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MERCEDES BUTLER,
and all putative class members

FILED
Superior Court of California
County of Los Angeles

FEB 23 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By Tanya Herrera Deputy
Tanya Herrera

BY FAX

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MERCEDES BUTLER, an individual, on
behalf of himself and all others similarly
situated,

Plaintiffs,

vs.

UNIFIED SECURITY SERVICES, INC.,
a California corporation, UNIFIED
PROTECTIVE SERVICES, INC., a
California corporation, and DOES 1-50,
inclusive,

Defendants.

Case No.: 20STCV49069

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Failure to Pay Wages- Rounding
2. Failure to Pay Minimum Wage
3. Failure to Timely Provide and/or
Authorize Meal Breaks
4. Failure to Provide and/or
Authorize Rest Breaks
5. Failure to Timely Pay All Wages
Owed, Waiting Time Penalties
6. Failure to Provide and Maintain
Timely, Accurate, Itemized Wage
Statements
7. Unlawful Business Practices
Bus & Prof. Code §17200
8. Private Attorneys General Act
Penalties (Lab. Code §2699)

JURY TRIAL DEMANDED

1 Plaintiff MERCEDES BUTLER, individually, and on behalf of all others similarly
2 situated, all aggrieved employees, and as Private Attorney General for the State of
3 California (collectively "Plaintiff"), alleges as follows:

4 NATURE OF THE ACTION

5 1. This is an employment class and representative action on behalf of over 100
6 hourly, non-exempt employees against their employer for violations of numerous wage and
7 hour laws. Plaintiff employees bring this employment class action complaint on behalf of
8 themselves, and all others similarly situated, all aggrieved employees, and as a Private
9 Attorney General for the State of California, against Unified Security Services, Inc. and
10 Unified Protective Services, Inc., and the other Defendants DOES 1-50, inclusive,
11 (hereafter collectively "Defendant" or "Defendants").

12 2. Unified Security Services, Inc. and Unified Protective Services, Inc., are security
13 service companies, where Plaintiff worked as a security guard from May 13, 2019 until
14 January 29, 2020, earning approximately \$15 per hour. Plaintiff and the proposed class
15 earn at or near minimum wage.

16 3. As described further below, Defendants have violated the California Labor Code
17 by (1) failing to pay for all hours worked, including overtime hours worked, at the lawful
18 rate of pay (§218, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199); (2) failing to pay the
19 required minimum wage for all hours worked (§218, 510, 512, 558, 1194, 1197, 1197.1,
20 1198, 1199); (3) failing to timely provide and/or authorize meal breaks (§226, 226.7, 512,
21 558, 1198); (4) failing to timely provide and/or authorize rest breaks (§226, 226.7, 512,
22 558, 1198); (5) failing to timely pay all wages owed, including upon discharge incurring
23 waiting time penalties (§201-204); (6) failing to provide timely, accurate wage statements
24 and payroll records (§212, 226, 1174); (7) unlawful and unfair business practices (Bus. &
25 Prof. Cod3 §17200, et. seq.); and (8) and (8) penalties under the Private Attorneys General Act
26 ("PAGA"), Labor Code §2698 et seq. Attorney General Act ("PAGA"), Labor Code §2698 et seq.

27 4. The class claims in this action are brought pursuant to Code of Civil Procedure
28 ("CCP") §382, seeking recovery for unpaid wages, including overtime wages, missed meal

1 and rest period penalty pay, statutory and waiting time penalties, injunctive and other
2 equitable relief, interest, and reasonable attorneys' fees and costs. Pursuant to the class and
3 representative action procedures provided for under California law, Plaintiff, on behalf of
4 themselves and proposed Class Members (also referred to as "Class"), also seeks injunctive
5 relief and restitution of all benefits Defendants have received from their unlawful actions
6 as alleged herein. Plaintiff has also provided notice of these claims pursuant to §2698 *et. seq.*, to
7 the Labor and Workforce and Development Agency ("LWDA") and now brings this First
8 Amended Complaint, including claims for civil penalties under the Private Attorneys General Act
9 ("PAGA"), Labor Code §2698 *et seq.* Attorney General Act ("PAGA"), Labor Code §2698 *et seq.*

10 5. The "Class Period" is designated as the four-year period prior to the filing of this
11 Complaint through the date of final disposition of this action. From the start of the Class
12 Period through the present, Defendants have had a policy and/or practice of among other
13 violations: rounding employee time card entries, frequently failing to provide meal and rest
14 breaks, frequently issuing inaccurate wage statements, ignoring and violating California
15 wage and hour laws in their business as more fully set forth below.

16 6. The "PAGA Period" is defined herein commences one year prior to the date of
17 filing the PAGA Notice letter with the LWDA.

18 7. Defendants have treated all persons employed in California in such a way as to
19 violate California's laws governing conditions of employment and payment of wages
20 owed. Plaintiff asserts that Defendants have knowingly and with conscious disregard of
21 the law refused to pay the Class Members and aggrieved employees all wages owed,
22 including overtime wages and meal and rest break penalty wages. Defendants have violated
23 numerous Labor Code provisions, as set forth herein. Class Members and aggrieved
24 employees are owed their back pay, plus interest and/or premiums and penalties under
25 Business and Professions Code section 17203 to compensate Class Members and aggrieved
26 employees for the delay in receiving wages due.

27 8. Defendants, by and through their actions, have engaged in unfair competition,
28 requiring restitution to persons affected and disgorgement of profits so obtained.

THE PARTIES

9. Plaintiff MERCEDES BUTLER is an individual who resides in California and was employed by Defendants from May 13, 2019 until January 29, 2020.

10. Defendants Unified Security Services, Inc., is a California domestic corporation duly registered to do business in California, with an address at 4431 W. Rosecrans Ave. Ste. 200, Hawthorne, CA 902505. Unified Security Services, Inc., exercised control over the wages, hours, and/or working conditions of Plaintiff and members of the proposed class and aggrieved employees throughout the liability period

11. Unified Protective Services, Inc., is a California domestic corporation, duly registered to do business in California, with an address at 4431 W. Rosecrans Ave. Ste. 200, Hawthorne, CA 902505. Unified Protective Services, Inc., exercised control over the wages, hours, and/or working conditions of Plaintiff and members of the proposed class and aggrieved employees throughout the liability period.

12. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiff. When their true names and capacities are ascertained, Plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff is informed and believe, and thereon alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged, and that the damages sustained by Plaintiff and the Class Members and aggrieved employees herein alleged were proximately caused by such Doe Defendants.

13. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

14. Venue is proper in this judicial district because Defendants conduct business in this County and Defendants have legal obligations to Plaintiff and many of the Class Members and aggrieved employees in this case that arose in this county.

15. The monetary damages, restitution and statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

16. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California and Defendants are incorporated in and/or qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

CLASS AND REPRESENTATIVE ACTION ALLEGATIONS

17. During the Class Period and PAGA Period, Defendants committed various violations of the California Labor Code, the CCR, the UCL and IWC Wage Order 4, as alleged below in more detail. Defendants enforce multiple policies that violate state law which are intended to increase its own profits to the detriment of its workers.

18. Defendants employed, upon information and belief, more than 100 current and former non-exempt employees (hereafter "Class Members" or "Class") during the Class Period.

19. Defendants failed to pay for all hours worked, including overtime hours worked, at the lawful rate of pay; timely provide and/or authorize meal breaks; timely provide and/or authorize rest breaks; pay earned wages upon discharge incurring waiting time penalties; and, provide timely, accurate wage statements and maintain required payroll records. These practices also constitute unlawful and unfair business practices. These policies and practices have deprived Plaintiff and Class Members and aggrieved employees of payment for all hours worked, and further damages, as set forth below.

1 20. Failure to pay for all hours worked. Section 2(K) or Wage Order 4 defines
2 “hours worked” as “the time during which an employee is subject to the control of an
3 employer, and including all the time the employee is suffered or permitted to work, whether
4 or not required to do so.” Defendants have been engaged in many unlawful employment
5 practices which resulted in underpayment for hours worked each pay period as more fully
6 set forth below.

7 A. Failure to pay overtime wages. Plaintiff, Class Members, and aggrieved
8 employees were often required to perform work in excess of eight hours
9 in one day and forty in one week but were not paid overtime as required
10 by Labor Code §510 due to Defendants’ practice of rounding timecard
11 entries. As a result, Plaintiff and others have been denied “the unpaid
12 balance of the full amount of this... overtime compensation” as required
13 by Cal. Labor Code. §1194, and is liable for unpaid wages, waiting time,
14 and civil penalties pursuant to Labor Code §558.

15 B. Failure to pay wages- required minimum wage. Defendant failed to pay
16 Plaintiff, Class Members, and aggrieved employees for all hours worked
17 as a result of Defendant’s practice of rounding timecard entries to the shift
18 start time, and from time to time refusing to permit Plaintiff and
19 employees to take required meal and rest breaks, while concurrently
20 failing to pay penalty wages for meal and rest break violations.

21 21. Failure to timely pay all wages owed. Defendants failed to timely pay all wages
22 owed by failing to pay all wages due upon separation as well as failing to pay all wages
23 owed twice per month.

24 A. Failure to pay wages due upon termination. As set forth above, due to
25 Defendant’s unlawful employment practices, Defendant knowingly and
26 willfully failed to pay all compensation due and owing to Plaintiff at the
27 time employment terminated as required by Cal. Lab. Code §§201 and
28 202.

1 B. Failure to pay all wages owed twice per month. Defendants are required
2 to pay Plaintiff, Class Members, and aggrieved employees all wages
3 earned twice during each calendar month pursuant to Labor Code
4 §204(a). Defendants failed to pay all wages earned to employees as a
5 result of the unlawful employment policies and practices discussed
6 herein. As a result of these practices, Plaintiff, Class Members, and
7 aggrieved employees were underpaid for hours worked, including
8 overtime and penalty wages, and this underpayment resulted in a failure
9 to pay all wages owed twice per month.

10 22. Meal periods. During the class period, Defendants failed to maintain a compliant
11 meal period policy and practice. Defendants failed to consistently permit Plaintiff, Class
12 Members, and aggrieved employees to take timely, off-duty, meal breaks of “not less than
13 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7
14 and 512. Plaintiff was hired as a security guard and was later promoted to the position of
15 supervisor, although still hourly, non-exempt. Particularly during his time as a supervisor,
16 Plaintiff was denied meal period on average 2-3 times per week. Defendants failed to
17 permit Plaintiff and Class Members to take timely, off-duty, meal breaks of “not less than
18 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7
19 and 512. Plaintiff, Class Members, and aggrieved employees were often not paid penalty
20 wages for missed and non-compliant meal periods.

21 23. Rest periods. Defendants failed to maintain a policy and practice that provides
22 its employees with off-duty rest periods as required by California law. Defendant
23 frequently did not authorize or permit all of its hourly employees to take at least a ten-
24 minute rest period in which they were relieved of all duties, for every 4 hours of work, or
25 major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-
26 2001 12(A). Defendant failed to pay Plaintiff and similarly situated and aggrieved
27 employees all premium compensation (one hour of pay at the employee’s regular rate of
28

1 pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these
2 missed rest periods.

3 24. Wage statement and record keeping violations. Defendant knowingly and
4 intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff, Class
5 Members, and aggrieved employees in accordance with Labor Code §§ 226 and 1174.
6 Derivative of the claims alleged above, the statements provided to Plaintiffs, Class
7 Members, and aggrieved employees have not accurately reflected actual gross wages
8 earned, including overtime and meal/rest premiums and, total hours worked. Such failures
9 caused injury to Plaintiff and others, by, among other things, impeding them from knowing
10 the total hours worked and the amount of wages to which they are and were entitled.

11 25. Unlawful business practices. Based upon the above allegations, Defendants
12 engaged in unfair competition.

13 26. Plaintiff brings this action on behalf of himself, and all other persons similarly
14 situated, all aggrieved employees, and the State of California, to recover from Defendants
15 for failure to comply with California wage and hour laws, and for claims under Business
16 and Professions Code § 17200.

