawful conduct once and for all.

25
26 **JURISDICTION AND VENUE**

27 11. This Court has jurisdiction over the claims brought herein for unpaid wages,
28 expense reimbursements, other damages and/or penalties, etc. under, *inter alia*, the applicable

1 Industrial Welfare Commission Wage Order (as effectuated through the California Labor Code),
2 Title 8 of the California Code of Regulations, Labor Code §§ 201-204, 226, 226.7, 512, 1174,
3 2699 and 2802, *inter alia*, and/or the California Code of Civil Procedure § 1021.5.

4 12. This Court also has jurisdiction over the claims brought herein for injunctive relief
5 and restitution of ill-gotten benefits arising from Defendants' unfair and/or fraudulent business
6 practices under California Business & Professions Code § 17200, *et seq.*

7 13. Venue as to Defendants is proper in this judicial district pursuant to California Code
8 of Civil Procedure § 395(a). Defendants provided the aforementioned services within this County
9 where numerous Aggrieved Employees and Class Members worked, transact business, have
10 agents, and are otherwise within this Court's jurisdiction for purposes of service of process. The
11 unlawful acts alleged herein have had a direct effect on Representative Plaintiffs, Aggrieved
12 Employees and those similarly situated within the State of California and within this County.

13
14 **PLAINTIFFS**

15 14. Representative Plaintiff Shani McElroy, Angela Jenkins and Barbara Sanchez are
16 and were natural persons who were employed by Defendant Universal Protection Service, LP as
17 Security Professionals (aka security guards) during the class and PAGA periods.

18 15. In these capacities, Representative Plaintiffs are and were entitled to full,
19 uninterrupted and statutorily-mandated meal and rest periods, payment of minimum and/or
20 overtime wages, reimbursements for business-related expense incurrences, as well as other
21 benefits of employment as set forth herein.

22
23 **DEFENDANTS**

24 16. Defendant Universal Protection Service, LP is a "leading security and facility
25 services company" that provides security personnel to safeguard its customers' locations across
26 the State of California and across the nation. According to its website, defendant Universal
27
28

1 Protection Service, LP employs more than 200,000 individuals, protects more than 50,000 client
2 sites, and has revenues exceeding \$8.5 billion.¹

3 17. Representative Plaintiffs are informed and believe and, on that basis, allege that, at
4 all times herein relevant, Defendants Universal Protection Service, LP, and Does 1 through 100,
5 did business within the State of California providing security services.

6 18. Defendant Universal Protection Service, LP is a limited partnership formed under
7 the laws of the State of California that does business as Allied Universal Security Services.

8 19. Those Defendants identified as Does 1 through 100, inclusive, are and were, at all
9 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or
10 each of the remaining defendants. Representative Plaintiffs are informed and believe and, on that
11 basis, allege that, at all relevant times herein mentioned, Defendants, and each of them, employed
12 and/or exercised control over the wages, hours, and/or working conditions of the Representative
13 Plaintiffs, Aggrieved Employees and Class Members within the State of California.

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

22 21. Representative Plaintiffs are informed and believe and, on that basis, allege that, at
23 all relevant times herein mentioned, each of the Defendants was the agent and/or employee of each
24 of the remaining Defendants and, in doing the acts herein alleged, was acting within the course
25 and scope of such agency and/or employment.

26
27
28 ¹ See, <https://www.aus.com/about-us>, current as of Nov. 29, 2020.

CLASS ACTION ALLEGATIONS

22. The Representative Plaintiffs bring this action on behalf of themselves and as a class action on behalf of all persons similarly situated and proximately damaged by Defendants' conduct including, but not necessarily limited to, the following Plaintiff Class:

“All persons employed by Defendant Universal Protection Service, LP and/or the DOE defendant(s) as non-exempt security professionals and/or in similar security guard positions in California at any time on or after February 2, 2020.”

23. Defendants' officers and directors are excluded from the Plaintiff Class.

24. Pursuant to California Rule of Court 3.765(b), Representative Plaintiffs reserve the right to amend or modify the class definition to achieve greater specificity, by further division into sub-classes and/or by limitation to particular issues.

