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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ALAMEDA**

14 MICHAEL HARRINGTON on behalf of
15 himself, and all others similarly situated,

16 Plaintiff,

17 v.

18 CREATIVE SECURITY COMPANY, INC.;
19 and DOES 1 through 50, inclusive,

20 Defendants.

) Case No: **RG21095377**

) CLASS ACTION

) **CLASS ACTION COMPLAINT FOR:**

-) **1. UNFAIR BUSINESS PRACTICES;**
) **2. VIOLATIONS OF THE LABOR CODE;**
) **3. PENALTIES; and**
) **4. ATTORNEYS' FEES.**

) **DEMAND FOR JURY TRIAL**

**ENDORSED
FILED
ALAMEDA COUNTY**

APR 09 2021

CLERK OF THE SUPERIOR COURT

By **NICOLE HALL**

1 Plaintiff MICHAEL HARRINGTON, on behalf of himself and all others similarly
2 situated, complains against Defendants CREATIVE SECURITY COMPANY, INC., and Does 1
3 through 50 (all referred to collectively as “Defendants” or “CREATIVE SECURITY”) as
4 follows:

5 **I. JURISDICTION AND VENUE**

6 1. This Court has subject matter jurisdiction over Plaintiff’s claims, based on, among
7 other statutes, California Business & Professions Code §§ 17200, *et seq.*, and California Labor
8 Code §§ 201-203, 226, 226.7, 510, 511, 512, and 1194.

9 2. This Court has personal jurisdiction over the parties because, at all relevant times,
10 Plaintiff was a California resident who worked in California for Defendants and Defendants
11 systematically and continuously have conducted business in the State of California.

12 3. Venue is proper in this Court because California Code of Civil Procedure § 395.5
13 because (a) Plaintiff performed part of his duties in Alameda County, (b) part of the of the
14 obligations of the parties arises in Alameda County, (c) part of Defendants’ liability arises in
15 Alameda County, and (d) breaches by Defendants occurred in connection with work performed
16 partly in Alameda County.

17 **II. PARTIES AND BACKGROUND**

18 4. Plaintiff MICHAEL HARRINGTON is an adult who worked for Defendants as a
19 non-exempt hourly employee. He worked for Defendants as an hourly, non-exempt patrol
20 supervisor from approximately March 2020 through July 2020 at client locations in California,
21 including Alameda County.

22 5. Defendant CREATIVE SECURITY COMPANY, INC. is a California corporation
23 doing business throughout California and is a “person” as defined by California Labor Code § 18
24 and California Business and Professions Code § 17201. In addition, it is an “employer” as that
25 term is used in the California Labor Code and in the California Industrial Welfare Commission’s
26 Orders regulating wages, hours, and working conditions.

27 6. Plaintiff is ignorant of the true names and capacities of Defendants sued as Does 1
28 through 50, inclusive, and therefore sues those Defendants by those fictitious names. Plaintiff

1 will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is
2 informed and believes and on that ground alleges that each of the fictitiously-named Defendants
3 is responsible in some manner for the occurrences alleged and that Plaintiff's damages and other
4 losses as alleged are proximately caused by those occurrences.

5 7. Plaintiff brings this action on behalf of a proposed state-wide class of hourly non-
6 exempt security guards who worked at CREATIVE SECURITY locations in California to
7 challenge Defendants' (a) policy and practice of failing to pay overtime for hours worked over
8 eight in a shift; (b) policy and practice of violating California Labor Code §§ 226.7 and 512 and
9 IWC Wage Order 5-2001 by failing to provide meal periods to employees, including second meal
10 periods to employees who worked more than 10 hours in a day; (c) policy and practice of
11 violating Labor Code § 226.7 by failing to authorize and permit adequate rest periods, (d) policy
12 and practice of violating California Labor Code § 226 by failing to provide accurate, itemized
13 wage statements; and (e) policy and practice of violating California Labor Code §§ 201-203 by
14 failing to pay former employees all wages due and owing at the time of discharge or voluntary
15 quit.

16 8. Plaintiff brings this action on behalf of himself and a proposed class of all hourly
17 non-exempt workers employed by CREATIVE SECURITY at client locations within the State of
18 California at any time during the four-year period preceding the filing of this Complaint up
19 through the present and until compliance with the law. Plaintiff seeks recovery of all allowable
20 compensation and other sums for the violations described above, including unpaid overtime,
21 penalties/premium pay for missed meal and rest periods, restitution and restoration of sums owed
22 and property unlawfully withheld, statutory penalties, interest, attorneys' fees, and costs.

