

1 DAVID G. SPIVAK (SBN 179684)

2 david@spivaklaw.com

3 MARALLE MESSRELIAN (SBN 316974)

4 maralle@spivaklaw.com

5 MAYA CHEAITANI (SBN 335777)

6 maya@spivaklaw.com

7 THE SPIVAK LAW FIRM

8 16530 Ventura Blvd., Suite 203

9 Encino, CA 91436

10 Telephone (213) 725-9094

11 Facsimile (213) 634-2485

12 Attorneys for Plaintiffs,

13 MAKAYLA FONTES and MELANIE JOHNSON, and all others similarly situated

14 (Additional Counsel for Plaintiffs on Next Page)

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF FRESNO**
17 **(UNLIMITED JURISDICTION)**

18 MAKAYLA FONTES and MELANIE

19 JOHNSON, on behalf of themselves, all others
20 similarly situated, and as “aggrieved employees”
21 on behalf of other “aggrieved employees” under
22 the Labor Code Private Attorneys General Act of
23 2004,

24 *Plaintiffs,*

25 vs.

26 GUARD FORCE INC., a Delaware corporation;
27 GUARD FORCE INTERNATIONAL, INC., a
28 Delaware corporation; GORDON L. BROOKS,
an individual; and DOES 1–50, inclusive,

Defendants.

E-FILED

11/16/2021 5:07 PM

Superior Court of California

County of Fresno

By: C. York, Deputy

Case No.: 21CECG02857

FIRST AMENDED CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Rest Periods (Lab. Code §§ 226.7 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 512 and 1198);
3. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
7. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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ADDITIONAL ATTORNEY FOR PLAINTIFF

Walter Haines (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave, #301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 Plaintiffs, MAKAYLA FONTES and MELANIE JOHNSON (hereafter “Plaintiffs”), on
2 behalf of themselves and all others similarly situated, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiffs brings this class and representative action against GUARD FORCE
5 INC., a Delaware corporation, GUARD FORCE INTERNATIONAL, INC., a Delaware
6 corporation, GORDON L. BROOKS, an individual, and DOES 1–50, inclusive (collectively
7 “Defendants”) for alleged violations of the California Labor Code, Industrial Welfare
8 Commission Order No. 4–2001 (hereafter “the Wage Order”), and the Business and Professions
9 Code.

10 2. As set forth in more detail below, Plaintiffs allege that Defendants are liable to
11 them and other similarly situated current and former employees in California for unpaid wages
12 and other related relief. These claims are based on Defendants’ alleged failures to: (1) Provide all
13 meal and rest periods in compliance with California law, (2) Pay all wages earned for all hours
14 worked at the correct rates of pay, (3) Provide accurate and complete itemized written wage
15 statements, (4) Timely pay all final wages upon termination of employment, and (5) Fairly
16 compete. Accordingly, Plaintiffs now seeks to recover unpaid wages and related relief through
17 this class and representative action.

18 **PARTIES**

19 3. Plaintiff Makayla Fontes (“FONTES”) is a resident of California. On
20 approximately April 17, 2020, Defendants began to employ Plaintiff Fontes in Fresno in the
21 position of security guard. Defendants continuously employed her in that capacity until on or
22 about September 28, 2020 when her employment ended.

23 4. Plaintiff Melanie Johnson (“JOHNSON”) is a resident of California. On
24 approximately July 20, 2020, Defendants began to employ Plaintiff Johnson in Fresno in the
25 position of security guard. Defendants continuously employed her in that capacity until on or
26 about September 30, 2020 when her employment ended.

27 5. At all relevant times, Plaintiffs were "employees" within the meaning of Title 8
28 California Code of Regulations § 11040 and "aggrieved employees" within the meaning of Labor
Code § 2699(c).

6. Defendant GUARD FORCE INC., is a corporation organized and existing under
the laws of Delaware and a citizen of California based on Plaintiffs’ information and belief.



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 7. Defendant GUARD FORCE INTERNATIONAL, INC., is a corporation
2 organized and existing under the laws of Delaware and a citizen of California based on Plaintiffs'
3 information and belief.

4 8. Defendant GORDON L. BROOKS is an individual and a citizen of California
5 based on Plaintiffs' information and belief.

6 9. In relevant part, California Labor Code § 558.1 states:

7 (a) Any employer or other person acting on behalf of an employer, who violates,
8 or causes to be violated, any provision regulating minimum wages or hours and
9 days of work in any order of the Industrial Welfare Commission, or violates, or
causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
liable as the employer for such violation.

10 (b) For purposes of this section, the term "other person acting on behalf of an
11 employer" is limited to a natural person who is an owner, director, officer, or
12 managing agent of the employer, and the term "managing agent" has the same
meaning as in subdivision (b) of § 3294 of the Civil Code.

13 10. Based on Plaintiffs' information and belief, Defendant GORDON L. BROOKS is
14 natural person and an owner, director, officer, and/or managing agent of Defendants GUARD
15 FORCE INC., and GUARD FORCE INTERNATIONAL, INC., who directly or indirectly, or
16 through an agent or any other person, employed or exercised control over the wages, hours, or
17 working conditions of Plaintiffs and the Class. Therefore, he is liable to Plaintiffs and the Class
18 for his violations of, or causing Defendants to violate the Labor Code and the Wage Order
19 pursuant to Labor Code section 558.1.

20 11. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
21 participation in the conduct alleged herein of the Defendants sued as DOES 1–50, inclusive, but
22 are informed and believe and thereon allege that said Defendants are legally responsible for the
23 wrongful conduct alleged herein and therefore sue these Defendants by such fictitious names.
24 Plaintiffs will amend the Complaint to allege the true names and capacities of the DOE
Defendants when ascertained.

25 12. Plaintiffs are informed and believe and thereon allege that, at all relevant times
26 herein, all Defendants were the agents, employees, servants, masters, and/or employers of the
27 remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course
28 and scope of such agency or employment and with the approval and ratification of each of the



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 other Defendants.

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

5 14. Plaintiffs are informed and believe and thereon allege that each and every one of
6 the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants,
7 each acting as agents and/or employees, and/or under the direction and control of each of the other
8 Defendants, and that said acts and failures to act were within the course and scope of said agency,
9 employment, and/or direction and control.

10 **CLASS ALLEGATIONS**

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

15 16. **Class Definition:** The Class is defined as follows: All individuals Defendants
16 currently and formerly employed or contracted with in California, including but not limited to
17 security guards, individuals performing work comparable to the aforementioned, and workers in
18 comparable positions at any time during the period beginning four years prior to the filing of this
19 action and ending on the date that final judgment is entered in this action (“Class” or “Class
20 Members”).

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

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

27 19. **Commonality and Predominance:** Common questions of law and fact exist as to
28 all Class Members and predominate over any questions which affect only individual Class



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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Members. These questions include, but are not limited to:

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

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

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

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

E. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

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

20. **Typicality:** Plaintiffs' claims are typical of the other Class Members' claims. Plaintiffs are informed and believe and thereon allege that Defendants have a policy and/or practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor Code, the Wage Order, and the Business and Professions Code.

21. **Adequacy of Class Representative:** Plaintiffs are adequate class representatives in that they have no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiffs are dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiffs will fairly and adequately represent and protect the interests of Class Members.