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

a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy as to certain claims brought herein. The members of the Plaintiff Class are so numerous that joinder of all members is impractical, if not impossible, insofar as Representative Plaintiffs are informed and believe and, on that basis, allege that the Plaintiff Class totals thousands of workers, thus meeting the numerosity requirement. Membership in the Class will be determined upon analysis of employee and payroll, among other, records required to be maintained by Defendants.

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

- 1) Whether Defendants maintained a policy and/or practice of failing to provide employees with meal and/or periods and/or failing to pay premium wages to Class Members in the event of such failures;
- 2) Whether Defendants failed to pay minimum wages to Class Members for all time worked;

- 3) Whether Defendants failed to pay overtime wages to Class Members for all hours worked beyond 40 in a workweek and/or eight in a workday;
 - 4) Whether Defendants violated California Labor Code §§ 201-204 by failing to pay wages due and owing each pay period and/or at the time that certain Class Members' employment with Defendants terminated;
 - 5) Whether Defendants violated California Labor Code § 226 by failing to provide accurate semimonthly itemized statements to Class Members of their amounts of gross and net wages, and total hours worked by each and at all applicable hourly rates in effect during the respective pay period(s);
 - 6) Whether Defendants violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work;
 - 7) Whether Class Members are entitled to "waiting time" penalties, pursuant to California Labor Code § 203;
 - 8) Whether Defendants failed to reimburse Class Members for all necessary business expenses incurred during the discharge of their duties;
 - 9) Whether Defendants violated California Business and Professions Code § 17200, *et seq.* by failing to provide meal and/or rest breaks, all wages due, and reimbursements for business-related expenses to Class Members working eligible shifts.
- c. Typicality: The Representative Plaintiffs' claims are typical of the claims of Class Members. The Representative Plaintiffs and Class Members sustained damages arising out of and caused by Defendants' common course of conduct in violation of law, as alleged herein.
- d. Adequacy of Representation: The Representative Plaintiffs in this class action are adequate representatives of the Plaintiff Class in that the Representative Plaintiffs' claims are typical of those of the Plaintiff Class and the Representative Plaintiffs have the same interest in the litigation as the Class Members. The Representative Plaintiffs are committed to vigorous prosecution of this case and have retained competent counsel who are experienced in conducting litigation of this nature. The Representative Plaintiffs are not subject to any individual defenses unique from those applicable to the Class as a whole. The Representative Plaintiffs anticipate no management difficulties in this litigation.
- e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein.

Should separate actions be brought, or be required to be brought, by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

COMMON FACTUAL ALLEGATIONS

26. Representative Plaintiffs, Aggrieved Employees and Class Members are and/or were non-exempt security professionals and/or persons occupying similar security guard positions who worked for Defendants at Defendants' customers' sites in California within the relevant time period. In these roles, Representative Plaintiffs, Aggrieved Employees and Class Members provided security services including patrolling, monitoring and reporting of suspicious activity.

27. As described herein, Defendants knowingly failed to adequately compensate Representative Plaintiffs, Aggrieved Employees and Class Members for all wages earned (including premium wages such as compensation for missed meal and/or rest periods) under the applicable IWC Wage Order, the applicable California Code of Regulations provisions and provisions of the California Labor Code, thereby enjoying a significant competitive edge over other service providers.

28. Defendants have declined to pay these wages, even upon their workers' terminations from or their resignation of employment, in blatant violation of California Labor Code § 201 and/or § 202.

29. California Labor Code §§ 201 and 202 require Defendants to pay severed employees all wages due and owed immediately upon discharge or within 72 hours of resignation of those positions, in most circumstances. California Labor Code § 203 provides that an employer who willfully fails to timely pay such wages must, as a penalty, continue to pay each subject employee's wages until the back wages are paid in full or an action is commenced, and the payment of such penalty shall continue for a period of time up to 30 days.

