

Bevin Allen Pike (SBN 221936)
Bevin.Pike@capstonelawyers.com
Orlando Villalba (SBN 232165)
Orlando.Villalba@capstonelawyers.com
Daniel Jonathan (SBN 262209)
Daniel.Jonathan@capstonelawyers.com
Trisha K. Monesi (SBN 303512)
Trisha.Monesi@capstonelawyers.com
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff Christopher Bell

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

CHRISTOPHER BELL, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

SERVICON SYSTEMS, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: BCV-21-100173

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Christopher Bell, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations of
9 any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order
11 were committed, as set forth in this complaint, at any time between one year prior to the filing
12 of the pre-filing written notice to the Labor and Workforce Development Agency (“LWDA”) in
13 this case on November 18, 2020, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional notions
22 of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this
23 action given that the State of California, as the real party in interest in this action, is not a
24 “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726
25 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated
26 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action,
27 and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil penalties
28 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court because Defendants employ persons in this county, and thus a substantial portion of the transactions, occurrences, and/or violations related to this action occurred in this county.

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Christopher Bell is a resident of Lancaster, in Los Angeles County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Security Escort from approximately October 22, 2018 to May 11, 2020. Plaintiff worked for Defendants based out of their client locations in Mojave, California and Palmdale, California. Plaintiff typically worked eight (8) hours or more per day, five (5) to six (6) days per week, from 6:00 a.m. to 2:30 p.m. or later. Plaintiff was compensated approximately \$22.55 per hour. His job duties included, without limitation, signing in visitors to the premises, escorting authorized visitors to the worksite, monitoring the visitors while they worked at the jobsite, and escorting the visitors off of the premises.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' dispute resolution policy and/or arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented new hires with an "Arbitration Agreement" ("Arbitration Agreement") during the onboarding process, which had to be reviewed and signed immediately. In fact, upon information and belief, this Arbitration Agreement was one of several documents presented to new employees for signature during the orientation process, including the Employee Handbook, Meal Period Waiver, and Rest Break Notice, among other documents. Also, employees did not have a meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to sign

1 on a take-it or leave-it basis at the time they were hired, along with all of the other on-boarding
2 documents. Furthermore, Defendants did not set forth in the agreement or otherwise provide
3 employees with the rules which will govern the arbitration, instead forcing employees to seek
4 this information out on their own.

5 8. SERVICON SYSTEMS, INC. was and is, upon information and belief, a
6 California corporation, and at all times hereinafter mentioned, an employer whose employees
7 are engaged throughout this county and the State of California.

8 9. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
9 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
10 complaint and serve such fictitiously named Defendants once their names and capacities
11 become known.

12 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
13 were the partners, agents, owners, or managers of SERVICON SYSTEMS, INC. at all relevant
14 times.

15 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
16 acts and omissions alleged herein was performed by, or is attributable to, SERVICON
17 SYSTEMS, INC. and/or DOES 1 through 10 (collectively, "Defendants" or "SERVICON"),
18 each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert
19 with, each of the other co-Defendants and was acting within the course and scope of such
20 agency, employment, joint venture, or concerted activity with legal authority to act on the
21 others' behalf. The acts of any and all Defendants were in accordance with, and represent, the
22 official policy of Defendants.

23 12. At all relevant times, Defendants, and each of them, ratified each and every act
24 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
25 and abetted the acts and omissions of each and all the other Defendants in proximately causing
26 the damages herein alleged.

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1 13. Plaintiff is informed and believes, and thereon alleges, that each of said
2 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
3 omissions, occurrences, and transactions alleged herein.

4 **PAGA REPRESENTATIVE ALLEGATIONS**

5 14. Defendants are the leading facilities maintenance contractor servicing the
6 aerospace, industrial, technology, and commercial sectors in California, Arizona, Virginia, and
7 New Mexico. Upon information and belief, Defendants maintain a single, centralized Human
8 Resources (“HR”) department at their corporate headquarters in Culver City, California, which
9 is responsible for the recruiting and hiring of new employees, and communicating and
10 implementing Defendants’ company-wide policies, including timekeeping policies and meal
11 and rest period policies, to employees throughout California.

12 15. In particular, Plaintiff and other non-party Aggrieved Employees, on information
13 and belief, received the same standardized documents and/or written policies. Upon
14 information and belief, the usage of standardized documents and/or written policies, including
15 new-hire documents, indicate that Defendants dictated policies at the corporate level and
16 implemented them company-wide, regardless of their employees’ assigned locations or
17 positions. Upon information and belief, Defendants set forth uniform policies and procedures
18 in several documents provided at an employee’s time of hire.

19 16. Upon information and belief, Defendants maintain a centralized Payroll
20 department at their corporate headquarters in Culver City, California, which processes payroll
21 for all non-exempt, hourly paid employees working for Defendants at their various locations
22 and jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based
23 upon information and belief, Defendants issue the same formatted wage statements to all non-
24 exempt, hourly paid employees in California, irrespective of their work locations. Upon
25 information and belief, Defendants process payroll for departing employees in the same manner
26 throughout the State of California, regardless of the manner in which each employee’s
27 employment ends.

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1 17. Defendants continue to employ non-exempt or hourly paid employees in
2 California.

3 18. Plaintiff is informed and believes, and thereon alleges, that at all times herein
4 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
5 advisors knowledgeable about California labor and wage law, employment and personnel
6 practices, and about the requirements of California law.

7 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
8 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
9 were not recorded.

10 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 receive certain wages for overtime compensation and that they were not receiving certain wages
13 for overtime compensation.

14 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 receive at least minimum wages for compensation and that they were not receiving at least
17 minimum wages for work that was required to be done off-the-clock. In violation of the
18 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
19 least minimum wages for work done off-the-clock.

20 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
23 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30)
24 minute meal periods and that Plaintiff and other non-party Aggrieved Employees were not
25 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
26 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

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1 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest
3 periods in accordance with the Labor Code and applicable IWC Wage Order or payment of one
4 (1) additional hour of pay at their regular rates of pay when they were not authorized and
5 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
6 and other non-party Aggrieved Employees were not authorized and permitted to take compliant
7 rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved Employees
8 with payment of one (1) additional hour of pay at their regular rates of pay when they were not
9 authorized and permitted to take a compliant rest period.

10 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 receive complete and accurate wage statements in accordance with California law. In violation
13 of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not
14 provided complete and accurate wage statements.

15 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that they had a duty to maintain accurate and complete payroll records in
17 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
18 and intentionally failed to do so.

19 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
21 timely payment of all wages earned upon termination of employment. In violation of the
22 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
23 payment of all wages due, including, but not limited to, overtime wages, minimum wages, meal
24 and rest period premiums, vested vacation wages, and/or reporting time pay, within permissible
25 time periods.

26 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 timely payment of wages during their employment. In violation of the California Labor Code,

1 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
2 including, but not limited to, overtime wages, minimum wages, meal and rest period premiums,
3 and/or reporting time pay, within permissible time periods.

4 28. Plaintiff is informed and believes, and thereon alleges, that at all time herein
5 mentioned, Defendants knew or should have known that they had a duty to cover the costs and
6 expenses Plaintiff and other non-party Aggrieved Employees incurred obtaining mandatory
7 examinations and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

8 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to one
10 day's rest in seven. In violation of the California Labor Code, Defendants required Plaintiff and
11 other non-party Aggrieved Employees to work more than six consecutive days without a day of
12 rest, where the total hours worked exceeded 30 hours in any week or six hours in any one day
13 thereof.

14 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 suitable seating and/or were entitled to sit when it did not interfere with the performance of their
17 duties and also have seats nearby to use during a lull in tasks that do require moving about or
18 standing.

19 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to be
21 paid reporting time pay when they reported to work for their scheduled shift but were put to work
22 for less than half of the regular schedule. In violation of the California Labor Code, Defendants
23 did not pay Plaintiff and other non-party Aggrieved Employees all reporting time pay due.

24 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 receive reimbursement for all business-related expenses and costs they incurred during the
27 course and scope of their employment and that they did not receive reimbursement of applicable
28 business-related expenses and costs incurred.

1 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that they had a duty to provide Plaintiff and other non-party Aggrieved
3 Employees with safety devices and safeguards, such as personal protective equipment, to protect
4 their life, safety, and health in the workplace, but willfully, knowingly, and intentionally failed
5 to do so.

6 34. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
8 and other non-party Aggrieved Employees for all hours worked, and that Defendants had the
9 financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to
10 do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees that they
11 were properly denied wages, all in order to increase Defendants' profits.

12 35. At all times herein set forth, PAGA provides that any provision of law under the
13 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
14 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
15 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
16 behalf of themselves and other current or former employees pursuant to procedures outlined in
17 California Labor Code section 2699.3.

18 36. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
19 person who was employed by the alleged violator and against whom one or more of the alleged
20 violations was committed."

21 37. Plaintiff and other current and former employees of Defendants are "aggrieved
22 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
23 or former employees and one or more of the alleged violations were committed against them.

24 38. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
25 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
26 requirements have been met:

- 27 (a) The aggrieved employee shall give written notice by online filing
28 (hereinafter "Employee's Notice") to the LWDA and by certified mail to

1 the employer of the specific provisions of the California Labor Code
2 alleged to have been violated, including the facts and theories to support
3 the alleged violations.

4 (b) An aggrieved employee's notice filed with the LWDA pursuant to
5 2699.3(a) and any employer response to that notice shall be accompanied
6 by a filing fee of seventy-five dollars (\$75).

7 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
8 employer and the aggrieved employee by certified mail that it does not
9 intend to investigate the alleged violation within sixty (60) calendar days
10 of the postmark date of the Employee's Notice. Upon receipt of the
11 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
12 (65) calendar days of the postmark date of the Employee's Notice, the
13 aggrieved employee may commence a civil action pursuant to California
14 Labor Code section 2699 to recover civil penalties in addition to any other
15 penalties to which the employee may be entitled.

16 39. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
17 through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision
18 other than those listed in Section 2699.5 after the following requirements have been met:

19 (a) The aggrieved employee or representative shall give written notice by
20 online filing to the LWDA and by certified mail to the employer of the
21 specific provisions of the California Labor Code alleged to have been
22 violated (other than those listed in Section 2699.5), including the facts
23 and theories to support the alleged violation.

24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(c) and any employer response to that notice shall be accompanied
26 by a filing fee of seventy-five dollars (\$75).

27 (c) The employer may cure the alleged violation within thirty-three (33)
28 calendar days of the postmark date of the notice. The employer shall give

1 written notice by certified mail within that period of time to the aggrieved
2 employee or representative and the agency if the alleged violation is
3 cured, including a description of actions taken, and no civil action
4 pursuant to Section 2699 may commence. If the alleged violation is not
5 cured within the 33-day period, the employee may commence a civil
6 action pursuant to Section 2699.

7 40. On November 18, 2020, Plaintiff provided written notice by online filing to the
8 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
9 Code alleged to have been violated, including facts and theories to support the alleged
10 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
11 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
12 PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff
13 PAGA Case Number LWDA-CM-812940-20. A true and correct copy of Plaintiff's written
14 notice to the LWDA and Defendants dated November 18, 2020, is attached hereto as "Exhibit
15 1."