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

23. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

STATEMENT OF FACTS

24. On approximately April 17, 2020, Defendants began to employ Plaintiff Fontes in Fresno in the position of security guard. Defendants continuously employed her in that capacity until on or about September 28, 2020 when her employment ended.

25. On approximately July 20, 2020, Defendants began to employ Plaintiff Johnson in Fresno in the position of security guard. Defendants continuously employed her in that capacity until on or about September 30, 2020 when her employment ended.

26. At all relevant times, Defendants issued wages to Plaintiffs and all of the other Class Members on a basis and paid them by the hour. At all relevant times, Defendants classified Plaintiffs and all of the other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

27. Defendants failed to compensate Plaintiffs and all of the other Class Members for all hours worked at the applicable minimum or regular rates of pay. Defendants required Plaintiffs and all of the Class Members to arrive 15 minutes before their scheduled work shifts, though Defendants did not pay them for this 15-minute period. Defendants terminated Plaintiff Johnson's employment when she refused to show up 15 minutes early without pay. Additionally, Defendants would only pay Plaintiffs and the Class Members for the length of time Defendants scheduled Plaintiffs and the Class Members to work. Defendants did not provide Plaintiffs and the Class Members with any means to record their start and stop times. Because Defendants required Plaintiffs and the Class Members to work beyond their scheduled shift, Defendants did not pay Plaintiffs and the Class Members for many of their daily work hours.

28. Defendants failed to compensate Plaintiffs and all of the other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. Defendants' scheduling and wage payment practices described above prevented Plaintiffs and the Class Members from being paid overtime premium rates for all hours worked in excess of eight in a day, in excess of 40 in a week, and



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

hours worked on the seventh day of the same workweek.

29. Defendants failed to compensate Plaintiffs and all of the other Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. Defendants' scheduling and wage payment practices described above also prevented Plaintiffs and the Class Members from being paid doubletime premium rates for all hours worked in excess of 12 in a day, and hours worked in excess of the first eight hours on the seventh day of the same workweek.

30. At all relevant times, Defendants failed to provide Plaintiffs and all of the other Class Members with all timely 30-minute, off-duty meal periods. Defendants' required Plaintiffs and the Class Members to work alone and to take their meal periods on-duty and without cover. Defendants also failed to pay premium wages for days on which they failed to provide Plaintiffs and all of the other Class Members with meal periods as required by law.

31. At all relevant times, Defendants failed to authorize and permit Plaintiffs and all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. Defendants' required Plaintiffs and the Class Members to work alone and to take their rest periods on-duty and without cover. Defendants also failed to pay premium wages for days on which they failed to authorize and permit Plaintiffs and all of the other Class Members to take rest breaks as required by law.

32. At all relevant times, Defendants failed to issue to Plaintiffs and all of the other Class Members complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the wage statements they issued to Plaintiffs and all of the other Class Members the unpaid wages and hours worked discussed above. The wage statements fail to state all minimum wages earned, all hours worked at the correct rates of pay, all regular wages earned, all overtime wages earned, all doubletime wages earned, all rest break premium wages earned, and all meal period premium wages earned.

33. Defendants also failed to timely pay Plaintiffs and all of the other Class Members all earned wages as described above during and at the conclusion of employment.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Lab. Code §§ 226.7 and 1198)



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

(By Plaintiffs and the Class against all Defendants)

34. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

35. At all relevant times during the applicable limitations period, Plaintiffs and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7 and 1198, and the Wage Order.

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

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

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

Rest Periods

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

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

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

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

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 employee one additional hour of pay at the employee's regular rate of
2 compensation for each work day that the meal or rest period is not provided.

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

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

8 41. At all relevant times, Defendants failed to authorize and permit Plaintiffs and all
9 of the other Class Members to take ten-minute, paid, duty-free rest breaks every four hours
10 worked or major fraction thereof. Defendants did not seek an exemption from the rest period
11 protections of the Wage Order from the California Division of Labor Standards Enforcement.
12 Defendants required Plaintiffs and the Class Members to work alone and to take their rest periods
13 on-duty and without cover. Moreover, Defendants failed to pay Plaintiffs and all of the other
14 Class Members premium wages on workdays Defendants failed to provide Plaintiffs and all of
15 the other Class Members with 10-minute rest periods every four hours worked or major fraction
16 thereof.

17 42. Plaintiffs are informed and believe and thereon allege that, at all relevant times
18 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
19 which resulted in Defendants not providing the Class with all rest breaks required by California
20 law.

21 43. In relevant part, California Labor Code § 558.1 states:

22 (a) Any employer or other person acting on behalf of an employer, who violates,
23 or causes to be violated, any provision regulating minimum wages or hours and
24 days of work in any order of the Industrial Welfare Commission, or violates, or
25 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
26 liable as the employer for such violation.

27 (b) For purposes of this section, the term "other person acting on behalf of an
28 employer" is limited to a natural person who is an owner, director, officer, or
managing agent of the employer, and the term "managing agent" has the same
meaning as in subdivision (b) of § 3294 of the Civil Code.

44. Based on Plaintiffs' information and belief, Defendant GORDON L. BROOKS is
natural person and an owner, director, officer, and/or managing agent of Defendants GUARD



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 FORCE INC., and GUARD FORCE INTERNATIONAL, INC., who directly or indirectly, or
2 through an agent or any other person, employed or exercised control over the wages, hours, or
3 working conditions of Plaintiffs and the Class. Therefore, he is liable to Plaintiffs and the Class
4 for his violations of, or causing Defendants to violate the Labor Code and the Wage Order
pursuant to Labor Code section 558.1.

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

8 46. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiffs and
9 the Class Members are entitled to premium wages for workdays in which one or rest breaks were
10 not provided to them.

11 **SECOND CAUSE OF ACTION**
12 **FAILURE TO PROVIDE MEAL PERIODS**
13 **(Lab. Code §§ 226.7, 512, and 1198)**

14 **(By Plaintiffs and the Class against all Defendants)**

15 47. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

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

18 49. In relevant part, California Labor Code § 1198 states:

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

23 50. In relevant part, California Labor Code § 512 states:

24 An employer shall not employ an employee for a work period of more than five
25 hours per day without providing the employee with a meal period of not less than
26 30 minutes, except that if the total work period per day of the employee is no
27 more than six hours, the meal period may be waived by mutual consent of both
the employer and employee.

28 An employer shall not employ an employee for a work period of more than 10
hours per day without providing the employee with a second meal period of not



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Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 less than 30 minutes, except that if the total hours worked is no more than 12
2 hours, the second meal period may be waived by mutual consent of the employer
3 and the employee only if the first meal period was not waived.

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

5 **Meal Periods**

6 (A) “No employer shall employ any person for a work period of more than
7 five (5) hours without a meal period of not less than 30 minutes, except that when
8 a work period of not more than six (6) hours will complete the day’s work the
9 meal period may be waived by mutual consent of the employee and the
10 employee. Unless the employee is relieved of all duty during a 30-minute meal
11 period, the meal period shall be considered an ‘on duty’ meal period and counted
12 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.”

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

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

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

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

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



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16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 54. Defendants intentionally failed to provide Plaintiffs and the Class Members with
2 all required 30-minute duty-free meal periods free from any work duties in accordance with the
3 Wage Order.

