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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

DAVONTY HENDRIX, on behalf of all  
similarly situated and/or aggrieved employees of  
Defendants in the State of California,

Plaintiff,

v.

LUCKY SEVEN DRAGONS, INC. DBA  
PROTECTIVE SHIELD SECURITY and  
DOES 1 THROUGH 50, inclusive,

Defendants.

Case No.: 21STCV08231

**FIRST AMENDED COMPLAINT**

**CLASS ACTION COMPLAINT**

[Cal. Code Civ. Proc. § 382]

1. Failure to Provide Meal Periods;
2. Failure to Provide Rest Periods;
3. Failure to Pay Minimum and Regular Wages;
4. Failure to Pay All Overtime Wages;
5. Failure to Reimburse Necessary Business Expenses;
6. Illegal Deductions from Wages;
7. Failure to Provide Accurate Itemized Wage Statements;
8. Failure to Timely Pay All Wages Due Upon Separation of Employment; and
9. Violation of Business & Professions Code §§ 17200, *et seq.*

**REPRESENTATIVE ACTION FOR PAGA  
PENALTIES**

[Labor Code §§ 2698, *et seq.*]

1. Representative Claims Under the Labor Code Private Attorneys General Act (PAGA)

**JURY TRIAL DEMANDED**

**FILED**

Superior Court of California  
County of Los Angeles

MAY 26 2021

Sherri R. Carter, Executive Officer/Clerk

By Yuliya Tarasyuk, Deputy

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**VIA FAX**

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Plaintiff DAVONTY HENDRIX, on behalf of all other similarly situated and/or aggrieved employees of Defendants LUCKY SEVEN DRAGONS, INC. DBA PROTECTIVE SHIELD SECURITY, and DOES 1 through 50, inclusive, allege as follows:

**I. INTRODUCTION**

1. Plaintiff DAVONTY HENDRIX (“Plaintiff”) brings this individual, putative class action and representative action against Defendants LUCKY SEVEN DRAGONS, INC. DBA PROTECTIVE SHIELD SECURITY (“PROTECTIVE SHIELD SECURITY”), and DOES 1 through 50, inclusive (collectively, “Defendants”), for engaging in a pattern of wage and hour violations under the California Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders.

2. Plaintiff brings this putative class action on behalf of all current and former non-exempt employees and all non-exempt security guards misclassified as independent contractors who worked and/or performed work in the State of California for Defendants, as defined in Section V below, (hereinafter also “similarly situated employees”).

3. Plaintiff is informed and believes, and on that basis alleges, that Defendants decreased their employment-related costs by systematically violating California wage and hour laws and engaging in unlawful and unfair business practices.

4. Plaintiff brings this representative action pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”) on behalf of all other current and former non-exempt employees of Defendants and all non-exempt security guards misclassified as independent contractors, in the State of California who had suffered at least one of the Labor Code violations alleged herein within the applicable statute of limitations up to the time this action is brought to trial (hereinafter also “aggrieved employees”).

5. Defendants’ systematic pattern of Labor Code and IWC Wage Order violations toward Plaintiff and other similarly situated and/or aggrieved employees in California include, but are not limited to:

- a. Failure to provide an off-duty meal period of at least 30-minutes before the commencement of the sixth hour of work;

- b. Failure to authorize and permit off-duty paid rest periods;
- c. Failure to pay all minimum and regular wages for all hours worked;
- d. Failure to pay all overtime wages;
- e. Failure to indemnify necessary business expenses;
- f. Illegal deductions from wages;
- g. Willful misclassification of employees as independent contractors and/or exempt employees;
- h. Failure to pay wages unconditionally;
- i. Failure to provide sick leave and retaliation for use of sick leave;
- j. Failure to maintain accurate records;
- k. Failure to provide accurate itemized wage statements; and
- l. Failure to timely pay all wages due upon during and upon separation of employment.

6. Plaintiff brings this lawsuit against Defendants seeking damages, restitution, punitive damages, declaratory judgment, injunctive relief, statutory penalties, civil penalties, and any other available monetary relief on behalf of himself and all other similarly situated and/or aggrieved employees of Defendants in California. Plaintiff seeks to recover, *inter alia*, unpaid wages, unreimbursed expenses, interest, attorney's fees, damages, liquidated damages, statutory penalties, civil penalties, and costs pursuant to Labor Code §§ 201, 202, 203, 204, 206, 210, 218.5, 218.6, 221, 225.5, 223, 226, 226.3, 226.7, 226.8, 233, 234, 238, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2750.5, 2802, California Business and Professions Code §§ 17200, *et seq.*, the California Private Attorney's General Act, Labor Code §§ 2698, *et seq.*, and the provisions of the applicable IWC Wage Order.

7. Plaintiff reserves the right to name additional representatives.

## II. PARTIES

### A. Plaintiff

8. Plaintiff is a former employee of Defendants, who, at all relevant times, was employed by and worked for Defendants in a non-exempt position in Stanislaus County as well as neighboring counties

1 in the State of California.

2 9. Plaintiff is a resident of the State of California and currently resides in Stanislaus County.

3 10. At all relevant times, Plaintiff and, on information and belief, other similarly situated  
4 and/or aggrieved employees of Defendants in California were subject to the same policies, practices, and  
5 procedures governing their employment and their payment of wages and hours worked.

6 **B. Defendants**

7 11. Defendant PROTECTIVE SHIELD SECURITY is a private security company, organized  
8 in the state of California and, at all relevant times, was authorized to conduct business and did conduct  
9 business in the State of California, with its principal place of business in Los Angeles County, California.

10 12. Plaintiff is informed and believes, and thereon alleges, that each Defendant, whether named  
11 or fictitious, is and, at all relevant times, was authorized to do business and did business in the State of  
12 California and was Plaintiff's and other similarly situated and/or aggrieved employees' "employer" as  
13 defined in and subject to the California Labor Code and the applicable IWC Wage Order.

14 13. Each of the fictitiously named Defendants participated in the acts alleged in this Complaint.  
15 The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently  
16 unknown to Plaintiff. Plaintiff will amend this Complaint, setting forth the true names and capacities of  
17 the fictitious Defendants, if and when their true names and capacities are ascertained. Plaintiff is informed  
18 and believes, and on that basis alleges, that each of the fictitious Defendants participated in the acts alleged  
19 in this Complaint.

20 14. Plaintiff and all other similarly situated and/or aggrieved employees are, and at all relevant  
21 times were, non-exempt employees of each Defendant, including DOES 1 through 50, within the meanings  
22 set forth in the California Labor Code and applicable IWC Wage Order.

23 15. Plaintiff is informed and believes that at all relevant times, each Defendant, whether named  
24 or fictitious, was the agent, employee or other person acting on behalf of every other Defendant, and, in  
25 participating in the acts alleged in this Complaint, acted within the scope of such agency or employment  
26 and ratified the acts of each other Defendant.

27 16. Plaintiff is informed and believes that at all relevant times, each Defendant, whether named  
28

1 or fictitious, exercised control over Plaintiff's and other similarly situated and/or aggrieved employees'  
2 wages, hours, and/or working conditions.

3 17. Plaintiff is further informed and believes that at all relevant times, each Defendant, whether  
4 named or fictitious, acted as the agent for the other Defendants, carried out a joint scheme, business plan  
5 or policy, and the acts of each Defendant are legally attributable to the other Defendants.

6 18. Each Defendant, whether named or fictitious, was the alter ego of each of the other  
7 Defendants at all relevant times herein.

8 19. A unity of interest and ownership between each Defendant, whether named or fictitious,  
9 exists such that all Defendants acted as a single employer of Plaintiff and all other similarly situated and/or  
10 aggrieved employees.

### 11 **III. JURISDICTION AND VENUE**

12 20. This Court has subject-matter jurisdiction to hear this case because Plaintiff is informed  
13 and believes that the monetary damages and restitution sought herein for Defendants' conduct exceeds the  
14 minimum jurisdictional limits of the Superior Court.

15 21. Venue is proper in Los Angeles County pursuant to Code of Civil Procedure §§ 395(a) and  
16 395.5 because Defendant PROTECTIVE SHIELD SECURITY's principal place of business is located in  
17 Los Angeles County.

18 22. Pursuant to rule 3.400 of the California Rules of Court, this case shall be deemed a complex  
19 action because it is filed as a class action and involves specialized case management, extensive discovery  
20 and evidence, difficult and/or novel issues and is likely to require extensive post-judgment supervision.

### 21 **IV. GENERAL ALLEGATIONS**

22 23. Plaintiff worked as a Security Guard for Defendants from approximately July 2020 through  
23 November 2020. At all times, security guards worked as non-exempt employees of Defendants.

24 24. At all times, Plaintiff worked as a non-exempt employee of Defendants.

25 25. Plaintiff typically worked four 12-hour shifts per week until August 2020, after which time  
26 he typically worked one 10-hour shift per week. Defendants contracted to pay him \$18.00 per hour worked  
27 or on-duty.  
28

1           26.     Nonetheless, Defendants denied Plaintiff and, on information and belief, other similarly  
2 situated and/or aggrieved employees working for Defendants, certain rights afforded to them under the  
3 California Labor Code and IWC Wage Order.

4           27.     Specifically, Defendants did not properly compensate Plaintiff and other similarly situated  
5 and/or aggrieved employees for all hours worked, failed to provide compliant meal and rest periods, failed  
6 to reimburse all necessary business expenses, illegally deducted wages from employees' wages,  
7 unlawfully conditioned their payment of wages, willfully misclassified non-exempt employees as  
8 independent contractors, unlawfully denied compliant sick leave and retaliated against employees for  
9 attempting to use their sick leave, failed to maintain accurate time records, failed to provide accurate  
10 itemized wage statements, and failed to pay all wages due and owing by the times set forth by law.

11           28.     Defendants controlled Plaintiff's and, on information and belief, other similarly situated  
12 and/or aggrieved employees' employment including, but not limited to, their wages, compensation,  
13 schedules, hours worked, work duties, mandatory reports, and uniforms, among others. On this basis,  
14 Plaintiff's and, on information and belief, other similarly situated and/or aggrieved employees' proper  
15 classification was as an employee.

16           29.     Despite having no legally justifiable reason, Defendants required Plaintiff and, on  
17 information and belief, other non-exempt employees to complete a W-9 form and informed them that they  
18 were classified as "independent contractors."

19           30.     Throughout Plaintiff's employment, Defendants did not deduct any form of payroll taxes  
20 from Plaintiff's wages and, on information and belief, other similarly situated and/or aggrieved  
21 employees. Defendants required Plaintiff and, on information and belief, other employees to complete W-  
22 9 tax forms at the beginning of their employment. Defendants provided Plaintiff and, on information and  
23 belief, other similarly situated and/or aggrieved employees with 1099 tax forms for work performed in  
24 2020. By all indications, Defendants illegally misclassified Plaintiff and, on information and belief, other  
25 similarly situated and/or aggrieved employees as independent contractors.