16 41. As of the filing date of this complaint, over 65 days have passed since Plaintiff
17 sent the LWDA Notice described above, and the LWDA has not responded that it intends to
18 investigate Plaintiff's claims, and Defendants have not cured the violations.

19 42. Thus, Plaintiff has satisfied the administrative prerequisites under California
20 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
21 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3,
22 510, 512, 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

23 43. Labor Code section 558(a) provides "[a]ny employer or other person acting on
24 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
25 provision regulating hours and days of work in any order of the Industrial Welfare Commission
26 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
27 each underpaid employee for each pay period for which the employee was underpaid (2)
28 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for

1 each pay period for which the employee was underpaid” Labor Code section 558(c)
2 provides “[t]he civil penalties provided for in this section are in addition to any other civil or
3 criminal penalty provided by law.” Plaintiff, acting in the public interest as a private attorney
4 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
5 himself, all other non-party Aggrieved Employees, and the State of California against
6 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
7 IWC wage order. Plaintiff, acting in the public interest as a private attorney general, does not
8 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
9 of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC wage order.

10 44. Defendants, at all times relevant to this complaint, were employers or persons
11 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
12 Employees’ rights by violating various sections of the California Labor Code as set forth above.

13 45. As set forth below, Defendants have violated numerous provisions of both the
14 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
15 Order.

16 46. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
17 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private
18 attorney general, seeks assessment and collection of civil penalties for himself, all other non-
19 party Aggrieved Employees, and the State of California against Defendants for violations of
20 California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3, 510, 512, 516,
21 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

22 **FIRST CAUSE OF ACTION**

23 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

24 **(Against all Defendants)**

25 47. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
26 and every allegation set forth above.

27 48. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
28 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section

1 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5, 226(a),
2 226.7, 227.3, 510, 512, 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802. Labor
3 Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil
4 penalties for violations of those Labor Code sections not found in section 2699.5, including
5 sections 516, 1182.12, 6401, and 6403.

6 49. Defendants' conduct, as alleged herein, violates numerous sections of the
7 California Labor Code, including, but not limited to, the following:

- 8 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
9 wage order for Defendants' failure to compensate Plaintiff and other non-
10 party Aggrieved Employees with all required overtime pay, as set forth
11 below;
- 12 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
13 applicable IWC wage order for Defendants' failure to compensate
14 Plaintiff and other non-party Aggrieved Employees with at least
15 minimum wages for all hours worked as set forth below;
- 16 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
17 applicable IWC wage order for Defendants' failure to provide Plaintiff
18 and other non-party Aggrieved Employees with meal periods, as set forth
19 below;
- 20 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
21 IWC wage order for Defendants' failure to authorize and permit Plaintiff
22 and other non-party Aggrieved Employees to take rest periods, as set forth
23 below;
- 24 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
25 wage order for failure to provide accurate and complete wage statements
26 to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- 27 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC
28 wage order for failure to maintain payroll records as set forth below;

- (g) Violation of Labor Code section 204 for failure to pay all earned wages during employment as set forth below;
- (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth below;
- (i) Violation of Labor Code section 222.5 for failure to compensate Plaintiff and other non-party Aggrieved Employees for mandatory physical examinations and/or drug testing as set forth below;
- (j) Violation of Labor Code section 227.3 for failure to pay all vested vacation wages upon termination as set forth below;
- (k) Violation of Labor Code sections 551 and 552 for failure to provide one day's rest in seven to Plaintiff and other non-party Aggrieved Employees, as alleged herein;
- (l) Violation of Labor Code section 1198 for failing to provide suitable seating to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (m) Violation of Labor Code section 1198 and the applicable IWC wage order for failure to pay reporting time pay when Plaintiff and other non-party Aggrieved Employees were put to work for less than half of their regular scheduled shifts, as set forth below;
- (n) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and
- (o) Violation of Labor Code sections 6401 and 6403 for failure to provide safety devices and safeguards, such as personal protective equipment, to Plaintiff and other non-party Aggrieved Employees, as set forth below.

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1 **FAILURE TO PAY OVERTIME**

2 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

3 50. Labor Code section 1198 makes it illegal to employ an employee under
4 conditions of labor that are prohibited by the applicable wage order. California Labor Code
5 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
6 be the . . . standard conditions of labor for employees. The employment of any employee . . .
7 under conditions of labor prohibited by the order is unlawful.”

8 51. California Labor Code section 1198 and the applicable IWC Wage Order provide
9 that it is unlawful to employ persons without compensating them at a rate of pay either time-
10 and-one-half or two-times that person’s regular rate of pay, depending on the number of hours
11 worked by the person on a daily or weekly basis.

12 52. Specifically, the applicable IWC Wage Order provides that Defendants are and
13 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
14 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
15 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
16 hours in a workweek.

17 53. The applicable IWC Wage Order further provides that Defendants are and were
18 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
19 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
20 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
21 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

22 54. California Labor Code section 510 codifies the right to overtime compensation
23 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
24 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
25 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
26 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
27 the seventh (7th) day of work.

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1 55. First, during the relevant period, Defendants had a company-wide policy and/or
2 practice of improperly rounding employees' clock-in and clock-out duration times in their
3 timekeeping system to the nearest tenth (0.10) of an hour. Defendants' rounding policy resulted
4 in the failure to compensate Plaintiff and other non-party Aggrieved Employees fully for all
5 hours worked, causing Plaintiff and other non-party Aggrieved Employees to not be paid
6 overtime wages for all of the overtime hours they actually worked. Defendants' policy of
7 rounding was unfair and has, over time, resulted in the underpayment of wages to Plaintiff and
8 other non-party Aggrieved Employees. To the extent Defendants' rounding policy has taken
9 away time worked that was eligible for overtime, Plaintiff and other non-party Aggrieved
10 Employees were denied overtime pay for all hours worked.

11 56. Second, Defendants had a company-wide practice and/or policy of requiring
12 Plaintiff and other non-party Aggrieved Employees to perform work-related tasks while off-
13 the-clock, but prevented them from accounting for and recording this time in the timekeeping
14 system. For example, Plaintiff and other non-party Aggrieved Employees would report to work
15 prior to the start of their scheduled shifts to prepare the golf carts for escorting visitors, but were
16 not permitted clock in until their scheduled shift start-times. Plaintiff was also asked to arrive
17 30-45 minutes prior to his scheduled shift at least twice to complete required paperwork, but
18 was prevented from clocking in until his scheduled shift start-time. Additionally, other non-
19 party Aggrieved Employees were also required to clean, prepare for the next day, and respond
20 to Defendants' management regarding work-related matters and assignments on their personal
21 cellular phones, after they had clocked out from their scheduled shifts. Thus, Defendants failed
22 to track all hours Plaintiff and other non-party Aggrieved Employees spent working before
23 clocking in and/or after clocking out, and Plaintiff and other non-party Aggrieved Employees
24 received no compensation for this time.

25 57. Third, Defendants understaffed their jobsites by adopting a single-staffing model
26 for certain posts, which resulted in a lack of meal period coverage for employees. As a result
27 of Defendants' policy of understaffing and/or single-staffing, coupled with a company-wide
28 policy and/or practice of failing to schedule meal periods, Plaintiff and other non-party

1 Aggrieved Employees were not always afforded uninterrupted 30-minute meal periods during
2 shifts when they were entitled to receive a meal period. For example, during his employment,
3 Plaintiff would completely miss meal periods at least 2-3 times per week in order to continue
4 monitoring the visitors he was escorting on the premises. Additionally, Plaintiff's unpaid meal
5 periods were interrupted or cut short at least 1-2 times per week due to Defendants' management
6 texting or calling him on his personal cellular phone requesting that he return early to assist
7 with escorting duties. Defendants, on information and belief, also had a company-wide practice
8 and/or policy of requiring other non-party Aggrieved Employees to carry company-issued
9 cellular phones so that other employees and management could communicate with them as
10 needed. Defendants knew or should have known that Plaintiff and other non-party Aggrieved
11 Employees were being made to continue working or communicate with other employees while
12 clocked out for meal periods, in order to meet Defendants' expectations, but failed to
13 compensate them for this off-the-clock work.

14 58. Fourth, Defendants' company-wide electronic timekeeping system further
15 prevented Plaintiff and other non-party Aggrieved Employees from recording all hours worked
16 when their meal periods were shortened or interrupted, because the system locked out Plaintiff
17 and other non-party Aggrieved Employees once they had clocked out for a meal period, and
18 would not permit them to clock back in from a meal before the 30 minutes elapsed.
19 Additionally, Defendants implemented a timekeeping system that did not always permit
20 employees stationed away from Defendants' main office (or "off-facility") to track and record
21 their actual hours worked. Defendants' timekeeping system was only accessible via the physical
22 timeclock in Defendants' main office or through a mobile application, which required the
23 employee to be within signal range of the main office to be functional. If the employee was not
24 within the requisite range, which was often the case for Plaintiff, the employee would get a
25 "rejected" or error message when he or she tried to clock in or out. Instead, Defendants had
26 their supervisors maintain control over employee punch-in and punch-out times by only
27 allowing Plaintiff and other non-party Aggrieved Employees to be clocked in and clocked out
28 when they alerted their supervisor that they were taking or returning from their meal period,

1 granting the supervisor exclusive control and discretion over the employee's time records.
2 Thus, Defendants' timekeeping system prevented Plaintiff and other non-party Aggrieved
3 Employees from recording all hours worked when their meal periods were shortened or
4 interrupted. In the alternative, on information and belief, because Defendants' management
5 frowned upon employees accruing meal period penalties, Defendants' management adjusted
6 employee time records in order to strictly limit meal penalties that would need to be paid by
7 Defendants.

8 59. Defendants knew or should have known that as a result of these company-wide
9 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were working
10 before and after their shifts and/or during their meal periods, and were suffered or permitted to
11 perform work for which they were not paid. Because Plaintiff and other non-party Aggrieved
12 Employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week
13 or more, some of this off-the-clock work qualified for overtime premium pay. Therefore,
14 Plaintiff and other non-party Aggrieved Employees were not paid overtime wages for all of the
15 overtime hours they actually worked.

16 60. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
17 the balance of overtime compensation as required by California law, violates the provisions of
18 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
19 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
20 2699(a), (f), and (g).

21 **FAILURE TO PAY MINIMUM WAGES**

22 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

23 61. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
24 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
25 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
26 Compensable work time is defined by the applicable wage order as "the time during which an
27 employee is subject to the control of an employer, and includes all the time the employee is
28 suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, §

1 11040(2)(K) (defining “Hours Worked”).

2 62. As set forth above, Defendants had a policy of rounding Plaintiff and other non-
3 party Aggrieved Employees’ hourly clock-in and clock-out duration times to the tenth-of-an-
4 hour in their timekeeping system, resulting in the failure to compensate Plaintiff and other non-
5 party Aggrieved Employees fully for all hours worked. Also, as set forth above, Defendants
6 had a company-wide practice and/or policy of requiring Plaintiff and other non-party Aggrieved
7 Employees to perform work-related tasks outside of their scheduled shifts, but prevented them
8 from accounting for and recording this time in the timekeeping system.