23 **III. FACTUAL ALLEGATIONS**

24 9. CREATIVE SECURITY provides security guard services on to clients throughout
25 California. The work is performed at multiple locations in the State of California, including
26 Alameda County.

27 10. At all relevant times, Plaintiff was employed by CREATIVE SEUCRITY as an
28 hourly non-exempt employee in a guard occupation as defined by § 2(O) of IWC Wage Order 4-

2001. During his employment with CREATIVE SECURITY, Plaintiff worked four days a week, and typically worked 10 or more hours a day, including some shifts over 12 hours.

11. Labor Code § 511 requires employers to adhere to strict requirements when adopting an alternative workweek schedule, including, among other things, that an employer must hold a secret election allowing employees to vote to adopt the alternative workweek schedule. Plaintiff alleges that Defendant failed to lawfully adopt an alternative workweek schedule.¹ Labor Code § 510 requires that employers must pay employees overtime for hours worked over eight in one workday and 40 hours in any one workweek. Labor Code § 1194 provides for a private right of action for an employee to seek unpaid overtime. Plaintiff alleges that CREATIVE SECURITY failed to lawfully adopt an alternative workweek schedule and failed to Plaintiff and other putative class members overtime for hours worked over eight in a day.

12. At all times relevant, Labor Code §§ 226.7 and 512, and IWC Wage Order 4-2001, § 11 have required employers to provide employees with (1) a first meal period of not less than 30 minutes during which they are relieved of all duty before working more than five hours and (2) a second duty-free meal period of not less than 30 minutes before working more than 10 hours per day. Further, an employer cannot require employees to stay on-site or be on-call during meal periods and breaks. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257. Plaintiff alleges that CREATIVE SECURITY required Plaintiff and other putative class members to take their first meal periods on-duty, despite no agreement to do so. Further, CREATIVE SECURITY required Plaintiff and other putative class members to carry company provided cellular telephones and be on-call during their breaks in violation of *Augustus*. In addition, Plaintiff and other putative class members often worked 10 hours or more per day, including many shifts over 12 hours. CREATIVE SECURITY had a policy and practice of failing to provide Plaintiff and other putative class members with their second meal periods on these shifts. Plaintiff and other putative class members did not receive a second meal period on shifts over 10 hours. Plaintiff

¹ There is no evidence that CREATIVE SECURITY properly held such an election in the Department of Industrial Relations Alternative Workweek Elections Database, available online here: <https://www.dir.ca.gov/databases/oprl/dlsr-awe.html>.

1 alleges that he and, on information and belief, other putative class members never waived their
2 right to a second meal period. Further, Plaintiff and other putative class members often worked
3 more than 12 hours in a day. Under Labor Code § 512(a), second meal periods are not waivable
4 for employees who work more than 12 hours in a day.

5 13. CREATIVE SECURITY had a policy and practice of failing to authorize and
6 permit Plaintiff and other putative class member to take discrete paid rest breaks of at least 10
7 minutes for every four hours worked or major fraction thereof as required by Labor Code § 226.7
8 and IWC Wage Order 4-2001, § 12(A). Plaintiff and putative class member typically worked
9 shifts of 10 or more hours a day, including shifts over 12 hours. CREATIVE SECUIRTY had a
10 policy and practice of failing to authorize and permit Plaintiff and other putative class members to
11 take adequate paid rest breaks in violation of Labor Code § 226.7 and IWC Wage Order 4-2001, §
12 12(A), including third rest breaks on shifts over 10 hours. In addition, Defendants required
13 Plaintiff and other Putative Class Members to stay on-site and remain on-call through company
14 provided cellular telephones during their rest breaks in violation of *Augustus*.

15 14. Labor Code § 226 provides that every employer is required, “semimonthly or at
16 the time of each payment of wages,” to give each employee an itemized wage statement that
17 includes “gross wages earned” as well as “all applicable hourly rates” and “the corresponding
18 number of hours worked at each hourly rate...” Defendants had a policy and practice of violating
19 Labor Code § 226 by failing to provide complete and accurate itemized wage statements to
20 Plaintiff and the putative class members in that the wage statements provided did not, among
21 other things, include the correct gross wages earned as well as correct hours worked at the correct
22 overtime rate.