4 55. At all relevant times, Defendants failed to provide Plaintiffs and all of the other
5 Class Members with all timely meal periods. Defendants denied Plaintiffs and all of the other
6 Class Members their 30-minute off-duty meal period within the first five hours of work.
7 Defendants required Plaintiffs and the Class Members to work alone and to take their meal
8 periods on-duty and without cover and the nature of their work did not require on duty meal
9 periods. Furthermore, Defendants failed to pay premium wages for days on which they failed to
10 provide Plaintiffs and all of the other Class Members with timely meal periods.

11 56. Plaintiffs are informed and believe and thereon allege that, at all relevant times
12 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
13 which resulted in Defendants not providing the Class with all off-duty meal periods required by
14 California law.

15 57. In relevant part, California Labor Code § 558.1 states:

16 (a) Any employer or other person acting on behalf of an employer, who violates,
17 or causes to be violated, any provision regulating minimum wages or hours and
18 days of work in any order of the Industrial Welfare Commission, or violates, or
19 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
20 liable as the employer for such violation.

21 (b) For purposes of this section, the term “other person acting on behalf of an
22 employer” is limited to a natural person who is an owner, director, officer, or
23 managing agent of the employer, and the term “managing agent” has the same
24 meaning as in subdivision (b) of § 3294 of the Civil Code.

25 58. Based on Plaintiffs’ information and belief, Defendant GORDON L. BROOKS is
26 natural person and an owner, director, officer, and/or managing agent of Defendants GUARD
27 FORCE INC., and GUARD FORCE INTERNATIONAL, INC., who directly or indirectly, or
28 through an agent or any other person, employed or exercised control over the wages, hours, or
working conditions of Plaintiffs and the Class. Therefore, he is liable to Plaintiffs and the Class
for his violations of, or causing Defendants to violate the Labor Code and the Wage Order
pursuant to Labor Code section 558.1.

 59. As a result of Defendants’ unlawful conduct, Plaintiffs and the Class Members



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Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
2 wages owed for all meal periods not provided to them.

3 60. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiffs and
4 the Class Members are entitled to premium wages for workdays in which one or more timely,
5 off-duty meal periods were not provided to them.

6 **THIRD CAUSE OF ACTION**

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

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

9 **(By Plaintiffs and the Class against Defendants)**

10 61. Plaintiffs incorporates all paragraphs of the Complaint as if fully alleged herein.

11 62. At all relevant times, Plaintiffs and the other Class Members have been non-
12 exempt employees of Defendants and entitled to the benefits and protections of California Labor
13 Code §§ 510, 1194, 1197, and 1198 and the Wage Order.

14 63. § 2 of the Wage Order defines “hours worked” as “the time during which an
15 employee is subject to the control of an employer, and includes all the time the employee is
16 suffered or permitted to work, whether or not required to do so.”

17 64. § 3 of the Wage Order states:

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

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

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

(b) Double the employee’s regular rate of pay for all hours worked in excess of
12 hours in any workday and for all hours worked in excess of eight (8) hours



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Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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on the seventh (7th) consecutive day of work in a workweek.

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

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

66. Labor Code § 510 states:

Eight 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. Nothing in this § requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

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

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

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

70. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

71. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiffs and all of the other Class Members for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the



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Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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correct rates of pay.

72. In relevant part, California Labor Code § 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

73. Based on Plaintiffs’ information and belief, Defendant GORDON L. BROOKS is natural person and an owner, director, officer, and/or managing agent of Defendants GUARD FORCE INC., and GUARD FORCE INTERNATIONAL, INC., who directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of Plaintiffs and the Class. Therefore, he is liable to Plaintiffs and the Class for his violations of, or causing Defendants to violate the Labor Code and the Wage Order pursuant to Labor Code section 558.1.

74. Plaintiffs are informed and believe and thereon allege that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’ failure to compensate Plaintiffs and the other Class Members for all hours worked as required by California law.

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

76. Pursuant to Labor Code § 1194, Plaintiffs, on behalf of themselves and Class Members, seek to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys’ fees, all in amounts subject to proof.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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(Lab. Code § 226)

(By Plaintiffs and the Class against all Defendants)

77. Plaintiffs incorporate all paragraphs of the Complaint as if fully alleged herein.

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

79. Pursuant to California Labor Code § 226(a), Plaintiffs and the other Class Members were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate itemized statement 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 § 515 or any applicable order of the Industrial Welfare Commission,

(3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,

(4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,

(5) Net wages earned,

(6) The inclusive dates of the period for which the employee is paid,

(7) The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,

(8) The name and address of the legal entity that is the employer, and

(9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

81. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer



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Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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injury if the employer fails to provide accurate and complete information as required by California Labor Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement alone one or more of the following:

- A. 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 California Labor Code § 226(a);
- B. Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period;
- C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period; and
- D. The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number

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

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

84. Defendants’ failure to provide Plaintiffs and the other Class Members with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiffs and the other Class Members with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

85. As a result of being provided with inaccurate wage statements by Defendants, Plaintiffs and the other Class Members have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements



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(213) 725-9094 Tel
(213) 634-2485 Fax
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1 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
2 and mathematical computations to determine the amounts of wages owed, has caused difficulty
3 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
4 inaccurate information about wages to state and federal government agencies. Further, Plaintiffs
5 and the other Class Members were not able to ascertain from the wage statements whether
6 Defendants complied with their obligations under California Labor Code § 226(a).

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

13 87. In relevant part, California Labor Code § 558.1 states:

14 (a) Any employer or other person acting on behalf of an employer, who violates,
15 or causes to be violated, any provision regulating minimum wages or hours and
16 days of work in any order of the Industrial Welfare Commission, or violates, or
17 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
18 liable as the employer for such violation.

19 (b) For purposes of this section, the term "other person acting on behalf of an
20 employer" is limited to a natural person who is an owner, director, officer, or
21 managing agent of the employer, and the term "managing agent" has the same
22 meaning as in subdivision (b) of § 3294 of the Civil Code.

23 88. Based on Plaintiffs' information and belief, Defendant GORDON L. BROOKS is
24 natural person and an owner, director, officer, and/or managing agent of Defendants GUARD
25 FORCE INC., and GUARD FORCE INTERNATIONAL, INC., who directly or indirectly, or
26 through an agent or any other person, employed or exercised control over the wages, hours, or
27 working conditions of Plaintiffs and the Class. Therefore, he is liable to Plaintiffs and the Class
28 for his violations of, or causing Defendants to violate the Labor Code and the Wage Order
pursuant to Labor Code section 558.1.

89. Accordingly, with respect to this cause of action, on behalf of themselves and the
other Class Members, Plaintiffs pray for the herein stated relief and for an award of all reasonable
costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject



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16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 to proof.

2 **FIFTH CAUSE OF ACTION**

3 **WAITING TIME PENALTIES**

4 **(Lab. Code §§ 201, 202, and 203)**

5 **(By Plaintiffs and the Class against all Defendants)**

6 90. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

7 91. At all relevant times during the applicable limitations period, Plaintiffs and the
8 Class have been non-exempt employees of Defendants and entitled to the benefits and
9 protections of California Labor Code §§ 201–203, and the Wage Order.

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

12 93. Labor Code § 202 provides that all earned and unpaid wages of an employee who
13 quits after providing at least 72-hours notice before quitting are due and payable at the time of
14 quitting and that all earned and unpaid wages of an employee who quits without providing at
15 least 72-hours notice before quitting are due and payable within 72 hours.