9 63. Additionally, as stated, due to Defendants’ policy and/or practice of
10 understaffing or single-staffing, lack of meal period coverage, and failure to schedule meal
11 periods, Plaintiff and other non-party Aggrieved Employees were impeded from taking all
12 uninterrupted meal periods to which they were entitled and were required to work off-the-clock,
13 continuing to monitor guests and responding to phone calls or text messages. Moreover, as set
14 forth above, Defendants’ timekeeping system did not permit Plaintiff and other non-party
15 Aggrieved Employees to record all hours worked, including the ability to clock back in early
16 when their meal periods were interrupted or cut short. As stated, Defendants implemented a
17 timekeeping system that did not always permit employees stationed away from Defendants’
18 main office or “off-facility” to track and record their actual hours worked. Instead, Defendants
19 had their supervisors maintain control over employee punch-in and punch-out times by only
20 allowing Plaintiff and other non-party Aggrieved Employees to be clocked in and out when they
21 alerted their supervisor that they were taking or returning from their meal period, granting the
22 supervisor exclusive control and discretion over the employee’s time records. Alternatively, as
23 stated, on information and belief, in order to prevent employees from accruing meal period
24 penalties, Defendants’ management adjusted employee time records to reflect compliant meal
25 periods, time for which they were not paid.

26 64. Further, Defendants implemented, on a company-wide basis, an employer-
27 imposed requirement that Plaintiff and other non-party Aggrieved Employees undergo a
28 mandatory drug testing and/or physical examinations. At all times, Defendants were in control

1 of scheduling the date and time for the testing and/or examinations, selecting the
2 provider/facility where the testing and/or examinations were to take place, and determining the
3 scope of the testing and/or examinations. Defendants gave Plaintiff and other non-party
4 Aggrieved Employees strict instructions to obtain drug testing and/or physical examinations,
5 and Plaintiff and other non-party Aggrieved Employees underwent the testing and/or
6 examinations for the sole benefit of Defendants. For example, Plaintiff followed Defendants'
7 instructions, traveled approximately 60 miles roundtrip (for approximately 80-90 minutes total)
8 in his personal vehicle to and from a designated medical facility in Palmdale, California, and
9 spent 40-50 minutes waiting at the medical facility and undergoing the requisite testing.
10 However, Defendants did not compensate Plaintiff and other non-party Aggrieved Employees
11 for the time they spent traveling to and from the medical facilities and for the time they spent
12 undergoing the drug testing and/or physical examinations.

13 65. Thus, Defendants did not pay at least minimum wages for off-the-clock hours
14 that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours
15 did not qualify for overtime premium payment, Defendants did not pay at least minimum wages
16 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
17 1194, 1197, and 1197.1. Accordingly, Defendants regularly failed to pay at least minimum
18 wages to Plaintiff and other non-party Aggrieved Employees for all of the hours they worked
19 in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

20 66. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
21 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
22 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
23 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

24 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

25 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

26 67. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
27 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
28 non-party Aggrieved Employees' employment by Defendants.

1 68. At all relevant times herein set forth, California Labor Code section 512(a)
2 provides that an employer may not require, cause, or permit an employee to work for a period
3 of more than five (5) hours per day without providing the employee with a meal period of not
4 less than thirty (30) minutes, except that if the total work period per day of the employee is not
5 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
6 and the employee. Under California law, first meal periods must start after no more than five
7 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

8 69. At all relevant times herein set forth, California Labor Code section 226.7,
9 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
10 meal period mandated by an applicable order of the IWC.

11 70. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
12 and the applicable IWC Wage Order also require employers to provide a second meal period of
13 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
14 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
15 hours worked is no more than twelve (12) hours, the second meal period may be waived by
16 mutual consent of the employer and the employee only if the first meal period was not waived.

17 71. Under California law, an employer cannot evade meal period requirements via
18 the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec.*
19 *Assocs.*, 2011 U.S. Dist. LEXIS 156685 (C.D. Cal. Jan. 11, 2011).

20 72. First, during the relevant period, as stated, Defendants systematically, and on a
21 company-wide basis, understaffed their posts by adopting a single-officer staffing model for
22 certain security posts, thereby failing to provide adequate meal period coverage to permit
23 employees to take compliant meal periods. Because Defendants understaffed their jobsites,
24 there was no one available to relieve Plaintiff and other non-party Aggrieved Employees
25 needing meal period coverage. For example, when working in classified areas, Plaintiff was
26 unable to obtain coverage for his meal periods due to a lack of officers with proper security
27 clearances available to relieve him. Instead of providing sufficient meal period coverage,
28 Defendants required Plaintiff and other non-party Aggrieved Employees to remain available

1 and on-duty at all times, including during meal periods, in order to tend to duties as they arose.
2 To the extent Defendants required Plaintiff and other non-party Aggrieved Employees to sign
3 written “on-duty” meal period agreements, such agreements are invalid as the nature of the work
4 performed by Plaintiff and other non-party Aggrieved Employees do not necessitate an “on-
5 duty” meal period under California law. Defendants could have provided rover meal period
6 coverage for their employees or staffed more than one employee at certain posts, but chose not
7 to do so. Because Defendants required that Plaintiff and other non-party Aggrieved Employees
8 remain alert and on-duty at all times while at their posts, and failed provide them with adequate
9 meal period coverage, Plaintiff and other non-party Aggrieved Employees were subject to
10 Defendants’ control and suffered to work during unpaid meal periods.

11 73. Second, Defendants, on a company-wide basis, systematically discouraged and
12 impeded Plaintiff and other non-party Aggrieved Employees from taking meal periods by
13 failing to schedule meal periods, even though Defendants are aware and know that employees
14 are entitled to such meal periods. As a result of this uniform failure to schedule meal periods
15 and subsequent lack of coverage, Plaintiff and other non-party Aggrieved Employees were not
16 provided timely, uninterrupted 30-minute meal periods during their shifts in which they were
17 entitled to receive a meal period. Additionally, Plaintiff and other non-party Aggrieved
18 Employees were required to respond to text messages and calls on their personal or company-
19 issued cellular phones from supervisors and management during unpaid meal periods. As a
20 result of Defendants’ policy and/or practice that employees carry and respond to company or
21 personal cellular phones, Plaintiff and other non-party Aggrieved Employees were compelled
22 to perform work-related duties during their unpaid meal periods.

23 74. Third, as described above, Defendants implemented an electronic timekeeping
24 system that locked Plaintiff and other non-party Aggrieved Employees out and prevented them
25 from clocking in early before the end of their 30-minute meal period. Furthermore, as stated,
26 Defendants implemented a timekeeping system that did not always permit employees stationed
27 away from Defendants’ main office or “off-facility” to track and record their actual hours
28 worked, because the mobile application Defendants required employees to use was non-

functional if they were not within signal range of the main office. Instead, Defendants had their supervisors maintain control over employee punch-in and punch-out times by only allowing Plaintiff and other non-party Aggrieved Employees to be clocked in and out when they alerted their supervisor that they were taking or returning from their meal period, granting the supervisor exclusive control and discretion over the employee's time records. As a result, Plaintiff and other non-party Aggrieved Employees were prevented from accurately recording when they had to return early from a meal period so that they could be compensated for that time worked. In the alternative, on information and belief, because Defendants frowned upon employees accruing meal period penalties, Defendants' management adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by Defendants.

75. As a result of Defendants' practices, Plaintiff and other non-party Aggrieved Employees had to work through part or all of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, during his employment, Plaintiff would completely miss meal periods at least 2-3 times per week in order to continue monitoring the visitors he was escorting on the premises. Additionally, 1-2 times per week, Plaintiff was required to keep working until he had concluded escorting assigned visitors before he could take his meal period, which was usually 6-8 hours into his shift. Plaintiff's unpaid meal periods were also interrupted or shortened at least 1-2 times per week in order to respond to his supervisors' requests and demands.

76. Furthermore, Defendants did not provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal periods on days when they worked in excess of ten (10) hours in one day. During his employment, Plaintiff worked shifts in excess of ten (10) hours or more per day, but was not provided a second 30-minute meal period. Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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1 77. Moreover, Defendants had a company-wide policy of requiring all newly hired
2 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
3 the position that non-exempt, hourly paid employees had waived their rights to first and second
4 meal periods for the entirety of their employment and, on that basis, did not provide them with
5 all meal periods to which they were entitled. Specifically, Defendants’ “Meal Period Waiver”
6 form provides that the waiver remains in effect until the employee provides Defendants with
7 advanced, written notice of his or her decision to revoke. Defendants’ company-wide use of
8 blanket meal period waivers signed at or near the time of hire and imposition on employees to
9 revoke the waivers in writing, discouraged and impeded Plaintiff and other non-party Aggrieved
10 Employees from taking all meal periods to which they were entitled. And, Defendants’
11 presumption that second meal periods would not be provided for shifts in excess of ten (10)
12 hours but less than twelve (12) hours due to blanket meal period waivers discouraged Plaintiff
13 and other non-party Aggrieved Employees from taking second meal periods.

14 78. What’s more, an employer’s obligation to provide a meal period is only
15 “triggered” when the employer “employs an employee for a work period of more than five hours
16 per day.” *Brinker*, 53 Cal. 4th at 1039 (“If an employer engages, suffers, or permits anyone to
17 work for a full five hours, its meal break obligation is triggered.”).

18 [A]fter the meal break obligation is triggered . . . an employer is put to a
19 choice: it must (1) afford an off-duty meal period; (2) consent to a mutually
20 agreed-upon waiver if one hour or less will end the shift; or (3) obtain
21 written agreement to an on-duty meal period if circumstances permit.
22 Failure to do one of these will render the employer liable for premium pay.

23 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). Further, under Labor
24 Code section 512(a) and the applicable IWC Wage Order, employees may waive their second
25 meal periods only if they took their first meal period. That Defendants require aggrieved
26 employees to sign meal period waivers simultaneously at or near their time of hire (as opposed
27 to on a specific work day) renders them invalid and unenforceable, because Defendants’
28 obligation to provide Plaintiff and other non-party Aggrieved Employees with meal periods did
not arise until it had employed them for a full five (5) hours.

1 79. Additionally, Defendants’ Meal Period Waiver form states “For this waiver to be
2 valid, Human Resources must also agree to the waiver in writing by signing below, at which
3 time this waiver immediately will become effective.” However, the blanket meal period waiver
4 was only signed by Plaintiff.

5 80. Defendants knew or should have known that as a result of their company-wide
6 policies and/or practices, that Plaintiff and other non-party Aggrieved Employees were not
7 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
8 knew or should have known that they did not pay Plaintiff and other non-party Aggrieved
9 Employees meal period premium wages when meal periods were missed, late, short, and/or
10 interrupted.

11 81. Defendants have also engaged in a company-wide practice and/or policy of not
12 paying all meal period premiums owed when compliant meal periods are not provided. Because
13 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
14 received premium pay for missed, interrupted, or late meal periods.

15 82. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
16 Employees compliant meal periods and failed to pay the full meal period premiums due.
17 Defendants’ conduct violates the applicable IWC Wage Order, and California Labor Code
18 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
19 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
20 (g).

21 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

22 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

23 83. At all relevant times herein set forth, the applicable IWC Wage Order and
24 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff’s and other
25 non-party Aggrieved Employees’ employment by Defendants.

