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FILED
Superior Court of California
County of Riverside
5/14/2021
J. Bishop
Electronically Filed

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE
RIVERSIDE HISTORIC COURTHOUSE

JESSIE CORTEZ, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

UNITED FACILITY SOLUTIONS, INC., a
California corporation, SMART & FINAL LLC,
a Delaware limited liability company, SMART
& FINAL STORES LLC, a California LLC,
SMART & FINAL LOGISTICS limited liability
company, a Delaware limited liability company;
and DOES 1 to 50 inclusive,

Defendants.

Case No.: **CVRI2102308**

**CLASS ACTION AND PAGA
REPRESENTATIVE COMPLAINT FOR:**

1. Failure to provide rest periods
2. Failure to provide meal periods
3. Failure to provide accurate, itemized wage statements
4. Failure to pay all wages owed at termination
5. Failure to provide employee records
6. Failure to provide personnel records
7. Failure to pay overtime wages
8. Failure to reimburse for all business expenses
9. Unlawful business practices
10. Civil penalties pursuant to the Private Attorneys General Act

Amount demanded exceeds \$25,000.

JURY TRIAL DEMANDED

1. The matters stated in this Complaint are true to the Plaintiff's knowledge, except the matters which are therein stated on information and belief, and as to those matters Plaintiff believes them to be true.

2. Plaintiff JESSIE CORTEZ, on behalf of himself and all others similarly situated, hereby alleges against UNITED FACILITY SOLUTIONS, INC., a California company; SMART & FINAL LLC, a Delaware limited liability company; SMART & FINAL STORES LLC, a California limited liability company; and SMART & FINAL LOGISTICS LLC, a Delaware limited liability company; and DOES 1-50 (hereafter collectively “Defendants”), as follows:

3. This action is brought pursuant to Cal. Code Civ. Proc. § 382, as well as Labor Code § 2698 – 2699.6 (“PAGA”), on behalf of the State of California and all individuals who were employed by Defendants in California from four years before the filing of this complaint to the present.

4. Plaintiff fully and completely exhausted his administrative remedies under PAGA prior to proceeding with this action. On February 26, 2021, Plaintiff filed a notice online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged as prescribed by PAGA. Plaintiff submitted the \$75.00 filing fee to the LWDA. No notice was received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the postmark date of the PAGA notice. Plaintiff is therefore, entitled to commence and proceed with a civil action pursuant to Labor Code § 2699.

5. The “Class Period” is designated as the period from October 2015 through the trial date. The “PAGA Period” is designated as the period from February 26, 2020, through the trial date. Defendants’ violations of California’s wage and hour laws and unfair competition laws, as described more fully below, have been ongoing throughout the Class Period and throughout the PAGA period and are ongoing.

JURISDICTION AND VENUE

6. Jurisdiction is conferred on this Court over Defendants named herein as residents of the State of California and/or conductors of business in the State of California. Jurisdiction is conferred on this Court as to all causes of action as they arise under state statute or common law.

7. Venue is proper in this Court because Defendants reside and/or conduct business in

1 this County and a substantial part of the events and omissions giving rise to Plaintiff's causes of
2 action occurred in this County.

3 4 **PARTIES**

5 8. Plaintiff JESSIE CORTEZ ("Plaintiff") is a resident of the State of California, and at
6 all times pertinent hereto worked for Defendants in Riverside. During the Class Period and PAGA
7 period, Plaintiff was employed by Defendants as an hourly, non-exempt employee, in the position
8 of Command Guard Services Security Officer, at the Smart & Final Distribution Center located at
9 2360 Cottonwood Ave., Riverside, CA 92508, in the County of Riverside.

10 9. Plaintiff, Class Members, and Aggrieved Employees are covered by Occupational
11 Wage Order No. 4-2001 ("Wage Order") of the Industrial Welfare Commission ("IWC").

12 10. Defendant UNITED FACILITY SOLUTIONS, INC. ("United Facility Solutions") is
13 a California corporation headquartered in Gardena, California.

14 11. Defendant SMART & FINAL, LLC ("Smart & Final") is a Delaware limited liability
15 company headquartered in Commerce, California.

16 12. Defendant SMART & FINAL STORES, LLC ("Smart & Final Stores") is a
17 California limited liability company headquartered in Commerce, California.

18 13. Defendant SMART & FINAL LOGISTICS, LLC ("Smart & Final Logistics") is a
19 Delaware limited liability company headquartered in Commerce, California.

20 14. The true names, identities, or capacities, whether individual, corporate associate, or
21 otherwise, of DOES 1 through 50, inclusive are unknown to Plaintiff. When the true names,
22 identities, or capacities of such fictitiously-designated Defendants are ascertained, Plaintiff will ask
23 leave of this court to amend this Complaint to insert their true names, identities, and capacities,
24 together with the proper charging allegations. Plaintiff is informed and believes and thereon alleges
25 that some or all of the fictitiously-named Defendants are responsible in some manner for the
26 occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused
27 by those defendants.