16 94. By failing to pay earned minimum and premium wages to Plaintiffs and the Class,
17 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
18 § 201 or § 202.

19 95. Plaintiffs are informed and believe that Defendants’ failures to timely pay all
20 final wages to them and the Class Members have been willful in that Defendants have the ability
21 to pay final wages in accordance with Labor Code §§ 201 and 202 but have intentionally adopted
22 policies or practice that are incompatible with those requirements.

23 96. In relevant part, California Labor Code § 558.1 states:

24 (a) Any employer or other person acting on behalf of an employer, who violates,
25 or causes to be violated, any provision regulating minimum wages or hours and
26 days of work in any order of the Industrial Welfare Commission, or violates, or
27 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
28 liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an
employer” is limited to a natural person who is an owner, director, officer, or
managing agent of the employer, and the term “managing agent” has the same
meaning as in subdivision (b) of § 3294 of the Civil Code.



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Encino, CA 91436
(213) 725-9094 Tel
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97. Based on Plaintiffs' information and belief, Defendant GORDON L. BROOKS is natural person and an owner, director, officer, and/or managing agent of Defendants GUARD FORCE INC., and GUARD FORCE INTERNATIONAL, INC., who directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of Plaintiffs and the Class. Therefore, he is liable to Plaintiffs and the Class for his violations of, or causing Defendants to violate the Labor Code and the Wage Order pursuant to Labor Code section 558.1.

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

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

100. Plaintiffs are informed and believe that Defendants' failures to weekly and timely pay Plaintiffs and the Class all of their earned and unpaid wages have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

101. Pursuant to Labor Code § 203, Plaintiffs seek waiting time penalties on behalf of themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, et seq.)

(By Plaintiffs and the Class against all Defendants)

102. Plaintiffs incorporate all paragraphs of the Complaint as if fully alleged herein.

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

104. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, et seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have



1 unfairly gained a competitive advantage over other comparable companies doing business in
2 California that comply with their legal obligations to, among other things, pay their employees
3 premium wages for workdays in which they did not provide employees with one or more meal
4 and rest periods, reimburse their employees for reasonable expenses incurred during the course
5 of performing their duties, and pay them all earned wages for all regular and overtime hours
6 worked.

7
8 105. In relevant part, California Labor Code § 558.1 states:

9 (a) Any employer or other person acting on behalf of an employer, who violates,
10 or causes to be violated, any provision regulating minimum wages or hours and
11 days of work in any order of the Industrial Welfare Commission, or violates, or
12 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
13 liable as the employer for such violation.

14 (b) For purposes of this section, the term “other person acting on behalf of an
15 employer” is limited to a natural person who is an owner, director, officer, or
16 managing agent of the employer, and the term “managing agent” has the same
17 meaning as in subdivision (b) of § 3294 of the Civil Code.

18 106. Based on Plaintiffs’ information and belief, Defendant GORDON L. BROOKS is
19 natural person and an owner, director, officer, and/or managing agent of Defendants GUARD
20 FORCE INC., and GUARD FORCE INTERNATIONAL, INC., who directly or indirectly, or
21 through an agent or any other person, employed or exercised control over the wages, hours, or
22 working conditions of Plaintiffs and the Class. Therefore, he is liable to Plaintiffs and the Class
23 for his violations of, or causing Defendants to violate the Labor Code and the Wage Order
24 pursuant to Labor Code section 558.1.

25 107. As a result of Defendants’ unfair competition as herein alleged, Plaintiffs and the
26 other Class Members have suffered injuries in fact and lost money or property. Defendants
27 deprived Plaintiffs and the other Class Members of minimum, overtime, doubletime, and
28 premium wages during the course of their employment.

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

109. Plaintiffs and the other Class Members are entitled to reasonable attorneys’ fees in



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(213) 725-9094 Tel
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1 connection with their unfair competition claims pursuant to California Code of Civil Procedure
2 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

3 **SEVENTH CAUSE OF ACTION**

4 **CIVIL PENALTIES**

5 **(By Plaintiffs and the Class against all Defendants)**

6 110. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

7 111. The “Aggrieved Employees” are all members of the Class defined above who
8 Defendants employed during the period beginning August 6, 2020 and ending on the date that
9 final judgment is entered in this action.

10 112. Labor Code § 204 states

11 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
12 or 204.2, earned by any person in any employment are due and payable twice
13 during each calendar month, on days designated in advance by the employer as
14 the regular paydays. Labor performed between the 1st and 15th days, inclusive,
15 of any calendar month shall be paid for between the 16th and the 26th day of the
16 month during which the labor was performed, and labor performed between the
17 16th and the last day, inclusive, of any calendar month, shall be paid for between
18 the 1st and 10th day of the following month. ...

19 (b) (1) Notwithstanding any other provision of this section, all wages
20 earned for labor in excess of the normal work period shall be paid no later than
21 the payday for the next regular payroll period.

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

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

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

113. Defendants paid wages to employees on regular intervals. Defendants, however,
failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On



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1 information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved
2 Employees on such intervals for all wages earned and all hours worked.

3 114. During the applicable time period, Defendants violated California Labor Code §§
4 201, 202, 203, 204, 226, 226.7, 510, 512, 558.1, 1174, 1194, 1197, and 1198.

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

8 116. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
9 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
10 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558.1, 1174, 1194, 1197, and 1198 during the
11 applicable limitations period in the following amounts:

12 A. For violations of California Labor Code § 204, one hundred dollars
13 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
14 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
15 (penalty amounts established by California Labor Code § 210).

16 B. For violations of California Labor Code § 226(a), two hundred fifty
17 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
18 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
19 established by California Labor Code § 226.3).

20 C. For violations of California Labor Code §§ 510, 512 and 558.1, fifty
21 dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars
22 (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty
23 amounts established by California Labor Code § 558).

24 D. For violations of California Labor Code § 1174, five hundred dollars
25 (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established
26 by Labor Code § 1174.5).

27 E. For violations of California Labor Code § 1197, one hundred dollars
28 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
pay period (regardless of whether the initial violations were intentionally committed) (penalty
amounts established by California Labor Code § 1197.1).



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1 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
2 and 1198, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each
3 initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period
4 for each subsequent violation (penalty amounts established by California Labor Code §
5 2699(f)(2)).

6 117. Plaintiffs have complied with the procedures for bringing suit specified in
7 California Labor Code § 2699.3. By letters dated August 6, 2021, Plaintiffs filed written notices
8 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
9 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
10 to have been violated, including the facts and theories to support the alleged violations. True and
11 correct copies of the notices to the LWDA dated August 6, 2021 are attached as **Exhibit A** and
12 **Exhibit B**. Plaintiffs accompanied their LWDA notices with a fee in the amount of \$75.00. The
13 LWDA has failed to take action in response within 65 calendar days of the date of Plaintiffs’
14 notices, but Plaintiffs anticipate that the LWDA will provide written notice to Plaintiffs
15 informing them that it does not intend to investigate these allegations.

