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6 Attorneys for Plaintiff, GREGORY LEE EBERLY as an individual and on behalf of all others
7 similarly situated

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF YUBA**

10 GREGORY LEE EBERLY, an individual and on)
11 his own behalf and on behalf of all others)
12 similarly situated)

13 Plaintiff,

14 v.

15 CALIFORNIA SECURITY SERVICES, INC.)
16 DBA ELITE UNIVERSAL SECURITY, a)
17 California corporation, and DOES 1-50,)
18 inclusive,)

19 Defendants.

Case No.: CVCV22-00074

**CLASS ACTION COMPLAINT FOR
DAMAGES, INJUNCTIVE RELIEF,
DECLARATORY RELIEF, PENALTIES
AND RESTITUTION**

- 1) **FAILURE TO PROVIDE MEAL PERIODS (Labor Code §§ 226.7, 512, And 1198);**
- 2) **FAILURE TO PROVIDE REST PERIODS (Labor Code §§ 226.7, 1198, IWC No. 4-2001);**
- 3) **FAILURE TO PAY OVERTIME (Labor Code § 510);**
- 4) **FAILURE TO COMPLY WITH CALIFORNIA'S "DAY OF REST" LAW (Labor Code §§ 510, 551 and 552)**
- 5) **FAILURE TO MAINTAIN ACCURATE RECORDS (Labor Code §1174(d));**
- 6) **FAILURE TO PAY ALL WAGES WHEN DUE (Labor Code § 204);**
- 7) **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Labor Code § 226, 226.3);**
- 8) **FAILURE TO REIMBURSE WORK EXPENSES (Labor Code § 2802);**

-) 9) **FAILURE TO TIMELY PAY WAGES**
) **UPON TERMINATION (Labor Code §§**
) **201-203);**
) **10) UNFAIR BUSINESS PRACTICES (In**
) **Violation of Bus. & Prof. Code §17200);**
) **11) VIOLATION OF THE PRIVATE**
) **ATTORNEY GENERALS ACT OF 2004,**
) **Labor Code §2698 et seq.**

{JURY TRIAL DEMANDED}

Plaintiff GREGORY LEE EBERLY (“EBERLY” or “Plaintiff”), as an individual and on behalf of all others similarly situated, hereby brings this Complaint (“Complaint”) against Defendant CALIFORNIA SECURITY SERVICES, INC. DBA ELITE UNIVERSAL SECUIRTY (“CSS” or “Defendant”), and DOES 1-50, Plaintiff hereby alleges as follows:

INTRODUCTION

1. Plaintiff brings this class action pursuant to California Code of Civil Procedure § 382 against Defendant for, among other things: failure to provide complaint rest and meal breaks; failure to pay overtime wages; failure to comply with California’s “Day of Rest” law; failure to maintain accurate records of hours worked and wages earned; failure to pay wages when due; failure to furnish accurate wage statement; failure to reimburse work-related expenses incurred in the discharge of job duties; and failure to pay all wages due upon termination. By failing to lawfully pay the Plaintiff all wages they are/were owed, Defendant also engaged in unfair, fraudulent and deceptive business practices within the meaning of Business and Professions Code §§ 17200 et seq. The non-exempt employees currently or formerly employed by Defendant within the State of California within four years from the date of the filing of this complaint (“Class Period”) are hereinafter referred to individually as “Class Members” and collectively as the “Class” or “Classes” or “Subclasses” for subclasses of Class Members.

2. Plaintiff thus brings this action on behalf of himself and other individuals similarly situated pursuant to Labor Code §§ 200-203, 204, 226, 226.7, 510, 512, 551, 552, 558, 1174, 1194, 2802 and Industrial Wage Commission (“IWC”) Wage Order No. 4-2001 (“IWC No. 4”) for unpaid

1 wages, unpaid overtime compensation, unpaid premiums for rest-and-meal break violations;
2 applicable penalties, injunctive relief and other relief and reasonable attorneys' fees and costs.
3 Pursuant to Business and Professions Code §§ 17200, Plaintiff on behalf of himself and putative
4 classes also seek injunctive relief and restitution from Defendant for unlawful withholding of wages,
5 meal and rest period premiums and reimbursement of expenses that lawfully belong to the Plaintiff
6 and the putative Class/Subclasses.