28 15. Plaintiff believes and therefore alleges that at all times herein mentioned, each of the

1 Defendants was the agent and employee of each of the other Defendants, and in doing the acts
2 alleged herein, was acting within the scope of such agency and employment. Plaintiff further
3 believes and therefore alleges that conduct of each of the Defendants as alleged herein was ratified
4 by each of the other Defendants, and the benefits thereof were accepted by each of the other said
5 Defendants.

6
7 **FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION**

8 16. Throughout the period of October 2015 through the date of class certification (“Class
9 Period”), Plaintiff and all Class members were and are employees of Defendants, entitled to all the
10 protections afforded to employees under the Labor Code and Wage Order. As part of their
11 employment, Plaintiff and all Class members agreed to the same employment practices utilized by
12 the Defendants throughout the State of California.

13 17. Plaintiff and all Class members are and were classified as hourly, non-exempt
14 employees. Further, Plaintiff is informed and believes that he and the other Class Members and
15 Aggrieved Employees were subject to the protections of the Wage Order.

16 18. This class action arises from wage and hour violations for, among other things,
17 Defendants’ failure to compensate their California hourly non-exempt employees in compliance
18 with California law. Defendants violated the Labor Code and the Wage Order.

19 19. Plaintiff and the Class worked as hourly non-exempt employees in the State of
20 California for Defendants.

21 20. Defendants failed to provide Plaintiff and the Class members with rest periods
22 because they were required to be on duty throughout their shift. Defendants failed to provide Plaintiff
23 and the Class members with meal periods because Plaintiff and the Class members were required to
24 be on duty during their meal periods. Defendants are liable to Plaintiff and the Class for failing to
25 provide legally compliant meal and rest periods.

26 21. Defendants failed to pay Plaintiff and the Class members overtime wages when they
27 worked for more than eight hours in a consecutive 24-hour period. Throughout the Class Period,
28 despite knowing that Plaintiff and the Class were working overtime, Defendants refused to pay them

overtime wages.

22. Defendants failed to pay all wages due to discharged Class members.

23. Throughout the Class Period, the wage statements provided to Plaintiff and Class members Defendants failed to provide accurate information reflecting the check-in and check-out period as well as overtime. Defendants failed to furnish accurate itemized wage statements to Plaintiff and the Class members, as overtime hours, check-in times, and check-out times were not included in their wage statements.

24. Defendants failed to maintain required records for Plaintiff and the Class members because overtime hours were not included, and check-in and check-out times were not included in their wage statements.

25. Defendants failed to provide Plaintiff and the Class members with a suitable sheltered place in which to consume food and drink.

26. Defendants failed to maintain reasonably comfortable temperature for Plaintiff and the Class members, as Plaintiff and the Class members were required to bring their own portable heaters.

27. Defendants failed to reimburse all expenses incurred by Plaintiff and the Class members, including but not limited to purchases of flashlights and portable heaters.

28. Defendants failed to provide Plaintiff and the Class members with tools and equipment. Instead, Plaintiff and Class members were required to bring their own flashlights and portable heaters. Throughout the Class Period, Defendants failed to provide tools and equipment to Plaintiff and Class members.

29. Throughout the Class Period, Defendants failed to maintain uniforms for Plaintiff and Class members. Defendants failed to maintain uniforms for Plaintiff and the Class members, as Plaintiff and the Class members were required to wash their own uniforms.

30. Defendants' conduct as alleged herein has caused Plaintiff and Class members damages including, but not limited to, loss of wages and compensation.

31. Plaintiff is a member of, and seeks to be the representative for, the Class of similarly situated employees who have been exposed to, have suffered from, and/or were permitted to work

under, Defendants' unlawful employment practices as alleged herein.

32. The Labor Code and Wage Order violations upon Plaintiff and the Class are a consequence of Defendants' unlawful policies and practices, which were centrally devised, implemented, communicated, and applied to Plaintiff and the Class.

33. Because of Defendants' unlawful conduct, Plaintiff and the Class have been and continue to be systematically deprived of their earned wages to which they are entitled by law and deprived of other benefits of the Labor Code and Wage Order, to the detriment of themselves and the public at large.

CLASS DEFINITION AND CLASS ALLEGATIONS

34. Plaintiff reserves the right to amend or otherwise alter the class definition presented to the Court at an appropriate time, or to alter, propose, or eliminate sub-classes, in response to facts learned through discovery, legal arguments advanced by Defendants, or otherwise.

35. Further, this action is brought for the benefit of the public, who are entitled to restitution of those funds improperly withheld by Defendants.

36. This action has been brought and may be properly maintained as a class action pursuant to the provisions of Code of Civil Procedure § 382 and other applicable law.

37. Plaintiff brings this action on his own behalf and on behalf of all others similarly situated, pursuant to Code of Civil Procedure § 382, and as a member of the Class defined as follows:

38. **Numerosity:** Members of the Class are so numerous that their individual joinder is impracticable. It is possible to ascertain the number of former and current employees who are members of the proposed class, but they are so numerous that joinder is impracticable. The proposed Class includes future employees (persons who are hired by Defendants within the class period, but who are not now class members as current or former employees) whose joinder is currently impossible. The precise number of Class members and their addresses can be determined by Defendants' business records and will become known to Plaintiff through discovery. Class members may be notified of the pendency of this action by mail, e-mail, the internet, or published and posted notice.

