

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 3/3/2021 2:50 PM
Reviewed By: R. Walker
Case #21CV376957
Envelope: 5956568**

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JASON VEHAWN, and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
(UNLIMITED JURISDICTION)**

JASON VEHAWN, on behalf of himself, all
others similarly situated, and as an "aggrieved
employee" on behalf of other "aggrieved
employees" under the Labor Code Private
Attorney General Act of 2004,

Plaintiff(s),

vs.

EAGLE EYE SECURITY SOLUTIONS, INC.,
a California corporation; and DOES 1-50,
inclusive,

Defendants.

Case No.: 21CV376957

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512 and 1198);
2. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201–203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
7. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff, JASON VEHAWN (hereafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendant EAGLE
5 EYE SECURITY SOLUTIONS, INC., a California corporation, and Does 1-50, inclusive
6 (collectively “Defendants”) for alleged violations of the California Labor Code, Industrial
7 Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”), and the Business and
8 Professions Code.

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated current and former employees in California for unpaid wages and
11 other related relief. These claims are based on Defendants’ alleged failures to (1) provide all meal
12 and rest periods in compliance with California law, (2) pay all wages earned for all hours worked
13 at the correct rates of pay, (3) indemnify Plaintiff and the below-described Class for reasonable
14 expenses incurred while performing their duties, (4) provide accurate and complete itemized
15 written wage statements, (5) timely pay all final wages upon termination of employment, and (6)
16 fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages and related relief
17 through this class action.

18 **JURISDICTION AND VENUE**

19 3. This court has subject matter jurisdiction because the aggregate claims of
20 Plaintiff, inclusive of all relief, place more than \$25,000 in controversy.

21 4. There is no basis for federal question subject matter jurisdiction in this case.
22 Specifically, Plaintiff asserts claims that solely arise under California law, rather than federal
23 law.

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

25 6. Venue is proper in Santa Clara County pursuant to California Code of Civil
26 Procedure § 395(a) and § 395.5 in that liability arose in Santa Clara County because at least
27 some of the transactions that are the subject matter of this Complaint occurred therein and/or
28 because each defendant is found, maintains offices, transacts business, and/or has an agent
therein.

PARTIES

7. Plaintiff JASON VEHAWN is a resident of Tracy, California.



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1 8. On or about October 17, 2018, Defendants first employed Plaintiff to work in
2 California as a non-exempt residential security agent. They employed him continuously from that
3 day until approximately September 11, 2020, when they terminated his employment because he
4 complained about Defendants' violations of the California Labor Code, including their failure to
provide him with all timely meal and rest periods.

5 9. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8
6 California Code of Regulations § 11050 and an "aggrieved employee" within the meaning of
7 Labor Code § 2699(c).

8 10. Defendant EAGLE EYE SECURITY SOLUTIONS, INC., is a corporation
9 organized and existing under the laws of California and a citizen of California based on Plaintiff's
10 information and belief.

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

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

21 13. At all relevant times, in perpetrating the acts and omissions alleged herein,
22 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
23 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
described class in accordance with applicable laws as alleged herein.

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



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CLASS ALLEGATIONS

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

16. **Class Definition:** The Class is defined as follows: All California-based persons Defendants employed on an hourly basis as security agents and in comparable positions at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

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

18. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California laws.

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

A. Whether Defendants failed to provide the Class Members with all meal and rest periods in compliance with California law;

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

C. Whether Defendants failed to indemnify the Class Members for the reasonable expenses they incurred during the course of performing their duties;

D. Whether Defendants knowingly and intentionally failed to provide the Class Members with accurate written wage statements;

E. Whether Defendants willfully failed to provide the Class Members with timely final wages upon termination of employment;

F. Whether Defendants engaged in unfair competition within the meaning of



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1 Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

2 G. Whether Class Members are entitled to restitution of money or property
3 that Defendants may have acquired from them through alleged Labor Code violations.