17 27. This action has been brought and may properly be maintained as a class action
18 pursuant to the provisions of Code of Civil Procedure § 382 because the proposed class is
19 ascertainable and there is a well-defined community of interest. Plaintiff is among in excess
20 of 100 employees who have been similarly injured by Defendants' unlawful employment
21 policies and practices.

22 28. The "PAGA Period" is defined herein commences one year prior to the date of
23 filing the PAGA Notice letter with the LWDA.

24 29. The PAGA Class, also referred to herein as "aggrieved employees": "All current and
25 former hourly, non-exempt employees of Defendants in California, at any time from one year
26 prior to the filing of the PAGA Notice letter with the LWDA until the resolution of this matter."
27 Plaintiff reserves the right to amend or modify the definition of aggrieved employees with
28 respect to the issues or in any other way.

1 30. The "Relevant Class Period" or proposed "Class Period" as defined herein
2 commences four years prior to the date of filing the Complaint in this action.

3 31. Plaintiff brings this action on their behalf and as a class action under Cal. Code
4 of Civil Procedure §382 on behalf of the following defined groups:

5 Proposed Class:

6 "All persons who are employed or have been employed by Defendants in the
7 State of California as hourly, non-exempt workers during the period of the
8 relevant statute of limitations."

9 Proposed Sub-classes are defined below and/or a representative action under Business
10 & Professions Code §§17200 et seq. and Labor Code §2699:

11 A. All persons who are employed or have been employed by Defendants in
12 the State of California as hourly, non-exempt workers during the period
13 of the relevant statute of limitations, who worked one or more shift in
14 excess of five (5) hours.

15 B. All persons who are employed or have been employed by Defendants in
16 the State of California as hourly, non-exempt workers during the period
17 of the relevant statute of limitations, who worked one or more shifts in
18 excess of six (6) hours.

19 C. All persons who are employed or have been employed by Defendants in
20 the State of California as hourly, non-exempt workers during the period
21 of the relevant statute of limitations, who worked one or more shifts in
22 excess of eight (8) hours.

23 D. All persons who are employed or have been employed by Defendants in
24 the State of California as hourly, non-exempt workers during the period
25 of the relevant statute of limitations, who worked one or more shifts in
26 excess of three and one-half hours (3 ½), but less than or equal to six (6)
27 hours.
28

1 E. All persons who are employed or have been employed by Defendants in
2 the State of California as hourly, non-exempt workers during the period
3 of the relevant statute of limitations, who worked one or more shifts in
4 excess of six (6) hours, but less than or equal to ten (10) hours.

5 F. All persons who are employed or have been employed by Defendants in
6 the State of California as hourly, non-exempt workers during the period
7 of the relevant statute of limitations, who separated their employment
8 from Defendants.

9 G. All persons who are employed or have been employed by Defendants in
10 the State of California as hourly, non-exempt workers during the period
11 of the relevant statute of limitations, who received pay for one or more
12 pay periods.

13 32. This action is brought, and may properly be maintained, as a class action under
14 CCP §382 and/or a representative action under Business & Professions Code §§17200 et seq. and
15 Labor Code §2699 because there is a well-defined community of interest in the litigation,
16 and the proposed Class, PAGA Class, and Subclasses (collectively "Class") are easily
17 ascertainable.

18 A. Numerosity: The Proposed Class is so numerous that joinder of all
19 members is impractical. Plaintiff is informed and believes, and on that
20 basis alleges, that during the relevant time period, Defendants employed
21 over 100 putative Class Members who are geographically dispersed and
22 who satisfy the definition of the proposed Class. As such, a class action
23 is the only available method for the fair and efficient adjudication of this
24 controversy. Membership in the Proposed Class can be easily ascertained
25 by an examination and analysis of employee and payroll records, among
26 other records within Defendants' possession and control.

27 B. Typicality: Plaintiff's claims are typical of the claims of the Class
28 Members. Plaintiff, like others similarly situated, was subjected to

1 Defendants' common, unlawful policies, practices, and procedures
2 described above. The Plaintiff's positions at the company was typical of
3 those of other Class Members. Plaintiff's claims are typical of the claims
4 of each Class Member because each have sustained damages arising out
5 of and caused by Defendants' common course of conduct, as alleged
6 herein. As such, Plaintiff has the same interests in this matter as all
7 members of the Class.

8 C. Adequacy: Plaintiff will fairly and adequately protect the interests of the
9 members of the Class. Plaintiff has retained counsel competent and
10 experienced in complex class actions and California labor and
11 employment litigation.

12 D. Commonality: Common questions of law and fact exist, including but not
13 limited to the following:

- 14 i. Whether Defendants violated wage and hour laws by
15 rounding time cards;
- 16 ii. Whether Defendants violated wage and hour laws by failing
17 to provide all required, duty-free, 30-minute minimum meal
18 periods;
- 19 iii. Whether Defendants violated wage and hour laws by failing
20 to provide all required rest periods;
- 21 iv. Whether Defendants' policy and practice concerning meal
22 breaks was unlawful;
- 23 v. Whether Defendants' policy and practice concerning rest
24 breaks was unlawful;
- 25 vi. Whether Defendants unlawfully failed to keep and furnish
26 Class Members with accurate, itemized records of hours
27 worked, in violation of Labor Code §§ 226 and 1174;
28

- vii. Whether Defendants' policy and practice of failing to pay employees all wages owed twice per month violates Labor Code §204(a);
- viii. Whether Defendants' timekeeping practices resulted in payment of wages less than the statutory minimum wage;
- ix. Whether Defendants' policy and practice of failing to pay its employees all wages due within the time required by law after their employment ended violates the law and warrants waiting time penalties under Cal. Labor Code §§ 200, 201, 202, 203, and 204;
- x. The proper measure of damages sustained and the proper measure of restitution recoverable by Plaintiff, the Class Members, and Subclass Members;
- xi. Whether the Class Members are entitled to injunctive relief to enjoin any further violations of wage and labor laws;
- xii. Whether Defendants, and each of them, are/were participants in the alleged unlawful and/or tortious conduct;
- xiii. Whether Defendants' conduct was willful and reckless;
- xiv. The effect upon and the extent of injuries suffered by Plaintiff and the Plaintiff Class and the appropriate amount of reimbursement, restitution, damages, or other compensation; and
- xv. What is the extent of liability of each Defendant, including DOE defendants, to each Class and Subclass member?