1 39. **Typicality:** Plaintiff's claims are typical of the claims of members of the proposed
2 classes. Defendants employed Plaintiff during the statutory period, and Plaintiff has been subjected
3 to Defendants' unlawful employment practices, as alleged in this Complaint.

4 40. **Adequacy of Class Representative:** Plaintiff will fairly and adequately protect the
5 interests of the classes. Plaintiff's interests do not conflict with Class members' interests, and
6 Plaintiff has retained competent and experienced counsel. The interests of Class members will be
7 fairly and adequately protected by Plaintiff and his counsel.

8 41. **Common Question of Law and Fact:** Common questions of law and fact exist as to
9 all Class members and predominate over any questions affecting solely individual members of the
10 proposed Class:

11 a. Whether Defendants engaged in a pattern or practice of failing to provide
12 Plaintiff and the Class members with paid rest periods.

13 b. Whether Defendants engaged in a pattern or practice of failing to provide
14 Plaintiff and the Class members with meal periods.

15 c. Whether Defendants engaged in a pattern or practice of failing to provide
16 Plaintiff and the Class members with accurate, itemized wage statements.

17 d. Whether Defendants engaged in a pattern or practice of failing to immediately
18 pay all wages due to discharged Plaintiff and the Class members.

19 e. Whether Defendants engaged in a pattern or practice of failing to maintain a
20 reasonably comfortable temperature for Plaintiff and the Class members;

21 f. Whether Defendants engaged in a pattern or practice of failing to provide
22 Plaintiff and the Class members with employee records;

23 g. Whether Defendants engaged in a pattern or practice of failing to provide
24 Plaintiff and the Class members with personnel records;

25 h. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff
26 and the Class members overtime wages;

27 i. Whether Defendants engaged in a pattern or practice of failing to provide
28 Plaintiff and the members of the Class with a suitable sheltered place in which to

1 consume food and drink;

2 j. Whether Defendants engaged in a pattern or practice of failing to reimburse
3 Plaintiff and the members of the Class for all expenses incurred in the course of work;

4 k. Whether Defendants engaged in a pattern or practice of failing to provide
5 Plaintiff and the members of the Class with tools and equipment;

6 l. Whether Defendants engaged in a pattern or practice of failing to maintain
7 uniforms for Plaintiff and the members of the Class;

8 m. Whether Defendants engaged in unfair business practices;

9 n. Whether Defendants implemented unlawful companywide violations of the
10 Labor Code; and

11 o. The nature and extent of class-wide injury and measure of damages for the
12 injury.

13 42. **Superiority and Substantial Benefit:** A class action is the superior method for the
14 fair and efficiency adjudication of this controversy. Defendants implemented illegal schemes that
15 are generally applicable to the members of the proposed plaintiff class and sub-classes. Damages
16 suffered by each Class member may be relatively small given the burden and expense of individual
17 prosecution of the complex and expensive litigation necessitated by Defendants' conduct. Further,
18 it would be virtually impossible for the Class members to redress the wrongs done to them on an
19 individual basis. Even if Class members could afford such individual litigation, the court system
20 could not. By contrast, the class action device presents far fewer management difficulties, and
21 provides the benefits of a single adjudication, economies of scale, and comprehensive supervision
22 by a single court.

23 43. Plaintiff knows of no difficulty that will be encountered in the management of this
24 litigation that would preclude its maintenance as a class action. Plaintiff is informed and believes,
25 and on that basis alleges, that the amount of money due each Class member as economic damages
26 is ascertainable from Defendants' records or may readily be determined by other means.

27 44. The Classes should also be certified because:

28 a. The prosecution of separate actions by individual Class members would

1 create a risk of inconsistent or varying adjudications with respect to individual Class
2 members, which would establish incompatible standards of conduct for Defendants;

3 b. The prosecution of separate actions by individual Class members creates the
4 risk of adjudication with respect to them, which would, as a practical matter, be
5 dispositive of the interests of the other Class members not parties to the adjudications,
6 or would substantially impair or impede their ability to protect their interests; and

7 c. Defendants have acted or refused to act on grounds generally applicable to
8 the Class, and/or general public, thereby making appropriate final and injunctive
9 relief with respect to the Classes as a whole.

10
11 **FIRST CAUSE OF ACTION FOR FAILURE TO PROVIDE REST PERIODS IN**
12 **VIOLATION OF LABOR CODE § 226.7 AND WAGE ORDER § 12**

13 45. Plaintiff restates and incorporates by reference each and every allegation of the
14 foregoing paragraphs as though fully set forth herein.

15 46. At all times relevant to this Complaint, Wage Order and Labor Code § 226.7 were in
16 effect and applicable to Defendants.

17 47. Wage Order § 12 provides: “Every employer shall authorize and permit all employees
18 to take rest periods, which insofar as practicable shall be in the middle of each work period. The
19 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
20 minutes net rest time per four (4) hours or major fraction thereof.”