7 **THE PARTIES**

8 **Plaintiff GREGORY LEE EBERLY**

9 3. Plaintiff GREGORY LEE EBERLY is and was, at all times relevant to this Complaint,
10 an adult individual who lived in Roseville, California and worked for Defendant in the City of
11 Olivehurst and Yuba City in the County of Yuba, California. EBERLY was employed by Defendant
12 as a Federal Security Officer from approximately April 10, 2019, to approximately November 20,
13 2019.

14 **Defendant CSS**

15 4. At all times relevant to this Complaint, Defendant CSS was a California corporation,
16 doing business and employing persons throughout California, where it employed Plaintiff.

17 5. The Class Members are or were also employed by Defendant primarily as security
18 guards and officers performing the same or similar duties as the Plaintiff, all of whom worked and
19 lived in the State of California during the relevant Class Period.

20 6. Defendant CSS is a security services company and maintained its principal executive
21 offices in California at 2001 West Magnolia Boulevard #D, Burbank, California 91506.

22 7. At all times mentioned in this Complaint, CSS was Plaintiff's "employer," and Plaintiff
23 was its "employee" as defined by California law.

24 8. Plaintiff is unaware of the true names or capacities of Defendants sued herein under the
25 fictitious names DOES 1–50, inclusive, but prays for leave to amend and serve such fictitiously-named
26 Defendants pursuant to California Code of Civil Procedure § 474 once their names and capacities
27 become known.

9. Plaintiff is informed and believes, and thereon alleges, that DOES 1–50, inclusive, are the partners, agents, owners, shareholders, managers, principals or employees of Defendant and/or and were acting on behalf of Defendant.

10. Plaintiff is informed and believes, and based thereon alleges, that each of the defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the trust names and capacities of the defendants designated hereinafter as DOES when such identities become known.

11. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by or is attributable to Defendant, each acting as the agent for the other, with legal authority to act on the other's behalf. The acts of any and all Defendant was in accordance with, and represent the policy of, Defendant.

12. At all times herein mentioned, Defendant, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendant, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages herein alleged.

13. Plaintiff is informed and believes, and thereon alleges, that Defendant is in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and transactions alleged herein.

JURISDICTION AND VENUE

14. The civil penalties sought by Plaintiff exceed the minimum jurisdiction limits of the Yuba County Superior Court and will be established according to proof at trial.

15. This Court has jurisdiction of this action pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes under which this action of brought do not specify any other basis for jurisdiction.

16. This Court has jurisdiction over the violations alleged herein and over Defendant and Does 1 – 50, inclusive, because upon information and belief, each party has sufficient minimum contacts in California or otherwise intentionally avails itself of California law so as to render the

1 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play
2 and substantial justice. Defendant at all times relevant employed Plaintiff while Plaintiff was
3 domiciled in and performing his work duties in the State of California, in the County of Yuba. Plaintiff
4 maintained and worked out of the city of Olivehurst, in the County of Yuba.

5 17. Venue is proper in this Court because, upon information and belief, the named
6 Defendant employed Plaintiff in this county, and the acts and omissions alleged herein took place in
7 this county.

8 18. The Court also has jurisdiction over Plaintiff and Class Members' claims pursuant to
9 Business and Professions Code sections 17200-17208, who also seek injunctive relief and restitution
10 of ill-gotten benefits arising from Defendant's unlawful business acts and practices under California
11 Business and Professions Code sections 17200-17208.