E. Superiority: A class action is superior to other available methods of the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where the damage suffered by individual plaintiffs, while not inconsequential, makes individual actions

1 impracticable given the expenses and burdens associated with seeking
2 individual relief. Prosecuting over 100 identical, individual lawsuits does
3 not promote judicial efficiency or equity and consistency in judicial
4 results. Moreover, the Class is a group of hourly, low-wage earning
5 employees who rely on their wages and requiring that each individual
6 take time away from work to prosecute individual actions would be
7 inequitable and result in undue hardship for the individual Class members
8 and their families. Public policy favors efficient resolution of their claims
9 and uniform enforcement of California Labor laws against entities
10 skirting their legal obligations at the expense of a vulnerable working
11 population.

12 33. Manageability: Plaintiff is informed and believes that all allegations in this
13 Complaint are capable of being determined on the same evidence and based primarily on
14 review of corporate records and key testimony of Defendants' corporate representatives.
15 To the extent statistical analysis and representative evidence is necessary, Plaintiff and
16 proposed class counsel will employ competent experts and consultants in the field to
17 determine and review evidence for both issues of liability and damages in a scientifically
18 reliable manner.

19 34. Plaintiff requests, pursuant to Rule 1857(a)(1) and Rule 3.766 of the California
20 Rules of Court, that the absent Class and Subclass Members be notified by the best notice
21 practicable under the circumstances, including individual notice to all members who can
22 be identified through reasonable effort. The names and address of the Class and Subclass
23 Members are available from Defendants.

24 **FIRST CAUSE OF ACTION**

25 **FAILURE TO PAY WAGES, INCLUDING OVERTIME WAGES, AGAINST ALL**
26 **DEFENDANTS**

27 35. Plaintiff incorporates by reference in this cause of action each allegation of the
28 preceding paragraphs as though fully set forth herein.

1 36. Section 2(K) or Wage Order 4 defines “hours worked” as “the time during which
2 an employee is subject to the control of an employer, and including all the time the
3 employee is suffered or permitted to work, whether or not required to do so.”

4 37. During the Class Period, Labor Code Section 510 applied to Defendants’
5 employment of Plaintiff and the Class. At all times relevant hereto, Labor Code Section
6 510 and the applicable IWC order provided that it was unlawful to employ persons such as
7 members of the Class without compensating them at a rate of pay either one and one-half
8 (1½) or two (2) times that person’s regular rate of pay, depending on the number of hours
9 worked by the person on a daily or weekly basis. Specifically, Wage Order 4 provided that
10 Defendants were required to pay Plaintiff and the rest of the Class at the rate of one and
11 one-half (1½) times the Class member’s regular rate of pay if the Class member worked
12 more than eight (8) hours in a day or more than forty (40) hours in a work week.
13 Furthermore, Defendants were required to pay Plaintiff and the rest of the Class at the rate
14 of two (2) times the Class member’s regular rate of pay if the Class member worked more
15 than twelve (12) hours a day.

16 38. Plaintiff is informed and believes and, based thereon, alleges that, during the
17 Class period, Defendants failed to pay Plaintiff and the Class all of the wages, including
18 overtime wages, that they were due and therefore violated Labor Code Section 510 and the
19 applicable IWC Wage Order as a result of Defendants’ practice of rounding timecard
20 entries down to the shift start time instead of the actual clock in time.

21 39. Therefore, the Class Members are entitled to recover from Defendants unpaid
22 wages, plus interest thereon.

23 40. Employees are employed at or near minimum wage, thus failure to pay all hours
24 worked, including overtime hours worked, results in a payment of wages lower than the
25 statutory minimum wages in violation of Labor Code §1197, and the Class is entitled to
26 penalties under Labor Code §1197.1, as described more fully below.

27 41. Plaintiffs allege on information and belief that Defendants' failure to pay the
28 Class Members all wages including overtime, as alleged in this cause of action, was willful,

1 and thus entitles the Class Members to penalties under Labor Code § 203. Specifically,
2 Labor Code § 203 provides that an employee's wages shall continue as a penalty until paid
3 or for a period of up to 30 days from the time they were due, whichever period is shorter.

4 42. In addition, and pursuant to Labor Code § 558, Plaintiffs request that this Court
5 award civil penalties as set forth in § 558 for each pay period during which Defendants
6 failed to pay the Class Members their wages, as alleged above.

7 43. Plaintiffs further request an award of attorneys' fees pursuant to Labor Code §§
8 218.5 and 1194 and Code of Civil Procedure § 1021.5.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGE AGAINST ALL DEFENDANTS**

11 44. Plaintiff incorporates by reference in this cause of action each allegation of the
12 preceding paragraphs as though fully set forth herein.

13 45. Section 2(K) or Wage Order 4 defines "hours worked" as "the time during which
14 an employee is subject to the control of an employer, and including all the time the
15 employee is suffered or permitted to work, whether or not required to do so."

16 46. Labor Code § 223 prohibits the payment of less than a statutory or contractual
17 wage scale. §1194-1197.1 prohibit the payment of less than the minimum wages. Labor
18 Code §1197.1 states, "[a]ny employer or other person acting individually as an officer,
19 agent, or employee of another person, who pays or causes to be paid to any employee a
20 wages less than the minimum fixed by an applicable state or local law, or by an order of
21 the commission shall be subject to a civil penalty, restitution of wages, liquidated damages
22 payable to the employee, and any applicable penalties pursuant to Section 203."