4 20. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
5 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
6 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
7 Code, the Wage Order, and the Business and Professions Code.

8 21. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
9 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
10 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
11 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
12 Members.

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

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

27 **STATEMENT OF FACTS**

28 24. On or about October 17, 2018, Defendants first employed Plaintiff to work in
California as a non-exempt residential security agent. They employed him continuously from that
day until approximately September 11, 2020, when they terminated his employment because he
complained about Defendants' violations of the California Labor Code, including their failure to



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1 provide him with all timely meal and rest periods.

2 25. At all relevant times, Defendants compensated Plaintiff and the Class Members
3 with a fixed salary on a semi-monthly basis.

4 26. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
5 with all timely rest and meal periods as provided under California law. Defendants often
6 understaffed Plaintiff and the Class Members' job sites and as a result, Plaintiff and the Class
7 Members had no choice but to take late meal and/or rest periods or miss them all together.
8 Adherence to Defendants' policies resulted in short or on-duty meal periods. Plaintiff and the
9 Class Members could leave the premises to take a meal period. Nonetheless, if they left the
10 premises using company assigned vehicles, Defendants required them to stay on-call. Plaintiff
11 and the Class Members could also use their personal vehicles to leave the premises during their
12 meal periods. However, Defendants required them to park their vehicles away from their job site
13 and it took approximately five to ten minutes for Plaintiff and the Class Members to retrieve their
14 personal vehicles. This policy, therefore resulted in short meal periods of less than 30 minutes.
15 Additionally, Defendants required Plaintiff and the Class Members to keep their work cellphones
16 on at all times and to respond to their supervisors' communications even during their off-the-
17 clock meal periods or rest breaks. Defendants' head of human resources and payroll, Monica
18 Avila, specifically instructed Plaintiff, through email, that during "Paid breaks you are on duty[.]"
19 Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and
20 the Class Members with rest and/or meal periods as provided by California law.

21 27. Defendants also failed to compensate Plaintiff and the Class Members for all hours
22 worked at the correct rates of pay, including overtime wages. At all relevant times, Defendants
23 required Plaintiff and the Class Members to work off-the-clock without compensation. In addition
24 to the work they performed during their off-the-clock meal periods as described above,
25 Defendants required Plaintiff and the Class Members to check their schedules, communicate with
26 management and review memoranda and policies received from Defendants' management off-
27 the-clock and during their off days. Further, by compensating the employees on a semi-monthly
28 basis with the same amount of pay regardless of the number of days worked during each pay
period, Defendants failed to compensate Plaintiff and the Class Members for all hours worked at
the correct rates of pay.

28 28. Defendants often required Plaintiff and the Class Members to use their personal



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1 cellphones to communicate with their supervisors regarding work-related matters. Defendants,
2 however, failed to reimburse them for all such expenses.

3 29. Further, Defendants often wire transferred Plaintiff and the Class Members wages,
4 including Plaintiff's final wages, which resulted in a \$15.00 fee deduction by his bank from his
5 wages.

6 30. Finally, Defendants provided Plaintiff and the Class Members with inaccurate and
7 insufficient wage statements. For example, Defendants either did not report total hours worked
8 and rates of pay or reported incorrect rates or hours on the wage statements they issued to Plaintiff
9 and the Class Members. By reporting the same number of hours for each pay period, instead of
10 the actual hours worked and reported by Plaintiff and the Class Members, Defendants violated
11 the California Labor Code.

12 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

An employer shall not employ an employee for a work period of



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

35. In relevant part, § 12 of the Wage Order states:

Rest Periods

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

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

36. In relevant part, § 11 of the Wage Order states:

Meal Periods

(A) “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employee and the employer. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the



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employee's regular rate of compensation for each work day that the meal period is not provided."

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

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

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

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

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

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

41. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely 30-minute duty-free meal periods within the first five hours of work. Defendants also failed to authorize and permit Plaintiff and the Class Members to take 10-minute rest breaks every four hours worked or major fraction thereof as required by the Wage Order. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Class Members with timely meal and rest periods.