12 **GENERAL ALLEGATIONS AND SUMMARY OF CLAIMS**

13 19. Plaintiff alleges that he and the Class/Subclass Members are individuals who currently
14 work or formerly worked for Defendant in the State of California as regular, hourly nonexempt
15 employees at any given time during the four years prior to the filing of this complaint who are/were
16 entitled to overtime compensation, day of rest, labor code compliant rest and meal breaks, accurate
17 wage statements, timely payment of wages when due, payment of all wages due at separation or
18 termination, and reimbursement of work related expenses incurred in the discharge of their job duties.
19 Plaintiff and such Class/Subclass Members work/worked in non-exempt, hourly-paid security
20 guard/officer positions for Defendant, security services company. Plaintiff and those who were
21 employed by Defendant in California during the Class Period's primary job duties were including, but
22 not limited to, security guard/officer services for client properties.

23 20. The duties of security guards and officers are virtually identical. Any differences in the
24 job activities between the different individuals in these positions were and are legally insignificant to
25 the issues presented by this action. The same policies, procedures, employee handbooks and manuals
26 and compensation plans and training modules were uniformly applied to the nonexempt Plaintiff and
27 Class/Subclass Members, which means individual issues will not predominate, and in fact, all issues

are systematically linked, related and common, both in terms of facts and law for Plaintiff and each of the members of the Class/Subclasses during the Class Period.

21. *Labor Code* § 1194 provides that employees must be separately paid an hourly wage for each and every hour worked.

22. Plaintiff and the Class/Subclass Members were at all times subject to California's laws and regulations protecting the employees' entitlement to be paid and presumption to be paid all wages earned for labor performed, including an hourly wage for each and every hour worked.

23. *Labor Code* §§ 218, 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal wage may recover the unpaid balance and together with attorney's fees and costs of suit, as well as liquidated damages in an amount equal to the wages unpaid and interest thereon.

24. *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."

25. *Labor Code* § 510 states in pertinent part, "Any work in excess of eight hours in one workday or in excess of 40 hours 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 any employee." In addition, "any work in excess of 12 hours in one day shall be compensated at a rate of no less than twice the regular rate of pay for an employee." As a matter of course during all or a substantial portion of the Class Period, Plaintiff and each member of the Class were regularly, uniformly and systematically required by Defendant to work in excess of eight hours per day, and/or required to work in excess of 40 hours per week without being paid the requisite overtime wages required by *Labor Code* §§ 510, 1194 and Wage Order No. 4.

26. Due to Plaintiff and Class Members/Subclass Members working off the clock during lunch breaks, in many instances because of the unrecorded hours worked, their shifts exceeded eight hours a day or over 40 hours in a week. Defendant also routinely altered Plaintiff and the Class Members/Subclass Members timesheets to avoid paying any overtime owed.

1 27. *Labor Code* § 512 provides in relevant part: “An employer shall not employ an
2 employee for a work period of more than five hours per day without providing the employee with a
3 meal period of not less than 30 minutes An employer shall not employ an employee for a work
4 period of more than 10 hours per day without providing the employee with a second meal period of
5 not less than 30 minutes”

6 28. IWC Order No. 4-2001, which applies to Defendant’s industry, likewise requires
7 employers to provide meal periods to employees. Section 11(C) of IWC Order No 4-2001 provides in
8 relevant part: “Unless the employee is relieved of all duty during a 30 minute meal period, the meal
9 period shall be considered an “on duty” meal period and counted as time worked.”

10 29. Throughout the Class Period, Defendant failed to provide meal periods and rest periods
11 to Plaintiff. The nature of Plaintiff’s and Class Members/Subclass Members’ work, being security
12 services, was rigorous and nonstop. Plaintiff and Class Members/Subclass Members were frequently
13 prevented from timely taking meal breaks and rest breaks because, due to their constant work demands
14 and staffing shortages, they were not timely relieved of all duties to take such breaks. Thus, as a matter
15 of course during all or a substantial portion of the Class Period, Plaintiff and each member of the Class
16 were regularly, uniformly and systematically prohibited by Defendant from taking timely, compliant,
17 uninterrupted, unpaid 30-minute meal periods for every five hours worked as required by *Labor Code*
18 § 512 and Wage Order no. 4, nor were Plaintiff or members of the Class paid a one hour premium
19 wage at their regular rate of pay for each missed, short, late or interrupted meal period.