26           31.     Defendants illegally required Plaintiff and, on information and belief, other non-exempt  
27 employees to sign invalid on-duty meal period waivers at the beginning of their employment.

32. Defendants further required Plaintiff and, on information and belief, other similarly situated and/or aggrieved non-exempt employees to remain on-duty at all times during their shifts and to carry and respond to radios and/or walkie-talkies at all times during their shifts including, but not limited to, receive necessary work instructions and/or to respond to calls from their co-workers and supervisors while they were on their meal and rest periods.

33. Defendants failed to pay Plaintiff and all other similarly situated employees and/or aggrieved employees for all hours worked and on-duty. Defendants had a policy and practice of improperly deducting one hour's worth of pay for each shift Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees worked. Even though Defendants failed to provide Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees with off-duty meal periods and/or rest periods, Defendants illegally and without any justification deducted one hour of pay from their wages for these on-duty meal and rest periods. Defendants kept time and pay records showing these deductions from Plaintiff's earned wages were for "1 hour lunch" and "breaks." During his employment with Defendants, Plaintiff was unable to take legally compliant and off-duty meal and rest breaks.

34. At no point during his employment did Plaintiff receive legally compliant and *paid* rest breaks. On information and belief, other similarly situated and aggrieved employees did not receive *paid* rest breaks during their employment with Defendants. Similarly, Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees, were compensated \$0 for the time they spent working and under the control of Defendants during their meal and rest breaks. Therefore, Plaintiff and other similarly situated and/or aggrieved employees were not paid at least minimum wages and/or at the legally mandated overtime rate for all the hours worked and under the control of Defendants.

35. Moreover, at no point during their employment did Defendants pay Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees an additional hour of pay for each shift in which Defendants denied them off-duty meal periods, nor did Defendants do so when Defendants denied them off-duty rest periods. Instead, Defendants had a policy, pattern and/or practice of *never* paying meal or rest periods premiums to their non-exempt employees, including Plaintiff.

1           36. Defendants failed to properly pay Plaintiff and, on information and belief, other similarly  
2 situated and/or aggrieved employees at least minimum, regular, and overtime wages owed for all time  
3 suffered or permitted to work during Plaintiff's and other similarly situated and/or aggrieved employees'  
4 employment.

5           37. Furthermore, Defendants did not keep accurate records of the actual hours worked.  
6 Plaintiffs and other non-exempt employees worked hours while on-the-clock, but Defendants illegally  
7 deducted them and/or shaved time worked. Defendants only compensated Plaintiff, and on information  
8 and belief, other non-exempt employees, for the hours they were *scheduled to work* and not for the hours  
9 actually worked and on-duty.

10           38. In addition, Defendant failed to pay any wages for the time Plaintiff and other similarly  
11 situated and/or aggrieved employees spent working and on-duty during their meal and rest periods.  
12 Despite the fact that Plaintiff and other similarly situated and/or aggrieved employees were on-duty and  
13 attending calls during their meal and rest periods, Defendant did not count this time as hours worked and  
14 provided no remuneration.

15           39. Defendants did not pay Plaintiff and, on information and belief, other similarly situated  
16 and/or aggrieved employees the legally applicable overtime pay at the corresponding hourly rate of pay  
17 when Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees worked  
18 in excess of 8 hours in a day or 40 hours in a week. Plaintiff and other non-exempt employees were  
19 regularly scheduled to work and in fact worked overtime during their employment with Defendants.

20           40. Defendants required Plaintiff and, on information and belief, other similarly situated and/or  
21 aggrieved employees to use their personal cell phones to communicate with supervisors and coworkers  
22 via text message.

23           41. Defendants required Plaintiff and, on information and belief, other similarly situated and/or  
24 aggrieved employees to download an app on their personal cell phone so they could make routine reports  
25 and incident reports in addition to engaging in communications with their supervisors and coworkers.

26           42. Defendants did not reimburse Plaintiff and, on information and belief, other similarly  
27 situated and/or aggrieved employees for any expenses associated with their usage of their personal cell  
28

1 phone to fulfill their work duties and/or to respond to work-related calls.

2 43. Defendants required Plaintiff and, on information and belief, other similarly situated and/or  
3 aggrieved employees to provide necessary equipment for their employment, including, but not limited to,  
4 a gun, a holster, and a flashlight. Defendants did not reimburse Plaintiff and, on information and belief,  
5 other similarly situated and/or aggrieved employees for such business expenditures.

6 44. As a condition of employment, Defendants further required Plaintiff and, on information  
7 and belief, other similarly situated and/or aggrieved employees to sign agreements which purport to allow  
8 Defendants to deduct from their wages for uniform replacement or repair. Moreover, as a condition of  
9 employment, Defendants required Plaintiff and, on information and belief, other similarly situated and/or  
10 aggrieved employees to sign agreements which condition payment of wages upon the return of their  
11 uniform.

12 45. To this date, Defendants have not properly reimbursed Plaintiff for all the necessary  
13 business expenses incurred in the fulfillment of his duties while employed with Defendants.

14 46. Defendants did not provide Plaintiff and, on information and belief, other similarly situated  
15 and/or aggrieved employees with any written wage statements, in clear violation of the California Labor  
16 Code. Similarly, Defendants did not provide Plaintiff and other non-exempt employees with any written  
17 wage statement indicating the accrued and available sick leave at any point during their employment.

18 47. Defendants had no written sick leave policy throughout Plaintiff's employment.

19 48. Defendants never communicated any "time off" policy to Plaintiff and, on information and  
20 belief, other similarly situated and/or aggrieved employees.

21 49. Defendants retaliated against Plaintiff and, on information and belief, other similarly  
22 situated and/or aggrieved employees for attempting to use time off or sick leave by either threatening  
23 termination of or actual termination of their employment.

24 50. Because Defendants uniformly deducted an hour from the time records of Plaintiff and, on  
25 information and belief, other similarly situated and/or aggrieved employees to reflect off-duty meal and  
26 rest periods that employees could not take, Defendants knowingly maintained inaccurate time records.

27 51. Defendants never provided Plaintiff and, on information and belief, other similarly situated  
28

1 and/or aggrieved employees with wage statements throughout their employment. Therefore, Defendants  
2 never provided written statements providing all of the information required by California Labor Code §  
3 226. Plaintiff suffered harm from receiving wages without such information.

4 52. Defendants failed to pay Plaintiff's and, on information and belief, other non-exempt  
5 employees' wages in a timely manner, both during and upon separation from employment. Instead,  
6 Defendants had the illegal policy and practice of not providing employees with their final pay until  
7 Defendants' regularly scheduled payment dates.

8 53. As a result of the above violations, Defendants engaged in a consistent pattern of unfair,  
9 unlawful, and/or fraudulent business practices.

10 **V. CLASS ACTION DESIGNATION**

11 54. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
12 paragraphs above, as though fully set forth herein.

13 55. Plaintiff brings Causes of Action One through Nine as a Class Action pursuant to California  
14 Code of Civil Procedure § 382.

15 56. Plaintiff seeks to represent the following Classes and Subclasses, which are defined as  
16 follows:

17 **The Non-Exempt Class**

18 "All persons who worked (either as an employees or independent contractors) for  
19 Defendant LUCKY SEVEN DRAGONS, INC. as security guards or similar title in the  
20 State of California at any time from and after **March 1, 2017.**"

21 **The Wage Statement Class**

22 "Any and all current and former non-exempt employees who worked for DEFENDANT in  
23 the state of California at any time from and after March 1, 2020."

24 57. Plaintiff seeks to represent the following Subclass, which is defined as:

25 **The Waiting Time Penalties Subclass:**

26 "All persons who worked (either as employees or independent contractors) for  
27 DEFENDANT as security guards or similar title in the State of California and who stopped  
28

working for DEFENDANT at any time from and after March 1, 2018.”

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

59. Causes of Action One through Nine are appropriately suited for a class action pursuant to section 382 of the Code of Civil Procedure because the following requirements are met:

**A. Numerosity**

60. The members of the Classes and Subclasses are sufficiently numerous to render the joinder of all their members impracticable. While Plaintiff has not yet determined the precise number of members of the Classes and Subclasses, Plaintiff is informed and believes that the Classes and Subclasses likely consist of over 50 individuals. Although the exact number is currently unknown to Plaintiff, this information is easily ascertainable from Defendants’ time and payroll records and other personnel records.

**B. Commonality and Predominance**

61. Common questions of law and fact exist as to all class members and predominate over any questions affecting only individual members of the Classes or Subclasses. The common questions of law and fact that predominate include, but are not limited to:

- a. Whether the Non-Exempt class was properly classified as independent contractors;
- b. Whether the Non-Exempt class was properly required to sign blank on-duty meal agreements at the beginning of their employment;
- c. Whether the on-duty meal period agreements are valid and enforceable;
- d. Whether the Non-Exempt Class members were on-duty and therefore working while they were attending to their radios and walkie-talkies during their meal periods;
- e. Whether Defendants failed to provide Non-Exempt Class members with legally compliant meal periods;
- f. Whether Defendants failed to authorize and permit Non-Exempt Class members with legally compliant rest periods;

- g. Whether Defendants failed to pay one additional hour of pay at the employees' regular rate of compensation to Non-Exempt Class members when they were not provided with compliant and timely meal and rest periods;
- h. Whether Defendants failed to pay Non-Exempt Class members at least minimum wages and/or all regular wages owed for all hours or fractions of an hour worked and under the control of Defendants;
- i. Whether Defendants failed to pay Non-Exempt Class member all overtime wages for all hours, or fraction of hours, worked over eight in a workday or over forty in a workweek;
- j. Whether Defendants failed to reimburse Non-Exempt Class members for necessary business expenses incurred in direct consequence of the discharge of their duties;
- k. Whether Defendants made illegal deductions to Non-Exempt Class members' wages;
- l. Whether Defendants illegally conditioned payment of Non-Exempt Class members;
- m. Whether Defendants willfully misclassified Non-Exempt Class members as independent contractors;
- n. Whether Defendants failed to provide Non-Exempt Class members and Wage Statement Class members with accurate itemized wage statements showing, among other things, the number of hours worked and the correct amount of gross and net wages earned; and
- o. Whether Defendants failed to pay Waiting Time Penalties Subclass members all of their wages owed within the required time frames during and upon separation of employment.

**C. Typicality**

62. Plaintiff's claims are typical of the claims of all class members because Plaintiff's and all class members' claims arise from the same event, practice and/or course of conduct of Defendants.

1 Plaintiff and all class members sustained injuries and damages as a result of Defendants' illegal policies,  
2 practices and/or common course of conduct in violation of California wage and hour laws and/or illegal,  
3 unfair, or fraudulent business practices.