42. Plaintiff is informed and believes and thereon alleges that, at all relevant times



1 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
2 which resulted in Defendants not providing the Class with all off-duty meal periods and rest
3 breaks required by California law.

4 43. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
5 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
6 wages owed for all meal periods and rest breaks not provided to them.

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

11 **SECOND CAUSE OF ACTION**

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

13 **(Lab. Code §§ 221, 510, 1194, 1197, and 1198)**

14 **(By Plaintiff and the Class against Defendants)**

15 45. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

16 46. At all relevant times, Plaintiff and the other Class Members have been non-exempt
17 employees of Defendants and entitled to the benefits and protections of California Labor Code
18 §§ 221, 510, 1194, 1197, and 1198 and the Wage Order.

19 47. § 2 of the Wage Order defines "hours worked" as "the time during which an
20 employee is subject to the control of an employer, and includes all the time the employee is
21 suffered or permitted to work, whether or not required to do so."

22 48. § 3 of the Wage Order states:

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

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



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

5 (b) Double the employee's regular rate of pay for all hours worked in excess of
6 12 hours in any workday and for all hours worked in excess of eight (8) hours on
7 the seventh (7th) consecutive day of work in a workweek.

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

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

14 50. Labor Code § 510 states:

15 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
16 in one workday and any work in excess of 40 hours in any one workweek and the
17 first eight hours worked on the seventh day of work in any one workweek shall
18 be compensated at the rate of no less than one and one-half times the regular rate
19 of pay for an employee. Any work in excess of 12 hours in one day shall be
20 compensated at the rate of no less than twice the regular rate of pay for an
21 employee. In addition, any work in excess of eight hours on any seventh day of a
22 workweek shall be compensated at the rate of no less than twice the regular rate
23 of pay of an employee. Nothing in this § requires an employer to combine more
24 than one rate of overtime compensation in order to calculate the amount to be paid
25 to an employee for any hour of overtime work.

26 51. Labor Code § 1194 invalidates any agreement between an employer and an
27 employee to work for less than the minimum wage required under the applicable Wage Order.

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

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

54. In conjunction, these provisions of the Labor Code require employers to pay non-
exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
worked, including unrecorded hours when the employer knew or reasonably should have known



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1 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
2 Cal.4th 575, 585.)

3 55. Labor Code § 221 prohibits an employer from taking deductions from an
4 employee's wages without the employee's express written consent or other legal authority for
5 doing so.

6 56. At all relevant times during the applicable limitations period, Defendants failed to
7 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
8 overtime wages for all overtime hours they worked at the correct rates of pay, and all off-the-
9 clock hours they worked at the correct rates of pay. Further, at all relevant times, Defendants
10 unlawfully collected and received part of Plaintiff and the Class Members' wages in violation of
11 California Labor Code § 221. Defendants often wire transferred Plaintiff and the Class Members'
12 wages, including Plaintiff's final wages, which resulted in a \$15.00 fee deduction by his bank
13 from his wages.

14 57. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
15 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
16 failure to compensate Plaintiff and the other Class Members for all hours worked as required by
17 California law.

18 58. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
19 Members have suffered damages, in an amount subject to proof, to the extent they were not paid
20 the full amount of wages earned during each pay period during the applicable limitations period,
21 including minimum and overtime wages.

22 59. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and Class Members,
23 seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid
24 wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject
25 to proof.

26 **THIRD CAUSE OF ACTION**

27 **FAILURE TO INDEMNIFY**

28 **(Lab. Code §§ 1198 & 2802)**

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

61. At all relevant times, Plaintiff and the Class Members have been non-exempt
employees of Defendants and entitled to the benefits and protections of the California Labor Code



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1 §§ 1198 and 2802 and the Wage Order.