20 30. Section 12(A) of IWC Order No. 4-2001 provides in relevant part: “Every employer
21 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
22 the middle of each work period. The authorized rest period time shall be based on the total hours
23 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
24 . . . Authorized rest period time shall be counted as hours worked for which there shall be no deduction
25 from wages.”

26 31. The nature of Plaintiff’s and Class Members/Subclass Members’ work, being security
27 services, was rigorous and nonstop. Plaintiff and Class Members/Subclass Members were frequently

1 prevented from timely taking rest breaks because, due to their constant work demands and staffing
2 shortages, they were not timely relieved of all duties to take such breaks. Plaintiff and Class
3 Members/Subclass Members were required by Defendant to remain on duty at the job premises,
4 leaving no time for rest breaks. Thus, as a matter of course, during all or a substantial portion of the
5 Class Period, Plaintiff and each member of the Class were regularly, uniformly, and systematically
6 prohibited by Defendants from taking, timely, compliant, uninterrupted paid 10-minute rest periods
7 for every four hours worked (or major fraction thereof) as required by Labor Code §§ 226.7, 512 and
8 Wage Order 4, nor were Plaintiff or members of the Class paid a one-hour premium wage at their
9 regular rate of pay for each missed, short, late or interrupted rest period.

10 32. *Labor Code* § 226.7(c) provides in relevant part: “If an employer fails to provide an
11 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
12 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
13 Commission, . . . the employer shall pay the employee one additional hour of pay at the employee’s
14 regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

15 33. Defendant knew or reasonably should have known that Plaintiff and Class
16 Members/Subclass Members were not timely relieved of all duties and were impeded or prevented
17 from taking timely all meal periods and rest breaks.

18 34. Plaintiff and Class Members/Subclass Members were never paid “premium pay
19 penalties” pursuant to *Labor Code* § 226.7(c) for any of the workdays that Defendant failed to provide
20 them timely, uninterrupted meal and rest breaks.

21 35. *Labor Code* § 226(a) requires employers to provide employees itemized wage
22 statements that accurately report, among other things, the total hours worked and total wages earned
23 in each pay period.

24 36. Pursuant to Section 11(C) of IWC Order No. 4-2001, Defendant should have correctly
25 counted all purported “meal periods” for which Defendant failed to relieve Plaintiff and Class
26 Members/Subclass Members of all duty as “on duty” meal periods, and Defendant should have
27 counted those purported “meal periods” as time worked. Defendant should have reported that

1 additional time worked on the itemized wage statements that Defendant provided to Plaintiff and Class
2 Members/Subclass Members, but Defendant failed to do so, in violation of *Labor Code* § 226(a).

3 37. From the outset and throughout the Class Period, Defendant has failed to comply with
4 *Labor Code* § 226(a). As a matter of common policy and practice, Defendant did not include Plaintiff
5 and Class Members' proper and correct number of hours worked at each correct hourly rate of pay.
6 The wage statements that were distributed by Defendant to Plaintiff and the Class Members did not
7 contain all wages earned. Defendant's policies and practices and the omissions on the wage statements
8 were intention and knowing, causing Plaintiff and members of the Class to suffer "injury" by, among
9 other things, impeding them from knowing the amount of wages to which they are and were entitled.

10 38. Defendant's failure to accurately record and maintain records of all hours worked and
11 wages earned further constitutes a violation of *Labor Code* §1174(d), which requires employers to
12 maintain accurate payroll records of hours worked and wages earned for a period of three years.

13 39. *Labor Code* § 201(a) provides in relevant part: "If an employer discharges an
14 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

15 40. *Labor Code* § 202(a) provides in relevant part: "If an employee not having a written
16 contract for a definite period quits his or her employment, his or her wages shall become due and
17 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of
18 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
19 quitting."

20 41. As a further result of Defendant's manipulation of Plaintiff's and Class
21 Members/Subclass Members' time records, Defendant violated *Labor Code* §§ 201 and 202 by failing
22 to timely pay all wages due upon Plaintiff and such Class Members who separated from Defendant's
23 employment during the Class Period, at their time of discharge or quitting.