23 15. Defendants had a policy and practice of violating California Labor Code §§ 201-
24 203 by failing to pay Plaintiff and putative class members all wages due and owing at the time of
25 discharge or voluntary quit. Plaintiff and putative class members still are owed wages, including
26 unpaid overtime for work over eight hours a shift.

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IV. CLASS ACTION ALLEGATIONS

16. Plaintiff brings this action on behalf of himself and as a class action under Code of Civil Procedure § 382 on behalf of a class of similarly situated persons employed by CREATIVE SECURITY in the State of California. Specifically, Plaintiff seeks to represent the class of all hourly non-exempt security guards who performed work for CREATIVE SECURITY at client locations throughout the State of California at any time during the four-year period preceding the filing of this Complaint and up through the present and until compliance with the law. Plaintiff also seeks to represent the following sub-classes of employees who worked for CREATIVE SECURITY at job sites within the State of California:

- (a) All hourly non-exempt security guards who performed work for CREATIVE SECURITY at any time during the four-year period preceding the filing of this Complaint and up through the present and until compliance with the law, inclusive, who were not paid overtime for hours worked over eight in a shift;
- (b) All hourly non-exempt security guards who performed work for CREATIVE SECURITY at any time during the four-year period preceding the filing of this Complaint and up to the present and until compliance with the law, inclusive, who were not provided timely and compete meal periods;
- (c) All hourly non-exempt security guards who performed work for CREATIVE SECURITY at any time during the four-year period preceding the filing of this Complaint and up to the present and until compliance with the law, inclusive, who were not provided required paid rest breaks;
- (d) All hourly non-exempt security guards who performed work for CREATIVE SECURITY at any time during the three-year period preceding the filing of this Complaint and up to the present and until compliance with the law, inclusive, who were not paid all wages due upon discharge or voluntary quit as required by Labor Code §§ 201-203; and

(e) All hourly non-exempt on-site employees who performed work for CREATIVE SECURITY at any time during the one-year period preceding the filing of this Complaint and up through the present and until compliance with the law, inclusive, who did not receive complete and accurate wage statements.

17. The class and sub-classes that Plaintiff seeks to represent contain numerous members and are clearly ascertainable. Plaintiff reserves the right under Rule 3.765 of the California Rules of Court to amend or modify the class and sub-class descriptions with greater specificity or further division into additional sub-classes or limitation to particular issues.

18. By their unlawful practices and policies, Defendants have violated the rights of employees under the laws and regulations of the State of California. The questions raised are, therefore, of common or general interest to the class members, who have a well-defined community of interest in the questions of law and fact raised in this action.

19. Plaintiff's claims are typical of those of the class, as Plaintiff now suffers and has suffered in the past from the same violations of the law as other members of the proposed class. Plaintiff has retained competent counsel to represent himself and the class, and Plaintiff will fairly and adequately represent the interests of the class.

20. This action may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed class and sub-classes are easily ascertainable.

Numerosity

21. The members of the proposed class are so numerous that joinder of all class members is impractical. While the precise number of class members has not been determined at this time, Plaintiff is informed and believes that Defendants have employed as many as 600 workers or more in the relevant time period.

22. Plaintiff alleges that Defendants' employment records would contain relevant information as to the number of members of the proposed class.

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Commonality

23. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. Those common questions of law and fact include, without limitation, the following:

- (a) Whether Defendants had a policy or practice of violating Labor Code § 1194 by failing to pay class members overtime for hours worked over eight in a shift;
- (b) Whether Defendants had a policy and practice of failing to provide class members with all of their required meal periods;
- (c) Whether Defendants had a policy and practice of failing to authorize and permit class members to take adequate duty-free rest periods;
- (d) Whether Defendants had a policy and practice of violating Labor Code § 226 by failing to provide required information on wage statements, such as gross wages earned, and whether those statements were accurate;
- (e) Whether Defendants had a policy and practice of violating Labor Code §§ 201-203 by failing to pay departing class members all wages, including overtime wages, due at the time of discharge or voluntary quit; and
- (f) Whether Plaintiff and the class members are entitled to equitable and restitutionary relief under Business and Professions Code §§ 17200, *et seq.*

Typicality and Adequacy of Representation

24. Plaintiff's claims are typical of the claims of the proposed class. Plaintiff and all members of the proposed class sustained injuries and economic loss arising out of and caused by Defendants' common course of conduct in violation of laws and regulations alleged in this Complaint.