2 62. In pertinent part, California Labor Code § 2802(a) states:

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

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

8 64. At all relevant times during the applicable limitations period, Defendants required
9 Plaintiff and the Class Members to incur certain business expenses which they failed to indemnify
10 them for both during and after their employment ended. At all relevant times, as a condition for
11 employment, Defendants required Plaintiff and the Class Members to use their personal mobile
12 phones for work-related activities without reimbursing them for mobile phone expenses.

13 65. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
14 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
15 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
16 during the course of performing their duties.

17 66. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class
18 Members are entitled to reimbursement for all necessary expenditures and losses and interest
19 thereon, due and owing to them within four years of the date of the filing of the Complaint until
20 the entry of judgment.

21 67. Accordingly, with respect to this cause of action, on behalf of himself and the
22 Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys’
23 fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

24 **FOURTH CAUSE OF ACTION**

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

26 **(Lab. Code § 226)**

27 **(Plaintiff and the Class against all Defendants)**

28 68. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

69. At all relevant times during the applicable limitations period, Plaintiff and the
other Class Members have been employees of Defendants and entitled to the benefits and
protections of California Labor Code § 226.



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1 70. Pursuant to California Labor Code § 226(a), Plaintiff and the other Class Members
2 were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate itemized
3 statement showing:

- 4 (1) Gross wages earned,
5 (2) Total hours worked by the employee, except for any employee whose
6 compensation is solely based on a salary and who is exempt from payment of overtime under
7 subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission,
8 (3) The number of piece rate units earned and any applicable piece rate if the
9 employee is paid on a piece-rate basis,
10 (4) All deductions, provided that all deductions made on written orders of the
11 employee may be aggregated and shown as one item,
12 (5) Net wages earned,
13 (6) The inclusive dates of the period for which the employee is paid,
14 (7) The name of the employee and his or her social security number, except
15 that by January 1, 2008, only the last four digits of his or her social security number or an
16 employee identification number other than a social security number may be shown on the itemized
17 statement,
18 (8) The name and address of the legal entity that is the employer, and
19 (9) All applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee.

21 71. Pursuant to California Labor Code § 226(e), an employee suffering injury as a
22 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
23 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
24 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
25 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
26 is entitled to an award of costs and reasonable attorneys' fees.

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



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

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

6 C. The name and address of the employer and, if the employer is a farm labor
7 contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and
8 address of the legal entity that secured the services of the employer during the pay period; and

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

11 73. “Promptly and easily determine,” as stated in California Labor Code §
12 226(e), means a reasonable person would be able to readily ascertain the information without
13 reference to other documents or information.

14 74. As alleged herein, Defendants failed to provide Plaintiff and the other Class
15 Members with all meal and rest periods in compliance with California law. They also failed to
16 provide them with premium wages on workdays they failed to provide them with one or more
17 meal and/or rest periods in compliance with California law. Further, Defendants failed to
18 compensate Plaintiff and the other Class Members for all hours worked. As a result, Defendants
19 have failed to properly itemize Plaintiff and the other Class Members’ gross and net wages earned,
20 total hours worked, hourly rate of pay, the corresponding number of hours worked at each hourly
21 rate, and other requirements of California Labor Code § 226. As a result, Defendants have
22 violated California Labor Code § 226.

23 75. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
24 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
25 the other Class Members with accurate wage statements but intentionally provided wage
26 statements that Defendants knew were not accurate.

27 76. As a result of being provided with inaccurate wage statements by Defendants,
28 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
wage statements were violated and they were misled about the amount of wages they had actually
earned and were owed. In addition, the absence of accurate information on their wage statements
prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery



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1 and mathematical computations to determine the amounts of wages owed, has caused difficulty
2 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
3 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
4 and the other Class Members were not able to ascertain from the wage statements whether
5 Defendants complied with their obligations under California Labor Code § 226(a).