1 30. Moreover, according to Defendants' policies, Representative Plaintiffs, Aggrieved
2 Employees and/or Class Members were required to incur business expenses related to Defendants'
3 operations but were not fully reimbursed for those expenses.

4 31. Furthermore, despite knowledge of these workers' entitlement to compensation for
5 all hours worked, Defendants violated California Labor Code § 1174(d) by failing to provide or
6 require the use, maintenance or submission of time records by Representative Plaintiffs, Aggrieved
7 Employees and Class Members. Defendants also failed to provide these workers with accurate
8 semimonthly itemized statements of the total number of hours worked by each, and all applicable
9 hourly rates in effect during each pay period, in violation of California Labor Code § 226. In failing
10 to provide the required documents, Defendants have not only failed to pay their workers the full
11 amount of compensation due, but have also, at least largely, shielded themselves from their
12 employees' scrutiny by concealing the magnitude and financial impact of their wrongdoing that
13 such documents might otherwise have led workers to discover.

14 32. Representative Plaintiffs, Aggrieved Employees and all persons similarly situated
15 are entitled to unpaid compensation, yet, to date, have not received such compensation despite
16 many of them having been terminated by Defendants and/or resigned from Defendants' employ.
17 More than 30 days have passed since certain Aggrieved Employees and Class Members have left
18 Defendants' employ.

19 33. As a consequence of Defendants' willful conduct in not paying former employees'
20 compensation for all hours worked in a prompt and timely manner, certain members of the Plaintiff
21 Class are entitled to up to 30 days wages as a penalty under California Labor Code § 203, together
22 with attorneys' fees and costs.

23 34. As a direct and proximate result of Defendants' unlawful conduct, as set forth
24 herein, Representative Plaintiffs and Class Members have sustained damages, as described above,
25 including the loss of earnings for hours worked on behalf of Defendants, in an amount to be
26 established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as
27 set forth herein, certain Class Members are entitled to recover "waiting time" penalties (pursuant
28 to California Labor Code § 203) and penalties for failure to provide semimonthly statements of

1 hours worked and all applicable hourly rates (pursuant to California Labor Code § 226) in an
2 amount to be established at trial. As a further direct and proximate result of Defendants' unlawful
3 conduct, as set forth herein, Representative Plaintiffs, Aggrieved Employees and Class Members
4 are also entitled to recover costs and attorneys' fees pursuant to statute(s).

5 35. Representative Plaintiffs seek injunctive relief prohibiting Defendants from
6 engaging in the complained-of illegal labor acts and practices in the future. Representative
7 Plaintiffs also seek restitution of costs incurred by Representative Plaintiffs and Class Members
8 under California's Unfair Competition Law. Unless enjoined, Defendants' unlawful conduct will
9 continue unchecked, while their non-exempt workers bear the financial brunt of Defendants'
10 unlawful conduct.

11 36. Representative Plaintiffs Shani McElroy and Barbara Sanchez have complied with
12 the procedures necessary to maintain a civil action against Defendants for violation of California's
13 Private Attorneys General Act, as specified in California Labor Code § 2699.3.

14 37. On October 1, 2020, Representative Plaintiff Shani McElroy served and filed a
15 notice upon the California Labor and Workforce Development Agency ("LWDA") and Defendants
16 in compliance with Labor Code §§ 2699, *et seq.* Further, during the claims period, Barbara Sanchez
17 has sent various notices in compliance with California Labor Code §§ 2699, *et seq.*

18
19 **FIRST CAUSE OF ACTION**
20 **UNLAWFUL FAILURE TO PAY WAGES**
(California Labor Code §§ 200-204, 510, 558, 1194 and 1198; IWC Wage Order)

21 38. Each and every allegation of the preceding paragraphs is incorporated in this cause
22 of action with the same force and effect as though fully set forth herein.

23 39. Throughout the class period, Representative Plaintiffs, Aggrieved Employees and
24 Class Members performed work for Defendants, oftentimes in excess of eight hours in a workday
25 and/or 40 hours in a workweek. The number of hours will be proven at trial.