4 63. Furthermore, Plaintiff's claims under the Labor Code and the applicable IWC Wage Order  
5 are typical of the Classes and Subclasses because Defendants' failure to comply with the provisions of  
6 California's wage and hour laws entitles Plaintiff and each class member to similar pay, benefits, and  
7 other relief. Accordingly, the legal theories underlying each cause of action are the same and the remedies  
8 sought by Plaintiff and all class members are the same.

9 **D. Adequacy of Representation**

10 64. Plaintiff has no conflict of interest with the Classes or Subclasses he seeks to represent.  
11 Plaintiff will adequately protect the interests of all class members because it is in Plaintiff's best interest  
12 to prosecute the claims alleged herein to obtain full compensation and penalties due to him and putative  
13 class members.

14 65. Plaintiff retained attorneys who are experienced employment law litigators with significant  
15 wage and hour and class action experience.

16 **E. Superiority of Class Action**

17 66. Plaintiff believes a class action is a superior method of litigation for the fair and efficient  
18 adjudication of this controversy. Individual joinder of all class members is not practicable. Class action  
19 treatment will allow similarly situated employees to litigate their claims in the manner that is most efficient  
20 and economical for the parties and the judicial system.

21 67. Plaintiff knows of no difficulty that might be encountered in the management of this suit,  
22 which would preclude maintenance as a class action.

23 **VI. THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**

24 **REPRESENTATIVE ACTION DESIGNATION**

25 68. Plaintiff re-alleges and incorporates by reference all preceding paragraphs set forth above  
26 as though fully set forth herein.

27 69. The Tenth Cause of Action alleged herein is appropriately suited under the Labor Code  
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Private Attorneys General Act of 2004 (“PAGA”) action because:

a) Pursuant to California Labor Code section 2699(a), any provision of the California Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of the California Labor Code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and all other current or former employees pursuant to the procedures specified in section 2699;

b) This action involves allegations of violations of provisions of the California Labor Code that provide or do not provide for a civil penalty to be assessed and collected by the LWDA or any departments, divisions, commissions, boards, agencies or employees;

c) Plaintiff is an “aggrieved employee” because he was employed by the alleged violators and had one or more of the alleged violations committed against him;

d) On January 15, 2021, Plaintiff satisfied the procedural requirements of section 2699.3 by serving the LWDA electronically and Defendant Lucky Seven Dragons *via* Certified Mail with his notice for wage and hour violations and penalties, including the facts and theories to support each violation. A true and correct copy of Plaintiff’s notice and proof of service is attached as **Exhibit A**; and

e) More than 65 days have passed since Plaintiff served notice *via* Certified Mail to the LWDA and his employer on January 15, 2021. Therefore, Plaintiff satisfied all the administrative requirements to pursue civil penalties against Defendants pursuant to California Labor Code section 2698, *et seq.*

70. Plaintiff files this action pursuant to California Labor Code section 2699(a) and (f), on behalf of himself and all other aggrieved employees of Defendants to recover civil penalties, including unpaid wages, which are to be paid to the affected employees pursuant to California Labor Code sections 558 and 1197.1;

71. Defendants were Plaintiff’s employers or persons acting on behalf of Plaintiff’s employers, within the meaning of California Labor Code section 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in

1 any order of the Industrial Welfare Commission at all relevant times;

2 72. Defendants were Plaintiff's employers or persons acting on behalf of Plaintiff's employers  
3 either individually or as an officer, agent, or employee of another person, within the meaning of California  
4 Labor Code section 1197.1, who paid or caused to be paid to any employee a wage less than the minimum  
5 fixed by California state law.

6 73. Plaintiff seeks to recover only those civil penalties that are required to be shared with the  
7 LWDA and no individual relief or underpaid wages.

8 **VII. CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PROVIDE MEAL PERIODS**

11 (Violation of Labor Code §§ 226.7, 512, and 1198 and the "Meal Periods" section of the  
12 Applicable IWC Wage Order)

13 (Alleged by Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

14 74. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
15 paragraphs above, as though fully set forth herein.

16 75. Plaintiff and the Non-Exempt Class members are or were non-exempt employees of  
17 Defendants within the meaning of the Labor Code and the applicable IWC Wage Order.

18 76. Labor Code § 512(a) provides, in part, that employers, including Defendants, "may not  
19 employ an employee for a work period of more than five hours per day without providing an employee  
20 with a meal period of not less than 30 minutes" and "may not employ an employee for a work period of  
21 more than 10 hours per day without providing the employee with a second meal period of not less than 30  
22 minutes."

23 77. Labor Code § 226.7 requires that employers, including Defendants, provide their  
24 employees with meal periods as mandated by the applicable Wage Order of the Industrial Welfare  
25 Commission, and prohibits employers from requiring any employee "*to work during any meal ... period*  
26 *mandated by an applicable order of the Industrial Welfare Commission.*"

27 78. Labor Code § 226.7(c) states, "[i]f an employer fails to provide an employee a meal ...  
28

1 period in accordance with a state law... the employer shall pay the employee one additional hour of pay  
2 at the employee's regular rate of compensation for each workday that the meal ... period is not provided."

3 79. Labor Code § 1198 states that the "maximum hours of work and standard conditions of  
4 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor  
5 for employees. The employment of any employee for longer hours than those fixed by the order or under  
6 conditions of labor prohibited by the order is unlawful."

7 80. The "Meal Periods" section of the applicable IWC Wage Order states, "[n]o employer shall  
8 employ any person for a work period of more than five (5) hours without a meal period of not less than  
9 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work  
10 the meal period may be waived by mutual consent of employer and employee."

11 81. The "Meal Periods" section of the applicable IWC Wage Order further states:

12 [u]nless the employee is relieved of all duty during a 30-minute meal period,  
13 the meal period shall be considered an 'on duty' meal period and counted  
14 as time worked. An 'on duty' meal period shall be permitted only when the  
15 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 meal period  
is agreed to. The written agreement shall state that the employee may, in  
writing, revoke the agreement at any time.

16 82. The "Meal Periods" section of the applicable IWC Wage Order also states, "[i]f an  
17 employer fails to provide an employee a meal period in accordance with the applicable provisions of this  
18 order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of  
19 compensation for each work day that the meal period is not provided."

20 83. Plaintiff and the Non-Exempt Class were subject to the same policies, practices, and  
21 procedures governing the provision and scheduling of meal periods.

22 84. Defendants had a pattern and practice of not providing Plaintiff and the Non-Exempt Class  
23 with legally compliant 30-minute off-duty meal periods before the commencement of their sixth hour of  
24 work during their shifts, even though they worked more than six (6) hours during their workday.

25 85. Plaintiff and, on information and belief, the Non-Exempt Class members did not sign valid  
26 and enforceable on-duty meal period agreements at any point during their employment with Defendants.  
27 Moreover, the nature of Defendants' non-exempt security guard positions did not prevent the Non-Exempt  
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1 Class from being relieved of all job duties for a timely first or second meal period of at least 30-minutes.

2 86. Plaintiff and, on information and belief, the Non-Exempt Class worked more than 10 hours  
3 and sometimes over 12-hours per day and did not properly waive any of their meal periods.

4 87. Though Plaintiff and the Non-Exempt Class members worked shifts over 10 hours,  
5 Defendants had a pattern and practice of never authorizing a second off-duty and uninterrupted meal  
6 period of at least 30-minutes.

7 88. Plaintiff and, on information and belief, the Non-Exempt Class were unable to take  
8 compliant meal periods because they were regularly required to remain on-duty and continue working  
9 though their meal periods. Although the nature of Plaintiff's and, on information and belief, Non-Exempt  
10 Class members' work did not require them to take on-duty meal periods, Defendants' work requirements  
11 made it so that they were not relieved of all duties.

12 89. Therefore, as a result of Defendants' conduct, including the conduct alleged herein,  
13 Defendants violated Labor Code §§ 226.7, 512, and 1198, as well as the applicable IWC Wage Order  
14 when Defendants failed to provide Plaintiff and the Non-Exempt Class members a 30-minute, duty-free  
15 meal period before the commencement of their sixth hour of work.

16 90. Consequently, pursuant to Labor Code § 226.7(b) and the "Meal Periods" section of the  
17 Wage Order, Defendants were required to pay Plaintiff and the Non-Exempt Class one additional hour of  
18 pay at their regular rate of compensation for each day that Defendants did not provide Plaintiff and the  
19 Non-Exempt Class with a 30-minute, duty-free meal period before the commencement of their sixth hour  
20 of work.

21 91. Despite this obligation, Defendants did not always pay Plaintiff and, on information and  
22 belief, the Non-Exempt Class one additional hour of pay at each employee's regular rate of compensation  
23 for each day that Defendants did not provide Plaintiff and the Non-Exempt Class with a 30-minute, duty-  
24 free meal period before the commencement of their sixth hour of work.

25 92. Instead, on information and belief, Defendants have a common policy and practice of  
26 failing to compensate Plaintiff and the Non-Exempt Class with an hour of pay at their regular rate of pay  
27 for the times that Defendants did not provide Plaintiff and the Non-Exempt Class with a 30-minute, duty-  
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1 free meal period before the commencement of their sixth hour of work, as required by Labor Code §  
2 226.7(b) and the IWC Wage Order.

3 93. Thus, on information and belief, Defendants intentionally refused to perform their  
4 obligations to provide meal periods and further failed to compensate Plaintiff and the Non-Exempt Class  
5 with all owed meal premium wages as set forth by Labor Code § 226.7(b) and the applicable IWC Wage  
6 Order.

7 94. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to  
8 Defendants' failure to pay an additional hour of pay for each day a legally compliant meal period was not  
9 provided and the associated use and enjoyment of compensation due and owing to them as a direct result  
10 of Defendants' Labor Code and IWC Wage Order violations.

11 95. Plaintiff and the Non-Exempt Class seek all available remedies for Defendants' violations,  
12 including, but not limited to, all wages due, monies, and interest to the extent permitted by law.

13 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PROVIDE REST PERIODS**

16 (Violation of Labor Code §§ 226.7 and 1198 and the "Rest Periods" section  
17 of the Applicable IWC Wage Order)

18 (Alleged by Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

19 96. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
20 paragraphs above, as though fully set forth herein.

21 97. Plaintiff and the Non-Exempt Class members are or were non-exempt employees of  
22 Defendants within the meaning of the Labor Code and the applicable IWC Wage Order.

23 98. Labor Code § 226.7 requires employers, including Defendants, to provide to their  
24 employees, including Plaintiff, paid rest periods as mandated by the IWC Wage Orders.

25 99. Labor Code § 1198 states that the "maximum hours of work and standard conditions of  
26 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor  
27 for employees. The employment of any employee for longer hours than those fixed by the order or under  
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1 conditions of labor prohibited by the order is unlawful.”