24 42. *Labor Code* § 203(a) provides in relevant part: "If an employer willfully fails to pay,
25 without abatement or reduction, in accordance with §§ 201 . . . 202 . . . any wages of an employee who
26 is discharged or who quits, the wages of the employee shall continue as a penalty from the due date
27

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.”

43. Despite Defendant’s violations of *Labor Code* §§ 201 and 202 by failing to timely pay all wages due upon such Plaintiff and Class Members who separated from Defendant’s employment during the Class Period, discharge or quitting, Defendant has failed to pay such individuals “waiting time” penalties pursuant to *Labor Code* § 203(a).

44. *Labor Code* § 2802(a) requires employers to reimburse employees for all expenses they incur in direct consequence of the discharge of their duties or obedience to their employers’ instructions.

45. During the Class Period, Defendant required Plaintiff and Class Members to use their personal cell phones to perform their job duties each workday throughout their employment. Defendant required them to utilize their personal cell phones for daily calls with Defendant’s dispatch team to confirm scheduling details and for other work-related phone calls and text messages including calling when you arrived at each site location. Plaintiff and Class Members also downloaded applications onto their personal cell phones through which applications they clocked in and clocked out every day and which enabled them to view pay their pay stubs. Plaintiff and Class Members would also have to do annual training without pay on an app they were required to download called PayCom. Plaintiff and Class Members also were required to do additional routine training from home using their personal computers and personal internet on their “days off” without pay. Moreover, Plaintiff and Class Members were required to utilize their own personal vehicles for work related travel to and from multiple jobsite locations as directed by the Defendant.

46. Despite Defendant’s requirement that Plaintiff and Class Members/Subclass Members incur expenses using their personal cell phones, computers, personal internet, and vehicles to perform their job duties, Defendant never reimbursed them for doing so. Defendant’s failure to reimburse Plaintiff and Class Members constitutes a violation of *Labor Code* §2802(a).

47. *Labor Code* § 551 provides, “[e]very person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.” Further, *Labor Code* § 552 provides, “[n]o employer of

labor shall cause his employees to work more than six days in seven.” Labor Code § 556 determines that the Day of Rest laws will not apply “when the total hours of employment do not exceed 30 hour in any week or six hours in any one day thereof.”

48. If an employer does not provide its employee with the day of rest, *Labor Code* § 510(a) requires that “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 ... [and] 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.”

49. Defendant would routinely schedule Plaintiff and the Class/Subclass Members through their seventh day without ever paying them the proper compensation.

50. Defendant has willfully refused to pay Plaintiff and members of the Class/Subclasses the required compensation for all hours worked and failed to keep time records as required by law.

51. Defendant’s company-wide policies and practices violate California law as pled herein. Plaintiff seeks declaratory relief, regular and overtime compensation, premium pay for rest and meal break violations, reimbursement of business expenses, day of rest, liquidated damages and other damages and penalties as permitted by California Law, interest and attorneys’ fees and costs.

CLASS ACTION ALLEGATIONS

52. Plaintiff brings causes of action for violation of California’s wage-and-hour laws as a class action pursuant to California Code of Civil Procedure Section 382 on behalf of all members of the Class and Subclasses which are defined and composed as follows under California Labor Code Section 203(a):

THE CLASS:

All individuals (a) who are currently or were formerly employed by California Security Services, Inc. Dba Elite Universal Security and performed work in California as security guards and officers and similar job positions, job titles, job codes, job classifications, job duties or job descriptions, and (b) who within four (4) years of the filing of this Complaint: who failed to have been paid by Defendant

all of their lawful wages for all hours worked, during each and every pay period; who failed to receive accurately itemized wage statements reflecting all hours worked and proper corresponding rates of pay; who failed to receive compensation or reimbursement for business expenditures incurred and required by their job duties; who worked and were not compensated for overtime; who were not provided or were actively impeded from taking compliant rest and meal breaks; who did not receive premium pay for such missed rest and meal breaks; who did not receive proper pay when scheduled to work seven days in a row in violation of California's Day of Rest laws; and who did not timely receive all wages due and owed upon their discharge or termination of employment with Defendant.