26 84. At all relevant times, the applicable IWC Wage Order provides that “[e]very
27 employer shall authorize and permit all employees to take rest periods, which insofar as
28 practicable shall be in the middle of each work period” and that the “rest period time shall be

1 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
2 hours or major fraction thereof” unless the total daily work time is less than three and one-half
3 (3½) hours.

4 85. At all relevant times, California Labor Code section 226.7 provides that no
5 employer shall require an employee to work during any rest period mandated by an applicable
6 order of the California IWC. To comply with its obligation to authorize and permit rest periods
7 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
8 must “relinquish any control over how employees spend their break time, and relieve their
9 employees of all duties—including the obligation that an employee remain on call. A rest
10 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
11 257, 269-270 (2016).

12 86. Pursuant to the applicable IWC Wage Order and California Labor Code section
13 226.7, Plaintiff and other non-party Aggrieved Employees are entitled to recover from
14 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
15 required rest period was not authorized and permitted.

16 87. During the relevant time period, Defendants regularly failed to authorize and
17 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period
18 per each four (4) hour period worked or major fraction thereof. As with meal periods,
19 Defendants’ company-wide practices, including understaffing and/or single-staffing, resulted in
20 a lack of rest period coverage and prevented Plaintiff and other non-party Aggrieved Employees
21 from being relieved of all duty in order to take compliant rest periods. Defendants also failed
22 to schedule rest periods, which, coupled with Defendants’ failure to provide adequate rest period
23 coverage, further led to Plaintiff and other non-party Aggrieved Employees not being authorized
24 and permitted to take rest periods. Moreover, Defendants’ policy and/or practice of requiring
25 Plaintiff and other non-party Aggrieved Employees to carry and respond to personal or
26 company-issued cellular phones also prevented them from being relieved of all duty to take
27 compliant rest periods.

28 ///

1 88. Furthermore, Defendants maintained and implemented a company-wide practice
2 and/or policy of effectively requiring that Plaintiff and/or other non-party Aggrieved Employees
3 remain on the work premises during their rest periods. Because Plaintiff and/or other non-party
4 Aggrieved Employees were implicitly restricted from leaving the work premises during rest
5 periods, they were denied the ability to use their rest periods freely for their own purposes.
6 Thus, Defendants effectively maintained control over Plaintiff and/or other non-party
7 Aggrieved Employees during rest periods, and, as a result of this rest period policy, Defendants
8 did not relinquish control over Plaintiff and/or other non-party Aggrieved Employees during
9 rest periods.

10 89. As a result, Plaintiff and other non-party Aggrieved Employees would work
11 shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being
12 permitted and authorized to take all ten (10) minute rest periods to which they were entitled.
13 For example, throughout his employment, Plaintiff's rest periods would occasionally be
14 interrupted or shortened in order to respond to his supervisors' requests because Defendants
15 failed to employ sufficient staff to provide Plaintiff rest period coverage.

16 90. Defendants have also engaged in a company-wide practice and/or policy of not
17 paying all rest period premiums owed when compliant rest periods are not authorized and
18 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
19 Employees have not received premium pay for all missed rest periods.

20 91. Defendants' conduct violates the applicable IWC Wage Order and California
21 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees
22 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
23 2699(a), (f), and (g).

24 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
25 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

26 92. At all relevant times herein, California Labor Code section 226(a) provides that
27 every employer shall furnish each of his or her employees an accurate and complete itemized
28 wage statement in writing, including, but not limited to, the name and address of the legal entity

1 that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable
2 rates of pay.

3 93. During the relevant time period, Defendants have knowingly and intentionally
4 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
5 inaccurate wage statements. For example, Defendants issued uniform wage statements to
6 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
7 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
8 the pay period, including overtime rates of pay, and the corresponding number of hours worked
9 at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5),
10 and 226(a)(9).

11 94. Because Defendants did not record the time Plaintiff and other non-party
12 Aggrieved Employees spent working off-the-clock, deducted time from their records for meal
13 periods that were interrupted and/or missed (and therefore time for which they should have been
14 paid), and improperly rounded their total hours worked, Defendants did not list the correct
15 amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved
16 Employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the
17 same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff
18 and other non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list
19 the applicable hourly rates of pay in effect during the pay period and the corresponding accurate
20 number of hours worked at each hourly rate, in violation of section 226(a)(9).

21 95. The wage statement deficiencies also include, among other things, failing to list
22 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
23 piece-rate basis; failing to list all deductions; failing to list the name of the employee and only
24 the last four digits of his or her social security number or an employee identification number
25 other than a social security number; failing to list the name and address of the legal entity that
26 is the employer; failing to list the inclusive dates of the period for which aggrieved employees
27 were paid; and/or failing to state all hours worked as a result of not recording or stating the
28 hours they worked off-the-clock.

1 96. California Labor Code section 1174(d) provides that “[e]very person employing
2 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
3 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
4 plants or establishments at which employees are employed, payroll records showing the hours
5 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
6 applicable piece rate paid to, employees employed at the respective plants or establishments. . .
7 .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they
8 fail to maintain accurate and complete records as required by section 1174(d). During the
9 relevant time period, and in violation of Labor Code section 1174(d), Defendants willfully failed
10 to maintain accurate payroll records for Plaintiff and other non-party Aggrieved Employees
11 showing the daily hours they worked and the wages paid thereto as a result of failing to record
12 the off-the-clock hours that they worked and improperly rounding Plaintiff’s and other non-
13 party Aggrieved Employees’ total hours worked.

14 97. California Labor Code section 1198 provides that the maximum hours of work
15 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
16 forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment
17 of any employees for longer hours than those fixed by the order or under conditions of labor
18 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
19 are required to keep accurate time records showing when the employee begins and ends each
20 work period and meal period. During the relevant time period, Defendants failed, on a
21 company-wide basis, to keep accurate records of work period and meal period start and stop
22 times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198. As
23 stated, Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiff’s
24 and other non-party Aggrieved Employees’ time records by deducting meal periods regardless
25 of if or when meal periods were actually taken, and thereby failed to keep accurate records of
26 meal start and end times for Plaintiff and other non-party Aggrieved Employees. Furthermore,
27 in light of Defendants’ failure to provide Plaintiff and other non-party Aggrieved Employees
28 with second 30-minute meal periods to which they were entitled, Defendants kept no records of

meal start and end times for second meal periods.

98. Because Defendants failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and other non-party Aggrieved Employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Plaintiff and other non-party Aggrieved Employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

99. Because Defendants' violations of 226(a) and 1174(d) were committed against Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

100. At all relevant times herein set forth, California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

101. At all relevant times herein, California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all relevant times herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

1 102. During the relevant time period, Defendants willfully failed to pay Plaintiff and
2 other non-party Aggrieved Employees all wages due to them within any time period specified
3 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
4 wages, meal and rest period premium wages, and/or reporting time pay.

5 103. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
6 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

7 **FAILURE TO PAY WAGES UPON TERMINATION**

8 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

9 104. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
10 that if an employer discharges an employee, the wages earned and unpaid at the time of
11 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
12 her employment, his or her wages shall become due and payable not later than seventy-two (72)
13 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
14 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
15 quitting.

16 105. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
17 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
18 above, including but not limited to, overtime wages, minimum wages, meal and rest period
19 premium wages, vested vacation wages, and/or reporting time pay, either at the time of
20 discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

21 106. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
22 who are no longer employed by Defendants their wages earned and unpaid at the time of
23 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor
24 Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore
25 entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and
26 (g).

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1 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATION**

2 **VIOLATION OF LABOR CODE SECTION 222.5**

3 107. At all relevant times herein, California Labor Code section 222.5 requires
4 employers to pay for the costs an employee incurs for obtaining any required medical or physical
5 examination.

6 108. During the relevant time period, Defendants implemented, on a company-wide
7 basis, an employer-imposed requirement that Plaintiff and non-party Aggrieved Employees
8 undergo mandatory drug testing and/or physical examinations, but required them to do so at
9 their own expense. As stated, Defendants had a company-wide policy requiring that Plaintiff
10 and non-party Aggrieved Employees travel to a specified medical facility on their own time and
11 use their own means of transportation to undergo drug testing and/or physical examinations. At
12 all times, Defendants were in control of scheduling the date and time for the testing and/or
13 examinations, selecting the provider/facility where the testing and/or examinations were to take
14 place, and determining the scope of the testing and/or examinations.

15 109. For example, Plaintiff was instructed by Defendants to travel to a designated
16 medical facility in Palmdale, California, and obtain a drug test. Plaintiff followed Defendants'
17 instructions, traveled to the medical facility Defendants selected, and underwent the testing.
18 Plaintiff drove approximately 60 miles roundtrip (for approximately 80-90 minutes total) in his
19 personal vehicle, to and from the designated medical facility, and spent 40-50 minutes waiting
20 at the medical facility and undergoing the requisite testing.

21 110. However, Defendants did not compensate Plaintiff and non-party Aggrieved
22 Employees for the time they spent traveling to and from the medical facilities, for the time they
23 spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel
24 expenses they incurred getting to and from the medical facilities. Defendants' policy and/or
25 practice of not paying for all costs Plaintiff and non-party Aggrieved Employees incurred
26 obtaining mandatory drug testing and/or physical examinations is in violation of California
27 Labor Code section 222.5.

28 ///

111. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PAY ALL VESTED VACATION TIME

AND PAID TIME OFF UPON TERMINATION

VIOLATION OF LABOR CODE SECTION 227.3

112. At all relevant times herein set forth, California Labor Code section 227.3 provides that whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken his or her vested vacation time, all vested vacation shall be paid to him or her as wages at his or her final rate in accordance with such contract of employment or employer policy respecting eligibility or time served.

113. During the relevant time period, Defendants had a company-wide policy and practice of failing to pay Plaintiff and other non-party Aggrieved Employees vested vacation wages that were owed to them at the end of their employment, in violation of California Labor Code section 227.3. Specifically, Plaintiff had earned vested vacation pay until his employment with Defendants ended on or about May 11, 2020. However, Defendants only paid Plaintiff the balance of his accrued and unused vacation wages as of May 3, 2020, or the end of his prior pay period. Defendants willfully and improperly paid Plaintiff and other non-party Aggrieved Employees their unused and vested vacation wages through their second to last pay period worked.

114. Furthermore, on information and belief, Defendants failed to correctly calculate and pay all earned vested vacation hours due to the hours Plaintiff and other non-party Aggrieved Employees worked off-the-clock, pursuant to company-wide policies and/or practices. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees who are no longer employed by Defendants all vested vacation wages at the end of their employment caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3.

115. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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1 **FAILURE TO PROVIDE ONE DAY’S REST IN SEVEN**

2 **VIOLATION OF LABOR CODE SECTIONS 551 AND 552**

3 116. At all relevant times herein, California Labor Code section 551 provides that
4 every person employed in any occupation of labor is entitled to one day’s rest in seven.
5 Additionally, California Labor Code section 552 prohibits employers from requiring employees
6 to work more than six consecutive days without a day of rest.

7 117. Further, at all times relevant herein set forth, California Labor Code section 556
8 exempts an employer from the day-of-rest requirement when the total hours worked by an
9 employee do not exceed 30 hours in any week or six hours in any one day thereof.