2 100. The “Rest Periods” section of the applicable IWC Wage Order states, “[e]very employer  
3 shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the  
4 middle of each work period. The authorized rest period time shall be based on the total hours worked daily  
5 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Furthermore,  
6 “[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions  
7 of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of  
8 compensation for each workday that the rest period is not provided.”

9 101. Plaintiff and the Non-Exempt Class were subject to the same policies, practices, and  
10 procedures governing the provision and scheduling of rest periods.

11 102. Defendants did not authorize and permit Plaintiff and, on information and belief, Non-  
12 Exempt Class members from taking legally compliant rest periods every four hours worked or major  
13 fraction thereof. Plaintiff and, on information and belief, the Non-Exempt Class were required to work  
14 through their rest periods and/or were never authorized or permitted to take rest periods during their  
15 employment.

16 103. Labor Code § 226.7(c) states, “[i]f an employer fails to provide an employee a ... rest ...  
17 period in accordance with a state law... the employer shall pay the employee one additional hour of pay  
18 at the employee’s regular rate of compensation for each workday that the .... rest ... period is not  
19 provided.”

20 104. Even though Plaintiff and Non-Exempt Class members were not authorized and permitted  
21 to take off-duty rest periods, Defendants did not pay Plaintiff and the Non-Exempt Class appropriate rest  
22 period premium wages for each day in which Defendants did not authorize and permit Plaintiff and the  
23 Non-Exempt Class to take compliant rest periods, in violation of Labor Code § 226.7 and the applicable  
24 IWC Wage Order.

25 105. On information and belief, Defendants had a common policy, pattern, and practice of  
26 failing to compensate Plaintiff and the Non-Exempt Class with an hour of pay at their regular rate of pay  
27 for the times that Plaintiff and the Non-Exempt Class were not authorized to take rest periods of at least  
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1 10 minutes for each four-hour work period, or major fraction thereof.

2 106. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to  
3 Defendants' failure to pay an additional hour of pay for each day a rest period was not provided and the  
4 associated use and enjoyment of compensation due and owing to them as a direct result of Defendants'  
5 Labor Code and IWC Wage Order violations.

6 107. Plaintiff and the Non-Exempt Class seek all available remedies for Defendants' violations  
7 including, but not limited to, any and all wages due, monies, and interest, to the extent permitted by law.

8 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM AND REGULAR WAGES**

11 (Violation of Labor Code §§ 1194, 1197, and 1198 and the "Minimum Wages" section of the  
12 Applicable IWC Wage Order)

13 (Alleged by Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

14 108. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
15 paragraphs above, as though fully set forth herein.

16 109. Plaintiff and the Non-Exempt Class members are or were non-exempt employees of  
17 Defendants within the meaning of the Labor Code and the applicable IWC Wage Order.

18 110. Labor Code § 1197 provides, "[t]he minimum wage for employees fixed by the  
19 commission is the minimum wage to be paid to employees, and the payment of a less wage than the  
20 minimum wage so fixed is unlawful."

21 111. The "Minimum Wages" section of the applicable IWC Wage Order provides that an  
22 employer may not pay employees less than the applicable minimum for all hours worked.

23 112. The applicable IWC Wage Order defines the term "hours worked" as "the time during  
24 which an employee is subject to the control of an employer, and includes all the time the employee is  
25 suffered or permitted to work, whether or not required to do so."

26 113. Furthermore, pursuant to Labor Code § 1198:

27 [t]he maximum hours of work and the standard conditions of labor fixed by  
28 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.

114. Defendants failed to pay Plaintiff and Non-Exempt Class members at least minimum wages for all the time spent working and under the control of Defendants. For example, Plaintiff and Non-Exempt Class members regularly worked through their 30-minute meal periods and were not compensated for this time. Additionally, Defendants deducted payments of Plaintiff and Non-Exempt Class members for rest periods.

115. Defendants failed to pay Plaintiff and Non-Exempt Class members their regular wages based upon improper recording of their hours worked.

116. Labor Code § 1194 provides, in part, that any employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage, including interest thereon, reasonable attorney's fees, and costs of suit.

117. Labor Code § 1194.2 allows an employee to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon for any action under Labor Code § 1194.

118. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to the use and enjoyment of compensation due and owing to them as a direct result of Defendants' unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

119. Plaintiff seeks all available remedies for Defendants' violations including, but not limited to, any and all wages due, monies, interest, liquidated damages, attorney's fees, and costs to the extent permitted by law.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 (Violation of Labor Code §§ 510, 1194, and 1198, and the “Hours and Days of Work” section of the  
4 Applicable IWC Wage Order)

5 (Alleged by Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

6 120. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
7 paragraphs above, as though fully set forth herein.

8 121. Plaintiff and the Non-Exempt Class members are or were non-exempt employees of  
9 Defendants within the meaning of the Labor Code and the applicable IWC Wage Order.

10 122. Labor Code § 510 provides:

11 [a]ny work in excess of eight hours in one workday and any work in excess  
12 of 40 hours in any one workweek and the first eight hours worked on the  
13 seventh day of work in any one workweek shall be compensated at the rate  
14 of no less than one and one-half times the regular rate of pay for an  
15 employee. Any work in excess of 12 hours in one day shall be compensated  
16 at the rate of no less than twice the regular rate of pay for an employee. In  
17 addition, any work in excess of eight hours on any seventh day of a  
18 workweek shall be compensated at the rate of no less than twice the regular  
19 rate of pay of an employee.

20 The “Hours and Days of Work” section of the applicable IWC Wage Order mandate the same  
21 requirements.

22 123. Labor Code § 1194 provides that any employee receiving less than the legal overtime  
23 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the  
24 full amount of this overtime compensation, including interest thereon, reasonable attorney’s fees, and  
25 costs of suit.

26 124. Furthermore, pursuant to Labor Code § 1198:

27 [t]he maximum hours of work and the standard conditions of labor fixed by  
28 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.

125. The applicable IWC Wage Order defines the term “hours worked” as “the time during  
which an employee is subject to the control of an employer, and includes all the time the employee is

1 suffered or permitted to work, whether or not required to do so.”

2 126. In California, overtime is computed based on the regular rate of pay. The regular rate of  
3 pay includes all different types of remuneration, including hourly earnings, salary, piecework earnings,  
4 commissions, and non-discretionary bonuses, and the value of meals and lodging.

5 127. Plaintiff and Non-Exempt Class members regularly worked over eight hours per day and  
6 forty hours per week while employed by Defendants. Plaintiff and Non-Exempt Class members did not  
7 receive all overtime compensation owed for all overtime hours worked over eight hours per day and/or  
8 forty hours per week during their employment with Defendants.

9 128. In addition, Plaintiff and Non-Exempt Class members did not receive all overtime  
10 compensation owed for all overtime hours worked because Defendants failed to properly include all rates  
11 of pay when determining the regular rate of pay for purposes of calculating overtime.

12 129. Plaintiff and Non-Exempt Class members suffered and continue to suffer losses related to  
13 the use and enjoyment of compensation due and owing to them as a direct result of Defendants’ unlawful  
14 acts and Labor Code violations in an amount to be shown according to proof at trial and within the  
15 jurisdictional limitations of this Court.

16 130. Plaintiff seeks all available remedies for Defendants’ violations including, but not limited  
17 to, any and all wages due, monies, interest, attorney’s fees, and costs to the extent permitted by law.

18 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENSES**

21 (Violation of Labor Code § 2802)

22 (Alleged by Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

23 131. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
24 paragraphs above, as though fully set forth herein.

25 132. Labor Code § 2802 requires an employer to indemnify its employees for all necessary  
26 expenditures or losses incurred by an employee in direct consequence of the discharge of his or her duties  
27 of employment.

1           133. Labor Code § 2802(b) states, “[a]ll awards made by a court ... for reimbursement of  
2 necessary expenditures” shall carry interest, at the same rate as judgments in civil actions, and said interest  
3 will accrue from the date on which the employee incurred the necessary expenditure including, but not  
4 limited to, reasonable costs and attorney’s fees incurred by the employee in enforcing their rights granted  
5 pursuant to Labor Code § 2802. The exact amount of the necessary expenditures or losses is in an amount  
6 to be proven at time of trial.

7           134. Furthermore, Labor Code § 2802(c) states, “[f]or the purposes of this section, the term  
8 ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to,  
9 attorney’s fees incurred by the employee enforcing the rights granted by this section.”

10          135. Plaintiff and Non-Exempt Class members incurred business expenses in direct  
11 consequence of their job duties through their personal cell phones and a variety of equipment. Despite  
12 Defendants’ knowledge that Plaintiff and Non-Exempt Class members were using their personal cell  
13 phones for work-related purposes, Defendants failed to reimburse them for these expenses in violation of  
14 Labor Code § 2802.

15          136. As a direct result of Defendants’ violations alleged herein, Plaintiff and Non-Exempt Class  
16 members suffered and continue to suffer, substantial losses related to Defendants’ failure to indemnify  
17 them for the expenses and losses, including the use and enjoyment of such monies, lost interest on such  
18 monies and expenses, and attorney’s fees and costs in seeking to compel Defendants to fully perform their  
19 obligations under state law, all to their respective damage in amounts according to proof at trial and within  
20 the jurisdictional limitations of this Court.

21          137. Plaintiff seeks to recover in a civil action to the fullest extent permissible all available  
22 remedies including, but not limited to, the unpaid balance of the indemnification from Defendants’  
23 violations, interest thereon permitted by Labor Code § 2802(b), reasonable attorney’s fees and costs of  
24 suit, and declaratory relief. The exact amount of reimbursements, interest, costs and attorney’s fees will  
25 be in an amount to be proved at time of trial.

26           WHEREFORE, Plaintiff prays for relief as hereinafter requested.

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SIXTH CAUSE OF ACTION

**ILLEGAL DEDUCTIONS FROM WAGES**

(Violation of Labor Code §§ 221, 222, 223, and 224)

(Alleged by Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

138. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

139. Plaintiff and the Non-Exempt Class members are or were non-exempt employees of Defendants within the meaning of the Labor Code and the applicable IWC Wage Order.

140. Labor Code § 221 disallows an employer from “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee.”

141. Defendants illegally deducted earned wages from Plaintiff and the Non-Exempt Class. For example, Defendants had a pattern, policy and practice of deducting one-hours’ worth of wages from Plaintiff and the Non-Exempt Class members from every shift they worked without any prior authorization from them or notice.

142. As a direct result of Defendants’ violations alleged herein, Plaintiff and Non-Exempt Class members suffered and continue to suffer, substantial harm, including the use and enjoyment of such monies, lost interest on such monies and expenses, and attorney’s fees and costs in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

143. Plaintiff seeks to recover in a civil action to the fullest extent permissible all available damages by Labor Code §§ 221, *et seq.*, reasonable attorney’s fees and costs of suit, and declaratory relief. The exact amount of damages will be in an amount to be proved at time of trial.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

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**SEVENTH CAUSE OF ACTION**

**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

(Violation of Labor Code §§ 226, 246, and 1198 and the “Records” section of the  
Applicable IWC Wage Order)

(Alleged by Plaintiff Individually and On Behalf of the Wage Statement Class Against All Defendants)

144. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

145. Plaintiff and the Wage Statement Class members are or were non-exempt employees of Defendants within the meaning of the Labor Code and the applicable IWC Wage Order.