53. In the alternative, and for the convenience of the Court and the parties, Plaintiff may seek to certify the following Subclasses at the time the motion for class certification is filed:

UNTIMELY PAYMENT OF WAGES SUBCLASS:

All members of the Class who Defendant failed to timely pay all wages earned when due, as defined by Labor Code § 204 for all hours worked during the Class Period.

OVERTIME SUBCLASS:

All members of the Class who (a) worked in excess of 8 hours per day and/or 40 hours per week; and (2) who Defendant failed to pay wages at the requisite overtime rates of pay for overtime hours worked during the Class Period.

MEAL PERIOD SUBCLASS:

All members of the Class that Defendant did not provide 30-minute, uninterrupted and duty-free meal periods for shifts over 5 and 10 hours of work, and who were not paid an additional hour of pay in lieu thereof during the Class Period.

REST PERIOD SUBCLASS:

All members of the Class that Defendant did not authorize or permit uninterrupted and duty-free 10-minute paid rest periods for every four hours worked, or major fraction

thereof, and who were not paid an additional hour of pay in lieu thereof during the Class Period.

WAGE STATEMENT SUBCLASS:

All members of the Class that Defendant did not provide accurate, itemized wage statements showing all hours actually worked, all wages earned, and the applicable rates of pay for each hour worked during the Class Period.

WAITING TIME SUBCLASS:

All members of the Class who (a) from three years prior to the filing of this complaint separated from Defendant's employment, and (2) who Defendant knowingly and willfully failed to pay all wages due within 72 hours of the time such employees voluntarily or involuntarily ended their employment with Defendant during the Class Period.

REIMBURSEMENT OF BUSINESS EXPENSES SUBCLASS:

All members of the Class that Defendant did not reimburse expenses necessarily incurred in the discharge of performing their work-related duties during the Class Period.

DAY OF REST SUBCLASS:

All members of the Class who (a) were not permitted to receive their Day of Rest within each calendar week, during employment with Defendant; and (b) did not received compensation at the requisite rates of pay for working on the day of rest and days following the seventh day, during the Class Period.

UCL SUBCLASS:

All members of the Class who, during the Class Period, are owed restitution of unpaid wages resulting from Defendant's systematic violations of California's Labor Code and Wage Order No. 4.

54. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or necessary to amend the definition of the Subclasses. In any event, Plaintiff will formally define and

1 designate a class definition at such time when Plaintiff seeks to certify the Class or Subclasses defined
2 herein.

3 **COMMON CLASS ACTION ALLEGATIONS FOR THE PROPOSED CLASS AND**
4 **SUBCLASSES**

5 55. **Numerosity**: The potential quantity of members of the Class and Subclasses as defined
6 are so numerous that joinder of all members would be unfeasible and impractical. Plaintiff is informed
7 and believes that the total number of current and formerly employed members of the Class exceeds
8 100. The quantity and identity of such membership is readily ascertainable via inspection of
9 Defendant's records.

10 56. **Superiority**: The nature of this action and the nature of the laws available to Plaintiff
11 make the use of the class action format particularly efficient and the appropriate procedure to afford
12 relief to Plaintiff and the members of the Class and Subclasses for the wrongs alleged herein, for the
13 following reasons:

- 14 a) The State of California, for which there is a named representative, has a public policy
15 which encourages the use of the class action device.
- 16 b) By establishing a technique whereby, the claims of many individuals can be resolved
17 at the same time, the class suit both eliminates the possibility of repetitious litigation
18 and provides small claimants with a method of obtaining redress for claims which
19 would otherwise be too small to warrant individual litigation.
- 20 c) This case involves large corporate Defendant and a large number of individual class
21 members with many relatively small claims and common issues of law and fact.
- 22 d) If each individual member of the Class was required to file an individual lawsuit, the
23 large corporate Defendant would necessarily gain an unconscionable advantage
24 because Defendant would be able to exploit and overwhelm the limited resources of
25 each individual member of the Class with Defendant's vastly superior financial and
26 legal resources.
- 27