26 40. Throughout the class period, Defendants refused to compensate Representative
27 Plaintiffs, Aggrieved Employees and Class Members for all of the wages earned, in violation of
28

1 the applicable IWC Wage Order, the applicable California Code of Regulations provisions and
2 provisions of the California Labor Code.

3 41. Throughout the class period, Defendants were aware of, and were under a duty to
4 comply with, the overtime provisions of the California Labor Code including, but not limited to,
5 California Labor Code §§ 510, 1194, and 1198.

6 42. California Labor Code § 510(a), in pertinent part, provides:

7 Any work in excess of eight hours in one workday and any work in
8 excess of 40 hours in any one workweek and the first eight hours
9 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.

10 43. California Labor Code § 1194(a), in pertinent part, provides:

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

15 44. California Labor Code § 1198, in pertinent part, provides:

16 The maximum hours of work and the standard conditions of labor
17 fixed by the commission shall be the maximum hours of work and
18 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.

19 45. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
20 which an employee is subject to the control of the employer and includes all the time the employee
21 is suffered or permitted to work, whether or not required to do so.

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

25 47. By refusing to compensate Representative Plaintiffs, Aggrieved Employees and
26 Class Members for overtime wages earned and/or pay levels meeting the California minimum
27 wage, Defendants violated those California Labor Code provisions cited above as well as the
28 applicable IWC Wage Order and California Code of Regulations provisions.

48. Defendants' conduct, as heretofore detailed, represents an underpayment of wages pursuant to California Labor Code §§ 218, *et seq.*, 225.5, 558, 1182.12, 1194.2, 1197, 1197.1 and 1198, for which Representative Plaintiffs and Class Members seek damages and/or penalties according to proof.

49. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Representative Plaintiffs and Class Members have sustained damages, including a loss of earnings for hours worked (including overtime hours worked) on behalf of Defendants, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Representative Plaintiffs and Class Members are entitled to recover penalties in amounts to be established at trial, as well as interest, liquidated damages, restitution, attorneys' fees and costs, pursuant to statute(s).

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(California Labor Code §§ 226.7 and 512)

50. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

51. At all relevant times, Defendants were aware of and were under a duty to comply with California Labor Code § 226.7 and § 512.

52. California Labor Code § 226.7 provides:

(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 work day that the meal or rest period is not provided.

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

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.

54. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that employers provide all applicable meal and/or rest periods to non-exempt employees.

55. Section 11 of the applicable IWC Wage Order provides:

(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...

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

(C) 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.

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

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

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

57. Representative Plaintiffs, Aggrieved Employees and Class Members were not provided with meal periods of at least 30 minutes for each five-hour work period and/or rest periods of at least net 10 minutes for each four hour work period, or major fraction thereof. These violations of law were the result of, *inter alia*, Defendants' policies of: (1) not scheduling a meal period as a part of Representative Plaintiffs' and each Aggrieved Employee's and Class Member's

1 work shift, (2) not allowing these employees to take meal and rest periods until they were released
2 by their supervisors or other security professionals/guards, (3) understaffing client sites in a
3 manner that made it difficult to enjoy timely, full and uninterrupted meal and/or rest periods, and
4 (4) demanding a security professional/guard remain on duty at assigned posts at all times. On many
5 occasions, these security professionals/guards missed meal and rest breaks altogether, remained
6 “on call” during the pendency of otherwise ostensible break periods, were compelled to wait well
7 beyond the fifth hour to take their meal periods, were interrupted during said breaks and/or were
8 required to “piggyback” breaks in a manner that violated California law.

9 58. By failing to consistently provide full, on-time, uninterrupted and duty-free thirty-
10 minute meal periods and/or net 10-minute rest periods to Representative Plaintiffs, Aggrieved
11 Employees and Class Members, Defendants violated the California Labor Code, applicable IWC
12 Wage Order provisions and the applicable California Code of Regulations provisions.