23 47. When employees like Plaintiff and their coworkers earning at or near minimum
24 wage work off the clock and/or do not receive the legally required minimum wage for all
25 hours worked due to timecard rounding and other practice resulting in off the clock hours
26 worked, the result is that they are earning less than the statutory minimum wages for all
27 hours worked. Employees like Plaintiff and Class Members who have their hours
28 consistently rounded to reflect their scheduled start and end times instead of their actual

1 clock in and clock out times fail to receive payment for all hours worked and have been
2 denied legally required minimum wages, in violation of Labor Code §1197.

3 48. Labor Code § 1194 entitles an employee receiving less than the minimum wage
4 to recover in a civil action the unpaid balance of the full amount of this minimum wage,
5 including interest thereon, reasonable attorneys' fees, and costs of suit.

6 49. Labor Code § 1194.2 entitles an employee receiving less than the minimum
7 wage to recover liquidated damages in an amount equal to the wages unlawfully unpaid
8 and interest thereon.

9 50. Labor Code §1197.1 subjects and employer who causes an employee to be paid
10 less than minimum wage to: (1) a civil penalty equal to one hundred dollars (\$100) for each
11 underpaid employee for each pay period in which the employee is underpaid for an initial
12 violation that is intentionally committed; (2) two hundred and fifty dollars (\$250) for a
13 subsequent violation for the same specific offense for each underpaid employee for each
14 pay period regardless of whether the initial violation is intentionally committed; (3)
15 restitution of wages; and (4) liquidated damages, all payable to the employee.

16 51. During the class period, Defendants have refused and failed to pay Plaintiff and
17 the Class for all hours worked. Consequently, Defendants have failed to pay minimum
18 wages to Plaintiff and the Class for all hours worked as alleged above in violation of
19 California Labor Code §§218, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the Wage Order.

20 52. As a result of Defendant's conduct, Plaintiff and Class Members have been
21 deprived of payment for all hours worked and minimum wage for all hours worked in an
22 amount to be determined at trial, and are entitled to recovery of the unpaid balance of the
23 full amount of these wage, including interest thereon, reasonable attorneys' fees, and costs
24 of suit pursuant to Labor Code §1194, 218.5, and Cal. Code of Civ. Pro. §1021.5; liquidated
25 damages and interest thereon pursuant to Labor Code §1194.2; and civil penalties,
26 restitution of wages, and liquidated damages pursuant to Labor Code §1197.1.

27 53. Plaintiff alleges on information and belief that Defendants' failure to pay the
28 Class Members for all hours worked as alleged in this cause of action, was willful, and thus

entitles the Class Members to penalties under Labor Code § 203. Specifically, Labor Code § 203 provides that an employee's wages shall continue as a penalty until paid or for a period of up to 30 days from the time they were due, whichever period is shorter.

54. In addition, and pursuant to Labor Code § 558, Plaintiff requests that this Court award civil penalties as set forth in § 558 for each pay period during which Defendants failed to pay the Class Members as alleged above.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS AGAINST ALL DEFENDANTS

55. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

56. Labor Code §512 provides, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes... An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.”

57. Section 11 of Wage Order 4 requires employers to authorize and permit employees to take an uninterrupted 30 minute meal period after no more than 5 hours of work. It further provides, “[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.” Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by the order is unlawful.”

58. Employer from time to time failed to permit claimants and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work. As a result of Defendants’ failure to afford legally compliant meal periods as set forth above, Defendants are liable to the Plaintiff and Class Members for one hour of additional pay at the regular rate of compensation for each workday that the required uninterrupted

1 meal periods were not provided, pursuant to Cal. Labor Code §226.7 and Wage Order No.
2 4-2001, § 11(d). Upon information and belief, Defendants often failed to pay such
3 premiums to Plaintiff and the Class.

4 59. Plaintiff seeks injunctive relief requiring Defendants to comply with the
5 California Labor Code and relevant Wage Orders with respect to meal periods, declaratory
6 relief that Defendants' policies regarding such are unlawful, and attorneys' fees and costs,
7 and under Cal. Code of Civ. Pro. §1021.5.

8 60. In addition, and pursuant to Labor Code § 558, Plaintiff requests that this Court
9 award civil penalties as set forth in § 558 for each pay period during which Defendants
10 failed to pay the Class Members as alleged above.

11 61. Defendants' failure to pay meal period premiums was done willfully, in bad
12 faith, in knowing violation of the California Labor Code and the IWC Wage Orders.

13 **FOURTH CAUSE OF ACTION**

14 **REST PERIOD VIOLATIONS AGAINST ALL DEFENDANTS**

15 62. Plaintiff incorporates by reference in this cause of action each allegation of the
16 preceding paragraphs as though fully set forth herein.

17 63. Plaintiff and similarly situated Class Members regularly worked more than three
18 and one-half hours in a day without being authorized and permitted to take a 10-minute
19 duty-free rest period, and regularly worked more than six hours in a day without being
20 authorized and permitted to take two, 10-minute duty-free rest periods per four hours or
21 major fraction thereof, as required under Cal. Labor Code § 226.7 and Wage Order No. 4-
22 2001, § 12(a).

23 64. Plaintiff also seeks injunctive relief requiring Defendants to comply with the
24 California Labor Code and Wage Orders with respect to rest periods, declaratory relief that
25 Defendants' policies regarding such are unlawful, and attorneys' fees and costs, and under
26 Cal. Code of Civ. Pro. §1021.5.

27 65. Defendants' failure to pay rest period premiums was done willfully, in bad faith,
28 in knowing violation of the California Labor Code and the IWC Wage Order.

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1 at the same rate until paid or until an action therefore is commenced, but the wages shall
2 not continue for more than thirty (30) days. Accordingly, Class Members who were
3 discharged or who quit during the Class Period are entitled to receive their wages for each
4 day they were not paid, at their regular rate of pay, up to a maximum of thirty (30) days.

5 71. Moreover, Defendants were required to pay Plaintiff and the Class all wages
6 earned twice during each calendar month pursuant to Labor Code §204(a). Defendants
7 failed to pay all wages earned to employees as a result of the unlawful employment policies
8 and practices discussed herein. As a result of these practices, employees were underpaid
9 for hours worked, including overtime and penalty wages, and this underpayment resulted
10 in a failure to pay all wages owed twice per month.