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

12 78. Accordingly, with respect to this cause of action, on behalf of himself and the other
13 Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs
14 and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to
15 proof.

16 **FIFTH CAUSE OF ACTION**

17 **WAITING TIME PENALTIES**

18 **(Lab. Code §§ 201-203)**

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

20 79. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

21 80. At all relevant times during the applicable limitations period, Plaintiff and the
22 Class have been non-exempt employees of Defendants and entitled to the benefits and
23 protections of California Labor Code §§ 201-203, and the Wage Order.

24 81. Labor Code § 201 provides that all earned and unpaid wages of an employee who
25 is discharged are due and payable immediately at the time of discharge.

26 82. Labor Code § 202 provides that all earned and unpaid wages of an employee who
27 quits after providing at least 72-hours notice before quitting are due and payable at the time of
28 quitting and that all earned and unpaid wages of an employee who quits without providing at
least 72-hours notice before quitting are due and payable within 72 hours.

83. By failing to pay earned minimum and premium wages to Plaintiff and the Class,
Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code



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1 § 201 or § 202.

2 84. Plaintiff is informed and believes that Defendants' failures to timely pay all final
3 wages to him and the Class Members have been willful in that Defendants have the ability to
4 pay final wages in accordance with Labor Code §§ 201 and 202 but have intentionally adopted
5 policies or practice that are incompatible with those requirements.

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

9 86. Defendants failed to pay Plaintiff and the Class Members whose employment
10 ended all of the earned, but unpaid wages described above by the conclusion of their employment.

11 87. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
12 and the Class all of their earned and unpaid wages have been willful in that, at all relevant times,
13 Defendants have deliberately maintained policies and practices that violate the requirements of
14 the Labor Code and the Wage Order, even though at all relevant times, they have had the ability
15 to comply with those legal requirements.

16 88. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of
17 himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties
18 for each Class Member.

19 **SIXTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION**

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

22 **(Plaintiff and the Class against all Defendants)**

23 89. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

24 90. At all relevant times during the applicable limitations period, Plaintiff and the
25 other Class Members have been employees of Defendants and entitled to the benefits and
26 protections of the Business and Professions Code §§ 17200, et seq.

27 91. The unlawful conduct of Defendants alleged herein amounts to and constitutes
28 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
unfairly gained a competitive advantage over other comparable companies doing business in
California that comply with their legal obligations to, among other things, pay their employees



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1 premium wages for workdays in which they did not provide employees with one or more meal
2 and rest periods, reimburse their employees for reasonable expenses incurred during the course
3 of performing their duties, and pay them all earned wages for all regular and overtime hours
4 worked.

5 92. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
6 other Class Members have suffered injuries in fact and lost money or property. Defendants
7 deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and
8 premium wages and reimbursement for expenses that Plaintiff and the other Class Members
9 incurred during the course of performing their duties.

10 93. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
11 other Class Members are entitled to restitution of all monies rightfully belonging to them that
12 Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
13 and unfair business practices.

14 94. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
15 connection with their unfair competition claims pursuant to California Code of Civil Procedure
16 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

17 **SEVENTH CAUSE OF ACTION**

18 **CIVIL PENALTIES**

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

20 95. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

21 96. The "Aggrieved Employees" are all members of the Class defined above who
22 Defendants employed during the period beginning December 1, 2019 and ending on the date
23 that final judgment is entered in this action.

24 97. Labor Code § 204 states

25 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
26 or 204.2, earned by any person in any employment are due and payable twice
27 during each calendar month, on days designated in advance by the employer as
28 the regular paydays. Labor performed between the 1st and 15th days, inclusive,
of any calendar month shall be paid for between the 16th and the 26th day of the
month during which the labor was performed, and labor performed between the
16th and the last day, inclusive, of any calendar month, shall be paid for between
the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages



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1 earned for labor in excess of the normal work period shall be paid no later than
2 the payday for the next regular payroll period.