13 59. Representative Plaintiffs are informed and believe and, on that basis, allege that
14 Defendants have either never paid the one hour of compensation to any Aggrieved Employee or
15 Class Member due to Defendants’ violations of the applicable IWC Wage Order, the applicable
16 California Code of Regulations provisions and provisions of the California Labor Code and/or
17 have insufficiently paid these premiums.

18 60. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
19 herein, Representative Plaintiffs and Class Members have sustained damages, including lost
20 compensation resulting from missed meal and/or rest periods, in an amount to be established at
21 trial. As a further direct and proximate result of Defendants’ unlawful conduct, as set forth herein,
22 Representative Plaintiffs and Class Members are entitled to recover penalties in amounts to be
23 established at trial, as well as interest, restitution, attorneys’ fees and costs, pursuant to statute(s).

24
25 **THIRD CAUSE OF ACTION**
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
26 **(California Labor Code §§ 226 and 1174)**

27 61. Each and every allegation of the preceding paragraphs is incorporated in this cause
28 of action with the same force and effect as though fully set forth herein.

62. California Labor Code § 226(a) provides:

Each employer shall semimonthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized wage statement in writing showing: (1) gross wages earned; (2) total number of hours worked by each employee whose compensation is based on an hourly wage; (3) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (4) net wages earned; (5) the inclusive date of the period for which the employee is paid; (6) the name of the employee and his or her social security number; and (7) the name and address of the legal entity which is the employer.

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

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

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

Every person employing labor in this state shall. . . [k]eep, at a central location in the state...payroll records showing the hours worked daily by and the wages paid to...employees.... 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 two years.

65. Defendants have failed to provide timely and accurate itemized wage statements to the Representative Plaintiffs, Aggrieved Employees and Class Members in accordance with, *inter alia*, California Labor Code § 201-204, 226, 226.3, 226.7, 512, 1174, 1174.5 and 2810.5. Representative Plaintiffs are informed and believe and, on that basis, allege that none of the statements provided by Defendants accurately reflected actual gross wages earned, net wages earned or the appropriate deductions of Representative Plaintiffs, Aggrieved Employees or Class Members.

66. Specifically, Defendants failed to comply with Labor Code section 226(a) as "gross wages earned," "total hours worked by the employee," "net wages earned," and/or "all applicable

1 hourly rates in effect during the pay period and the corresponding number of hours worked at each
2 hourly rate by the employee” were not accurately reflected in the wage statements of
3 Representative Plaintiffs, Aggrieved Employees and/or Class Members, to wit: certain hours
4 worked, and certain premiums due as a result of overtime hours worked and/or failures to provide
5 and/or make available meal and rest breaks were omitted.

6 67. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
7 herein, Representative Plaintiffs and Class Members are entitled to recover penalties in amounts
8 to be established at trial, as well as attorneys’ fees and costs, pursuant to statute(s).

9
10 **FOURTH CAUSE OF ACTION**
11 **FAILURE TO PAY WAGES ON TERMINATION**
12 **(California Labor Code § 203)**

13 68. Each and every allegation of the preceding paragraphs is incorporated in this cause
14 of action with the same force and effect as though fully set forth herein.

15 69. California Labor Code § 203 provides that:

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

19 70. Numerous Aggrieved Employees and Class Members were employed by
20 Defendants during the class period and were, thereafter, terminated or resigned from their
21 positions, yet they were not paid all premium (e.g., overtime, meal/rest period violations) wages
22 due upon said termination or within 72 hours of said resignation of employment therefrom. Said
23 non-payment was the direct and proximate result of a willful refusal to do so by Defendants.

24 71. More than 30 days have elapsed since certain Aggrieved Employees and Class
25 Members were involuntarily terminated or voluntarily resigned from Defendants’ employ.

26 72. As a direct and proximate result of Defendants’ willful conduct in this regard,
27 affected Class Members are entitled to recover “waiting time” penalties of up to thirty days’ wages
28

1 pursuant to California Labor Code § 203 and 256 in an amount to be established at trial, as well as
2 attorneys' fees and costs, pursuant to statute(s).