11 72. Plaintiff will seek both restitution pursuant to Labor Code §558(a)(3) for himself
12 and members of the proposed Subclass for each violation of Labor Code §203 during the
13 Class Period, in an amount according to proof based on Defendants' corporate and payroll
14 records.

15 **SIXTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS** 17 **AGAINST ALL DEFENDANTS**

18 73. Plaintiff incorporates by reference in this cause of action each allegation of the
19 preceding paragraphs as though fully set forth herein.

20 74. California Labor Code § 226(a) provides that, at the time of each payment of
21 wages, an employer shall provide each employee with a wage statement itemizing, among
22 other things, the total hours worked by the employee in the pay period, and all applicable
23 hourly rates in effect during the pay period, the corresponding number of hours worked at
24 each hourly rate by the employee, and the true legal name of the entity that is the employer.

25 75. California Labor Code § 226(e) provides that an employee suffering injury as a
26 result of a knowing and intentional failure by an employer to comply with Labor Code §
27 226(a) is entitled to recover the greater of his or her actual damages or a penalty of \$50 for
28 the initial pay period in which a violation occurs and \$100 per employee for each violation

1 in a subsequent pay period (up to a maximum of \$4,000), in addition to attorneys' fees and
2 costs.

3 76. Employer knowingly and intentionally failed to provide timely, accurate,
4 itemized wage statements to Plaintiff and the Class Members in accordance with Labor
5 Code §§ 226 and 1174.

6 77. Derivative of the claims alleged above, the statements provided to Plaintiff and
7 Class Members have not accurately reflected actual gross wages earned, including
8 overtime and meal/rest premiums and, total hour worked requirements. Such failures
9 caused injury to Plaintiff and others, by, among other things, impeding them from knowing
10 the total hours worked and the amount of wages to which they are and were entitled.
11 Defendants' violations of Labor Code section 226 are ongoing and will continue until and
12 unless this Court enters an injunction barring such violations.

13 78. Plaintiff and the Class Members are therefore entitled to the damages and
14 penalties, plus attorneys' fees and costs, provided for under Labor Code §§ 226(e) and (g).
15 Pursuant to Labor Code § 226(g), Plaintiff and the Class Members are also entitled to and
16 seek injunctive relief requiring Defendants to comply with Labor Code 226(a).

17 79. Labor Code § 1174 provides that "[e]very employer employing labor in this state
18 shall ... (c) [k]eep a record showing the names and addresses of all employees employed
19 and the ages of all minors [and] (d) [k]eep at a central location in the state or at the plants
20 or establishments at which employees are employed, payroll records showing the hours
21 worked daily by and the wages paid to, and the number of piece-rate units earned by and
22 any applicable piece rate paid to, employees employed at the respective plants or
23 establishments. These records shall be kept in accordance with rules established for this
24 purpose by the commission, but in any case shall be kept on file for not less than two years."

25 80. Labor Code § 1174.5 provides that "[a]ny person employing labor who willfully
26 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and
27 complete records maintained by subdivision (d) of Section 1174, or to allow any member
28

1 of the commission or employees of the division to inspect records pursuant to subdivision
2 (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

3 81. Plaintiff alleges on information and belief that Defendants knowingly and
4 intentionally failed to furnish the Class Members with accurate itemized statements for
5 each pay period that they worked and failed to maintain accurate payroll records of the
6 Class Members as mandated by Labor Code §§ 226 and 1174. As such, the Class Members
7 are entitled to civil penalties and an award of costs and attorney's fees under § 226(e). In
8 addition, the Class Members are entitled to recover civil penalties under § 1174.5.

9 **SEVENTH CAUSE OF ACTION**

10 **UNFAIR PRACTICE UNDER THE UNFAIR COMPETITION ACT (“UCL”)**
11 **AGAINST ALL DEFENDANTS**

12 82. Plaintiff incorporates by reference in this cause of action each allegation of the
13 preceding paragraphs as though fully set forth herein.

14 83. Defendants knowingly committed, and upon information and belief continue to
15 commit, ongoing unlawful business practices within the meaning of the UCL, including,
16 but not limited to unlawful practices as described in the causes of action articulated above,
17 and hereby incorporated herein.

18 84. Plaintiff lost money and property as a result of Defendants' unlawful business
19 practices described above.

20 85. Pursuant to the UCL, Plaintiff and all Class Members are entitled to restitution
21 of money or property acquired by Defendants by means of such unlawful business
22 practices, in amounts not yet known, but to be ascertained at trial.

23 86. Pursuant to the UCL, Plaintiff and Class Members are entitled to injunctive
24 relief against Defendants' ongoing unlawful business practices. If an injunction does not
25 issue enjoining Defendants from engaging in the unlawful business practices described
26 above, Plaintiff and the general public will be irreparably injured.

27 87. Plaintiff has no plain, speedy, and adequate remedy at law. Defendants, if not
28 enjoined by this Court, will continue to engage in the unlawful business practices described

1 above in violation of the UCL, in derogation of the rights of Plaintiff and Class Members
2 and of the general public.

3 88. Plaintiff's success in this action will result in the enforcement of important
4 rights affecting the public interest by conferring a significant benefit upon the general
5 public.

6 89. Defendants' numerous violations of local and California law, as well as the
7 other statutory and regulatory violations alleged herein, constitute unlawful business
8 actions and practices in violation of Business and Professions Code § 17200, et seq.

9 90. Pursuant to Business and Professions Code § 17200, et seq., Plaintiff and the
10 Class Members are entitled to restitution of unpaid wages and penalty pay, among other
11 relief alleged herein, that were withheld and retained by Defendants during a period that
12 commences four years prior to the filing of this action. Plaintiffs are further entitled to a
13 permanent injunction requiring Defendants to comply with all provisions of California
14 labor law, including properly paying the lawful rate of pay for all hours worked, providing
15 meal/rest periods to all workers as defined herein, timely pay wages upon discharge,
16 maintain accurate wages statements and payroll records, in addition to an award of
17 attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and other applicable
18 law, and costs.