21 48. Labor Code § 226.7 provides that no employer shall require an employee to work
22 during any rest period mandated by an applicable Wage Order. The Court has explained this to mean
23 that “[d]uring required rest periods, employers must relieve their employees of all duties and
24 relinquish any control over how employees spend their break time.” Augustus v. ABM Security
25 Services, Inc., (2016) 2 Cal.5th 257, 260.

26 49. During the relevant statutory time period, Defendants systematically, routinely, and
27 willfully failed to permit Plaintiff and Class members to take uninterrupted, non-captive rest periods
28 of at least ten minutes for every four hours worked. In fact, section 8.5 of the Command Guard

Services Security Officer Handbook says that “security officers are not authorized to leave the post during their shift for any reason.”

50. Defendants’ failure to provide legally compliant rest periods resulted from the following acts and omissions: suffering or permitting Plaintiff and Class members to work for longer than four hours without receiving an uninterrupted, non-captive rest periods of at least ten minutes.

51. As a direct result, Plaintiff and the Class members have suffered and continue to suffer substantial damages in an amount to be proven at trial and are entitled to all appropriate legal remedies provided by the Labor Code and the Wage Order, including unpaid wages, liquidated damages, interest, attorneys’ fees, and costs of suit.

52. Plaintiff and Class members are entitled to seek and do seek from Defendants one additional hour of pay at the regular rate of compensation for each workday that a rest period was not provided, pursuant to Wage Order § 11 and Labor Code § 226.7(c). Further, pursuant to Labor Code § 1194, Plaintiff and the Class members are entitled to their attorneys’ fees and costs and interest according to proof.

SECOND CAUSE OF ACTION FOR FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF LABOR CODE § 226.7 AND 512, AND WAGE ORDER § 12

53. Plaintiff restates and incorporates by reference each and every allegation of the foregoing paragraphs as though fully set forth herein.

54. At all times relevant to this Complaint, Wage Order § 11 and Labor Code § and 512(a) were in effect and applicable to Defendants.

55. Both Wage Order § 11 and Labor Code § 512(a) state that an employer shall not employ an employee for a work period of more than five hours without a meal period of no less than thirty minutes, except that if a work period of not more than six hours will complete the day’s work, the meal period may be waived by mutual consent of the employer and employee.

56. Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by an applicable IWC Wage Order.

57. During the relevant statutory time period, Defendants systematically, routinely, and

1 willfully failed to permit Plaintiff and Class members to take uninterrupted, non-captive meal
2 periods of at least thirty minutes for every five hours worked, occurring before the end of the fifth
3 hour of work. In fact, section 8.5 says that “security officers are not authorized to leave the post
4 during their shift for any reason.”

5 58. Defendants’ failure to provide legally compliant meal periods resulted from the
6 following acts and omissions: suffering or permitting Plaintiff and Class members to work for longer
7 than five hours without receiving an uninterrupted, non-captive meal periods of at least thirty
8 minutes.

9 59. As a direct result, Plaintiff and the Class members have suffered, and continue to
10 suffer, substantial damages in an amount to be proven at trial and are entitled to all appropriate legal
11 remedies provided by the Labor Code and Wage Order, including unpaid wages, liquidated damages,
12 interest, attorneys’ fees, and costs of suit.

13 60. For all the days on which Plaintiff and Class members were denied a valid meal
14 period, they are entitled to seek and do seek from Defendants one additional hour of pay at the
15 regular rate of compensation for each workday that a meal period was not provided, pursuant to
16 Wage Order § 11 and Labor Code § 226.7(c). Further, pursuant to Labor Code § 1194, Plaintiff and
17 the Class members are entitled to their attorneys’ fees and costs and interest according to proof.

18
19 **THIRD CAUSE OF ACTION FOR FAILURE TO PROVIDE ACCURATE, ITEMIZED**
20 **WAGE STATEMENTS IN VIOLATION OF LABOR CODE § 226**

21 61. Plaintiff restates and incorporates by reference each and every allegation of the
22 foregoing paragraphs as though fully set forth herein.

23 62. Labor Code § 226(a) requires an employer to furnish its employees with an accurate
24 itemized statement in writing showing, among other things, gross wages earned, net wages earned,
25 all applicable hourly rates in effect during the pay period, and the corresponding number of hours
26 worked at each hourly rate by the employee.

27 63. Under Labor Code § 226(e), an employee suffering injury as a result of a knowing
28 and intentional failure by an employer to comply with § 226(a) is entitled to recover the greater of

all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 for each violation in a subsequent pay period, up to a maximum amount of \$4,000.

64. During the relevant statutory time period, Defendants systematically, routinely, and willfully deprived Plaintiff and Class members of wage statements that correctly stated the gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

65. Defendants are in violation of Labor Code § 226(a) and are liable to Plaintiff and Class members for damages. Plaintiff and Class members are entitled to recover the damages or penalties provided by Labor Code § 226(e), including interest thereon, and reasonable attorneys' fees and costs.