146. Labor Code § 226(a) requires that employers, including Defendants, furnish their non-exempt employees with each wage payment an accurate and itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

147. Labor Code § 226(e), in part, permits employees suffering injury to collect the greater of all actual damages or the amount specified in Labor Code § 226 per violation.

148. Labor Code § 226(e)(2)(B) states, in pertinent part:

an employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following: (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

149. Labor Code § 226(h) states, “An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney’s fees.”

150. Defendants knowingly and intentionally failed to provide Plaintiff, the Non-Exempt Class and the Wage Statement Class members an accurate itemized wage statement with each wage payment as

1 required by Labor Code § 226(a). Defendants knowingly and intentionally failed to provide Plaintiff and  
2 members of the Non-Exempt Class and Wage Statement Class with each wage payment an accurate wage  
3 statement showing, among other things, the inclusive dates of the period for which the employee is paid,  
4 the total regular and overtime hours worked during the pay period, the corresponding gross and net wages  
5 earned, all applicable hourly rates and the corresponding number of hours worked at each hourly rate.

6 151. Defendants' failure to provide accurate wage statements deprived Plaintiff and members  
7 of the Non-Exempt Class and the Wage Statement Class of the ability to promptly and easily understand  
8 and question the calculation and rate of pay and hours used to calculate the wages paid by Defendants.

9 152. Plaintiff and members of the Non-Exempt Class and Wage Statement Class, therefore, had  
10 no way to dispute any error in the payment or calculation of their wages, all of which resulted in an  
11 unjustified economic enrichment to Defendants, and Plaintiff and members of the Non-Exempt Class  
12 suffered actual damages as a result.

13 153. Defendants' failure to provide accurate itemized wage statements constitutes an injury as  
14 defined under Labor Code § 226(e)(2)(B). Therefore, Plaintiff and members of the Non-Exempt Class  
15 have suffered an injury for purposes of Labor Code § 226 and are entitled to recover the greater of all  
16 actual damages or the amount specified in § 226 per violation.

17 154. Plaintiff and, on information and belief, the Non-Exempt Class members suffered and  
18 continue to suffer injuries, losses and actual damages as a direct result of Defendants' Labor Code  
19 violations, including lost interest on such wages, and expenses and attorney's fees in seeking to compel  
20 Defendants to fully perform their obligations, in an amount to be shown according to proof at trial.

21 155. Plaintiff, the Non-Exempt Class and the Wage Statement Class members seek to recover  
22 all available remedies including, but not limited to damages, penalties, attorney's fees, costs, and injunctive  
23 relief to the fullest extent permitted by law.

24 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

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**EIGHTH CAUSE OF ACTION**

**FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

(Violations of Labor Code §§ 201, 202, and 203)

(Alleged by Plaintiff Individually and On Behalf of the Waiting Time Penalties Subclass

Against All Defendants)

156. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

157. Labor Code § 201 requires Defendants to immediately pay any wages, without abatement or reduction, to any employee who is discharged. Labor Code § 202 requires Defendants to pay any and all wages due and owing to an employee not having a written contract for a definite period, who quits his or her employment, within 72 hours of the employee quitting his or her employment, 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.

158. For violations of Labor Code §§ 201 and 202, Labor Code § 203 causes the unpaid wages of an employee to continue as a penalty from the due date thereof, at the same rate until paid or until an action is commenced, but the wages shall not continue for more than 30 days.

159. As a result of Defendants' conduct during the applicable statutory period, Defendants willfully failed to pay Plaintiff and, on information and belief, the Waiting Time Penalties Subclass all wages due and owing to them, including minimum wages, overtime wages, sick time wages, and regular wages for all the time they were suffered or permitted to work or were engaged in work under Defendants' control, as well as all meal period premiums and rest period premiums owed within the time required by Labor Code §§ 201 and 202, as applicable.

160. To date, Plaintiff has not yet received all wages due and payable including, but not limited to, minimum wages, overtime wages, regular wages, sick time wages, and meal and rest period premium wages owing to him. On information and belief, members of the Waiting Time Penalties Subclass have not yet received all minimum wages, overtime wages, regular wages, and meal and rest period premium wages due and owing to them.

162. Plaintiff and the Waiting Time Penalties Subclass members seek all available remedies for Defendants' violations to the fullest extent permissible.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

### NINTH CAUSE OF ACTION

**VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

(Alleged by Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

163. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

164. California Business & Professions Code §§ 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice...”

165. Defendants' Labor Code and IWC Wage Order violations alleged herein constitute "unlawful, unfair or fraudulent business act or practices," which are prohibited by Business and Professions Code §§ 17200-17208 and include, but are not limited to: (i) failure to provide proper meal periods and pay Plaintiff and the Non-Exempt Class premium wages for failure to provide compliant meal periods; (ii) failure to provide proper rest periods and pay Plaintiff and the Non-Exempt Class premium wages for failure to provide compliant rest periods; (iii) failure to pay Plaintiff and the Non-Exempt Class all regular and minimum wages for all hours suffered or permitted to work and under the control of Defendants; (iv) failure to pay Plaintiff and the Non-Exempt Class all overtime wages for all hours suffered or permitted to work and under the control of Defendants; (v) failure to indemnify Plaintiff and the Non-Exempt Class for necessary business expenses; (vi) illegal deductions from wages; (vii) conditional payment of wages; (viii) willful misclassification of employees as independent contractors; (ix) failure to maintain accurate records; (x) failure to provide Plaintiff and the Non-Exempt Class with accurate itemized wage statements; (xi) failure to timely pay Plaintiff and members of the Waiting Time

Penalties Subclass all wages owed during and upon separation of their employment with Defendants; and  
(xii) failure to provide legally required sick leave.

166. Defendants intentionally avoided paying Plaintiff and members of the Non-Exempt Class all wages and/or monies, and other financial obligations attached thereto, to create for Defendants an artificially lower cost of doing business, and thus, undercut its competitors.

167. Defendants lowered their costs of doing business by paying Plaintiff and members of the Non-Exempt Class an amount less than what is required by the California Labor Code and the applicable Wage Order of the Industrial Welfare Commission, thereby unfairly forcing Plaintiff and other similarly situated employees to perform work without fair compensation and benefits.

168. Defendants held themselves out to Plaintiff and members of the Non-Exempt Class as being knowledgeable about, and adhering to, the employment laws of California at all times relevant herein. Plaintiff and members of the Non-Exempt Class relied on and believed in Defendants' representation concerning Defendants' adherence to the California laws, all to their detriment.

169. Defendants' scheme to lower its payroll and operation costs and thus profit, by withholding money owed to the class and withholding wages, compensation and benefits, which are all the property of Plaintiff and members of the Non-Exempt Class, in violation of the California Labor Code and the IWC Wage Orders, as alleged herein, constitutes an "unlawful, unfair or fraudulent business act or practice," under California Business and Professions Code §§ 17200, *et seq.* As a result of Defendants' unfair competition, Plaintiff and members of the Non-Exempt Class suffered injury in fact by losing money and/or property.

170. Business and Professions Code § 17204, states, in relevant part, "[a]ctions for relief pursuant to this chapter shall be prosecuted...by...a person who has suffered injury in fact and has lost money or property as a result of the unfair competition."

171. Defendants acquired money and property owed to Plaintiff and members of the Non-Exempt Class by means of an unlawful practice that constitutes unfair competition as defined by Business and Professions Code §§ 17200, *et seq.*

172. Plaintiff and members of the Non-Exempt Class are persons in interest under Business and

1 Professions Code § 17203 to whom money and property should be restored. Business and Professions  
2 Code § 17203 states, in relevant part, that “any person may pursue representative claims or relief on behalf  
3 of others only if the claimant meets the standing requirements of Section 17204.”

4 173. Plaintiff is a person who suffered injury in fact and lost money, wages, compensation, and  
5 benefits, as a result of Defendants’ unfair competition. Thus, pursuant to Business and Professions Code  
6 §§ 17203 and 17204, Plaintiff may pursue representative claims and relief on behalf of himself and the  
7 putative classes.

8 174. Pursuant to Business and Professions Code § 17203, “[t]he court may make such orders or  
9 judgments, as may be necessary to restore to any person in interest any money or property, real or personal,  
10 which may have been acquired by means of such unfair competition.”

11 175. Defendants reaped unfair benefits and illegal profits at the expense of Plaintiff and the  
12 Non-Exempt Class by committing the unlawful acts alleged herein. Thus, Defendants must make  
13 restitution and/or be subject to other equitable relief pursuant to Business & Professions Code § 17203  
14 and restore all unpaid wages to Plaintiff and the Non-Exempt Class.

15 176. Plaintiff and the Non-Exempt Class suffered and continue to suffer loss of wages and  
16 monies, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

17 177. Plaintiff seeks all available remedies on behalf of himself and on behalf of the Non-Exempt  
18 Class, including, but not limited to, restitution of all wages and all monies owed, all in an amount to be  
19 shown according to proof at trial. All such remedies are cumulative of relief available under other laws,  
20 pursuant to Business & Professions Code § 17205.

21 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

22 **TENTH CAUSE OF ACTION**

23 **REPRESENTATIVE CLAIMS UNDER THE CALIFORNIA LABOR CODE**

24 **PRIVATE ATTORNEYS GENERAL ACT (PAGA)**

25 (California Labor Code section 2698, *et seq.*)

26 (Alleged by Plaintiff on Behalf of All Aggrieved Employees of Defendants Against All Defendants)

27 178. Plaintiff hereby re-alleges and incorporates by reference all preceding paragraphs set forth  
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1 above as though fully set forth herein.

2 179. Pursuant to California Labor Code section 2699(a), any provision of the California Labor  
3 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,  
4 divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be  
5 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and  
6 other current or former employees pursuant to the procedures specified in California Labor Code section  
7 2699.3.

8 180. This cause of action involves allegations of violations of California Labor Code sections  
9 201, 202, 203, 204, 210, 218.5, 218.6, 221, 223, 225.5, 226, 226.3, 226.7, 226.8, 233, 235, 246, 510, 512,  
10 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2750.5, and 2802 which, pursuant to California  
11 Labor Code section 2699.5, provide for a civil penalty to be assessed and collected by the LWDA or  
12 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and  
13 other current or former employees pursuant to the procedures specified in California Labor Code section  
14 2699.3.