25. Plaintiff will fairly and adequately protect the interests of all proposed class members. Plaintiff has no interests that are antagonistic to those of the proposed class and is not subject to any unique defenses. Plaintiff also has retained counsel experienced in class actions and in representing employees and protecting employees' rights.

Superiority of Class Action

26. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed class members is not practicable, and questions of law and fact common to the class predominate over any questions affecting only individual members of the class. Each member of the class has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

27. Class action treatment will allow those similarly-situated persons to litigate their claims in the manner that is most effective and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

28. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all proposed class members is impractical. Even if every proposed class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts if individual litigation of numerous cases were to be required. Individualized litigation also would present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action with respect to some or all of the issues presented herein gives rise to fewer management difficulties, conserves the resources of the court system and the parties and protects the rights of each proposed class member. Further, it prevents the very real harm that would be suffered by numerous putative class members who simply will be unable to enforce individual claims of this size on their own, and by Defendants' competitors, who will be placed at an unfair competitive disadvantage as their punishment for obeying the law. Plaintiff does not anticipate difficulties in the management of this action.

V. FIRST CAUSE OF ACTION

(UNFAIR BUSINESS PRACTICES – CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)

29. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

1 30. California Business and Professions Code §§ 17200, *et seq.*, prohibit unfair
2 competition in the form of any unlawful, unfair, deceptive, or fraudulent business act or practice.

3 31. Beginning at an exact date unknown to Plaintiff, but at least during the four-year
4 period preceding the filing of this Complaint and up through the present, Defendants committed
5 unlawful acts and practices as defined by California Business and Professions Code §§ 17200, *et*
6 *seq.* Defendants have had a policy and practice of engaging in unlawful and unfair business
7 practices including, but not limited to, violations of:

- 8 (a) Labor Code § 1194 (failure to pay all overtime wages);
9 (b) Labor Code §§ 226.7 and 512 (failure to provide meal periods);
10 (c) Labor Code § 226.7 (failure to authorize and permit adequate duty-free rest
11 breaks)
12 (d) Labor Code § 226 (failure to provide accurate itemized wage statements);
13 (e) Labor Code §§ 201-203 (failure to pay all wages, including statutory
14 minimum wages, due and owing at time of discharge or voluntary quit);
15 and
16 (f) Industrial Welfare Commission IWC Wage Order No. 4-2001.

17 32. The violations of those laws and the acts and practices described in this Complaint
18 constitute unlawful, unfair, deceptive and fraudulent business acts and practices and unfair
19 competition within the meaning of Business and Professions Code §§ 17200, *et seq.*

20 33. As a direct and proximate result of those acts and practices, Defendants have
21 received and continue to hold as ill-gotten gains money and property belonging to Plaintiff and
22 the class, in that Defendants have profited in those amounts from their unlawful practices.

23 34. Business and Professions Code § 17203 provides that the Court may restore to any
24 person in interest any money or property that may have been acquired by means of unfair
25 competition and may order Defendants to make restitution to Plaintiff for the practices alleged in
26 this Complaint. Plaintiff and putative class members are entitled under Business and Professions
27 Code §§ 17203 and 17208 to restitution and restoration of all wages unlawfully withheld at any
28 time during the four-year period preceding the filing of this Complaint and up through the present

1 and until the violations have been corrected, together with all civil penalties owed in connection
2 with those violations. Plaintiff will, upon leave of the Court, amend this Complaint to state those
3 amounts when they are ascertained.

4 35. Plaintiff's success in this action will enforce important rights affecting the public
5 interest and, in that regard, Plaintiff sues on behalf of the proposed class as well as on behalf of
6 himself and the general public. Plaintiff seeks and is entitled to unpaid wages and any other
7 remedy owing to Plaintiff and all others similarly situated.

8 36. To prevent Defendants from profiting and benefiting from their wrongful and
9 illegal policies and practices, an order requiring Defendants to restore to Plaintiff and class
10 members all monies and property unlawfully gained through Defendants' unlawful practices is
11 appropriate and necessary.