**FOURTH CAUSE OF ACTION FOR FAILURE TO PAY ALL WAGES OWED AT
TERMINATION IN VIOLATION OF LABOR CODE § 201**

66. Plaintiff restates and incorporates by reference each and every allegation of the foregoing paragraphs as though fully set forth herein.

67. At all times relevant to this Complaint, Labor Code §§ 201 and 203 were in effect and applicable to Defendants.

68. Labor Code § 201 states that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

69. When Class members' employment ended Defendants were required to pay all wages earned and unpaid on that date. However, Defendants did not immediately pay such wages.

70. Labor Code § 203 requires that if an employer willfully fails to pay any wages of any employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than thirty days.

71. During the relevant statutory time period, Defendants systematically, routinely, and willfully failed to pay Plaintiff and Class members all wages owed upon termination.

72. Plaintiff and Class members are entitled to seek and do seek waiting time penalties

1 in the amount of up to thirty days' wages under Labor Code § 203, with interest thereon and
2 reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5 and 1194.

3 73. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff and
4 Class members have lost and will continue to lose income and benefits in an amount to be proven at
5 trial. Plaintiff and Class members claim such amount as general damages for mental and emotional
6 distress, aggravation, and physical harm, in an amount to be proven at trial, together with pre-
7 judgment interest pursuant to Civil Code § 3287 and any other provision of law providing for pre-
8 judgment interest.

9
10 **FIFTH CAUSE OF ACTION FOR FAILURE TO PROVIDE EMPLOYEE RECORDS IN**
11 **VIOLATION OF LABOR CODE § 226(b) – (c)**

12 74. Plaintiff restates and incorporates by reference each and every allegation of the
13 foregoing paragraphs as though fully set forth herein.

14 75. Labor Code § 226(b) requires an employer to “afford current and former employees
15 the right to inspect or copy records pertaining to their employment, upon reasonable request to the
16 employer.” Labor Code § 226(c) requires an employer “who receives a written or oral request to
17 inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former
18 employee shall comply with the request as soon as practicable, but not later than 21 calendar days
19 from the date of the request..” Per Labor Code § 226(f), an employer who fails “to permit a current
20 or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the
21 current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar
22 (\$750) penalty from the employer.”

23 76. On February 26, 2021, Plaintiff's counsel sent a letter to Defendants, requesting
24 Plaintiff's employee records, Pursuant to Labor Code §§ 226, 247.5, 432, 11989.5, and 1199,
25 Defendants were obligated to produce Plaintiff's employee records by March 19, 2021. As of the
26 filing of this Complaint, Defendants have not produced Plaintiff's employee records.

27 77. As a result, Plaintiff is entitled to receive, and Defendants are required to pay, a
28 penalty of \$750 as provided by Labor Code § 226(f).

1
2 **SIXTH CAUSE OF ACTION FOR FAILURE TO PROVIDE PERSONNEL RECORDS IN**
3 **VIOLATION OF LABOR CODE § 1198.5(b)(1)**

4 78. Plaintiff restates and incorporates by reference each and every allegation of the
5 foregoing paragraphs as though fully set forth herein.

6 79. Labor Code § 1198.5(a) – (b) states that every current and former employee has the
7 right to inspect and receive a copy of the personnel records that the employer maintains relating to
8 the employee's performance or to any grievance concerning the employee. Further, the employer
9 shall make the contents of those personnel records available for inspection to the current or former
10 employee no later than thirty calendar days from the date the employer receives a written request.

11 80. On February 26, 2021, Plaintiff's counsel sent a letter to Defendants, requesting
12 Plaintiff's employee records, Pursuant to Labor Code §§ 226, 247.5, 432, 11989.5, and 1199,
13 Defendants were obligated to produce Plaintiff's personnel records by March 28, 2021. As of the
14 filing of this Complaint, Defendants have not produced Plaintiff's personnel records.

15 81. As a result, Plaintiff is entitled to receive, and Defendants are required to pay, a
16 penalty of \$750 as provided by Labor Code § 11985(k).

17
18 **SEVENTH CAUSE OF ACTION FOR FAILURE TO PAY OVERTIME WAGES IN**
19 **VIOLATION OF LABOR CODE §§ 510 AND 1194, AND WAGE ORDER § 3**

20 82. Plaintiff restates and incorporates by reference each and every allegation of the
21 foregoing paragraphs as though fully set forth herein.

22 83. At all times relevant to this Complaint, Labor Code §§ 510 and 1194 and Wage Order
23 § 3 were in effect and applicable to Defendants.

24 84. Labor Code §§ 510 and 1194 and Wage Order § 3 require that “any work in excess
25 of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first
26 eight hours worked on the seventh consecutive day of work in any one workweek shall be
27 compensated at the rate of no less than one and one-half times the regular rate of pay for an
28 employee.”

1 85. Under Labor Code § 500, “workday” means any consecutive 24-hour period
2 commencing at the same time each calendar day.

3 86. Defendants required Plaintiff and Class Members to work more than eight hours in a
4 consecutive 24-hour period, but did not pay them overtime.