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

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

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

15 98. Defendants paid wages to employees on regular intervals. Defendants, however,
16 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On
17 information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved
18 Employees on such intervals for all wages earned and all hours worked.

19 99. During the applicable time period, Defendants violated California Labor Code §§
20 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

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

24 101. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
25 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
26 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable
27 limitations period in the following amounts:

28 A. For violations of California Labor Code § 204, one hundred dollars
 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
 (penalty amounts established by California Labor Code § 210).

 B. For violations of California Labor Code § 226(a), two hundred fifty
 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars



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1 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
2 established by California Labor Code § 226.3).

3 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
4 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
5 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
6 established by California Labor Code § 558).

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

12 E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
13 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
14 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
15 period for each subsequent violation (penalty amounts established by California Labor Code §
16 2699(f)(2)).

17 102. Plaintiff has complied with the procedures for bringing suit specified in
18 California Labor Code § 2699.3. By letter dated December 1, 2020, Plaintiff filed written notice
19 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
20 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
21 to have been violated, including the facts and theories to support the alleged violations. A true
22 and correct copy of the notice to the LWDA dated December 1, 2020 is attached as Exhibit A.
23 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
24 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but
25 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it
26 does not intend to investigate these allegations.

27 103. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
28 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
connection with their claims for civil penalties.



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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for relief and judgment against Defendants as follows:

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

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: 03 / 03 / 2021

By 
DAVID SPIVAK,
CAROLINE TAHMASSIAN,
MAYA CHEATANI, Attorneys for Plaintiff,
JASON VEHAWN, and all others similarly
situated



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

December 1, 2020

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

RE: *Jason Vehawn / Eagle Eye Security*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Jason Vehawn (hereafter “Vehawn”) provides notice on behalf of himself and of all individuals currently and formerly employed as non-exempt employees, including but not limited to residential security agents, and similar positions, paid on an hourly and/or salary basis (hereafter referred to as “Aggrieved Employees,”) by Eagle Eye Security Solutions, Inc., a California corporation (hereafter referred to as “Eagle Eye Security”) of violations of California Labor Code §§ 98.6, 201, 202, 203, 204, 221, 226, 510, 512, 1102.5, 1194, 1197, 1198, 2751, and 2802.

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

Statement of Facts

On or about October 17, 2018, Eagle Eye Security first employed Vehawn to work in California as a non-exempt residential security agent. It employed him continuously from that date until approximately September 11, 2020 when it terminated his employment because he complained about Eagle Eye Security's violations of the California Labor Code, including its failure to provide him with all timely meal and rest periods.

At all relevant times, Eagle Eye Security compensated Vehawn and the Aggrieved Employees with a fixed salary on a semi-monthly basis.

At all relevant times, Eagle Eye Security failed to provide Vehawn and the Aggrieved Employees with all timely rest and meal periods as provided under California law. Eagle Eye Security often understaffed Vehawn and the Aggrieved Employees' job sites and as a result, Vehawn and the Aggrieved Employees had no choice but to take late meal and/or rest periods or miss them all together. Adherence to Eagle Eye Security's policies resulted in short or on-duty meal periods. Vehawn and the Aggrieved Employees could leave the premises to take a meal period. Nonetheless, if they left the premises using company assigned vehicles, Eagle Eye Security required them to stay on-call. Vehawn and the Aggrieved Employees could also use their personal vehicles to leave the premises during their meal periods. Eagle Eye Security, however, required them to park their vehicles away from their job site and it took approximately five to ten minutes for Vehawn and the Aggrieved Employees to retrieve their personal vehicles. This policy, therefore, resulted in short meal periods of less than 30 minutes. Additionally, Eagle Eye Security required Vehawn and the Aggrieved Employees to keep their work cellphones on at all times and to respond to their supervisors' communications even during their off-the-clock meal periods or rest breaks. Eagle Eye Security's head of human resources and payroll, Monica Avila, specifically instructed Vehawn that during "Paid breaks you are on duty[.]" Eagle Eye Security failed to pay premium wages for days on which it failed to provide Vehawn and the Aggrieved Employees with rest and/or meal periods as provided by California Law.