10 118. During the relevant period, Defendants required Plaintiff and other non-party
11 Aggrieved Employees to work eight (8) or more hours per day and seven (7) consecutive days
12 in a workweek. For example, on information and belief, Plaintiff worked seven (7) consecutive
13 days in a workweek on at least two (2) occasions. Because Plaintiff and other non-party
14 Aggrieved Employees worked over thirty (30) hours per week and over six (6) hours per day in
15 a workweek, they were not exempt from the day-of-rest requirement. To the extent that Plaintiff
16 and other non-party Aggrieved Employees signed purported waivers of their right to a day’s
17 rest in seven, such waivers are invalid. Thus, Defendants caused Plaintiff and other non-party
18 Aggrieved Employees to work more than six days in seven, in violation of Labor Code sections
19 551 and 552.

20 119. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
21 recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

22 **FAILURE TO PROVIDE SUITABLE SEATING**

23 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
24 **REGULATIONS, TITLE 8, SECTION 11040(14)(A)**

25 120. At all relevant times herein, California Labor Code section 1198 makes it illegal
26 to employ an employee under conditions of labor that are prohibited by the applicable wage
27 order. California Labor Code section 1198 requires that “. . . the standard conditions of labor
28 fixed by the commission shall be the . . . standard conditions of labor for employees. The

1 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

2 121. California Code of Regulations, Title 8, section 11040(14)(A) provides that “[a]ll
3 working employees shall be provided with suitable seats when the nature of the work reasonably
4 permits the use of seats.”

5 122. Defendants’ California jobsites are generally similar in their layout and design
6 and there was, and continues to be, space near their workstations to allow for the presence and
7 use of a seat or stool by Plaintiff and other non-party Aggrieved Employees (with reasonable or
8 no modification to these work areas) during the performance of their work duties. Defendants
9 could provide Plaintiff and other non-party Aggrieved Employees with a seat or stool at their
10 workstations, but instead denies employees seating and forces Plaintiff and other non-party
11 Aggrieved Employees to stand throughout the day.

12 123. Plaintiff and other non-party Aggrieved Employees spent a substantial portion of
13 their day at their workstations. The nature of the work of an employee performing security
14 officer duties can reasonably be accomplished from a seated position. For example, once
15 Plaintiff and other non-party Aggrieved Employees escorted visitors onto jobsites, the
16 remainder of their shift typically consisted of monitoring visitors, which could be performed
17 from a seated position, until the visitors were ready to leave the premises. However, as set forth
18 herein, Defendants systematically, and on a company-wide basis, does not provide seats or
19 stools at or near workstations, forcing Plaintiff and other non-party Aggrieved Employees to
20 stand throughout their work shifts.

21 124. Defendants violated California Labor Code section 1198 and California Code of
22 Regulations, Title 8, section 11040(14)(A) because Plaintiff and other non-party Aggrieved
23 Employees were not allowed to sit, even when it would not have interfered with the performance
24 of their duties, nor were they provided with suitable seats. Defendants’ management did not
25 inform Plaintiff and other non-party Aggrieved Employees that they were allowed to sit down,
26 provide any means for them to sit down, or mention any policy regarding sitting.

27 125. As a result of Defendants’ company-wide policy and/or practice of prohibiting
28 employees from sitting during their shifts and company-wide failure to provide suitable seating,

1 Plaintiff and other non-party Aggrieved Employees were forced to stand during shifts and
2 denied seats. Defendants' failure to provide suitable seating to Plaintiff and other non-party
3 Aggrieved Employees violates California Labor Code section 1198 and IWC Wage Order 4-
4 2001, Section 14(A).

5 126. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
6 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

7 **FAILURE TO PROVIDE SUITABLE SEATING**
8 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
9 **REGULATIONS, TITLE 8, SECTION 11040(14)(B)**

10 127. At all relevant times herein, California Labor Code section 1198 makes it illegal
11 to employ an employee under conditions of labor that are prohibited by the applicable wage
12 order. California Labor Code section 1198 requires that “. . . the standard conditions of labor
13 fixed by the commission shall be the . . . standard conditions of labor for employees. The
14 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

15 128. California Code of Regulations, Title 8, section 11040(14)(B) provides that
16 “[w]hen employees are not engaged in the active duties of their employment and the nature of
17 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
18 proximity to the work area and employees shall be permitted to use such seats when it does not
19 interfere with the performance of their duties.”

20 129. During the relevant time period, Defendants violated California Labor Code
21 section 1198 and California Code of Regulations, Title 8, section 11040(14)(B), because
22 Plaintiff and other non-party Aggrieved Employees were not provided with suitable seats in
23 reasonable proximity to their work areas and, therefore, effectively not allowed to sit, even
24 during lulls in their work duties.

25 130. As stated, Defendants' California jobsites are generally similar in their layout
26 and design and there was, and continues to be, space near work areas (with reasonable or no
27 modification to these work areas) to allow for the presence and use of a seat or stool by Plaintiff
28 and other non-party Aggrieved Employees during lulls in operation. Defendants could provide

1 Plaintiff and other non-party Aggrieved Employees with a seat or stool in their work areas, but
2 instead denied employees seating and forces Plaintiff and other non-party Aggrieved Employees
3 to stand throughout the day.

4 131. Defendants did not provide Plaintiff and other non-party Aggrieved Employees
5 with seats or stools in reasonable proximity to their work areas to allow them to use seats when
6 it would not interfere with the performance of their duties for times when they were not engaged
7 in active duties that require standing. In other words, to the extent Plaintiff and other non-party
8 Aggrieved Employees engaged in duties in which the nature of the work required standing,
9 Defendants denied them the use of seats nearby during lulls in their work duties. Moreover,
10 Defendants did not inform Plaintiff and other non-party Aggrieved Employees of their rights to
11 a seat or stool under California law.

12 132. As a result of Defendants' company-wide policy and/or practice of prohibiting
13 employees from sitting at any time, even when they were not engaged in active duties requiring
14 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,
15 Plaintiff and other non-party Aggrieved Employees were forced to stand during shifts and
16 denied seats. Defendants' failure to provide suitable seating to Plaintiff and other non-party
17 Aggrieved Employees violates California Labor Code section 1198 and IWC Wage Order 4-
18 2001, Section 14(B).

19 133. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
20 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

21 **FAILURE TO PAY REPORTING TIME PAY**

22 **VIOLATION OF LABOR CODE SECTION 1198**

23 134. California Labor Code section 1198 makes it illegal to employ an employee under
24 conditions of labor that are prohibited by the applicable wage order. California Labor Code
25 section 1198 requires that "... the standard conditions of labor fixed by the commission shall be
26 the ... standard conditions of labor for employees. The employment of any employee ... under
27 conditions of labor prohibited by the order is unlawful."

28 ///

1 135. California Code of Regulations, Title 8, section 11040(5)(A) provides that “[e]ach
2 workday an employee is required to report for work and does report, but is not put to work or is
3 furnished less than half said employee’s usual or scheduled day’s work, the employee shall be
4 paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor
5 more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the
6 minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least
7 partial compensation for employees who report to work expecting to work a specified number of
8 hours, and who are deprived of that amount because of inadequate scheduling or lack of proper
9 notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

10 136. Defendants violated California Labor Code section 1198 and California Code of
11 Regulations, Title 8, section 11040(5), because Defendants failed to pay Plaintiff and other non-
12 party Aggrieved Employees reporting time pay when they reported to work for their scheduled
13 shift but were put to work for less than half of the regular schedule.

14 137. During the relevant time period, Defendants had a company-wide practice of
15 sending Plaintiff and other non-party Aggrieved Employees home early from their shifts,
16 including before they had worked at least half of their regular shift, but would not pay Plaintiff
17 and other non-party Aggrieved Employees for half of their scheduled shift. For example, 10-15
18 times during his employment, Plaintiff reported to work for his scheduled shift, but was told to
19 go home two (2) hours into his shift because there were not enough people, or charges, for him
20 to escort that day. Although Plaintiff and other non-party Aggrieved Employees would report to
21 work based on the schedule that Defendants provided to them, Defendants would send them
22 home before they had worked at least half of their scheduled shifts without giving them
23 reporting time pay. Accordingly, Plaintiff and other non-party Aggrieved Employees were not
24 properly compensated with reporting time pay in violation of California Labor Code section
25 1198.

26 138. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
27 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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1 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

2 **VIOLATION OF LABOR CODE SECTION 2802**

3 139. At all times herein set forth, California Labor Code section 2802 provides that
4 an employer must reimburse employees for all necessary expenditures and losses incurred by
5 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
6 to prevent employers from passing off their cost of doing business and operating expenses on
7 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
8 (2014). The applicable wage order, IWC Wage Order 4-2001, provides that: "[w]hen the
9 employer requires the use of tools or equipment or they are necessary to the performance of a
10 job, such tools and equipment shall be provided and maintained by the employer, except that an
11 employee whose wages are at least two (2) times the minimum wage may provide and maintain
12 hand tools and equipment customarily required by the particular trade or craft."

13 140. First, during the relevant time period, Defendants, on a company-wide basis,
14 required that Plaintiff and other non-party Aggrieved Employees use their own personal cellular
15 phones and/or cellular data to carry out their job duties, but failed to reimburse them for the
16 costs of their work-related cellular phone expenses. For example, Plaintiff and other non-party
17 Aggrieved Employees received work-related calls and texts from their supervisors discussing
18 their assignments with Defendants' managers throughout each shift. As a further example,
19 Defendants required Plaintiff and other non-party Aggrieved Employees to download and use
20 the Kronos mobile timekeeping application on their personal cellular phones. Although
21 Defendants required Plaintiff and other non-party Aggrieved Employees to utilize their personal
22 cellular phones to carry out their work-related responsibilities, Defendants failed to fully
23 reimburse them for this cost.

24 141. Second, as stated, Defendants had a company-wide policy of requiring Plaintiff
25 and other non-party Aggrieved Employees to travel to medical facilities on their own time and
26 using their personal vehicles or alternate transportation to obtain mandatory drug testing and/or
27 physical examinations, but did not reimburse them for their travel expenses, including mileage.
28 At all times, Defendants were in control of scheduling the date and time for the testing and/or

1 physical examinations, selecting the provider or facility where the testing and/or physical
2 examinations were to take place, and determining the scope of the testing and/or physical
3 examinations. Defendants gave Plaintiff and other non-party Aggrieved Employees strict
4 instructions to obtain drug testing and/or physical examinations, and Plaintiff and other non-
5 party Aggrieved Employees underwent the examinations and/or testing for the sole benefit of
6 Defendants. For example, Plaintiff followed Defendants' instructions, traveled approximately
7 60 miles roundtrip (for approximately 80-90 minutes total) in his personal vehicle to and from
8 a designated medical facility in Palmdale, California, but was not reimbursed for his mileage to
9 and from the medical facility. Although Defendants required Plaintiff and other non-party
10 Aggrieved Employees to use their own vehicles or obtain alternate transportation to undergo
11 mandatory drug testing and/or physical examinations, Defendants never reimbursed them for
12 their travel expenses.

13 142. Third, during the relevant time period, Defendants, on a company-wide basis,
14 forced Plaintiff and other non-party Aggrieved Employees to purchase their own security
15 supplies and tools, such as lanyards and security badge holders, as required by Defendants'
16 clients. For example, Plaintiff was required to spend approximately \$50.00 on these supplies
17 in order to carry out his work-related duties, such as entering and escorting visitors to
18 Defendants' clients' restricted access construction areas. Although Defendants required
19 Plaintiff and other non-party Aggrieved Employees to purchase their own supplies and tools for
20 use on the job, Defendants did not reimburse them for these expenses.