5 87. As a direct result, Plaintiff and Class Members suffered damages legally caused by
6 the aforementioned violations of Defendants as stated below under the prayer for relief, which is
7 incorporated here to the extent pertinent as if set forth here in full. Plaintiff and Class Members seek
8 all available remedies for Defendants’ violations, including but not limited to any and all wages due,
9 penalties, interest, attorneys’ fees, and costs, to the extent permitted by law.

10
11 **EIGHTH CAUSE OF ACTION FOR FAILURE TO REIMBURSE FOR ALL BUSINESS**
12 **EXPENSES, IN VIOLATION OF LABOR CODE § 2802**

13 88. Plaintiff restates and incorporates by reference each and every allegation of the
14 foregoing paragraphs as though fully set forth herein.

15 89. At all times relevant to this Complaint, Labor Code § 2802 was in effect and
16 applicable to Defendants.

17 90. Labor Code § 2802 requires employers to indemnify employees for all expenses
18 incurred in the course of, and as a result of, discharging their duties to their employers.

19 91. Defendants failed to reimburse Plaintiff and Class Members for all necessary
20 expenditures incurred in the course of their duties, including but not limited to purchases of
21 flashlights and portable heaters. Section 7.2.c of the Command Guard Services Security Officer
22 Handbook says that night patrols must include a flashlight. However, no flashlight was provided to
23 Plaintiff and Class Members.

24 92. As a direct result, Plaintiff and Class Members suffered damages legally caused by
25 the aforementioned violations of Defendants as stated below under the prayer for relief, which is
26 incorporated here to the extent pertinent as if set forth here in full. Plaintiff and Class Members seek
27 all available remedies for Defendants’ violations, including but not limited to any and all wages due,
28 penalties, interest, attorneys’ fees, and costs, to the extent permitted by law.

1
2 **NINTH CAUSE OF ACTION FOR UNLAWFUL BUSINESS PRACTICES IN VIOLATION**
3 **OF BUSINESS & PROFESSIONS CODE §§ 17200 - 17209**

4 93. Plaintiff restates and incorporates by reference each and every allegation of the
5 foregoing paragraphs as though fully set forth herein.

6 94. Labor Code § 1198 requires that the standard conditions of labor fixed by the
7 commission be the standard conditions of labor for employees, and that the employment of any
8 employee under conditions of labor prohibited by the order is unlawful.

9 95. As required by Wage Order § 15, the temperature maintained in each work area shall
10 provide reasonable comfort consistent with industry-wide standards for the nature of the process and
11 the work performed. If excessive heat or humidity is created by the work process, the employer shall
12 take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable
13 comfort.

14 96. During the relevant statutory time period, Defendants systematically, routinely, and
15 willfully required Plaintiff and Class members to work in environments that were either
16 unreasonably cold or hot.

17 97. Defendants' failure to maintain a reasonably comfortable temperature resulted from
18 the following acts and omissions: requiring Plaintiff and Class members to work in posts that did
19 not have air conditioning or heating.

20 98. As a direct result, Plaintiff and Class Members suffered damages legally caused by
21 the aforementioned violations of Defendants as stated below under the prayer for relief, which is
22 incorporated here to the extent pertinent as if set forth here in full. Plaintiff and Class Members seek
23 all available remedies for Defendants' violations, including but not limited to any and all wages due,
24 penalties, interest, attorneys' fees, and costs, to the extent permitted by law.

25 99. At all times relevant to this Complaint, Wage Order § 3 was in effect and applicable
26 to Defendants. Wage Order § 3 says that "If a meal period occurs on a shift beginning or ending at
27 or between the hours of 10 p.m. and 6 a.m..... a suitable sheltered place shall be provided in which
28 to consume...food or drink."

1 100. No such suitable sheltered place was provided for Plaintiff and other aggrieved
2 employees even though their shifts sometimes began or ended between the hours of 10 p.m. and 6
3 a.m. Section 8.5 the Command Guard Services Security Officer Handbook says that “security
4 officers are not authorized to leave the post during their shift for any reason.”

5 101. As a direct result, Plaintiff and Class Members suffered damages legally caused by
6 the aforementioned violations of Defendants as stated below under the prayer for relief, which is
7 incorporated here to the extent pertinent as if set forth here in full. Plaintiff and Class Members seek
8 all available remedies for Defendants’ violations, including but not limited to any and all wages due,
9 penalties, interest, attorneys’ fees, and costs, to the extent permitted by law.

10 102. At all times relevant to this Complaint, Labor Code § 2695.2 and Wage Order § 9
11 were in effect and applicable to Defendants. Under these laws, “when tools or equipment are required
12 by the employer or are necessary to the performance of a job, such tools and equipment shall be
13 provided and maintained by the employer.”

14 103. Defendants did not provide Plaintiff and other aggrieved employees with equipment
15 necessary for performance of their jobs, including but not limited to flashlights and portable heaters.
16 Section 7.2.c of the Command Guard Services Security Officer Handbook says that night patrols
17 must include a flashlight. However, no flashlight was provided to Plaintiff and Class Members.