19 **EIGHTH CAUSE OF ACTION**

20 STATUTORY PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL
21 ACT, LABOR CODE §2698 *et seq.* AGAINST ALL DEFENDANTS

22 91. Plaintiff incorporates by reference in this cause of action each allegation of the
23 preceding paragraphs as though fully set forth herein.

24 92. Under the Private Attorneys General Act of 2006, Labor Code §§2698-2699.5, an
25 aggrieved employee, on behalf of herself and other current or former employees, may recover
26 penalties under any provision of the Labor Code that provides for civil penalties. These penalties
27 are in addition to any other relief available under the Labor Code. Plaintiff is an aggrieved
28 employee under PAGA.

1 93. As set forth above, Defendants have committed numerous violations for which the
2 Labor Code provides for penalties, including violations of all applicable Labor Code provisions
3 set forth in the foregoing causes of action. Labor Code §2699.5 identifies the aforementioned
4 Labor Code provisions as statutes to which §2699.3's procedural requirements must be met
5 before a penalty may be assessed under §2699(f). Plaintiff has complied with the procedural
6 requirements specified in §2699.3 by providing written notice to the Defendants and the Labor &
7 Workforce Development Agency ("LWDA"). See Exhibit 1 attached hereto, which is a true and
8 correct copy of the Notice correspondence showing compliance with §2699.3. No notice of
9 intent to investigate the alleged violations was provided within the statutory period.
10 Consequently, Plaintiff has exhausted administrative remedies, and on behalf of themselves and
11 all other aggrieved current and former employees of Defendants. Plaintiff, therefore, now
12 pursues this cause of action as permitted by §2698, *et seq.*

13 94. Enforcement of statutory provisions enacted to protect workers and to ensure proper
14 and prompt payment of wages due to employees is a fundamental public interest in California.
15 Consequently, Plaintiff's success in this action will result in the enforcement of important rights
16 affecting the public interest and will confer a significant benefit upon the general public. Private
17 enforcement of the rights enumerated herein is necessary, as no public agency has pursued
18 enforcement. Plaintiff is incurring a financial burden in pursuing this action and it would be
19 against the interests of justice to require payment of attorneys' fees and costs from any recover
20 that might be obtained herein, pursuant to, *inter alia*, Labor Code §§2698, *et seq.*, and Code of
21 Civil Procedure §1021.5

22 95. In addition, if Plaintiff succeeds in enforcing these rights affecting the public interest,
23 then attorneys' fees may be awarded to Plaintiff and against Defendants under Code of Civil
24 Procedure §1021.5 and other applicable law in part, because:

25 **a.** A successful outcome in this action will result in the enforcement of important
26 rights affecting the public interest by requiring Defendants to comply with the wage and hour
27 laws and California's unfair business practice law;

28 **b.** This action will result in a significant benefit to Plaintiff, the Class, and the
general public by bringing to a halt unlawful and/or unfair activity;

1 c. Unless this action is prosecuted, members of the Class and general public will not
2 recover those moneys, and many of Defendants' employees would not be aware that the acts and
3 practices they were subjected to by Defendants were wrongful;

4 d. Unless this action is prosecuted, Defendants will continue to mislead their
5 employees about the true nature of their rights and remedies under the wage and hour laws; and

6 96. An award of attorneys' fees and costs is necessary for the prosecution of this action
7 and will result in a benefit to Plaintiff, the Class, aggrieved employees, and to consumers in
8 general, by preventing Defendants from continuing to circumvent the wage and hour statutes and
9 frustrate the long-standing recognition by the California legislature and the courts that such
10 statutes, as pled herein, are not merely a matter of private concern between employer and
11 employee to be eviscerated by considerations of waiver, contributory negligence, good or bad
12 faith, and private agreements. Rather, the wage and hour statutes have been described as a matter
13 of public concern, were designed to provide minimum substantive guarantees to individual
14 workers and are essential to public welfare.

15 REQUEST FOR RELIEF

16 WHEREFORE, Plaintiff, on behalf of himself and the Proposed Class, request
17 judgment and the following specific relief against Defendants as follows:

- 18 A. That the Court determine that this action may be maintained as a class
19 action under Code of Civil Procedure § 382;
- 20 B. That the Court determine that this action may be maintained as a PAGA
21 representative action under Cal. Labor Code. §2698 *et seq.*
- 22 C. Provision of class notice to all members of the Class;
- 23 D. That Defendant is found to have violated the above-referenced provisions
24 of the Labor Code, CCR and IWC Wage Order 4-2001 as to Plaintiff,
25 Class Members, relevant subclass Members, and aggrieved employees;
- 26 E. For compensatory damages, in an amount according to proof at trial, with
27 interest thereon;
- 28 F. For compensation for not being provided paid rest breaks;

- 1 G. For compensation for not being provided meal periods;
- 2 H. That Defendant's actions are found to be willful and/or in bad faith to the
- 3 extent necessary under §§ 201, 202, 203, 204 and 558 of the California
- 4 Labor Code for willful failure to pay all compensation owed at the time
- 5 of separation to Plaintiff, Class Members, and aggrieved employees no
- 6 longer employed by Defendants;
- 7 I. That Plaintiff, Class Members, and aggrieved employees receive
- 8 penalties for Defendant's violation of §226 and 1174 of the California
- 9 Labor Code for willful failure to provide and maintain the required
- 10 accurate and itemized wage statements;
- 11 J. That Plaintiff, Class Members, and aggrieved employees receive an
- 12 award in the amount of unpaid wages owed, including interest thereon,
- 13 and penalties as provided in the Labor Code, CCR and Wage Order,
- 14 including under Labor Code §§ 203, 510, 558, and 2698 et seq., subject
- 15 to proof at trial;
- 16 K. That Plaintiff and Class Members receive damages pursuant to §§248.5
- 17 in addition to reasonable attorneys' fees, and costs of suit pursuant to
- 18 Labor Code § 218.5 and CCP 1021.5;
- 19 L. That Defendants be ordered to pay restitution to Plaintiff and Class
- 20 Members for amounts acquired through Defendants' unlawful activities
- 21 pursuant to Business and Professions Code §§ 17200-05 and enjoined to
- 22 cease and desist from unlawful and unfair activities in violation of
- 23 California Business and Professions Code § 17200 et. seq.;
- 24 M. That Plaintiff and Class Members receive an award of reasonable
- 25 attorneys' fees and costs pursuant to Code of Civil Procedure §1021.5,
- 26 Labor Code §226, 218.5, and 1194 and/or applicable laws;
- 27 N. That the Court award penalties pursuant to Labor Code §2698 et seq.
- 28