21 143. Fourth, Defendants, on a company-wide basis, mandated that Plaintiff and other
22 non-party Aggrieved Employees purchase special safety shoes such as steel-toed boots, which
23 they were required to wear while at work in construction zones. Plaintiff and other non-party
24 Aggrieved Employees purchased steel-toed boots to wear inside Defendants' clients' facilities,
25 such as construction zones, but were not reimbursed fully for these costs.

26 144. Defendants could have provided Plaintiff and other non-party Aggrieved
27 Employees with the actual tools for use on the job, such as company phones, company vehicles,
28 security supplies and tools, and steel-toed boots, or could have reimbursed employees for the

1 costs of their cellular phone usage, travel expenses, mileage, security supply and tool expenses,
2 and boot expenses. Instead, Defendants passed these operating costs off onto Plaintiff and other
3 non-party Aggrieved Employees. At all relevant times, Plaintiff and other non-party Aggrieved
4 Employees did not earn at least two (2) times the minimum wage.

5 145. Defendants' company-wide policy and/or practice of passing on their operating
6 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
7 section 2802. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
8 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

9 **FAILURE TO PROVIDE SAFETY DEVICES AND SAFEGUARDS**

10 **VIOLATION OF LABOR CODE SECTIONS 6401 AND 6403**

11 146. At all times herein set forth, California Labor Code section 6401 provides that
12 employers must furnish and use safety devices and safeguards, and adopt and use practices,
13 means, methods, operations, and processes which are reasonably adequate to render the
14 employment and place of employment safe and healthy. California Labor Code Section 6401
15 further provides that an employer must do everything reasonably necessary to protect the life,
16 safety and health of its employees. California Labor Code section 6403(a) requires that
17 employers provide and use safety devices and safeguards reasonably adequate to render the
18 employment and place of employment safe.

19 147. Defendants, on a company-wide basis, failed to provide Plaintiff and other non-
20 party Aggrieved Employees with personal protective equipment, such as steel-toed boots, to
21 keep them safe in the workplace. Despite the fact that Defendants required employees to wear
22 certain personal protective equipment, including steel-toed boots, Defendants failed to provide
23 such reasonably necessary equipment to Plaintiff and other non-party Aggrieved Employees to
24 keep them safe.

25 148. Defendants' failure to provide Plaintiff and other non-party Aggrieved
26 Employees with safety devices and safeguards for the workplace violates Labor Code sections
27 6401 and 6403. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
28 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

1 **REQUEST FOR JURY TRIAL**

2 Plaintiff requests a trial by jury.

3 **PRAYER FOR RELIEF**

4 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
5 judgment against Defendants, jointly and severally, as follows:

6 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
7 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

8 **As to the First Cause of Action**

9 2. That the Court declare, adjudge and decree that Defendants violated the
10 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
11 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
12 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
13 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
14 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
15 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
16 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
17 employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical
18 examinations); 227.3 (by failing to pay all vested vacation wages); 551 and 552 (by failing to
19 provide one day's rest in seven); 1198 (by failing to provide suitable seating); 1198 (by failing to
20 provide reporting time pay); 2802 (by failing to reimburse business expenses); and 6401 and
21 6403 (by failing to provide safety devices and safeguards).

22 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
23 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
24 203, 204, 222.5, 226(a), 226.7, 227.3, 510, 512, 516, 551, 552, 1174(d), 1182.12, 1194, 1197,
25 1198, 2802, 6401, and 6403;

26 4. For attorneys' fees and costs pursuant to California Labor Code section
27 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
28 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3, 510, 512, 516, 551, 552,

1 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403;

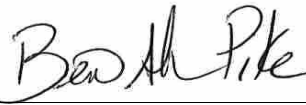
2 5. For pre-judgment and post-judgment interest as provided by law; and

3 6. For such other and further relief as the Court may deem equitable and
4 appropriate.

5
6 Dated: January 26, 2021

Respectfully submitted,

7 Capstone Law APC

8
9 By: 

10 Bevin Allen Pike
11 Orlando Villalba
12 Daniel Jonathan
13 Trisha K. Monesi

14 Attorneys for Plaintiff Christopher Bell
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EXHIBIT “1”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

MICHELLE KENNEDY
310.712.8146 Direct
Michelle.Kennedy@capstonelawyers.com

November 18, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/295>)

Subject: *Christopher Bell v. Servicon Systems, Inc.*

Dear PAGA Administrator:

This office represents Christopher Bell in connection with his claims under the California Labor Code. Mr. Bell was an employee of SERVICON SYSTEMS, INC. ("SERVICON").

The employer may be contacted directly at the address below:

SERVICON SYSTEMS, INC.
3965 LANDMARK ST
CULVER CITY, CA 90232

Mr. Bell intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Bell seeks relief on behalf of himself, the State of California, and other persons who are or were employed by SERVICON as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

SERVICON employed Mr. Bell as an hourly paid, non-exempt Security Escort from approximately October 2018 to May 2020. During his employment, Mr. Bell typically worked eight (8) hours or more per day and five (5) to six (6) days per week. At the end of his employment, Mr. Bell earned \$16.00 per hour. His job duties included, without limitation, signing in visitors to the premises, escorting authorized visitors to the worksite, monitoring the visitors while they worked at the jobsite, and escorting the visitors off of the premises.

SERVICON committed one or more of the following Labor Code violations against Mr. Bell, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

SERVICON’s Company-Wide and Uniform Payroll and HR Practices

SERVICON is a California corporation, and is the leading facilities maintenance contractor servicing the aerospace, industrial, technology, and commercial sectors in California, Arizona, Virginia, and New Mexico. Upon information and belief, SERVICON maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Culver City, California, for all non-exempt, hourly paid employees working for SERVICON in California, including Mr. Bell and other aggrieved employees. At all relevant times, SERVICON issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Bell and other aggrieved employees, regardless of its location or position.

Upon information and belief, SERVICON maintains a centralized Payroll department at its corporate headquarters in Culver City, California, which processes payroll for all non-exempt, hourly paid employees working for SERVICON in California, including Mr. Bell and other aggrieved employees. Further, SERVICON issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Bell and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, SERVICON utilized the same methods and formulas when calculating wages due to Mr. Bell and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

SERVICON willfully failed to pay all overtime wages owed to Mr. Bell and other aggrieved employees. During the relevant time period, Mr. Bell and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, SERVICON had a company-wide policy and/or practice of improperly rounding employees’ clock-in and clock-out duration times in their timekeeping system to the nearest

¹ These facts, theories, and claims are based on Mr. Bell’s experience and counsel’s review of those records currently available relating to Mr. Bell’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Bell reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

tenth (0.10) of an hour. SERVICON's rounding policy resulted in the failure to compensate Mr. Bell and other aggrieved employees fully for all hours worked, causing Mr. Bell and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. SERVICON's policy of rounding was unfair and has, over time, resulted in the underpayment of wages to Mr. Bell and other aggrieved employees. To the extent SERVICON's rounding policy has taken away time worked that was eligible for overtime, Mr. Bell and other aggrieved employees were denied overtime pay for all hours worked.

Second, SERVICON had a company-wide practice and/or policy of requiring Mr. Bell and other aggrieved employees to perform work-related tasks while off-the-clock, but prevented them from accounting for and recording this time in the timekeeping system. For example, Mr. Bell and other aggrieved employees would report to work prior to the start of their scheduled shifts to prepare the golf carts for escorting visitors, but were not permitted clock in until their scheduled shift start-times. Mr. Bell was also asked to arrive 30-45 minutes prior to his scheduled shift at least twice to complete required paperwork, but was prevented from clocking in until his scheduled shift start-time. Additionally, other aggrieved employees were also required to clean, prepare for the next day, and respond to SERVICON's management regarding work-related matters and assignments on their personal cellular phones, after they had clocked out from their scheduled shifts. Thus, SERVICON failed to track all hours Mr. Bell and other aggrieved employees spent working before clocking in and/or after clocking out, and Mr. Bell and other aggrieved employees received no compensation for this time.

Third, SERVICON understaffed its jobsites by adopting a single-staffing model for certain posts, which resulted in a lack of meal period coverage for employees. As a result of SERVICON's policy of understaffing and/or single-staffing, coupled with a company-wide policy and/or practice of failing to schedule meal periods, Mr. Bell and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, during his employment, Mr. Bell would completely miss meal periods at least 2-3 times per week in order to continue monitoring the visitors he was escorting on the premises. Additionally, Mr. Bell's unpaid meal periods were interrupted or cut short at least 1-2 times per week due to SERVICON's management texting or calling him on his personal cellular phone requesting that he return early to assist with escorting duties. SERVICON, on information and belief, also had a company-wide practice and/or policy of requiring other aggrieved employees to carry company-issued cellular phones so that other employees and management could communicate with them as needed. SERVICON knew or should have known that Mr. Bell and other aggrieved employees were being made to continue working or communicate with other employees while clocked out for meal periods, in order to meet SERVICON's expectations, but failed to compensate them for this off-the-clock work.

Fourth, SERVICON's company-wide electronic timekeeping system further prevented Mr. Bell and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Bell and other aggrieved employees once they had clocked out for a meal period, and would not permit them to clock back in from a meal before the 30 minutes elapsed. Additionally, SERVICON implemented a timekeeping system that did not always permit employees stationed away from SERVICON's main office (or "off-facility") to track and record their actual hours worked. SERVICON's timekeeping system was only accessible via the physical timeclock in SERVICON's main office or through a mobile application, which required the employee to be within signal range of the main office to be functional. If the employee was not within the requisite range, which was often the case for Mr. Bell, the employee would get a "rejected" or error message when he or she tried to clock in or out. Instead, SERVICON had its supervisors maintain control over employee punch-in and punch-out times by only allowing Mr. Bell and other aggrieved employees to be clocked in and clocked out when they alerted their SERVICON supervisor that they were taking or returning from their meal period, granting the supervisor exclusive control and discretion over the employee's time records.

Thus, SERVICON's timekeeping system prevented Mr. Bell and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted. In the alternative, on information and belief, because SERVICON's management frowned upon employees accruing meal period penalties, SERVICON's management adjusted employee time records in order to strictly limit meal penalties that would need to be paid by SERVICON.

SERVICON knew or should have known that as a result of these company-wide practices and/or policies, Mr. Bell and other aggrieved employees were working before and after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Bell and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Bell and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, SERVICON did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, SERVICON paid other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, SERVICON failed to incorporate all compensation, including shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, SERVICON failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Bell and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 4 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

As set forth above, SERVICON had a policy of rounding Mr. Bell's and other aggrieved employees' hourly clock-in and clock-out duration times to the tenth-of-an-hour in its timekeeping system, resulting in the failure to compensate Mr. Bell and other aggrieved employees fully for all hours worked. Also, as set forth above, SERVICON had a company-wide practice and/or policy of requiring Mr. Bell and other aggrieved employees to perform work-related tasks outside of their scheduled shifts, but prevented them from accounting for and recording this time in the timekeeping system.