15 181. Plaintiff exhausted his obligation to provide administrative notice to his former employer  
16 and now seeks penalties on behalf of himself and other current and former California employees of  
17 Defendants.

18 182. Pursuant to California Labor Code section 2699(a), Plaintiff seeks civil penalties, on behalf  
19 of himself all other aggrieved employees.

20 183. Defendants employed Plaintiff, who had one or more of the alleged violations committed  
21 against him. Therefore, Plaintiff is an “aggrieved employee” under PAGA because the alleged violator  
22 employed him and he had one or more of the alleged violations committed against him. As such, Plaintiff  
23 is properly suited to represent the interests of other aggrieved employees in a PAGA Representative action.

24 184. Plaintiff seeks to recover civil penalties, but only those civil penalties that are required to  
25 be shared with the LWDA and no individual relief or underpaid wages, on behalf of himself and all other  
26 aggrieved employees for Defendants’ violations of the California Labor Code including, but not limited  
27 to, Defendants’ violations of California Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 221,  
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223, 225.5, 226, 226.3, 226.7, 226.8, 233, 235, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2750.5, and 2802.

185. For all provisions of the California Labor Code for which a civil penalty is not specifically provided, California Labor Code section 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation.

186. Defendants violated California Labor Code sections 226.7, 512, and 1198 by failing to provide Plaintiff and aggrieved employees lawfully compliant meal periods and by failing to pay them meal period premium wages for each day a compliant meal period was not provided. Under California Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of California Labor Code sections 226.7 and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

187. Defendants violated California Labor Code sections 226.7 and 1198 by failing to authorize and permit Plaintiff and aggrieved employees to take duty-free rest periods and by failing to pay them rest period premium wages for each day a compliant rest period was not provided. Under California Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of California Labor Code sections 226.7 and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

188. Defendants violated California Labor Code sections 223, 1194, 1197, and 1198 by not paying Plaintiff and other aggrieved employees at least minimum and regular wages for all the time they were suffered or permitted to work, engaged in work and/or under Defendants' control, as alleged herein. Thus, under California Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of California Labor Code sections 223, 1194, and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

189. Defendants violated California Labor Code sections 223, 510, 1194, and 1198 by not paying Plaintiff and other aggrieved employees all overtime wages earned for all the time they were suffered or permitted to work, engaged in work, and/or under Defendants' control, as alleged herein. At

1 all relevant times, Plaintiff and, on information and belief, other aggrieved employees were not paid all  
2 overtime when they worked in excess of eight hours in a workday or forty hours in a workweek. Thus,  
3 under California Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each  
4 aggrieved employee per pay period for the initial violation of California Labor Code sections 223, 1194,  
5 and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

6 190. Under California Labor Code section 225.5, Defendants, in addition to, and entirely  
7 independent and apart from, any other penalty, are subject to a civil penalty for unlawfully withholding  
8 wages due to Plaintiff and other aggrieved employees in violation of California Labor Code section 221  
9 and 223 as follows: (1) For an initial violation, one hundred dollars (\$100.00) for each failure to pay each  
10 employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars  
11 (\$200.00) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. This  
12 amount shall be recovered on behalf of the California Labor Commissioner.

13 191. Defendants violated California Labor Code section 246 by failing to provide Plaintiff and  
14 other aggrieved employees with required sick leave and written notice of the amount of paid sick leave  
15 available, as alleged herein. Thus, under California Labor Code section 2699(f)(2), Defendants are subject  
16 to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of California  
17 Labor Code section 246, and \$200 for each aggrieved employee per pay period for each subsequent  
18 violation, up to a \$100,000.00 limit.

19 192. Defendants violated California Labor Code sections 201, 202, and 1198 by not paying  
20 Plaintiff and aggrieved employees all minimum, regular, overtime, and all meal and rest premium wages  
21 owed by the time set forth by law during and upon their separation of employment, as alleged herein.  
22 Thus, under California Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100  
23 for each aggrieved employee per pay period for the initial violation of California Labor Code sections  
24 201, 202, and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

25 193. Defendants violated California Labor Code sections 204 and 1198 by not paying Plaintiff  
26 and aggrieved employees all minimum, regular, overtime, and all meal and rest premium wages owed by  
27 the time set forth by law during their employment, as alleged herein. Thus, under California Labor Code  
28

1 section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay  
2 period for the initial violation of California Labor Code sections 204 and 1198, and \$200 for each  
3 aggrieved employee per pay period for each subsequent violation.

4 194. Under California Labor Code section 210(a), Defendants, in addition to, and entirely  
5 independent and apart from any other penalty, are subject to a civil penalty for failing to pay the wages of  
6 each aggrieved employee as provided in California Labor Code section 204, as follows: (1) for any initial  
7 violation, one hundred dollars (\$100) for each failure to pay each aggrieved employee; and (2) for each  
8 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure  
9 to pay each aggrieved employee, plus 25 percent of the amount unlawfully withheld. This amount shall  
10 be recovered on behalf of the California Labor Commissioner.

11 195. Defendant violated California Labor Code sections 226(a), 1174(d), and 1198 by failing to  
12 maintain records detailing the start and end times of work shifts and meal periods, and knowingly and  
13 intentionally failing to maintain and provide Plaintiff and other aggrieved employees of Defendants with  
14 wage statements itemizing accurately all information required by California Labor Code section 226(a),  
15 as alleged herein, including the total hours worked, all regular hours worked, all overtime hours worked,  
16 the applicable hourly rate per hour worked, and the total wages earned. Thus, under California Labor Code  
17 section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay  
18 period for the initial violation of California Labor Code sections 226(a) and 1198, and \$200 for each  
19 aggrieved employee per pay period for each subsequent violation.

20 196. Defendants violated California Labor Code section 226(a), 246(i), and 1198 by failing to  
21 include the accrued sick hours on Plaintiff's and aggrieved employees' wage statements as required by  
22 law and as alleged herein. Further Defendants did not provide wage statements whatsoever. Thus, under  
23 California Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each  
24 aggrieved employee per pay period for the initial violation of California Labor Code sections 226(a),  
25 246(i), and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

26 197. Alternatively, California Labor Code section 226.3 provides for a civil penalty in the  
27 amount of \$250 per violation in an initial citation and \$1,000 for each violation in a subsequent citation,  
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1 for which the employer fails to provide the employee a wage deduction statement or fails to keep the  
2 records required in subdivision (a) of section 226.

3 198. California Labor Code section 1174.5 provides for a civil penalty of \$500 for any person  
4 employing labor who willfully fails to maintain accurate and complete records required by subdivision (d)  
5 of section 1174.

6 199. Defendants are and were Plaintiff's and aggrieved employees' employer or other person(s)  
7 acting either individually or as an officer, agent, or employee of another person(s), who pays or causes to  
8 be paid to any employee a wage less than the minimum fixed by an order of the Commission, and, as such,  
9 is subject to civil penalties for each underpaid employee pursuant to California Labor Code section 1197.1.

10 200. California Labor Code section 1197.1 imposes upon Defendants for each initial violation  
11 of California Labor Code section 1197 by paying or causing an employee to be paid less than the minimum  
12 wage, a civil penalty of \$100.00 for each underpaid employee for each pay period for which the employee  
13 is underpaid. Furthermore, California Labor Code section 1197.1 imposes upon Defendants for each  
14 subsequent violation a civil penalty of \$250.00 for each underpaid employee for each pay period for which  
15 the employee was underpaid. Plaintiff seeks to recover civil penalties, but only those civil penalties that  
16 are required to be shared with the LWDA and no individual relief or underpaid wages, on behalf of  
17 themselves and other aggrieved employees for Defendants' violations of the California Labor Code.

18 201. Defendants violated Labor Code sections 226.8 and 2750.5 by willfully misclassifying  
19 Plaintiff and, on information and belief, other aggrieved employees as independent contractors. Per Labor  
20 Code section 226.8, an employer who engages in a pattern of willful misclassification as independent  
21 contractors, the employer is subject to a civil penalty not less than \$10,000 and not more than \$25,000 for  
22 each violation.

23 202. Defendants are and were Plaintiff's and other aggrieved employees' employer, or person  
24 acting on their behalf, within the meaning of California Labor Code section 558, who violated or caused  
25 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating  
26 hours and days of work in any IWC Wage Order and, as such, are subject to civil penalties for each  
27 underpaid employee as set forth in California Labor Code section 558.

203. Pursuant to California Labor Code section 558, Defendants are subject to a civil penalty of \$50.00 for an initial violation of California Labor Code sections 510 and 512, for each aggrieved employee, for each pay period for which the aggrieved employee was not provided with a timely uninterrupted 30-minute meal period and all overtime wages for all hours worked, as alleged herein. Furthermore, California Labor Code section 558 imposes upon Defendants for each subsequent violation of California Labor Code sections 510 and 512 a civil penalty of \$100.00 for each aggrieved employee for each pay period for which the aggrieved employee was not provided with a timely uninterrupted 30-minute meal period and all overtime wages for all hours worked, as alleged herein.

204. Pursuant to Labor Code Section 2802, Defendants are subject to civil penalties of \$100 for an employer's initial violation and \$250 for each subsequent violation regarding Defendants' failure to reimburse necessary business expenses.

205. California Labor Code section 558 also imposes upon Defendants for each initial violation of the Hours and Days of Work section of the applicable IWC Wage Order a civil penalty of \$50.00 for each aggrieved employee for each pay period for which the aggrieved employee was not provided with a paid uninterrupted 10-minute rest period, as alleged herein. Furthermore, California Labor Code section 558 imposes upon Defendants for each subsequent violation of the Hours and Days of Work section of the applicable IWC Wage Order a civil penalty of \$100.00 for each aggrieved employee for each pay period for which the aggrieved employee was not provided with a paid uninterrupted 10-minute rest period, as alleged herein. The Hours and Days of Work section of the Wage Order also covers failure to provide rest periods and Plaintiff may therefore recover civil penalties, but only those civil penalties that are required to be shared with the LWDA and no individual relief or underpaid wages.