16 118. Pursuant to California Labor Code § 2699(g), Plaintiffs and the Aggrieved
17 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
18 connection with their claims for civil penalties.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray
21 for relief and judgment against Defendants as follows:

- 22 A. An order that the action be certified as a class action;
- 23 B. An order that Plaintiffs be appointed class representatives;
- 24 C. An order that counsel for Plaintiffs be appointed class counsel;
- 25 D. Unpaid Wages;
- 26 E. Actual Damages;
- 27 F. Statutory Damages;
- 28 G. Liquidated Damages;
- H. Civil Penalties;
- I. Restitution;



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1 J. Declaratory and injunctive relief;

2 K. Equitable relief;

3 L. Pre-judgment interest;

4 M. Statutory penalties;

5 N. Costs of suit;

6 O. Interest;

7 P. Reasonable attorneys' fees; and

8 Q. Such other relief as the Court deems just and proper.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a jury
11 trial on all issues so triable.

12 Respectfully submitted,

13 THE SPIVAK LAW FIRM

14 Dated: November 16, 2021

15 By



16 DAVID SPIVAK,
17 MARALLE MESSRELIAN,
18 MAYA CHEAITANI,
19 Attorneys for Plaintiffs, MAKAYLA
20 FONTES, MELANIE JOHNSON, and all
21 others similarly situated



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16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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EXHIBIT A



SPIVAK LAW

(*SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL*)

August 6, 2021

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

Re: Makayla Fontes / Guard Force

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Makayla Fontes (hereafter “Fontes” or “Complainant”) provides notice that Guard Force Inc., a Delaware corporation, Guard Force International, Inc., a Delaware corporation, Gordon L. Brooks, and related entities (collectively “the Guard Force Employers” or “the Employers”) violated her rights and those of all other individuals the Guard Force Employers have employed or otherwise contracted with in California as security guards, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198. On behalf of herself and all other Aggrieved Employees, Fontes hereby provides this notice to the Labor & Workforce Development Agency and the Guard Force Employers and their agents and representatives.

At all relevant times, the Guard Force Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Fontes and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No.

4-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately April 17, 2020, the Guard Force Employers began to employ Fontes in Fresno in the position of security guard. The Guard Force Employers continuously employed her in that capacity until on or about September 28, 2020 when her employment ended.

At all relevant times, the Guard Force Employers issued wages to Fontes and all of the other Aggrieved Employees on a basis and paid them by the hour. At all relevant times, the Guard Force Employers classified Fontes and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Guard Force Employers failed to compensate Fontes and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Guard Force Employers required Fontes and all of the Aggrieved Employees to arrive 15 minutes before their scheduled work shifts, though the Guard Force Employers did not pay them for this 15-minute period. The Guard Force Employers terminated Fontes’ employment when she refused to show up 15 minutes early without pay. Additionally, the Guard Force Employers would only pay Fontes and the Aggrieved Employees for the length of time the Guard Force Employers scheduled Fontes and the Aggrieved Employees to work. The Guard Force Employers did not provide Fontes and the Aggrieved Employees with any means to record their start and stop times. Because the Guard Force Employers required Fontes and the Aggrieved Employees to work beyond their scheduled shift, the Guard Force Employers did not pay Fontes and the Aggrieved Employees for many of their daily work hours.

The Guard Force Employers failed to compensate Fontes and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the

workweek. The Guard Force Employers' scheduling and wage payment practices described above prevented Fontes and the Aggrieved Employees from being paid overtime premium rates for all hours worked in excess of eight in a day, in excess of 40 in a week, and hours worked on the seventh day of the same workweek.

The Guard Force Employers failed to compensate Fontes and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Guard Force Employers' scheduling and wage payment practices described above also prevented Fontes and the Aggrieved Employees from being paid doubletime premium rates for all hours worked in excess of 12 in a day, and hours worked in excess of the first eight hours on the seventh day of the same workweek.

At all relevant times, the Guard Force Employers failed to provide Fontes and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Guard Force Employers' required Fontes and the Aggrieved Employees to work alone and to take their meal periods on-duty and without cover. The Guard Force Employers also failed to pay premium wages for days on which it failed to provide Fontes and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Guard Force Employers failed to authorize and permit Fontes and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Guard Force Employers' required Fontes and the Aggrieved Employees to work alone and to take their rest periods on-duty and without cover. The Guard Force Employers also failed to pay premium wages for days on which it failed to authorize and permit Fontes and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Guard Force Employers failed to issue to Fontes and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Guard Force Employers knowingly and intentionally failed to state on the wage

statements they issued to Fontes and all of the other Aggrieved Employees the unpaid wages and hours worked discussed above. The wage statements fail to state all minimum wages earned, all hours worked at the correct rates of pay, all regular wages earned, all overtime wages earned, all doubletime wages earned, all rest break premium wages earned, and all meal period premium wages earned.

The Guard Force Employers also failed to timely pay Fontes and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Guard Force Employers failed to provide Fontes and all of the other Aggrieved Employees with toilet and storage facilities, change rooms, and acceptable work temperatures.

The Guard Force Employers failed to provide Fontes and all of the other Aggrieved Employees with an adequate number of suitable seats.

The Guard Force Employers failed to maintain accurate employee records of Fontes and all of the other Aggrieved Employees.

For the reasons stated herein, Fontes alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Guard Force Employers failed to pay Fontes and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Guard Force Employers failed to provide Fontes and all of the other Aggrieved Employees all meal periods in compliance with California law;

- (c) The Guard Force Employers failed to authorize and permit Fontes and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Guard Force Employers failed to compensate Fontes and all of the other Aggrieved Employees at one hour's pay for each day in which the Guard Force Employers failed to provide them with one or more meal periods as required by law;
- (e) The Guard Force Employers failed to compensate Fontes and all of the other Aggrieved Employees at one hour's pay for each day in which the Guard Force Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Guard Force Employers knowingly and intentionally failed to provide Fontes and all of the other Aggrieved Employees with accurate wage statements;
- (g) The Guard Force Employers willfully failed to timely pay Fontes and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Guard Force Employers and when their employment ended;
- (h) The Guard Force Employers failed to provide Fontes and all of the other Aggrieved Employees with toilet and storage facilities, change rooms, and acceptable work temperatures;
- (i) The Guard Force Employers failed to provide Fontes and all of the other Aggrieved Employees with an adequate number of suitable seats; and
- (j) The Guard Force Employers failed to maintain accurate employment records pertaining to Fontes and all of the other Aggrieved Employees.

Accordingly, Fontes now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Guard Force Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in professional, technical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis..." Wage Order, § 1. The Wage Order defines "Professional, Technical, Clerical, Mechanical, and Similar Occupations" to include

professional, semiprofessional, managerial, supervisory, laboratory, research, technical, clerical, office work, and mechanical occupations. Said occupations shall include, but not be limited to, the following: accountants; agents; appraisers; artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters; canvassers; carriers; cashiers; checkers; clerks; collectors; communications and sound technicians; compilers; copy holders; copy readers; copy writers; computer programmers and operators; demonstrators and display representatives; dispatchers; distributors; door-keepers; drafters; elevator operators; estimators; editors; graphic arts technicians; guards; guides; hosts; inspectors; installers; instructors; interviewers; investigators; librarians; laboratory workers; machine operators; mechanics; mailers; messengers; medical and dental technicians and technologists; models; nurses; packagers; photographers; porters and cleaners; process servers; printers; proof readers; salespersons and sales agents; secretaries; sign erectors; sign painters; social workers; solicitors; statisticians; stenographers; teachers; telephone, radiotelephone, telegraph and call-out operators; tellers; ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations

Wage Order, § 2(O). At all relevant times during the applicable limitations period, the Guard Force Employers, Fontes, and all of the Aggrieved Employees were

covered by the Wage Order because the Guard Force Employers operated a private security service, and Fontes, and all of the Aggrieved Employees, worked for the Guard Force Employers as security guards. Accordingly, Fontes and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

Under Labor Code section 1197, “The 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.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the

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

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

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using

the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

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

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Guard Force Employers required Fontes and all of the Aggrieved Employees to arrive 15 minutes before their scheduled work shifts, though the Guard Force Employers did not pay them for this 15-minute period. The Guard Force Employers terminated Fontes' employment when she refused to show up 15 minutes early without pay. Additionally, the Guard Force Employers would only pay Fontes and the Aggrieved Employees for the length of time the Guard Force Employers scheduled Fontes and the Aggrieved Employees to work. The Guard Force Employers did not provide Fontes and the Aggrieved Employees with any means to record their start and stop times. Because the Guard Force Employers required Fontes and the Aggrieved Employees to work beyond their scheduled shift, the Guard Force Employers did not pay Fontes and the Aggrieved Employees for many of their daily work hours. The Guard Force Employers' scheduling and wage payment practices described above prevented Fontes and the Aggrieved Employees from being paid overtime premium rates for all hours worked in excess of eight in a day, in excess of 40 in a week, and hours worked on the seventh day of the same workweek. The Guard Force Employers' scheduling and wage payment practices described above also prevented Fontes and the Aggrieved Employees from being paid doubletime premium rates for all hours worked in excess of 12 in a day, and hours worked in excess of the first eight hours on the seventh day of the same workweek.

At all relevant times during the applicable limitations period, the Guard Force Employers failed to compensate Fontes and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Fontes now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), 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 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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

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

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Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. 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. . . .
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

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

employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Guard Force Employers failed to provide Fontes and all of the other Aggrieved Employees with all timely meal periods. The Guard Force Employers denied Fontes and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Guard Force Employers required Fontes and the Aggrieved Employees to work alone and to take their meal periods on-duty and without cover and the nature of their work did not require on duty meal periods. Furthermore, the Guard Force Employers failed to pay premium wages for days on which they failed to provide Fontes and all of the other Aggrieved Employees with timely meal periods. Accordingly, Fontes now seeks civil penalties for these Labor Code violations that the Guard Force Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) 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 workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

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

The Guard Force Employers failed to authorize and permit Fontes and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Guard Force Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Guard Force Employers required Fontes and the Aggrieved Employees to work alone and to take their rest periods on-duty and without cover. Moreover, the Guard Force Employers failed to pay Fontes and all of the other Aggrieved Employees premium wages on workdays the Guard Force Employers failed to provide Fontes and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Fontes now seeks civil penalties for these Labor Code violations that the Guard Force

Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;

6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Guard Force Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Guard Force Employers failed to state in the wage statements they issued to Fontes and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Guard Force Employers knowingly and intentionally failed to state on the wage statements they issued to Fontes and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all hours worked at the correct rates of pay, all regular wages earned, all overtime wages earned, all doubletime wages earned, all rest break premium wages earned, all meal period premium wages earned.

Accordingly, Fontes seeks civil penalties for the Labor Code violations that the Guard Force Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each

initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

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

The Guard Force Employers failed to compensate Fontes and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, and unprovided rest break premium wages, at the intervals stated above. As a result, the Guard Force Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Fontes now seeks civil penalties for the Labor Code violations that the Guard Force Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

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

The Guard Force Employers failed to pay Fontes and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Fontes, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, and unprovided rest break premium wages. By failing to pay Fontes and all of the other Aggrieved Employees as set forth above at the end of employment, the Guard Force Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Fontes seeks civil penalties from the Guard Force Employers as follows:

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

Failure to Provide Toilet and Storage Facilities, Lockers, Change Rooms, and Acceptable Work Temperatures
(Lab. Code §§ 1198 and 2350)

Labor Code § 2350 states,

Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.

Section 13 of Wage Order states,

- (A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

- (B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

Section 15 of Wage Order states,

...

- (C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

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

Throughout the relevant time period, the Guard Force Employers failed to provide any toilet facilities for use by Fontes and all of the other Aggrieved Employees within reasonable access. Accordingly, on behalf of herself and aggrieved employees, Fontes demands that the Guard Force Employers cure the violations of Labor Code § 2350 and provide sufficient toilets to all aggrieved employees. The Guard Force Employers also failed to provide lockers, closets, storage facilities, and changing rooms for use by Fontes and all of the other Aggrieved Employees. Moreover, the Guard Force Employers failed to provide acceptable temperatures for the work areas it expected Fontes and all of the other Aggrieved Employees to perform their job duties in. If within 33 days of this

notice, the Guard Force Employers fail to notify my office in writing by certified mail that they have cured the violations of Labor Code § 2350 and the Wage Order mentioned above, Fontes, on behalf of herself and all of the other Aggrieved Employees, will commence a civil action and seek civil penalties from the Guard Force Employers as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 2350, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Provide an Adequate Number of Suitable Seats
(Lab. Code § 1198)

Section 14 of the Wage Order states as follows:

Seats.

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

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

The nature of the work the Guard Force Employers expected Fontes and all of the other Aggrieved Employees to perform reasonably permits the use of seats. However, the Guard Force Employers, in violation of the Wage Order and Labor Code § 1198, did not provide Fontes and all of the other Aggrieved Employees with an adequate number of suitable seats. Additionally, the Guard Force Employers did not place an adequate number of suitable seats in reasonable proximity to their work area, nor did they permit Fontes and all of the other Aggrieved Employees to use such seats when it did not interfere with the performance of their duties.

Pursuant to Labor Code Sections 2699(a) and (f), Fontes, on behalf of herself and all of the other Aggrieved Employees, seeks \$100.00 for each employee per pay period for each initial violation of § 1198 and \$200.00 for each employee per pay period for each subsequent violation of § 1198 (penalty amounts established by Labor Code Section 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, 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. These records shall be

kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Guard Force Employers failed to compensate Fontes and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all hours worked at the correct rates of pay, all regular wages earned, all overtime wages earned, all doubletime wages earned, all rest break premium wages earned, and all meal period premium wages earned. As a result, the Guard Force Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Fontes and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Fontes seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

- 1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
- 2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for

each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Person Acting on Behalf of Employers who Violates Labor Code
(Labor Code § 558.1)

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Gordon L. Brooks was an employer of Fontes and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of the Guard Force Employers and the other employers identified above. Gordon L. Brooks directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Aggrieved Employees, Fontes seeks the same civil penalties against Gordon L. Brooks on the same grounds for which she seeks civil penalties against the Guard Force Employers.

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Conclusion

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

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Makayla Fontes
Walter L. Haines, Esq.

Guard Force Inc.
c/o Agent for service of process
Lee Parker
Secretary, Guard Force Inc.
3936 Mourfield Ave
Stockton, CA 95206

Gordon L. Brooks
2250 Double Creek Dr.
Ste 6952
Round Rock, TX 78683
gbrooks@guardforce.us

Guard Force International, Inc.
c/o Agent for service of process
Lee Parker
Secretary, Guard Force International, Inc.
6135 TAM O' SHANTER DR #2
Stockton, CA 95210

EXHIBIT B



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

August 6, 2021

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

Re: Melanie Johnson / Guard Force

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Melanie Johnson (hereafter “Johnson” or “Complainant”) provides notice that Guard Force Inc., a Delaware corporation, Guard Force International, Inc., a Delaware corporation, Gordon L. Brooks, and related entities (collectively “the Guard Force Employers” or “the Employers”) violated her rights and those of all other individuals the Guard Force Employers have employed or otherwise contracted with in California as security guards, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198. On behalf of herself and all other Aggrieved Employees, Johnson hereby provides this notice to the Labor & Workforce Development Agency and the Guard Force Employers and their agents and representatives.