12 37. Plaintiff takes upon himself enforcement of these laws and lawful claims. There is
13 a financial burden incurred in pursuing this action and it would be against the interests of justice
14 to penalize Plaintiff by forcing him to pay attorneys' fees from the recovery in this action.
15 Therefore, an award of attorneys' fees is appropriate under California Code of Civil Procedure §
16 1021.5.

17 Wherefore, Plaintiff prays for relief as set forth below.

18 **VI. SECOND CAUSE OF ACTION**

19 **(UNPAID OVERTIME WAGES– LABOR CODE § 1194)**

20 38. Plaintiff repeats and realleges each and every paragraph above as though fully set
21 forth herein.

22 39. Plaintiff alleges that CREATIVE SECURITY failed to lawfully adopt an
23 alternative workweek schedule in accordance with Labor Code § 511 and failed to pay Plaintiff
24 and other putative class members overtime for hours worked over eight in a day as required by
25 Labor Code §§ 510 and 1194.

26 40. Plaintiff seeks to recover all overtime wages due to Plaintiff and other putative
27 class members and interest, under Labor Code §§ 1194 and 218.6.

28 41. Plaintiff seeks attorneys' fees and costs under Labor Code § 1194, which provides

1 for a private right of action to recover overtime compensation and also provides for the recovery
2 of attorneys' fees and costs by a prevailing employee.

3 Wherefore, Plaintiff prays for relief as set forth below.

4 **VII. THIRD CAUSE OF ACTION**

5 **(UNPAID OVERTIME WAGES –**

6 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

7 42. RESERVED. Plaintiff will add this cause of action to an amended complaint as
8 allowed by Labor Code § 2699.3(a)(2)(C).

9 **VIII. FOURTH CAUSE OF ACTION**

10 **(FAILURE TO PROVIDE MEAL PERIODS)**

11 43. Plaintiff repeats and realleges each and every paragraph above as though fully set
12 forth herein.

13 44. At all relevant times, the Defendants were "employers" of Plaintiff and other
14 putative class members within the meaning of Labor Code §§ 226.7 and 512, and IWC Wage
15 Order 4-2001, § 2(F).

16 45. At all relevant times, Plaintiff and other putative class members were "employees"
17 of Defendants within the meaning of Labor Code §§ 226.7 and 512, and IWC Wage Order 4-
18 2001, § 2(E). Plaintiff and other putative class members also were employed by Defendants in a
19 professional, technical, clerical, mechanical, and similar occupation, as defined in and within the
20 meaning of IWC Wage Order 4-2001, § 2(O).

21 46. At all relevant times, Labor Code §§ 226.7 and 512, and IWC Wage Order 4-2001,
22 § 11 provide that employees must receive a first meal period of not less than 30 minutes before
23 working more than five hours, and a second meal period of not less than 30 minutes before
24 working more than 10 hours in a day. Further, an employer cannot require employees to stay on-
25 site or on-call during meal periods. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257.

26 47. As alleged above, Defendants failed to provide Plaintiff and other putative class
27 members with their legally required meal periods. CREATIVE SECURITY required Plaintiff
28 and other putative class members to take their first meal periods on-duty, despite no agreement to

1 do so. Further, CREATIVE SECURITY required Plaintiff and other putative class members to
2 carry company provided cellular telephones and be on-call during their meal periods in violation
3 of *Augustus*. In addition, Plaintiff and other putative class members often worked 10 hours or
4 more per day, including many shifts over 12 hours. CREATIVE SECURITY had a policy and
5 practice of failing to provide Plaintiff and other putative class members with their second meal
6 periods on these shifts. Plaintiff and other putative class members did not receive a second meal
7 period on shifts over 10 hours. Plaintiff alleges that he and, on information and belief, other
8 putative class members never waived their right to a second meal period. Further, Plaintiff and
9 other putative class members often worked more than 12 hours in a day. Under Labor Code §
10 512(a), second meal periods are not waivable for employees who work more than 12 hours in a
11 day.

12 48. Defendants' practices of failing to provide employees meal periods violate Labor
13 Code §§ 226.7 and 512(a), and IWC Wage Order 4-2001, § 11.