206. For bringing this action, Plaintiff is additionally entitled to attorney's fees and costs incurred herein.

207. Plaintiff seeks to recover civil penalties on behalf of himself and other aggrieved employees for Defendants' violations of the California Labor Code including, but not limited to, Defendants' violations of California Labor Code sections 201, 202, 203, 204, 210, 223, 225.5, 226, 226.2, 226.3, 226.7, 246, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198 pursuant to California Labor Code

1 section 2698, *et seq.* The exact amount of the applicable penalties is in an amount to be shown according  
2 to proof at trial and within the jurisdictional limitations of this Court.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 5 a. For general damages;
- 6 b. For special damages;
- 7 c. For compensatory damages;
- 8 d. For punitive damages;
- 9 e. For an award of liquidated damages to the extent permissible by Labor Code §  
10 1194.2;
- 11 f. For all statutory penalties pursuant to California Labor Code section 203;
- 12 g. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by  
13 law including, but not limited to, those pursuant to Code of Civil Procedure §  
14 1021.5; Labor Code §§ 218.5, 218.6, 226, 1194, and 2802; and Government Code  
15 § 12965, subd. (b);
- 16 h. For civil and statutory penalties to the extent permitted by law, including, but not  
17 limited to, those pursuant to the Labor Code, the California Private Attorney's Act,  
18 and the Orders of the Industrial Welfare Commission;
- 19 i. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- 20 j. For civil penalties for each initial and subsequent violation for each underpaid  
21 employee for each pay period for which the employee was underpaid;
- 22 k. For an order requiring Defendants to restore and disgorge all funds to each affected  
23 person acquired by means of any act or practice declared by this Court to be  
24 unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under  
25 Business and Professions Code §§ 17200, *et seq.*;
- 26 l. For an award of damages in the amount of unpaid compensation and monies  
27 including, but not limited to, actual damages, unpaid wages, minimum wages,  
28

regular wages, overtime wages, illegally deducted wages, waiting time penalties and other penalties according to proof, including interest thereon, to the extent permissible by law;

m. For an award of an additional hour of pay at the regular rate of compensation for each noncompliant meal, rest, and recovery period, pursuant to Labor Code § 226.7 and the applicable Order of the Industrial Welfare Commission;

n. For penalties as described in Labor Code §248.5;

o. For an award of the greater of actual damages or the liquidated damage amounts provided by Labor Code § 226(e) for Defendants' failure to provide accurate itemized wage statements, pursuant to Labor Code § 226(a);

p. For injunctive relief as provided by the Labor Code including, but not limited to, Labor Code §§ 226(h) and 248.5, and Business and Professions Code §§ 17200, *et seq.*;

q. For reimbursement of all expenses incurred as a result of employment with Defendants, with interest;

r. For pre- and post-judgment interest to the extent permitted by law including, but not limited to, Labor Code §§ 218.6 and 1194;

s. For an order imposing a constructive trust upon Defendants to compel it to transfer wages that have been wrongfully obtained and held by Defendants to unpaid employees;

t. For an accounting to determine all money wrongfully obtained and held by Defendants;

u. For a declaratory judgment that Defendants violated Labor Code §§ 201, 202, 203, 204, 221, 222, 223, 224, 226, 226.7, 226.8, 246, 510, 512, 1174, 1194, 1197, 1198, 2750.5 and 2802, as well as the "Hours and Days of Work," "Minimum Wages," "Records," "Meal Periods," and "Rest Periods" sections of the Wage Order of the Industrial Welfare Commission;

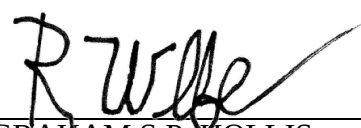
- v. Such civil penalties that are required to be shared with the LWDA; and
- w. An award of such other and further relief as this Court deems proper and just.

**JURY TRIAL DEMAND**

Plaintiff hereby demands a trial by jury on all Causes of Action to the extent authorized by law.

Dated: May 26, 2021

GRAHAMHOLLIS APC

By: 

GRAHAM S.P. HOLLIS  
VILMARIE CORDERO  
HALI M. ANDERSON  
RIDGEWAY WOULFE  
Attorneys for Plaintiff  
DAVONTY HENDRIX

# **EXHIBIT A**

January 15, 2021

**Attorneys at Law**

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**VIA ELECTRONIC FILING**

California Labor and Workforce Development Agency  
Attn: PAGA Administrator  
1515 Clay Street, Suite 801  
Oakland, CA 94612

**CERTIFIED MAIL (RETURN RECEIPT)**

Lucky Seven Dragons, Inc.  
Attn: Sherif Zaaza, Agent for Service of Process  
3550 Wilshire Boulevard, Suite 1070  
Los Angeles, CA 90010

Re: **Davonty Hendrix's Wage and Hour Claims Against Lucky Seven  
Dragons, Inc.**

Dear Labor and Workforce Development Agency and Lucky Seven Dragons, Inc.:

Please be advised that Davonty Hendrix ("Claimant") has retained our firm to represent him for claims against his former employer Lucky Seven Dragons, Inc., dba Protective Shield Security ("the Company").

This letter shall serve as Claimant's written notice to the Labor and Workforce Development Agency ("LWDA") and the Company of the alleged Labor Code violations Claimant claims that the Company committed against him and all other non-exempt employees in California ("aggrieved employees"). Claimant provides this notice in accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2699.3. Claimant desires to file a civil action to enforce his rights under the Labor Code and seek compensation accordingly.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant also intends to represent all other current and former non-exempt employees who performed work for the Company in California and who have suffered at least one of the wage and hour violations described herein during their employment.

**FACTUAL BACKGROUND**

Lucky Seven Dragons, Inc. dba Protective Shield Security ("the Company") is a California corporation which provides security services.

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

Claimant began working for the Company in July of 2020. The Company hired Claimant as a non-exempt employee at the Authentic 209 location in Modesto, CA. The Company compensated Claimant on an hourly basis at a rate of \$18.00 per hour. As a Security Guard, Claimant monitored his location for security threats, addressed security threats as they arose, and provided regular reports to his supervisors to keep them abreast of the location's status. Claimant began working 12 hours per shift, approximately four days per week. Over time, Claimant began working 10 hours per shift, approximately one day per week. Other employees regularly worked full-time during their employment.

The Company denied Claimant and, on information and belief, other aggrieved employees in California specific rights afforded to them under the California Labor Code and the applicable Industrial Welfare Commission Wage Order ("IWC Wage Order"). For example, the Company misclassified employees as independent contractors; failed to issue accurate itemized wage statements; failed to provide notice of accrued and available sick leave; retaliated against employees for attempting to use sick leave; failed to provide them with legally compliant meal and rest breaks or pay meal and rest break premiums; failed to timely pay Claimant and/or other aggrieved employees all minimum, regular, and overtime wages owed; failed to reimburse them for all necessary business expenditures; made illegal deductions from employees' wages; engaged in unfair business practices via requiring employees to sign a noncompete agreement (among other violations of fair business practices); operated an auto-deduct system; unlawfully withheld payment upon completion of a condition; required employees to sign an invalid on-duty meal period agreement; failed to maintain accurate records; and failed to timely pay all wages due during and upon separation of employment.

The Company required employees to complete a W-9 form, indicating the employees are independent contractors. Further, the Company informed Claimant and, on information and belief, other aggrieved employees to either not pay taxes or pay taxes as an independent contractor. This is an intentional misclassification of their employees as independent contractors. Claimant's work as a Security Guard is clearly within the security company's usual course of business and the Company exercised control over its employees including, but not limited to, their schedule, break times, precise duties, manner of reporting, and even the grooming of their facial hair. There is no reasonable basis to believe the employees were independent contractors.

The Company intentionally deprived Claimant and, on information and belief, other aggrieved employees of wage statements whatsoever. Instead, the Company simply provided regular checks. These checks did not state an accurate corporate name, instead listing "Protective Shield Security." Claimant inquired about this deficiency to his supervisors, and they simply told him not to report his income for tax purposes. By failing to provide any wage statements whatsoever, the Company failed to provide accurate wage statements. Claimant and, on information and belief, other aggrieved employees suffered as a result of the Company's refusal to provide wage statements because they could never ascertain whether the Company paid them the proper amount.

The Company also did not provide a statement of accrued and available sick leave as required under California law. The Company never informed Claimant of any sick leave policies or rights. Instead, the Company required 2 weeks' notice to request days off. When Claimant informed his supervisors that he would be using sick leave to care for his ailing brother, the Company terminated Claimant's employment

in retaliation for his use of sick leave. On information and belief, Claimant asserts the Company threatened retaliation and/or retaliated against other aggrieved employees who attempted to use sick leave.

The Company failed to provide 30-minute, off-duty meal breaks commencing before the end of the fifth hour of employment. Instead, the Company required Claimant and, on information and belief, other aggrieved employees to carry two-way radios while on breaks and provide updates as supervisors requested them. Despite knowing the Company required employees to take on-duty meal periods, the Company's supervisors always logged meal breaks as though the Company allowed off-duty meal periods. The Company also required employees to sign an on-duty meal and rest period agreement, despite there being no legal basis for such an agreement. For the same reasons that the Company failed to provide meal breaks, the Company failed to authorize and permit Claimant and other aggrieved employees from taking paid, duty-free rest breaks of ten minutes for every four hours worked or major fraction thereof. Although the Company denied Claimant and, on information and belief, other aggrieved employees compliant, off-duty meal and rest breaks, the Company failed to provide meal and rest break premiums to them.

The Company did not pay Claimant and, on information and belief, other aggrieved employees all minimum, regular, and overtime wages for all of the time worked for the Company or while subject to the Company's control. The Company intentionally denied Claimant and, on information and belief, other aggrieved employees of payment for time worked during on-duty meal periods and for rest periods, the latter of which California law requires to be a paid and off-duty.

The Company denied Claimant and, on information and belief, other aggrieved employees payment at an overtime rate. Instead, they paid employees their standard rate of pay for hours worked in excess of 8 hours each day. When Claimant asked about paying the appropriate rate, Claimant's supervisors told him that was why the Company did not deduct taxes from wages.

The Company also failed to reimburse Claimant and, on information and belief, other aggrieved employees for all necessary expenses that were incurred in the discharge of their job duties. For example, the Company required Claimant and, on information and belief, other aggrieved employees to use their personal cell phones to communicate with managers, co-workers, customers, and associates. The Company also required them to download apps in order to communicate and make reports. The Company failed to reimburse Claimant and, on information and belief, aggrieved employees for expenses related to the use of their personal cell phones, as required by California law. Furthermore, the Company required employees to provide a gun, a holster, a flashlight, and specific portions of the company uniform, but they did not reimburse employees for any of these expenses.

The Company willingly failed to maintain accurate time and employment records. The Company deducted time for meal periods despite knowing it required non-exempt employees work on-duty meal periods. The Company also recorded time off for rest periods in violation of California law, which requires rest periods to be paid. Thus, The Company knowingly and intentionally deprived employees of wages and meal premiums based upon inaccurate time records.

The Company's policy states it could make deductions from employees' wages as payment for a Company uniform or any damages. Employees had no option to decline allowing these deductions.

Likewise, the Company required employees to sign unenforceable and illegal noncompete agreements. Furthermore, the Company's policies expressly condition payment of some wages upon the return of company equipment, in another illegal agreement that the Company mandated.

As a direct result of the aforementioned Labor Code violations, the Company did not pay Claimant and, on information and belief, all aggrieved employees all wages due and payable during and upon separation of employment, including minimum, regular, and overtimes wages for all hours worked; meal and rest period premium wages; and reimbursement of business expenses as required pursuant to Labor Code sections 201, 202 and 204.