At all relevant times, the Guard Force Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Johnson and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No.

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

August 6, 2021

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

Re: Melanie Johnson / Guard Force

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Melanie Johnson (hereafter “Johnson” or “Complainant”) provides notice that Guard Force Inc., a Delaware corporation, Guard Force International, Inc., a Delaware corporation, Gordon L. Brooks, and related entities (collectively “the Guard Force Employers” or “the Employers”) violated her rights and those of all other individuals the Guard Force Employers have employed or otherwise contracted with in California as security guards, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198. On behalf of herself and all other Aggrieved Employees, Johnson hereby provides this notice to the Labor & Workforce Development Agency and the Guard Force Employers and their agents and representatives.

At all relevant times, the Guard Force Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Johnson and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No.

4-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately July 20, 2020, the Guard Force Employers began to employ Johnson in Fresno in the position of security guard. The Guard Force Employers continuously employed her in that capacity until on or about September 30, 2020 when her employment ended.

At all relevant times, the Guard Force Employers issued wages to Johnson and all of the other Aggrieved Employees on a basis and paid them by the hour. At all relevant times, the Guard Force Employers classified Johnson and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Guard Force Employers failed to compensate Johnson and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Guard Force Employers required Johnson and all of the Aggrieved Employees to arrive 15 minutes before their scheduled work shifts, though the Guard Force Employers did not pay them for this 15-minute period. The Guard Force Employers terminated Johnson’ employment when she refused to show up 15 minutes early without pay. Additionally, the Guard Force Employers would only pay Johnson and the Aggrieved Employees for the length of time the Guard Force Employers scheduled Johnson and the Aggrieved Employees to work. The Guard Force Employers did not provide Johnson and the Aggrieved Employees with any means to record their start and stop times. Because the Guard Force Employers required Johnson and the Aggrieved Employees to work beyond their scheduled shift, the Guard Force Employers did not pay Johnson and the Aggrieved Employees for many of their daily work hours.

The Guard Force Employers failed to compensate Johnson and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the

workweek. The Guard Force Employers' scheduling and wage payment practices described above prevented Johnson and the Aggrieved Employees from being paid overtime premium rates for all hours worked in excess of eight in a day, in excess of 40 in a week, and hours worked on the seventh day of the same workweek.

The Guard Force Employers failed to compensate Johnson and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Guard Force Employers' scheduling and wage payment practices described above also prevented Johnson and the Aggrieved Employees from being paid doubletime premium rates for all hours worked in excess of 12 in a day, and hours worked in excess of the first eight hours on the seventh day of the same workweek.

At all relevant times, the Guard Force Employers failed to provide Johnson and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Guard Force Employers' required Johnson and the Aggrieved Employees to work alone and to take their meal periods on-duty and without cover. The Guard Force Employers also failed to pay premium wages for days on which it failed to provide Johnson and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Guard Force Employers failed to authorize and permit Johnson and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Guard Force Employers' required Johnson and the Aggrieved Employees to work alone and to take their rest periods on-duty and without cover. The Guard Force Employers also failed to pay premium wages for days on which it failed to authorize and permit Johnson and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Guard Force Employers failed to issue to Johnson and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Guard Force Employers knowingly and intentionally failed to state on the wage

statements they issued to Johnson and all of the other Aggrieved Employees the unpaid wages and hours worked discussed above. The wage statements fail to state all minimum wages earned, all hours worked at the correct rates of pay, all regular wages earned, all overtime wages earned, all doubletime wages earned, all rest break premium wages earned, and all meal period premium wages earned.

The Guard Force Employers also failed to timely pay Johnson and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Guard Force Employers failed to provide Johnson and all of the other Aggrieved Employees with toilet and storage facilities, change rooms, and acceptable work temperatures.

The Guard Force Employers failed to provide Johnson and all of the other Aggrieved Employees with an adequate number of suitable seats.

The Guard Force Employers failed to maintain accurate employee records of Johnson and all of the other Aggrieved Employees.

For the reasons stated herein, Johnson alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Guard Force Employers failed to pay Johnson and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Guard Force Employers failed to provide Johnson and all of the other Aggrieved Employees all meal periods in compliance with California law;

- (c) The Guard Force Employers failed to authorize and permit Johnson and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Guard Force Employers failed to compensate Johnson and all of the other Aggrieved Employees at one hour's pay for each day in which the Guard Force Employers failed to provide them with one or more meal periods as required by law;
- (e) The Guard Force Employers failed to compensate Johnson and all of the other Aggrieved Employees at one hour's pay for each day in which the Guard Force Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Guard Force Employers knowingly and intentionally failed to provide Johnson and all of the other Aggrieved Employees with accurate wage statements;
- (g) The Guard Force Employers willfully failed to timely pay Johnson and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Guard Force Employers and when their employment ended;
- (h) The Guard Force Employers failed to provide Johnson and all of the other Aggrieved Employees with toilet and storage facilities, change rooms, and acceptable work temperatures;
- (i) The Guard Force Employers failed to provide Johnson and all of the other Aggrieved Employees with an adequate number of suitable seats; and
- (j) The Guard Force Employers failed to maintain accurate employment records pertaining to Johnson and all of the other Aggrieved Employees.

Accordingly, Johnson now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Guard Force Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in professional, technical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis..." Wage Order, § 1. The Wage Order defines "Professional, Technical, Clerical, Mechanical, and Similar Occupations" to include

professional, semiprofessional, managerial, supervisory, laboratory, research, technical, clerical, office work, and mechanical occupations. Said occupations shall include, but not be limited to, the following: accountants; agents; appraisers; artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters; canvassers; carriers; cashiers; checkers; clerks; collectors; communications and sound technicians; compilers; copy holders; copy readers; copy writers; computer programmers and operators; demonstrators and display representatives; dispatchers; distributors; door-keepers; drafters; elevator operators; estimators; editors; graphic arts technicians; guards; guides; hosts; inspectors; installers; instructors; interviewers; investigators; librarians; laboratory workers; machine operators; mechanics; mailers; messengers; medical and dental technicians and technologists; models; nurses; packagers; photographers; porters and cleaners; process servers; printers; proof readers; salespersons and sales agents; secretaries; sign erectors; sign painters; social workers; solicitors; statisticians; stenographers; teachers; telephone, radiotelephone, telegraph and call-out operators; tellers; ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations

Wage Order, § 2(O). At all relevant times during the applicable limitations period, the Guard Force Employers, Johnson, and all of the Aggrieved Employees were

covered by the Wage Order because the Guard Force Employers operated a private security service, and Johnson, and all of the Aggrieved Employees, worked for the Guard Force Employers as security guards. Accordingly, Johnson and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

Under Labor Code section 1197, “The 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.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the

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

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

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using

the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

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

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Guard Force Employers required Johnson and all of the Aggrieved Employees to arrive 15 minutes before their scheduled work shifts, though the Guard Force Employers did not pay them for this 15-minute period. The Guard Force Employers terminated Johnson's employment when she refused to show up 15 minutes early without pay. Additionally, the Guard Force Employers would only pay Johnson and the Aggrieved Employees for the length of time the Guard Force Employers scheduled Johnson and the Aggrieved Employees to work. The Guard Force Employers did not provide Johnson and the Aggrieved Employees with any means to record their start and stop times. Because the Guard Force Employers required Johnson and the Aggrieved Employees to work beyond their scheduled shift, the Guard Force Employers did not pay Johnson and the Aggrieved Employees for many of their daily work hours. The Guard Force Employers' scheduling and wage payment practices described above prevented Johnson and the Aggrieved Employees from being paid overtime premium rates for all hours worked in excess of eight in a day, in excess of 40 in a week, and hours worked on the seventh day of the same workweek. The Guard Force Employers' scheduling and wage payment practices described above also prevented Johnson and the Aggrieved Employees from being paid doubletime premium rates for all hours worked in excess of 12 in a day, and hours worked in excess of the first eight hours on the seventh day of the same workweek.