- 1 e) Requiring each individual member of the Class to pursue an individual remedy would
2 also discourage the assertion of lawful claims by the members of the Class who would
3 be disinclined to pursue action against Defendant because of an appreciable and
4 justifiable fear of retaliation and permanent damage to their lives, careers and well-
5 being.
- 6 f) Proof of a common policy and practice or factual pattern, of which the members of the
7 Class experienced, is representative of the Class herein and will establish the right of
8 each of the members of the Class to recover on the causes of action alleged herein.
- 9 g) Absent class treatment, the prosecution of separate actions by the individual members
10 of the Class, even if possible, would likely create:
- 11 i. a substantial risk of each individual plaintiff presenting in separate, duplicative
12 proceedings the same or essentially similar arguments and evidence, including
13 expert testimony;
- 14 ii. a multiplicity of trials conducted at enormous expense to both the judicial
15 system and the litigants;
- 16 iii. inconsistent or varying verdicts or adjudications with respect to the individual
17 members of the Class against Defendant;
- 18 iv. potentially incompatible standards of conduct for Defendant; and
- 19 v. potentially incompatible legal determinations with respect to individual
20 members of the Class which would, as a practical matter, be dispositive of the
21 interests of the other members of the Class who are not parties to the
22 adjudications or which would substantially impair or impede the ability of the
23 members of the Class to protect their interests.
- 24 h) The claims of the individual members of the Class are not sufficiently large to warrant
25 vigorous individual prosecution, considering all of the concomitant costs and expenses
26 attendant thereto.
- 27

- i) Courts seeking to preserve efficiency and other benefits of class actions routinely fashion methods to manage any individual questions.
- j) Judicial precedent urges trial courts, which have an obligation to consider the use of innovative procedural tools to certify a manageable class, to be procedurally innovative in managing class actions.

57. **Well-defined Community of Interest:** Plaintiff also meets the established standards for class certification as follows:

- a) **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class and Subclasses they seek to represent because all members of the Class sustained injuries and damages arising out of Defendant's common course of conduct in violation of California law, and the injuries and damages of all members of the Class were caused by Defendant's wrongful conduct in violation of California law, as alleged herein.
- b) **Adequacy:** Plaintiff is an adequate representative of the Class and/or Subclasses he seeks to represent, will fairly protect the interests of the members of the Class, has no interests antagonistic to the members of the Class, and will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.
- c) **Predominant Common Questions of Law or Fact:** There are common questions of law and/or fact as to the members of the Class which predominate over questions affecting only individual members of the Class, including, without limitation:
 - i. Whether Defendant failed and continues to fail to have a policy to provide members of the Class timely, duty-free, uninterrupted meal periods of at least 30-minutes for shifts over 5 and 10 hours of work;
 - ii. Whether Defendant failed and continues to fail to have a policy to provide members of the Class timely, duty-free, uninterrupted rest periods of at least 10-minutes for every four hours worked or major fraction thereof;

- 1 iii. Whether Defendant unlawfully failed to pay Plaintiff and the members of the
2 Class overtime compensation in violation of Labor Code §§ 218, 510, 1194,
3 and Wage Order 4;
- 4 iv. Whether Defendant unlawfully failed to provide Plaintiff and the members of
5 the Class the day of rest, or compliant compensation for such work performed
6 in violation of Labor Code §§ 510, 551 and 552;
- 7 v. Whether Defendant unlawfully failed to maintain accurate records in violation
8 of Labor Code § 1174(d);
- 9 vi. Whether Defendant unlawfully failed to pay all wages to Plaintiff and members
10 of the Class when due in violation of Labor Code § 204;
- 11 vii. Whether Defendant unlawfully failed to furnish accurate itemized statements to
12 members of the Class in violation of Labor Code §§ 226, 226.3;
- 13 viii. Whether Defendant failed to reimburse Plaintiff and members of the Class for
14 all expenses incurred in discharge of their duties in violation of Labor Code §
15 2802;
- 16 ix. Whether Defendant's policies and practices of failing to pay their employees
17 all wages due within the time required by California law after their employment
18 ended with Defendant violate Labor Code §§ 201-203;
- 19 x. Whether Defendant's conduct constitutes unfair competition, an unfair business
20 practice and/or a deceptive business practice within the meaning of Business &
21 Professions Code §§ 17200, *et seq.*;
- 22 xi. Whether the members of the Class are entitled to compensatory damages, and
23 if so, the means of measuring such damages;
- 24 xii. Whether the members of the Class are entitled to injunctive relief;
- 25 xiii. Whether the members of the Class are entitled to restitution; and
- 26 xiv. Whether Defendant is liable for attorneys' fees and costs to the extent permitted
27 by California law.