1 O. That the Court issue declaratory relief that Defendant's challenged
2 policies are unlawful; and

3 P. That the Court order further relief, in law and equity, as it deems
4 appropriate and just.

5
6 DATED: February 22, 2021

7 **KOUL LAW FIRM**

8 
9 BY: Nazo Koulloukian, Esq.
10 Attorneys for Plaintiff MERCEDES
11 BUTLER and putative class members
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13
14
15

16 ***DEMAND FOR JURY TRIAL***

17 Plaintiff, on behalf of himself and the putative class, hereby demands trial by jury
18 to the full extent permitted by law.
19

20 DATED: February 22, 2021

21 **KOUL LAW FIRM**

22 
23 BY: Nazo Koulloukian, Esq.
24 Attorneys for Plaintiff MERCEDES
25 BUTLER and putative class members
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 - 5484

F (818) 561 - 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

December 3, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Unified Security Services, Inc.
4431 W. Rosecrans Ave. Ste 200
Hawthorne, CA 90250

Unified Protective Services, Inc.
4431 W. Rosecrans Ave. Ste 200
Hawthorne, CA 90250

Unified Security Services II, Inc.
4431 W. Rosecrans Ave. Ste 200
Hawthorne, CA 90250

Re: PAGA Notice Pursuant to California Labor Code §2699

Claimant: Mercedes Butler

Employers: Unified Security Services, Inc.
Unified Security Services II, Inc.
Unified Protective Services, Inc.

Dear Sir or Madam:

Mercedes Butler has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM to represent him, and all other aggrieved employees, for wage and hour claims against his employers, Unified Security Services, Inc., Unified Security Services II, Inc., and Unified Protective Services, Inc. ("Employer.")

Employers provide security services to clients throughout California. Claimant's proposed PAGA representative action would represent current and former aggrieved employees. Claimant began working for Employer as a security guard from May 13, 2019 until January 29, 2020 earning approximately \$15 per hour.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit Claimant to seek civil

penalties under the Private Attorney General Act ("PAGA"), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency ("LWDA") and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay or All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 226.8, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, 2750.3, 2699 *et seq.*)

Section 2(K) or Wage Order 4 defines "hours worked" as "the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so."

Employer engages in numerous practices resulting in failure to pay all hours worked. Although Employer used biometric finger print scanners and has record of the exact time employees clock in and out, Employer would round employee timeclock entries to the shift start time instead of paying Claimant and aggrieved employees from their actual start to their actual end time. Claimant was not paid for all time worked and the rounding policy in place unlawfully favored Employer.

When employees like Claimant and aggrieved employees earning at or near minimum wage do not receive full payment for all hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below:

Failure to Pay Overtime Wages

Employer has required Claimant and others to work hours in excess of eight hours in a day and forty in a week but has not paid these employees overtime compensation at one and one-half times the regular rate of pay in violation of Labor Code §510. Further, Claimant and aggrieved employees have been required to work in excess of 12 hours in one day without being compensated at a rate of twice the regular rate of pay. §510. As a result, Claimant and aggrieved employees have been denied "the unpaid balance of the full amount of this... overtime compensation" as required by Cal. Labor Code. §1194. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay Wages- Required Minimum Wage & Penalty Wages

Employer failed to pay Claimant and aggrieved employees at the lawful rate for all hours worked as a result of Employer's practice of rounding timecard entries to the shift start time, and refusing to permit Claimant and employees to take required meal and rest breaks, while concurrently failing to pay penalty wages for meal and rest break

violations. Based on Employer's unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, Employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 5-2001 4(B).

Based on the above violations, Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has violated §1198. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202 and 2698 *et seq.*)

Failure to Pay Wages Due Upon Termination

Pursuant to Cal. Lab. Code § 202 (a), "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter." An employee who is discharged must be paid all of his or her wages immediately at the time of termination. Labor Code §§ 201 and 227.3.) As a result of Employer's unlawful employment practices as described herein, Employer failed to pay aggrieved employees who are no longer employed by Employer all wages due in a timely manner upon termination.

As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to aggrieved employees at the time employment terminated. Pursuant to §203, aggrieved employees are now also entitled to recover up to thirty (30) days of wages due to Employer's "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, aggrieved employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Provide Uninterrupted Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Claimant was hired as a security guard and was later promoted to the position of supervisor, although still hourly, non-exempt. Particularly during his time as a supervisor, Claimant was denied meal period on average 2-3 times per week.

Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

Section 11(D) of Wage Order 4 states:

Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

Employer failed to permit claimants and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Moreover, because Employer's failure to provide meal periods violates a Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq.

During Claimant's employment, Employer failed to maintain a compliant rest period policy and practice. Claimant was hired as a security guard and was later promoted to the position of supervisor, although still hourly, non-exempt. Particularly during his time as a supervisor, Claimant was denied rest breaks on average 2-3 times per week.

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-2001 12(A).

Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. Because Employer violated Section 12(A) of Wage Order 4, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.*

Failure to Provide Accurate Itemized Wage Statements and Comply with Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 2699 *et seq.*)

Based on the claims alleged herein, Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and aggrieved employees in accordance with Labor Code §§ 226 and 1174. This failure caused injury to Claimant and aggrieved employees, by, among other things, impeding them from knowing the accurate total hours worked and the amount of wages to which they are and were entitled. This failure was knowing and intentional, and in violation of Labor Code §226(a). Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform Claimant if it does not intend to investigate these violations so that Claimant may pursue these claims as a representative action in civil court.

Sincerely,



Nazo Koulloukian, Esq.
Attorney for Claimant