At all relevant times during the applicable limitations period, the Guard Force Employers failed to compensate Johnson and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Johnson now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), 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 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

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

employer and the employee. 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. . . .

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

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Guard Force Employers failed to provide Johnson and all of the other Aggrieved Employees with all timely meal periods. The Guard Force Employers denied Johnson and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Guard Force Employers required Johnson and the Aggrieved Employees to work alone

and to take their meal periods on-duty and without cover and the nature of their work did not require on duty meal periods. Furthermore, the Guard Force Employers failed to pay premium wages for days on which they failed to provide Johnson and all of the other Aggrieved Employees with timely meal periods. Accordingly, Johnson now seeks civil penalties for these Labor Code violations that the Guard Force Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) 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 workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

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

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

The Guard Force Employers failed to authorize and permit Johnson and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Guard Force Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Guard Force Employers required Johnson and the Aggrieved Employees to work alone and to take their rest periods on-duty and without cover. Moreover, the Guard Force Employers failed to pay Johnson and all of the other Aggrieved Employees premium wages on workdays the Guard Force Employers failed to provide Johnson and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Johnson now seeks civil penalties for these Labor Code violations that the Guard Force Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

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

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Guard Force Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Guard Force Employers failed to state in the wage statements they issued to Johnson and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Guard Force Employers knowingly and intentionally failed to state on the wage statements they issued to Johnson and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all hours worked at the correct rates of pay, all regular wages earned, all overtime wages earned, all doubletime wages earned, all rest break premium wages earned, all meal period premium wages earned.

Accordingly, Johnson seeks civil penalties for the Labor Code violations that the Guard Force Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th

days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Guard Force Employers failed to compensate Johnson and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, and unprovided rest break premium wages, at the intervals stated above. As a result, the Guard Force Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Johnson now seeks civil penalties for the Labor Code violations that the Guard Force Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for

purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

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

The Guard Force Employers failed to pay Johnson and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Johnson, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, and unprovided rest break premium wages. By failing to pay Johnson and all of the other Aggrieved Employees as set forth above at the end of employment, the Guard Force Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Johnson seeks civil penalties from the Guard Force Employers as follows:

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

which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Toilet and Storage Facilities, Lockers, Change Rooms, and Acceptable Work Temperatures
(Lab. Code §§ 1198 and 2350)

Labor Code § 2350 states,

Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.

Section 13 of Wage Order states,

- (A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

- (B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

Section 15 of Wage Order states,

...

- (C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

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

Throughout the relevant time period, the Guard Force Employers failed to provide any toilet facilities for use by Johnson and all of the other Aggrieved Employees within reasonable access. Accordingly, on behalf of herself and aggrieved employees, Johnson demands that the Guard Force Employers cure the violations of Labor Code § 2350 and provide sufficient toilets to all aggrieved employees. The Guard Force Employers also failed to provide lockers, closets, storage facilities, and changing rooms for use by Johnson and all of the other Aggrieved Employees. Moreover, the Guard Force Employers failed to provide acceptable temperatures for the work areas it expected Johnson and all of the other Aggrieved Employees to perform their job duties in. If within 33 days of this notice, the Guard Force Employers fail to notify my office in writing by certified mail that they have cured the violations of Labor Code § 2350 and the Wage Order mentioned above, Johnson, on behalf of herself and all of the other Aggrieved Employees, will commence a civil action and seek civil penalties from the Guard Force Employers as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 2350, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Provide an Adequate Number of Suitable Seats
(Lab. Code § 1198)

Section 14 of the Wage Order states as follows:

Seats.

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

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

The nature of the work the Guard Force Employers expected Johnson and all of the other Aggrieved Employees to perform reasonably permits the use of seats. However, the Guard Force Employers, in violation of the Wage Order and Labor Code § 1198, did not provide Johnson and all of the other Aggrieved Employees with an adequate number of suitable seats. Additionally, the Guard Force Employers did not place an adequate number of suitable seats in reasonable proximity to their work area, nor did they permit Johnson and all of the other Aggrieved Employees to use such seats when it did not interfere with the performance of their duties.

Pursuant to Labor Code Sections 2699(a) and (f), Johnson, on behalf of herself and all of the other Aggrieved Employees, seeks \$100.00 for each employee per pay period for each initial violation of § 1198 and \$200.00 for each employee per pay period for each subsequent violation of § 1198 (penalty amounts established by Labor Code Section 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Guard Force Employers failed to compensate Johnson and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all hours worked at the correct rates of pay, all regular wages earned, all overtime wages earned, all doubletime wages earned, all rest break premium wages earned, and all meal period premium wages earned. As a result, the Guard Force Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Johnson and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Johnson seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Person Acting on Behalf of Employers who Violates Labor Code
(Labor Code § 558.1)

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who

is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Gordon L. Brooks was an employer of Johnson and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of the Guard Force Employers and the other employers identified above. Gordon L. Brooks directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Aggrieved Employees, Johnson seeks the same civil penalties against Gordon L. Brooks on the same grounds for which she seeks civil penalties against the Guard Force Employers.

Conclusion

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

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Melanie Johnson
Walter L. Haines, Esq.

Guard Force Inc.
c/o Agent for service of process
/ / /

Lee Parker
Secretary, Guard Force Inc.
3936 Mourfield Ave
Stockton, CA 95206

Gordon L. Brooks
2250 Double Creek Dr.
Ste 6952
Round Rock, TX 78683
gbrooks@guardforce.us

Guard Force International, Inc.
c/o Agent for service of process
Lee Parker
Secretary, Guard Force International, Inc.
6135 TAM O' SHANTER DR #2
Stockton, CA 95210

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 16530 Ventura Blvd., Suite 203, Encino, California 91436.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Tuesday, November 16, 2021, I served the foregoing document described as **FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

GUARD FORCE, INC.
C/O Lee Parker
Agent of Service of Process
3936 Mourfiled Ave.
Stockton, CA 95203

GUARD FORCE INTERNATIONAL, INC.
C/O Lee Parker
Agent of Service of Process
3936 Mourfiled Ave.
Stockton, CA 95203

GORDON BROOKS
C/O Lee Parker
3936 Mourfiled Ave.
Stockton, CA 95203

xxx_____ (BY FED EX) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

EXECUTED on Tuesday, November 16, 2021, at Burbank, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.