3
4 **FIFTH CAUSE OF ACTION**
5 **FAILURE TO REIMBURSE EXPENSES AND/OR PROHIBITED CASH BOND**
6 **(California Labor Code §§ 406 and 2802)**

7 73. Each and every allegation of the preceding paragraphs is incorporated in this cause
8 of action with the same force and effect as though fully set forth herein.

9 74. Throughout the class period, Defendants required the Representative Plaintiffs,
10 Aggrieved Employees and Class Members to incur expenses related to the business operations of
11 Defendants. These expenses include(d), without limitation, use of their personal cellular devices
12 and/or transportation vehicles for company purposes and/or uniform purchases and maintenance.
13 These expenditures were incurred in direct consequence of the discharge of the duties of
14 Representative Plaintiffs, Aggrieved Employees and Class Members, or of their obedience to the
15 directions of the employer, and have not yet been reimbursed by Defendants.

16 75. Throughout the class period, Defendants were aware of and were under a duty to
17 comply with various provisions of the California Labor Code, including, but not necessarily
18 limited to §§ 406 and 2802.

19 76. California Labor Code § 406 provides:

20 Any property put up by an employee, or applicant as a part of the contract
21 of employment, directly or indirectly, shall be deemed to be put up as a bond
22 and is subject to the provisions of this article whether the property is put up
23 on a note or as a loan or an investment and regardless of the wording of the
24 agreement under which it is put up.

25 77. California Labor Code § 2802(a) provides:

26 An employer shall indemnify his or her employee for all necessary
27 expenditures or losses incurred by the employee in direct consequence of
28 the discharge of his or her duties, or of his or her obedience to the directions
of the employer, even though unlawful, unless the employee, at the time of
obeying the directions, believed them to be unlawful.

1 Class Members herein alleged, as incidental to Defendants' business operations, rather than accept
2 the alternative costs of full compliance with fair, lawful and honest business practices, ordinarily
3 borne by their responsible competitors and as set forth in legislation and the judicial record.

4
5 **SEVENTH CAUSE OF ACTION**
6 **PRIVATE ATTORNEYS GENERAL ACT CLAIM**
7 **(California Labor Code §§ 2699, et seq.)**

8 85. Each and every allegation of the preceding paragraphs is incorporated in this cause
9 of action with the same force and effect as though fully set forth herein.

10 86. California Labor Code § 2699(a) provides, in pertinent part:

11 Notwithstanding any other provision of the law, any provision of this code
12 that provides for a civil penalty to be assessed and collected by the Labor
13 and Workforce Development Agency or any of its departments, divisions,
14 commissions, boards, agencies, or employees, for a violation of this code,
15 may, as an alternative, be recovered through a civil action brought by an
16 Aggrieved Employee on behalf of themselves or herself and other current
17 or former employees. . .

18 87. Representative Plaintiffs and each and every other non-exempt security
19 professional/guard working in California for Defendants within one year of the exhaustion of the
20 administrative prerequisites under the California Private Attorneys General Act, as described
21 herein, are "Aggrieved Employees," as defined by California Labor Code § 2699(c), because
22 she/they was/were employed by Defendants and were among the employees against whom the
23 violations of law articulated in this Complaint were committed.

24 88. These Aggrieved Employees share each and every one of the factual underpinnings
25 and predicate violations articulated in the preceding paragraphs of this Complaint with Class
26 Members and the Representative Plaintiffs.

27 89. As set forth above, one or more Representative Plaintiffs have met all of the
28 requirements set forth in California Labor Code § 2699.3 necessary to maintain a civil action
against Defendants for violations of (and/or recovery on behalf of the State of California under)
California's Private Attorneys General Act.

91. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Representative Plaintiffs, Aggrieved Employees and the State of California are entitled to recover penalties as provided by California Labor Code § 2699, in an amount to be established at trial, as well as costs and attorneys' fees, pursuant to statute(s).