Due to the foregoing Labor Code violations, the Company denied Claimant and other aggrieved employees certain rights afforded to them under the California Labor Code and IWC Wage Orders. Claimant makes these claims against the Company on behalf of himself and all other aggrieved current and former employees of the Company in California.

#### **WILLFUL MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT CONTRACTORS**

(Labor Code sections 226.8, 2750.5)

Labor Code section 226.8 states it is unlawful for an employer to willfully misclassify an individual as an independent contractor. Labor Code section 2750.5 states the following three requirements for an entity to properly classify an individual as an independent contractor:

1. That the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
2. That the worker performs work that is outside the usual course of the hiring entity's business; and
3. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

Per Labor Code section 226.8, "the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law." If, as in this case, the person or employer has engaged in a pattern of misclassification of employees as independent contractors, they "shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law."

As set forth above, the Company classified Claimant and, on information and belief, other aggrieved employees as independent contractors despite exerting extreme control over their work, paying them to perform work that is in the Company's usual course of business, and knowing they did not operate their own independent trade or business. Therefore, the Company's misclassification was willful. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

### **FAILURE TO MAINTAIN ACCURATE RECORDS**

(Labor Code sections 1174, 1174.5, 1198, and the “Records” section of the Applicable IWC Wage Order)

Labor Code section 1174 states, “[e]very person employing labor in this state shall... [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.”

The “Records” section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal period, split shift intervals, total hours worked in the payroll period, and applicable rates of pay.

Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

As set forth above, the Company violated these requirements by deducting time from employee time records for meal periods which were on-duty and rest periods which were on-duty and which should be considered “on-the-clock” even when they are off-duty. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

### **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

(Labor Code sections 226, 226.3, and 1198 and the “Records” section of the Applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees 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, ... (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, ...; 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.”

Labor Code section 226.3 imposes a civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

As set forth above, the Company did not provide wage statements whatsoever, thereby violating Labor Code 226. Even the paycheck they provided listed “Protective Shield Security” rather than the Company’s actual corporate name, Lucky Seven Dragons, Inc. Claimant will pursue all available remedies

for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

**FAILURE TO PROVIDE COMPLIANT SICK LEAVE AND RETALIATION FOR USING SICK LEAVE**

(Labor Code §§ 233, 234, 238, and 246)

Labor Code section 233 states, "[a]ny employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement..." Labor Code section 234 states, "[a]n employer absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233."

Labor Code section 246(b)(1) states, "[a]n employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section." Section (c) states, "[a]n employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section."

Labor Code section 238 states that any violators "shall be subject to a civil penalty of two thousand five hundred dollars (\$2,500)." If an employer was previously assessed and failed to pay the penalty, the employer "shall be subject to an additional penalty of one hundred dollars (\$100) for each calendar day that the employer conducts business in violation of this section," up to a \$100,000 limit.

As set forth above, the Company denied Claimant and, on information and belief other aggrieved employees the right to use sick leave. Furthermore, the Company retaliated against employees for attempting to use sick leave. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

**FAILURE TO PROVIDE COMPLIANT MEAL PERIODS AND AUTHORIZE AND PERMIT REST PERIODS**

(Labor Code §§ 226.7, 512 and "Meal Period" and "Rest Period" sections of the Applicable IWC Wage Order)

Labor Code section 226.7(b) states, "[a]n 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..." Labor Code section 226.7(c) states, "[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... 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."

Labor Code section 512(a) states, “[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” and “[a]n 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.”

The “Meal Period” section of the IWC Wage Order states in relevant part:

(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 employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time. (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided. . . . (D) 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.

The “Rest Period” section of the IWC Wage Order states in relevant part:

(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.

Labor Code section 1198 states, "[t]he 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."

Labor Code section 558 states,

[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.

As set forth above, the Company did not provide Claimant and, on information and belief, other aggrieved employees with the opportunity to take uninterrupted, off-duty meal breaks of at least 30-minutes before the start of their fifth hour of work and did not authorize or permit Claimant and other aggrieved employees to take legally compliant rest breaks. Consequently, Claimant and, on information and belief, other aggrieved employees were entitled to receive one-hour of premium wages for each day a compliant meal break was not provided and one-hour of premium wages for each day a compliant rest period was not authorized or permitted. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

#### **FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code sections 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198 and the "Minimum Wages" and "Hours and Days of Work" sections of the Applicable IWC Wage Order)

Labor Code section 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." Labor Code section 1197.1 provides that, "Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203." Section 1198 states, "[t]he 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.”

Labor Code section 510 states,

[e]ight hours of labor constitutes a day’s work. 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.

The “Hours and Days of Work” sections of the Applicable IWC Wage Order mandate the same requirements.

Labor Code section 1194(a) states, “...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 section 1194.2 further provides, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

Labor Code section 223 states, “Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” Labor Code section 225.5 provides that, “...every person who unlawfully withholds wages due any employee in violation of Section ...223 shall be subject to a civil penalty” of \$100 for each initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company failed to pay Claimant and, on information and belief, other aggrieved employees all minimum, regular, and overtime wages, as required by law. Claimant and, on information and belief, other aggrieved employees frequently worked during their meal breaks and rest breaks, but the Company deducted wages as though employees received 30-minute off-duty meal periods and as though the law permitted them to deduct wages for rest breaks (though its denial of off-duty rest periods entitles employees to wages even if that were not the case). The Company also denied Claimant, and on information and belief, other aggrieved employees overtime rates for work scheduled in excess of 8 hours per day and 40 hours per week. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

### **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

(Labor Code section 2802)

Labor Code section 2802 provides in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

Labor Code section 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” Accordingly, Claimant will request that he receive interest on the applicable amount.

Furthermore, Labor Code section 2802(c) states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” Consequently, Claimant will also request reimbursement of the attorney’s fees incurred in pursuing this matter.

As set forth above, the Company required that Claimant and, on information and belief, other aggrieved employees utilize their personal cell phones and purchase a plethora of necessary equipment for their work. Nevertheless, the Company did not reimburse for any of these expenses. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

### **FAILURE TO PAY WAGES UNCONDITIONALLY**

(Labor Code section 206)

Labor Code section 206 provides in pertinent part, “[i]n case of a dispute over wages, the employer shall pay, without condition and within the time set by this article, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to as to any balance claimed.”

As set forth above, the Company conditioned wage payments upon the return of a company uniform. The Company expressly stated this condition in its policies. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

### **ILLEGAL DEDUCTION OF WAGES**

(Labor Code sections 221, *et seq.*)

Labor Code section 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.” Labor Code section 224 disallows employers from making deductions from wages without authorization from the employee, with

limited exceptions. As described above, the Company conditioned employment upon employees allowing deductions from employees' wages to pay for equipment and damages thereof.

Labor Code section 225.5 provides the following penalties for this violation: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As set forth above, the Company conditioned employment upon allowing illegal deductions of wages. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL WAGES DUE DURING AND UPON SEPARATION OF EMPLOYMENT**

(Labor Code sections 201, 202, 203, 204, 210, 1194, 1194.2, 1198, and the  
"Minimum Wages" section of the Applicable IWC Wage Order)

Labor Code section 204(a) states in pertinent part, "[a]ll wages...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." Furthermore, Labor Code section 204(b)(1) states, "all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period." Labor Code section 210 provides that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation. The "Minimum Wages" section of the applicable IWC Wage Order also states that "[e]very 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."

Labor Code section 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202 states, in pertinent part, "[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, 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."

Labor Code section 203(a) states, in pertinent part, "[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, 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 therefore is commenced; but the wages shall not continue for more than 30 days."

As set forth above, the Company violated these Labor Code sections by not paying to Claimant and, on information and belief, other aggrieved employees all minimum, regular, and overtime wages, and all meal and rest break premium wages, within the required time during and upon separation of their

employment. As a result of the Company's failure to comply with the aforementioned Labor Code provisions, the Company owe waiting time penalties to aggrieved employees, which they have not yet paid. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

**CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS**

(Labor Code sections 558 and 1197.1)

Labor Code section 558 subjects any employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: "[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. For each subsequent violation, one hundred (\$100) for each underpaid employee for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages."

Similarly, Labor Code section 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

As set forth above, the Company underpaid Claimant and, on information and belief, aggrieved employees by failing to pay them all regular, minimum, and overtime wages, and meal and rest break premium wages, as required under Labor Code sections 226.7, 510, 512, 233, 234, 246, 1194, 1197, 1198, and the applicable sections of the applicable IWC Wage Order. As a result, the Company is liable for civil penalties under Labor Code sections 558 and 1197.1. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

**ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES**

(Labor Code sections 210, 218.5, 218.6, 225.5, 226(e),  
558, 1194, 1194.2, 1197.1, 2802, and 2699, *et seq.*)

Labor Code sections 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 2802, and 2699, *et seq.*, among others, give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, reimbursements, damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

Pursuant to Labor Code section 2699, *et seq.*, an aggrieved employee is entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Company is liable for these items in addition to the unpaid wages and reimbursements. Claimant has already incurred actual damages, costs and attorney's fees and he will continue to incur costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies, including those provided by PAGA, for these violations on behalf of himself and other aggrieved employees.

**CONCLUSION**

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional compensation owed to him or other losses incurred by him or by any other aggrieved employee of the Company, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in his complaint.

Sincerely,



Ridgeway Woulfe



January 22, 2021

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**9414 8118 9876 5892 1679 72.**

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| <b>Status Date / Time:</b> | January 21, 2021, 2:09 pm                    |
| <b>Location:</b>           | LOS ANGELES, CA 90005                        |
| <b>Postal Product:</b>     | First-Class Mail®                            |
| <b>Extra Services:</b>     | Certified Mail™<br>Return Receipt Electronic |
| <b>Recipient Name:</b>     | Seven Dragons Inc Attn                       |

#### Shipment Details

|                |       |
|----------------|-------|
| <b>Weight:</b> | 3.0oz |
|----------------|-------|

#### Recipient Signature

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| Reference       | 34955-00001 Hendrix Protective Shield AG                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| USPS History    | Delivery Attempted - No Access to Delivery Location, 01/20/2021, 11:09 am, LOS ANGELES, CA 90005<br>Out for Delivery, 01/20/2021, 9:21 am, LOS ANGELES, CA 90005<br>In Transit to Next Facility, 01/19/2021<br>In Transit to Next Facility, 01/18/2021<br>In Transit to Next Facility, 01/17/2021<br>Arrived at USPS Regional Origin Facility, 01/16/2021, 11:59 pm, SAN DIEGO CA DISTRIBUTION CENTER<br>Accepted at USPS Origin Facility, January 16, 2021, 10:44 pm, SAN DIEGO, CA 92103<br>Shipping Label Created, USPS Awaiting Item, January 15, 2021, 10:17 pm, SAN DIEGO, CA 92103 |

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