Eagle Eye Security also failed to compensate Vehawn and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime wages. At all relevant times, Eagle Eye Security required Vehawn and the Aggrieved Employees to work off-the-clock without compensation. In addition to the work they performed during their off-the-clock meal periods as described above, Eagle Eye Security required Vehawn and other Aggrieved Employees to check their schedules, communicate with management and review memoranda and policies received from Eagle Eye Security management off-the-clock and during their off days. Further, by compensating the employees on a semi-monthly basis with the same amount of pay regardless of the number of days worked during each pay period, Eagle Eye Security failed to compensate Vehawn and the Aggrieved Employees for all hours worked at the correct rates of pay.

Eagle Eye Security often required Vehawn and the Aggrieved Employees to use their personal cellphones to communicate with their supervisors regarding work related matters. Eagle Eye Security, however, failed to reimburse them for all such expenses.

Further, Eagle Eye Security often wire transferred Vehawn and the other agreed employees' wages, including Vehawn's final wages, which resulted in a \$15.00 fee deduction by his bank from his wages.

Finally, Eagle Eye Security provided Vehawn and the Aggrieved Employees with inaccurate and insufficient wage statements. For example, Eagle Eye Security either did not report total hours worked and rates of pay or reported incorrect rates or hours on the wage statements it issues to Vehawn and the Aggrieved Employees. By reporting the same number of hours for each pay period, instead of the actual hours worked and reported by Vehawn and the Aggrieved Employees, Eagle Eye Security violated the California Labor Code.

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

- a) Eagle Eye Security failed to provide Vehawn and other Aggrieved Employees with all rest breaks and meal periods;
- b) Eagle Eye Security failed to compensate Vehawn and other Aggrieved Employees at one hour's pay for each day in which they were not provided the rest breaks required by law;
- c) Eagle Eye Security failed to compensate Vehawn and other Aggrieved Employees at one hour's pay for each day in which they were not provided the meal periods required by law;
- d) Eagle Eye Security failed to compensate Vehawn and other Aggrieved Employees for all hours worked at the correct rates of pay;
- e) Eagle Eye improperly deducted from Vehawn and other Aggrieved Employees' wages;
- f) Eagle Eye Security failed to indemnify Vehawn and other Aggrieved Employees for all business expenses;
- g) Eagle Eye Security failed to provide Vehawn and other Aggrieved Employees with accurate wage statements; and
- h) Eagle Eye Security failed to timely pay Vehawn and other Aggrieved Employees all earned and unpaid wages during their employment at Eagle Eye Security and at the time such employment ended.

Accordingly, Vehawn now seeks civil penalties on behalf of himself and other Aggrieved Employees based on Eagle Eye Security's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to “all persons employed in professional, technical, clerical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis[.]” § 1. “Professional, Technical, Clerical, Mechanical, and Similar Occupations” includes “professional, semiprofessional, managerial, supervisory, laboratory, research, technical, clerical, office work, and mechanical occupations”. § 2(O). Said occupations include guards. *Id.* At all relevant times during the applicable limitations period, Eagle Eye Security employed Vehawn and the other Aggrieved Employees as security guards. Accordingly, Vehawn and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

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

In relevant part, California Labor Code § 1198 states:

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

In relevant part, California Labor Code § 512 states:

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

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if

the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was no waived.

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

Meal Periods:

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

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

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

Rest Periods:

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

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

California Labor Code § 226.7 states:

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

Regarding timing of the rest breaks, "in the context of an eight-hour shift, '[a]s a general matter,' one rest break should fall on either side of the meal break." *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1031-1032.