RELIEF SOUGHT

WHEREFORE, the Representative Plaintiffs, on behalf of themselves, in a qui tam representative capacity and/or behalf of the proposed Plaintiff Class, pray for judgment and the following specific relief against Defendants, and each of them, jointly and separately, as follows:

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

2. That the Court declare and adjudge Defendants willfully violated their legal duties to pay all wages due under the California Labor Code, the applicable California Industrial Welfare Commission Wage Order and the applicable California Code of Regulations provisions;

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

4. That the Court make an award to the Representative Plaintiffs and Class Members of one hour of pay at each employee's regular rate of compensation for each workday that a rest period was not adequately authorized and permitted;

5. That the Court make an award to the Representative Plaintiffs and Class Members of penalties, pursuant to California Labor Code §§ 203, 226, 558 and 1174.5 and/or liquidated damages pursuant to § 1194.2, in amounts to be proven at trial;

6. That the Court declare and adjudge that Defendants violated California Labor Code §§ 406 and 2802 by, *inter alia*, willfully failing to reimburse the Representative Plaintiffs, Aggrieved Employees and Class Members for expenses made on behalf of Defendants;

7. That the Court order Defendants to pay restitution to the Representative Plaintiffs and Class Members due to Defendants' unlawful activities, pursuant to California Business and Professions Code §§ 17200-17208;

8. That the Court further enjoin Defendants, ordering them to cease and desist from unlawful activities in violation of California Business and Professions Code §§ 17200, *et seq.*;

9. For interest on the amount of any economic losses, at the prevailing legal rate(s);

10. That the Court declare and adjudge that this action is a proper representative action and that one or more Representative Plaintiffs have standing to pursue it, pursuant to California Labor Code § 2699, *et seq.*;

11. That the Court make an award of civil penalties to Aggrieved Employees and the State of California, pursuant to California Labor Code § 2699, *et seq.*;

12. For reasonable attorneys' fees, pursuant to California Code of Civil Procedure § 1021.5, and Labor Code §§ 218.5 and/or 2699, *et seq.*;

13. For costs of suit and any such other relief as the Court deems just and proper; and

14. For all other Orders, findings and determinations sought in this Complaint.

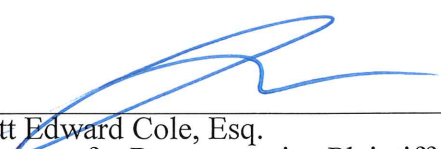
JURY DEMAND

Representative Plaintiffs, on behalf of themselves, and in their various representative capacities hereby demand a trial by jury on all issues triable by jury.

Dated: January 13, 2021

SCOTT COLE & ASSOCIATES, APC

By:


Scott Edward Cole, Esq.
Attorneys for Representative Plaintiffs, et al.

PROOF OF SERVICE

I am over 18 years of age, not a party to the above-captioned action, and am employed by the law firm of Scott Cole & Associates, APC, 555 12th St., Suite 1725, Oakland, California 94607.

On this date, I served a copy of:

FIRST AMENDED COMPLAINT FOR DAMAGES, DECLARATORY AND INJUNCTIVE RELIEF, PENALTIES AND RESTITUTION

☒	By depositing the document(s) with the U.S. Postal Service, with postage fully prepaid, addressed as indicated below, in the ordinary course of business.
☐	By facsimile transmission to the fax number(s) below, before 5:00 p.m. PST.
☐	By placing the document(s) in a sealed Federal Express envelope, affixing a pre-paid air bill and delivering it to a Federal Express agent.
☐	By personal delivery.
☒	By e-mail transmission to the e-mail address(es) below.
☐	By electronic filing using the CM/ECF System which will send a Notice of Electronic Filing to the email address(es) listed in the Electronic Mail Notice List.
☐	By uploading the document(s) to the third-party document management/service company, court-approved for purposes of this litigation.
☒	By electronic submission to the Labor and Workforce Development Agency.

on the following person(s):

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I declare under penalty of perjury under the laws of the United States and the State of California the foregoing is true and correct. Executed in Oakland, California on January 13, 2021.



Nicole Randle