18 104. As a direct result, Plaintiff and Class Members suffered damages legally caused by
19 the aforementioned violations of Defendants as stated below under the prayer for relief, which is
20 incorporated here to the extent pertinent as if set forth here in full. Plaintiff and Class Members seek
21 all available remedies for Defendants’ violations, including but not limited to any and all wages due,
22 penalties, interest, attorneys’ fees, and costs, to the extent permitted by law.

23 105. At all times relevant to this Complaint, Wage Order § 9 was in effect and applicable
24 to Defendants. Wage Order § 9 says that, “When uniforms are required by the employer to be worn
25 by the employee as a condition of employment, such uniforms shall be...maintained by the
26 employer.”

27 106. Although uniforms were required by Defendants, they failed to maintain such
28 uniforms for Plaintiff and Class members.

1 107. As a direct result, Plaintiff and Class Members suffered damages legally caused by
2 the aforementioned violations of Defendants as stated below under the prayer for relief, which is
3 incorporated here to the extent pertinent as if set forth here in full. Plaintiff and Class Members seek
4 all available remedies for Defendants' violations, including but not limited to any and all wages due,
5 penalties, interest, attorneys' fees, and costs, to the extent permitted by law.

6 108. Business & Professions Code §§ 17200 – 17209 (Unfair Competition Law, hereafter
7 “UCL”) provides that “unfair competition shall mean and include any unlawful, unfair or fraudulent
8 business act or practice.”

9 109. Wage and hour laws express fundamental public policies. The prompt payment of
10 overtime pay and other legally required wages and benefits is a fundamental public policy of this
11 State. Labor Code § 90.5(a) articulates that the public policy of this State is to enforce labor standards
12 vigorously, to ensure that employees are not required or permitted to work under substandard and
13 unlawful conditions, and to protect law-abiding employers and employees from competitors who
14 lower costs by failing to comply with labor standards.

15 110. Defendants have violated statutes and public policies. Through the conduct alleged
16 in this Complaint, Defendants have acted contrary to these public policies, have violated specific
17 provisions of the Labor Code, including but not limited to, §§ 226, 226.7, 510, and 512, and have
18 engaged in other unlawful and unfair business practices in violation of the UCL, depriving Plaintiff
19 and Class members, all persons similarly situated, and all interested persons of rights, benefits, and
20 privileges guaranteed to all employees under the law.

21 111. Defendants' unlawful and unfair conduct, as alleged above, constitutes unfair
22 competition in violation of the UCL. By engaging in the conduct alleged herein, Defendants violated
23 the UCL.

24 112. Business & Professions Code § 17204 provides for a private cause of action, stating
25 that “[a]ctions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of
26 competent jurisdiction . . . upon the complaint of any board, officer, person, corporation or
27 association or by any person who has suffered injury in fact and has lost money or property as a
28 result of such unfair competition.”

1 113. Business & Professions Code § 17203 provides the court with available remedies,
2 stating that “[a]ny person who engages, has engaged, or proposes to engage in unfair competition
3 may be enjoined in any court of competent jurisdiction. The court may make such orders or
4 judgments . . . as may be necessary to restore to any person in interest any money or property . . .
5 which may have been acquired by means of such unfair competition.”

6 114. Defendants’ unlawful and unfair business practices described herein present a
7 continuing threat to members of the public in that Defendants continue to engage in the conduct
8 described herein.

9 115. Defendants have wrongfully retained monies belonging to Plaintiff and Class
10 members that they may have acquired by means of unfair and unlawful business practices.

11 116. Unless restrained by this Court, Defendants will continue to engage in the unlawful
12 conduct as alleged above. Pursuant to the Business and Professions Code, the Court should make
13 such orders or judgments as may be necessary to prevent the use or employment, by Defendants, its
14 agents or employees, of any unlawful or deceptive practice prohibited by the Business & Professions
15 Code, and/or, including but not limited to, disgorgement of profits which may be necessary to restore
16 to Plaintiff the money Defendants have unlawfully failed to pay.

17 117. As a direct and foreseeable result of Defendants’ of aforesaid acts, Plaintiff and Class
18 members have lost and will continue to lose income and benefits in an amount to be proven at trial.
19 Plaintiff claims such amount as general damages for mental and emotional distress, aggravation, and
20 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant to
21 Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

22
23 **TENTH CAUSE OF ACTION FOR CIVIL PENALTIES PURSUANT TO THE PRIVATE**
24 **ATTORNEYS GENERAL ACT (LABOR CODE §§ 2698 – 2699.6)**

25 118. Plaintiff restates and incorporates by reference each and every allegation of the
26 foregoing paragraphs as though fully set forth herein.

27 119. Pursuant to Labor Code § 2699.3, Plaintiff provided notice to the Labor and
28 Workforce Development Agency (“LWDA”) and written notice by U.S. certified mail to Defendants

1 of the specific provisions of the Labor Code alleged to have been violated and the facts and theories
2 to support the alleged violations. These notices were sent on February 26, 2021. The LWDA did not
3 respond to the notice within sixty-five calendar days. Thus, under Labor Code § 2699.3(a)(2)(C),
4 Plaintiff is permitted to commence a civil action pursuant to Labor Code § 2699.