Additionally, as stated, due to SERVICON's policy and/or practice of understaffing or single-staffing, lack of meal period coverage, and failure to schedule meal periods, Mr. Bell and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock, continuing to monitor guests and responding to phone calls or text messages. Moreover, as set forth above, SERVICON's timekeeping system did not permit Mr. Bell and other aggrieved employees to record all hours worked, including the ability to clock back in early when their meal periods were interrupted or cut short. As stated, SERVICON implemented a timekeeping

system that did not always permit employees stationed away from SERVICON's main office or "off-facility" to track and record their actual hours worked. Instead, SERVICON had its supervisors maintain control over employee punch-in and punch-out times by only allowing Mr. Bell and other aggrieved employees to be clocked in and out when they alerted their SERVICON supervisor that they were taking or returning from their meal period, granting the supervisor exclusive control and discretion over the employee's time records. Alternatively, on information and belief, in order to prevent employees from accruing meal period penalties, SERVICON's management adjusted employee time records to reflect compliant meal periods, time for which they were not paid.

Further, SERVICON implemented, on a company-wide basis, an employer-imposed requirement that Mr. Bell and other aggrieved employees undergo a mandatory drug testing and/or physical examinations. At all times, SERVICON was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. SERVICON gave Mr. Bell and other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and Mr. Bell and other aggrieved employees underwent the testing and/or examinations for the sole benefit of SERVICON. For example, Mr. Bell followed SERVICON's instructions, traveled approximately 60 miles roundtrip (for approximately 80-90 minutes total) in his personal vehicle to and from a designated medical facility in Palmdale, California, and spent 40-50 minutes waiting at the medical facility and undergoing the requisite testing. However, SERVICON did not compensate Mr. Bell and other aggrieved employees for the time they spent traveling to and from the medical facilities and for the time they spent undergoing the drug testing and/or physical examinations.

Thus, SERVICON did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, SERVICON did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, SERVICON regularly failed to pay at least minimum wages to Mr. Bell and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Mr. Bell and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

Under California law, an employer cannot evade meal period requirements via the use of “on-duty” meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 2011 U.S. Dist. LEXIS 156685 (C.D. Cal. Jan. 11, 2011).

First, during the relevant period, SERVICON systematically, and on a company-wide basis, understaffed its posts by adopting a single-officer staffing model for certain security posts, thereby failing to provide adequate meal period coverage to permit employees to take compliant meal periods. Because SERVICON understaffed its jobsites, there was no one available to relieve Mr. Bell and other aggrieved employees needing meal period coverage. For example, when working in classified areas, Mr. Bell was unable to obtain coverage for his meal periods due to a lack of officers with proper security clearances available to relieve him. Instead of providing sufficient meal period coverage, SERVICON required Mr. Bell and other aggrieved employees to remain available and on-duty at all times, including during meal periods, in order to tend to duties as they arose. To the extent SERVICON required Mr. Bell and other aggrieved employees to sign written “on-duty” meal period agreements, such agreements are invalid as the nature of the work performed by Mr. Bell and other aggrieved employees do not necessitate an “on-duty” meal period under California law. SERVICON could have provided rover meal period coverage for its employees or staffed more than one employee at certain posts, but chose not to do so. Because SERVICON required that Mr. Bell and other aggrieved employees remain alert and on-duty at all times while at their posts, and failed provide them with adequate meal period coverage, Mr. Bell and other aggrieved employees were subject to SERVICON’s control and suffered to work during unpaid meal periods.

Second, SERVICON, on a company-wide basis, systematically discouraged and impeded Mr. Bell and other aggrieved employees from taking meal periods by failing to schedule meal periods, even though it is aware and knows that employees are entitled to such meal periods. As a result of this uniform failure to schedule meal periods and subsequent lack of coverage, Mr. Bell and other aggrieved employees were not provided timely, uninterrupted 30-minute meal periods during their shifts in which they were entitled to receive a meal period. Additionally, Mr. Bell and other aggrieved employees were required to respond to text messages and calls on their personal or company-issued cellular phones from supervisors and management during unpaid meal periods. As a result of SERVICON’s policy and/or practice that employees carry and respond to company or personal cellular phones, Mr. Bell and other aggrieved employees were compelled to perform work-related duties during their unpaid meal periods.

Third, as described above, SERVICON implemented an electronic timekeeping system that locked Mr. Bell and other aggrieved employees out and prevented them from clocking in early before the end of their 30-minute meal period. Furthermore, as stated, SERVICON implemented a timekeeping system that did not always permit employees stationed away from SERVICON’s main office or “off-facility” to track and record their actual hours worked, because the mobile application SERVICON required employees to use was non-functional if they were not within signal range of the main office. Instead, SERVICON had its supervisors maintain control over employee punch-in and punch-out times by only allowing Mr. Bell and other aggrieved employees to be clocked in and out when they alerted their SERVICON supervisor that they were taking or returning from their meal period, granting the supervisor exclusive control and discretion over the employee’s time records. As a result, Mr. Bell and other aggrieved employees were prevented from accurately recording when they had to return early from a meal period so that they could be compensated for that time worked. In the alternative, on information and belief, because SERVICON frowned upon employees accruing meal period penalties, SERVICON’s management adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by SERVICON.

As a result of SERVICON's practices, Mr. Bell and other aggrieved employees had to work through part or all of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, during his employment, Mr. Bell would completely miss meal periods at least 2-3 times per week in order to continue monitoring the visitors he was escorting on the premises. Additionally, 1-2 times per week, Mr. Bell was required to keep working until he had concluded escorting assigned visitors before he could take his meal period, which was usually 6-8 hours into his shift. Mr. Bell's unpaid meal periods were also interrupted or shortened at least 1-2 times per week in order to respond to his supervisors' requests and demands.

Furthermore, SERVICON did not provide Mr. Bell and other aggrieved employees with second 30-minute meal periods on days when they worked in excess of ten (10) hours in one day. During his employment, Mr. Bell worked shifts in excess of ten (10) hours or more per day, but was not provided a second 30-minute meal period. Mr. Bell and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, SERVICON had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. SERVICON took the position that non-exempt, hourly paid employees had waived their rights to first and second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Specifically, SERVICON's "Meal Period Waiver" form provides that the waiver remains in effect until the employee provides SERVICON with advanced, written notice of his or her decision to revoke. SERVICON's company-wide use of blanket meal period waivers signed at or near the time of hire and imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. Bell and other aggrieved employees from taking all meal periods to which they were entitled. And, SERVICON's presumption that second meal periods would not be provided for shifts in excess of ten (10) hours but less than twelve (12) hours due to blanket meal period waivers discouraged Mr. Bell and other aggrieved employees from taking second meal periods.

What's more, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay. *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)).

Further, under Labor Code section 512(a) and the applicable IWC Wage Order, employees may waive their second meal periods only if they took their first meal period. That SERVICON requires aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because SERVICON's obligation to provide Mr. Bell and other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

Additionally, SERVICON's Meal Period Waiver form states "For this waiver to be valid, Human Resources must also agree to the waiver in writing by signing below, at which time this waiver immediately will become effective." However, the blanket meal period waiver was only signed by Mr. Bell. *See excerpted signature block below.*

File Number/Número de empleado: _____ Date/Fecha: 10/22/2018

Employee Signature/Firma del empleado: Chris Bell

Print Name/Nombre: Christopher Bell

Servicon Systems, Inc. ("Servicon") hereby agrees to the employee's waiver of a meal period as described above. Only Human Resources or its designee may sign on behalf of the employer Servicon.

Human Resources signature: _____ Date: _____

SERVICON knew or should have known that as a result of its company-wide policies and/or practices, that Mr. Bell and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. SERVICON further knew or should have known that it did not pay Mr. Bell and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

SERVICON has also engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Bell and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that SERVICON did pay other aggrieved employees for missed, late, and interrupted meal periods, SERVICON did not pay other aggrieved employees at the correct rate of pay for premium wages because SERVICON systematically failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SERVICON failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Bell and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, SERVICON regularly failed to authorize and permit Mr. Bell and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SERVICON's company-wide practices, including understaffing and/or single-staffing, resulted in a lack of rest period coverage and prevented Mr. Bell and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. SERVICON also failed to schedule rest periods, which, coupled with SERVICON's failure to provide adequate rest period coverage, further led to Mr. Bell and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, SERVICON's policy and/or practice of requiring Mr. Bell and other aggrieved employees to carry and respond to personal or company-issued cellular phones also prevented them from being relieved of all duty to take compliant rest periods.

Furthermore, SERVICON maintained and implemented a company-wide practice and/or policy of effectively requiring that Mr. Bell and/or other aggrieved employees remain on the work premises during their rest periods. Because Mr. Bell and/or other aggrieved employees were implicitly restricted from leaving the work premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, SERVICON effectively maintained control over Mr. Bell and/or other aggrieved employees during rest periods, and, as a result of this rest period policy, SERVICON did not relinquish control over Mr. Bell and/or other aggrieved employees during rest periods.

As a result, Mr. Bell and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, throughout his employment, Mr. Bell's rest periods would occasionally be interrupted or shortened in order to respond to his supervisors' requests because SERVICON failed to employ sufficient staff to provide Mr. Bell rest period coverage.

SERVICON also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Bell and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that SERVICON did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SERVICON did not pay other aggrieved employees at the correct rate of pay for premium wages because SERVICON failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SERVICON failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Bell and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. SERVICON has not provided Mr. Bell and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial

citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, SERVICON has knowingly and intentionally provided Mr. Bell and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SERVICON issued uniform wage statements to Mr. Bell and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, SERVICON violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because SERVICON did not record the time Mr. Bell and other aggrieved employees spent working off-the-clock, deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), and improperly rounded their total hours worked, SERVICON did not list the correct amount of gross wages and net wages earned by Mr. Bell and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SERVICON failed to accurately list the total number of hours worked by Mr. Bell and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

In addition, because SERVICON did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, SERVICON did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). SERVICON also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, 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. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), SERVICON willfully failed to maintain accurate payroll records for Mr. Bell and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Mr. Bell's and other aggrieved employees' total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, SERVICON failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Bell and other aggrieved employees, in violation of section 1198. As stated, SERVICON engaged in a company-wide practice and/or policy of falsifying Mr. Bell’s and other aggrieved employees’ time records by deducting meal periods regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Bell and other aggrieved employees. Furthermore, in light of SERVICON’s failure to provide Mr. Bell and other aggrieved employees with second 30-minute meal periods to which they were entitled, SERVICON kept no records of meal start and end times for second meal periods.

Because SERVICON failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Bell and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Bell and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Bell and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, SERVICON failed to pay Mr. Bell and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Bell and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves 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.

SERVICON willfully failed to pay Mr. Bell and other aggrieved employees who are no longer employed by SERVICON all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, reporting time pay, and/or all vested vacation pay, either at the time of discharge, or within seventy-two (72) hours of their leaving SERVICON's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Bell and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, SERVICON implemented, on a company-wide basis, an employer-imposed requirement that Mr. Bell and other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, SERVICON had a company-wide policy requiring that Mr. Bell and other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, SERVICON was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

For example, Mr. Bell was instructed by SERVICON to travel to a designated medical facility in Palmdale, California, and obtain a drug test. Mr. Bell followed SERVICON's instructions, traveled to the medical facility SERVICON selected, and underwent the testing. Mr. Bell drove approximately 60 miles roundtrip (for approximately 80-90 minutes total) in his personal vehicle, to and from the designated medical facility, and spent 40-50 minutes waiting at the medical facility and undergoing the requisite testing.