14 49. Plaintiff and members of proposed class have lost money as a direct result of
15 Defendants' unlawful practices as alleged above in that they were required to work shifts longer
16 than 10 hours, were not provided meal periods, and were not compensated correctly for not
17 having been provided such meal periods, respectively. Accordingly, Plaintiff and other putative
18 class members are entitled to proper compensation, restitution and premium pay for each missed,
19 late, and/or short meal period as required by law and to the waiting time penalties attached to
20 those violations.

21 50. CREATIVE SECURITY's violations of Labor Code §§ 226.7 and 512 and IWC
22 Wage Order 4-2001 as alleged above are ongoing and will continue unless and until this Court
23 enters an injunction barring those violations.

24 51. Plaintiff is entitled to an award of attorneys' fees and costs and expenses incurred
25 in this action under Code of Civil Procedure § 1021.5.

26 Wherefore, Plaintiff prays for relief as set forth below.

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IX. FIFTH CAUSE OF ACTION
(FAILURE TO PROVIDE MEAL PERIODS –
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

52. RESERVED. Plaintiff will add this cause of action to an amended complaint as allowed by Labor Code § 2699.3(a)(2)(C).

X. SIXTH CAUSE OF ACTION
(FAILURE TO AUTHORIZE AND PERMIT REST BREAKS)

53. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

54. At all relevant times, the Defendants were “employers” of Plaintiff and other putative class members within the meaning of Labor Code §§ 226.7 and 512, and IWC Wage Order 4-2001, § 2(H).

55. At all relevant times, Plaintiff and other putative class members were “employees” of Defendants within the meaning of Labor Code §§ 226.7 and 512, and IWC Wage Order 4-2001, § 2(H). Plaintiff and other putative class members were employed by Defendants in a professional, technical, clerical, mechanical, or similar occupation, as defined in and within the meaning of IWC Wage Order 4-2001, § 2(O).

56. At all relevant times, Labor Code § 226.7 and IWC Wage Order 4-2001, § 12 require employers to authorize and permit employees to take discrete paid rest breaks of at least ten minutes for every four hours worked or major fraction thereof.

57. CREATIVE SECURITY had a policy and practice of failing to authorize and permit Plaintiff and other putative class member to take discrete paid rest breaks of at least 10 minutes for every four hours worked or major fraction thereof as required by Labor Code § 226.7 and IWC Wage Order 4-2001, § 12(A). Plaintiff and putative class member typically worked shifts of over ten hours or more a day, including many shifts over 12 hours. FORBES SECURITY had a policy and practice of failing to authorize and permit Plaintiff and other putative class members to take adequate paid rest breaks in violation of Labor Code § 226.7 and IWC Wage Order 4-2001, § 12(A), including third rest breaks on shifts over 10 hours. In

1 addition, Defendants required Plaintiff and other Putative Class Members to stay on-site and
2 remain on-call through company provided cellular phones in violation of *Augustus*.

3 58. Defendants' practices of failing to authorize and permit employees to take discrete
4 paid rest breaks of not less than 10 minutes for every four hours worked or major fraction thereof,
5 and of requiring employees to work through their rest breaks, violate Labor Code § 226.7 and
6 IWC Wage Order 4-2001, § 12(A).

7 59. Plaintiff and other putative class members lost money as a direct result of
8 Defendants' unlawful practices as alleged above in that they were not compensated correctly for
9 not having been provided adequate rest periods. Accordingly, Plaintiff and other putative class
10 members are entitled to proper compensation, restitution and premium pay for each rest period
11 that was not provided as required by Labor Code § 226.7.

12 60. Defendants' violations of Labor Code § 226.7 and IWC Wage Order 4-2001 as
13 alleged above are ongoing and will continue unless and until this Court enters an injunction
14 barring those violations.

15 61. Plaintiff is entitled to an award of attorneys' fees and costs and expenses incurred
16 in this action under Code of Civil Procedure § 1021.5.

17 Wherefore, Plaintiff prays for relief as set forth below.

18 **XI. SEVENTH CAUSE OF ACTION**

19 **(FAILURE TO AUTHORIZE AND PERMIT REST BREAKS –**

20 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

21 62. RESERVED. Plaintiff will add this cause of action to an amended complaint as
22 allowed by Labor Code § 2699.3(a)(2)(C).

23 **XII. EIGHTH CAUSE OF ACTION**

24 **(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)**

25 63. Plaintiff repeats and realleges each and every paragraph above as though fully set
26 forth herein.