5 120. Defendants' conduct as set forth herein has caused injury to Plaintiff and similarly
6 aggrieved employees, and has violated various provisions of the Labor Code. As such, Plaintiff
7 brings this claim as a representative action on behalf of himself and similarly aggrieved employees.

8 121. Under Labor Code § 2699(f), "[f]or all provisions of this code except those for which
9 a civil penalty is specifically provided, there is established a civil penalty for a violation of these
10 provisions, as follows: . . . If, at the time of the alleged violation, the person employs one or more
11 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay
12 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
13 period for each subsequent violation."

14 122. As alleged herein, Plaintiff and similarly aggrieved employees seek, and Defendants
15 are liable for, penalties for the violations of Labor Code, including the following:

- 16 - Violation of Labor Code § 226.7 for failure to provide rest periods to Plaintiff
17 and similarly aggrieved employees;
- 18 - Violation of Labor Code §§ 226.7 and 512 for failure to provide meal breaks to
19 Plaintiff and similarly aggrieved employees;
- 20 - Violation of Labor Code §§ 510 and 1194 for failure to pay overtime wages to
21 Plaintiff and similarly aggrieved employees
- 22 - Violation of Labor Code §§ 201 and 203 for failure to pay all wages owed at
23 termination to Plaintiff and similarly aggrieved employees
- 24 - Violation of Labor Code § 1198 for failure to provide a suitable sheltered place
25 Plaintiff and similarly aggrieved employees
- 26 - Violation of Labor Code § 1198 for failure to provide a reasonably comfortable
27 temperature to Plaintiff and similarly aggrieved employees
- 28 - Violation of Labor Code § 226 for failure to provide accurate, itemized wage

statements to Plaintiff and similarly aggrieved employees

- Violation of Labor Code § 1174 for failure to maintain records for Plaintiff and similarly aggrieved employees
- Violation of Labor Code § 2802 for failure to reimburse Plaintiff and similarly aggrieved employees for all expenses incurred in the course of employment
- Violation of Labor Code § 2695.2 for failure to provide tools and equipment to Plaintiff and similarly aggrieved employees
- Violation of Labor Code § 1198 for failure to maintain uniforms for Plaintiff and similarly aggrieved employees

123. Plaintiff and similarly aggrieved employees are also entitled to seek all reasonable attorneys' fees and costs of suit pursuant to Labor Code § 2699(g).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. An order that the action be certified as a class action;
2. An order that Plaintiff be appointed class representative;
3. An order that counsel for Plaintiff be appointed class counsel;
4. An order requiring Defendants to identify, by name, address, and telephone number, all of their current and former California hourly non-exempt employees for the period of August 2018 through the date of class certification;
5. For all unpaid wages due to Plaintiff and each Class member in amounts to be proven at trial;
6. For the full amount of liquidated damages due Plaintiff and each Class member pursuant to Labor Code §§ 1194 and 1194.2;
7. For recovery as authorized by Labor Code § 226(e);
8. For restitution of all unpaid wages due Plaintiff and each Class member;
9. For all applicable statutory penalties, in amounts to be proven at trial;

1 10. For an award of waiting time penalties pursuant to Labor Code § 203, in amounts to
2 be proven at trial;

3 11. For general damages including compensatory damages according to proof;

4 12. For pre-judgment interest as allowed by Labor Code §§ 218.6 and 1194(a) as well as
5 Civil Code § 3287 and to the extent permitted by law, the California Constitution, and/or deemed
6 equitable by the Court;

7 13. For all applicable interest on damages, wages, and penalties due;

8 14. For injunctive relief to prevent further violations of the Labor Code;

9 15. For declaratory relief that Defendants engaged in unfair practices;

10 16. For declaratory relief that Defendants violated Labor Code §§ 201-203, 226, 226.7,
11 510, 512, 1194, and 1197;

12 17. For restitution of all moneys due to Plaintiff and Class members, and disgorged
13 profits from the unlawful and/or unfair business practices of Defendants, pursuant to Business &
14 Professions Code §17200;

15 18. For one hour of pay at each of the employees' regular rate of compensation for each
16 workday that a legally compliant rest period was not provided;

17 19. For one hour of pay at each of the employees' regular rate of compensation for each
18 workday that a legally compliant meal period was not provided;

19 20. For costs of suit, expenses, and attorneys' fees pursuant to Labor Code §§226(e) and
20 (h), 1194(a), Code of Civil Procedure § 1021.5, and all other applicable law, and;

21 21. For all such other and further relief that the Court may deem just and proper.
22

23 Dated: May 14, 2021

Respectfully submitted,

24 **JAFARI LAW GROUP, INC.**

25 

26 David V. Jafari
27 Saul Acherman
28 Attorneys for Plaintiff
JESSIE CORTEZ and all others similarly
situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so triable in the Complaint.

Dated: May 14, 2021

Respectfully submitted,

JAFARI LAW GROUP, INC.

A handwritten signature in black ink, appearing to read 'David V. Jafari', is written over a horizontal line.

David V. Jafari
Saul Acherman
Attorneys for Plaintiff
JESSIE CORTEZ and all others similarly
situated