Eagle Eye Security intentionally and improperly failed to provide all timely rest breaks and/or meal periods to Vehawn and other Aggrieved Employees as required by law. In failing to do so, Eagle Eye Security violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Vehawn seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

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

Section 4 of Wage Order states,

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, Section 2 of the Wage Order states,

“Hours worked” means 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.

In relevant part, California Labor Code § 1194 states,

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

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

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

(A) Daily Overtime - General Provisions

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

provided the employee is compensated for such overtime at not less than:

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

In relevant part, California Labor Code § 510 states,

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

At all relevant times during the applicable limitations period, Eagle Eye Security failed to compensate Vehawn and other Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay.

Accordingly, Vehawn seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

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

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

As describe above, during the applicable limitations period, Eagle Eye Security required Vehawn and other Aggrieved Employees to incur certain business expenses which it failed to indemnify them for both during and after their employment ended. Accordingly, Vehawn seeks civil penalties on behalf of himself and other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

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

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, Eagle Eye Security violated California Labor Code § 226, in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226.

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

Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

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

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

Because of Eagle Eye Security's failures to pay Vehawn and the Aggrieved Employees within the time periods set by California Labor Code § 204, Eagle Eye Security failed to timely pay all wages due during employment.

Accordingly, Vehawn seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204, and \$200 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, for each subsequent violations (penalties set by Labor Code § 210).

Failures to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours

previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

By failing to pay wages to Vehawn and other Aggrieved Employees as set forth above, Eagle Eye Security is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and other Aggrieved Employees, Vehawn seeks civil penalties from Eagle Eye Security as follows:

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

§ 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Unlawful Wage Deductions
(Lab. Code § 221)

In relevant part, California Labor Code § 221 states:

It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

Eagle Eye Security often wire transferred Vehawn and the other Aggrieved Employees' wages, including Vehawn's final wages. These wire transfers resulted in a \$15.00 fee deduction from Vehawn and the other Aggrieved Employees wages.

Accordingly, Vehawn seeks civil penalties on behalf of herself and the other aggrieved employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code § 221 (if found to be neither willful nor intentional) and \$200 for each aggrieved employee, plus 25% of the amount unlawfully withheld, for each initial violation of California Labor Code § 221 (if found to be either willful or intentional) and for each subsequent violation of California Labor Code § 221 (regardless of whether they are found to be either willful or intentional) (penalties set by California Labor Code § 225.5).

Retaliation
(Lab. Code § 98.6)

A person shall not discharge an employee because the employee has filed a bona fide complaint or claim relating to his or her rights that are under the jurisdiction of the Labor Commissioner or made a written or oral complaint that he or she is owed unpaid wages. Cal.Lab.Code § 98.6(a).

Vehawn complained about Eagle Eye Security's failure to comply with California Labor Code including its failure provide Vehawn and the Aggrieved Employees with timely meal and rest periods. Eagle Eye Security terminated Vehawn for objecting to conduct that violated the California Labor Code. This is a clear violation of California Labor Code § 98.6(a).

Vehawn seeks civil penalties under California Labor Code § 98.6(b)(3) in an amount not to exceed \$10,000 for each violation by Eagle Eye Security of California Labor Code § 98.6(a), as well as attorney's fees and costs under Labor Code § 2699(g).

Retaliation
(Lab. Code § 1102.5)

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties. Cal.Lab.Code § 1102.5(b).

Further, an employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. Cal.Lab.Code § 1102.5(c).

Eagle Eye Security terminated Vehawn for objecting to conduct that violated the California Labor Code. This is a clear violation of California Labor Code § 1102.5(b) and 1102.5(c).

Vehawn seeks civil penalties under California Labor Code § 1102.5(f) in an amount not to exceed \$10,000 for each violation by Eagle Eye Security of California Labor Code §§ 1102.5(b) and 1102.5(c), as well as attorney's fees and costs under Labor Code § 2699(g).

Conclusion

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

Sincerely,



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cc: Walter Haines, Esq.
Jason Vehawn

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