However, SERVICON did not compensate Mr. Bell and other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. SERVICON's policy and/or practice of not paying for all costs Mr. Bell and other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

Mr. Bell and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 227.3 – Failure to Pay Vested Vacation Wages

California Labor Code section 227.3 provides that if a contract of employment or employer policy provides for paid vacations and an employer terminates an employee, all vested vacation shall be paid to the employee at the employee's final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

SERVICON had a company-wide policy and practice of failing to pay Mr. Bell and other aggrieved employees vested vacation wages that were owed to them at the end of their employment, including all vested vacation wages that accrued during employees' final week of employment, in violation of California Labor Code section 227.3. Specifically, Mr. Bell had earned vested vacation pay until his employment with SERVICON ended on or about May 11, 2020. However, SERVICON only paid Mr. Bell the balance of his accrued and unused vacation wages as of May 3, 2020, or the end of his prior pay period. SERVICON willfully and improperly paid Mr. Bell and other aggrieved employees their unused and vested vacation wages through their second to last pay period worked. Furthermore, SERVICON failed to correctly calculate and pay all earned vested vacation hours due to the hours Mr. Bell and other aggrieved employees worked off-the-clock, pursuant to company-wide policies and/or practices. SERVICON's failure to pay Mr. Bell and other aggrieved employees all vested vacation wages at the end of their employment has caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3.

Mr. Bell and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant time period, on information and belief, SERVICON scheduled Mr. Bell and other aggrieved employees to work eight (8) or more hours per day and more than seven (7) consecutive days in a workweek. On information and belief, during his employment, Mr. Bell worked seven (7) consecutive days in a workweek on at least two (2) occasions. Because Mr. Bell and other aggrieved employees worked over 30 hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Mr. Bell and other aggrieved employees may have signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, SERVICON caused Mr. Bell and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Mr. Bell and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11040(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

SERVICON’s California jobsites are generally similar in their layout and design and there was, and continues to be, space near their workstations to allow for the presence and use of a seat or stool by Mr. Bell and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. SERVICON could provide Mr. Bell and other aggrieved employees with a seat or stool at its workstations, but instead denies employees seating and forces Mr. Bell and other aggrieved employees to stand throughout the day.

Mr. Bell and other aggrieved employees spent a substantial portion of their day at their workstations. The nature of the work of an employee performing security officer duties can reasonably be accomplished from a seated position. For example, once Mr. Bell and other aggrieved employees escorted visitors onto jobsites, the remainder of their shift typically consisted of monitoring visitors, which could be performed from a seated position, until the visitors were ready to leave the premises. However, as set forth herein, SERVICON systematically, and on a company-wide basis, does not provide seats or stools at or near workstations, forcing Mr. Bell and other aggrieved employees to stand throughout their work shifts.

SERVICON violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(14)(A) because Mr. Bell and other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. SERVICON’s management did not inform Mr. Bell and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of SERVICON’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Mr. Bell and other aggrieved employees were forced to stand during shifts and denied seats. SERVICON’s failure to provide suitable seating to Mr. Bell and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 4-2001, Section 14(A).

Mr. Bell and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring SERVICON into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11040(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

As stated, SERVICON's California jobsites are generally similar in their layout and design and there was, and continues to be, space near work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Bell and other aggrieved employees during lulls in operation. SERVICON could provide Mr. Bell and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Mr. Bell and other aggrieved employees to stand throughout the day.

SERVICON did not provide Mr. Bell and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Bell and other aggrieved employees engaged in duties in which the nature of the work required standing, SERVICON denied them the use of seats nearby during lulls in their work duties. Moreover, SERVICON did not inform Mr. Bell and other aggrieved employees of their rights to a seat or stool under California law.

As a result of SERVICON's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Bell and other aggrieved employees were forced to stand during shifts and denied seats. SERVICON's failure to provide suitable seating to Mr. Bell and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 4-2001, Section 14(B).

Mr. Bell and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring SERVICON into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11040(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

Upon information and belief, SERVICON violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(5), because SERVICON failed to pay Mr. Bell and other aggrieved employees reporting time pay when they reported to work for their scheduled shift, but were put to work for less than half of the regular schedule. SERVICON had a company-wide practice of sending Mr. Bell and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Bell and other aggrieved employees for half of their scheduled shift. For example, 10-15 times during his employment, Mr. Bell reported to work for his scheduled shift, but was told to go home two (2) hours into his shift because there were not enough people, or charges, for him to escort that day. Although Mr. Bell and other aggrieved employees would report to work based on the schedule that SERVICON provided to them, SERVICON would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Bell and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Bell and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 4-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, SERVICON, on a company-wide basis, required that Mr. Bell and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. For

example, Mr. Bell and other aggrieved employees received work-related calls and texts from their supervisors discussing their assignments with SERVICON's managers throughout each shift. As a further example, SERVICON required Mr. Bell and other aggrieved employees to download and use the Kronos mobile timekeeping application on their personal cellular phones. Although SERVICON required Mr. Bell and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, SERVICON failed to fully reimburse them for this cost.

Second, as stated, SERVICON had a company-wide policy of requiring Mr. Bell and other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles or alternate transportation to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, SERVICON was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. SERVICON gave Mr. Bell and other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and Mr. Bell and other aggrieved employees underwent the examinations and/or testing for the sole benefit of SERVICON. For example, Mr. Bell followed SERVICON's instructions, traveled approximately 60 miles roundtrip (for approximately 80-90 minutes total) in his personal vehicle to and from a designated medical facility in Palmdale, California, but was not reimbursed for his mileage to and from the medical facility. Although SERVICON required Mr. Bell and other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo mandatory drug testing and/or physical examinations, SERVICON never reimbursed them for their travel expenses.

Third, during the relevant time period, SERVICON, on a company-wide basis, forced Mr. Bell and other aggrieved employees to purchase their own security supplies and tools, such as lanyards and security badge holders, as required by SERVICON's clients. For example, Mr. Bell was required to spend approximately \$50.00 on these supplies in order to carry out his work-related duties, such as entering and escorting visitors to SERVICON's clients' restricted access construction areas. Although SERVICON required Mr. Bell and other aggrieved employees to purchase their own supplies and tools for use on the job, SERVICON did not reimburse them for these expenses.

Fourth, SERVICON, on a company-wide basis, mandated that Mr. Bell and other aggrieved employees purchase special safety shoes such as steel-toed boots, which they were required to wear while at work in construction zones. Mr. Bell and other aggrieved employees purchased steel-toed boots to wear inside SERVICON's clients' facilities, such as construction zones, but were not reimbursed fully for these costs.

SERVICON could have provided Mr. Bell and other aggrieved employees with the actual tools for use on the job, such as company phones, company vehicles, security supplies and tools, and steel-toed boots to be used for fulfilling work-related tasks, or could have reimbursed employees for the costs of their cellular phone usage, travel expenses, mileage, security supply and tool expenses, and boot expenses. Instead, SERVICON passed these operating costs off onto Mr. Bell and other aggrieved employees. At all relevant times, Mr. Bell and other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, SERVICON had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Bell and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

SERVICON, on a company-wide basis, failed to provide Mr. Bell and other aggrieved employees with safety devices and safeguards, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that SERVICON required employees to wear certain personal protective equipment while working in construction zones, SERVICON failed to provide such reasonably necessary equipment to Mr. Bell and other aggrieved employees to keep them safe.

SERVICON's failure to provide Mr. Bell and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Bell and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." SERVICON, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Bell's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Bell seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Bell, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against SERVICON for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Bell seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Bell's reasonable attempt to settle his dispute with SERVICON prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice

serves to inform SERVICON of Mr. Bell's aforementioned grievances and the proposed remedies as detailed below, while affording SERVICON a reasonable opportunity to satisfy Mr. Bell's demands.

Demand is hereby made that SERVICON shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. SERVICON shall pay Mr. Bell and all other aggrieved employees employed by SERVICON at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. SERVICON shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid all vested vacation pay and reporting time pay.
3. SERVICON shall conduct a survey or interview all current and former aggrieved employees in California who worked for SERVICON in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mandatory medical examinations, travel, security supply and tool expenses, boot expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. SERVICON shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. SERVICON also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. SERVICON shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for SERVICON's benefit, including, but not limited to, costs of mandatory medical examinations, travel, security supply and tool expenses, and boot expenses, as required by Labor Code sections 222.5 and 2802.
6. SERVICON shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. SERVICON shall provide Mr. Bell and all aggrieved employees employed by SERVICON at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. SERVICON shall pay former aggrieved employees their vested vacation wages at their final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served, as required by Labor Code section 227.3.
9. SERVICON shall provide all aggrieved employees who worked over thirty (30) hours per week and over six (6) hours per day in a workweek with one day's rest in seven, as required by Labor Code sections 551 and 552.
10. SERVICON shall implement and provide suitable seating to all aggrieved employees.

11. SERVICON shall provide all aggrieved employees with safety devices and safeguards reasonably adequate to render the employment and place of employment safe, pursuant to Labor Code sections 6401 and 6403.
12. SERVICON shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
13. SERVICON shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 4-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Michelle Kennedy
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Michelle Kennedy', with a stylized flourish at the end.

Michelle Kennedy

Copy: SERVICON SYSTEMS, INC. (via U.S. Certified Mail)

CERTIFIED MAIL®



7020 1290 0000 3958 7191

Stone
LAW APC
1000
Park East, Ste 1000
s, CA 90067



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SERVICON SYSTEMS, INC.
3965 LANDMARK ST
CULVER CITY, CA 90232



9590 9402 5816 0034 8469 46

2. Article Number (Transfer from service label)

7020 1290 0000 3958 7191

PS Form 3811, July 2015 PSN 7530-02-000-9053

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A. Signature

X

- ☐ Agent
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B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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3965 LANDMARK ST
CULVER CITY, CA 90232

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
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For delivery information, visit our website at www.usps.com®.

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Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$ 2.80
☐ Return Receipt (electronic) \$
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☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage
\$ 1.63
Total Postage and Fees
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Street and Apt. No., or PO Box No.
3965 LANDMARK ST
City, State, ZIP+4®
CULVER CITY, CA 90232

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Bell v. Servicon
Systems, Inc.

PS Form 3800, April 2015 PSN 7530-02-000-9047

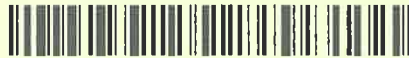
See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SERVICON SYSTEMS, INC.
3965 LANDMARK ST
CULVER CITY, CA 90232



9590 9402 5816 0034 8469 46

2. Article Number (Transfer from service label)

7020 1290 0000 3958 7191

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X



Agent



Addressee

B. Received by (Printed Name)

C. Date of Delivery

11/24/20

D. Is delivery address different from item 1?
If YES, enter delivery address below:☐ Yes☐ No

3. Service Type

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- ☐ Adult Signature Restricted Delivery
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- ☐ Collect on Delivery Restricted Delivery
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