27 64. As alleged above, during all or some portion of the proposed class period,
28 Defendants violated Labor Code § 226 through their practice of failing to provide their

employees, including Plaintiff and members of the proposed class, with complete and accurate itemized wage statements. Among other things, the wage statements provided by Defendants violated Labor Code § 226(a) by failing to state accurately the gross wages earned and the accurate hours worked by each employee at the correct hourly rate.

65. Under Labor Code § 226(e), Plaintiff and members of the proposed class are entitled to recover the greater of actual damages or \$50 for the initial pay period in which a violation occurred and \$100 for each subsequent pay period in which Defendants failed to comply with the statute, up to a maximum of \$4,000 per employee.

66. Under Labor Code § 226(g), Plaintiff is entitled to an award of attorneys' fees and costs incurred in bringing this action.

Wherefore, Plaintiff prays for relief as set forth below.

XIII. NINTH CAUSE OF ACTION

**(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS –
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

67. RESERVED. Plaintiff will add this cause of action to an amended complaint as allowed by Labor Code § 2699.3(a)(2)(C).

XIV. TENTH CAUSE OF ACTION

(LABOR CODE §§ 201-203)

68. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

69. Labor Code §§ 201 and 202 require an employer to pay its employees all wages due within the times specified by law. Labor Code § 203 provides that if an employer willfully fails to pay those wages within the times specified by Labor Code §§ 201 or 202, the employer must continue to pay the subject employees' wages day-by-day, weekends included, until the back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

70. Defendants unfairly and unlawfully have had a policy and practice of violating Labor Code §§ 201 and 202 by failing to pay Plaintiff and the class all wages earned during their employment within the times specified by those sections.

72. More than 30 days have passed since Plaintiff and certain class members left Defendants' employ.

Wherefore, Plaintiff prays for relief as set forth below.

(LABOR CODE §§ 201-203 –

74. RESERVED. Plaintiff will add this cause of action to an amended complaint as allowed by Labor Code § 2699.3(a)(2)(C).

(LABOR CODE § 204 –

75. RESERVED. Plaintiff will add this cause of action to an amended complaint as allowed by Labor Code § 2699.3(a)(2)(C).

Plaintiff prays for relief as follows:

- CASE NO.

- iii. For disgorgement of profits and restitution and restoration of all costs incurred, sums or property unlawfully withheld and/or losses caused by the policy and practice of violating Business and Professions Code §§ 17200, *et seq.* by failing to provide proper meal and rest periods and to pay all premium wages due and owing for those failures;
- iv. For compensatory damages in amounts according to proof at time of trial representing the amount of overtime wage compensation owed to Plaintiff and the class members for the policy and practice of failing to pay all wages due and owing during the applicable limitations period preceding the filing of the Complaint and up through and including the present and until the date of compliance with the law;
- v. For compensatory damages in amounts according to proof at time of trial representing the amount of unpaid compensation owed to Plaintiff and class members for missed meal and rest periods due and owing during the applicable limitations period preceding the filing of the Complaint and up through and including the present and until the date of compliance with the law;
- vi. For the statutory amounts provided by Labor Code § 226(e) for Plaintiff and class members during the applicable limitations period preceding the filing of this Complaint and up through and including the present and until the date of compliance with the law;
- vii. For waiting time penalties as provided by Labor Code § 203 for Plaintiff and class members;
- viii. For reasonable attorneys' fees and costs as allowed by Labor Code §§ 1194(a), and 226(g) and Code of Civil Procedure § 1021.5;
- ix. For all interest as required by Labor Code § 218.6 and other applicable law;

- x. For all costs of this suit as allowed by law, including Labor Code §§ 218.5,
226(g), and 1194; and
- xi. For such other and further relief as the Court may deem proper.

Dated: March 24, 2021

Respectfully submitted,

KELLER GROVER LLP

By: 

ERIC A. GROVER

ROBERT SPENCER

Attorneys for Plaintiff and the Proposed Class

JURY TRIAL DEMAND

Plaintiff demands a trial by jury as to all issues so triable.

Dated: March 24, 2021

KELLER GROVER LLP

By: 

ERIC A. GROVER

ROBERT SPENCER

Attorneys for Plaintiff and the Proposed Class