1 d) **Manageability of Class and Common Proof**: The nature of this action and the nature
2 of laws available to Plaintiff makes use of the class action format and procedure a
3 particularly efficient and appropriate procedure to afford relief to Plaintiff and members
4 of the Class for the wrongs alleged herein. Specifically, liability will turn on
5 Defendant's own uniform, systematic practices of failing to pay their employees for all
6 wages they earned in violation of California law during the Class Period. Therefore,
7 the wage violations are predominant questions of fact that are easily capable of being
8 determined through manageable devices of common proof, such as statistical random
9 sampling, survey evidence based on scientific principles, representative testimony,
10 documentary evidence and common practices/procedures of Defendant in treating each
11 of the members of the Class as a homogeneous group. Once the predominant issues of
12 wage compliance are determined, then each of the derivative subclass claims and
13 damages suffered by each member of the Class will be capable of being shown by
14 several means of common proof, and limited by individual showings of entitlement to
15 recovery that can be professionally administered and tailored to the facts and
16 circumstances of the case.

17 58. Class certification of the First through the Tenth causes of action is appropriate under
18 *Cal. Code Civ. Proc.* § 382 because questions of law and fact common to the Class and Subclasses
19 predominate over any questions affecting only individual members of the Class and Subclasses of this
20 litigation. Defendant's policies and practices unlawfully treated members of the Class and Subclasses
21 in a uniform fashion. The damages suffered by individual members of the Class and Subclasses are
22 small compared to the expense and burden of individual prosecution of this litigation. In addition,
23 class certification is superior because it will obviate the need for unduly duplicative litigation that
24 might result in inconsistent judgments about Defendant's practices.

25 59. Class certification of the First through Tenth causes of action is also appropriate
26 pursuant to *Cal. Code Civ. Proc.* § 382 because Defendant has acted or refused to act on grounds
27

generally applicable to the Class, making appropriate declaratory relief with respect to and the Class and Subclasses as a whole.

60. Plaintiff intends to send notice to all members of the Class and Subclasses to the extent required by law and each will be given an opportunity to opt out of the proceedings.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

In Violation of Labor Code §§ 226.7(c), 512(a), 1198 and IWC Order No. 4-2001

(Brought by Plaintiff on Behalf of Himself and Members of the Class or, in the Alternative, Meal Break Subclass Against Defendant and Does 1 – 50, inclusive)

61. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

62. *Labor Code* § 512 provides in relevant part: “An employer shall 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 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 less than 30 minutes”

63. IWC Order No. 4-2001, which applies to Defendant’s industry, likewise requires employers to provide meal periods to employees. Section 11(C) of IWC Order No 4-2001 provides in relevant part: “Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked.” An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties, an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may in writing, revoke the agreement at any time.

64. *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

1 labor for employees. The employment of any employee for longer hours than those fixed by the order
2 or under conditions of labor prohibited by the order is unlawful.”

3 65. *Labor Code* § 226.7(c) provides in relevant part: “If an employer fails to provide an
4 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
5 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
6 Commission, . . . the employer shall pay the employee one additional hour of pay at the employee’s
7 regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

8 66. Throughout the Class Period, Plaintiff and members of the Class were rarely provided
9 an uninterrupted meal break due to routine understaffing and Defendant requiring Plaintiff and the
10 Class members to work without meal breaks, or to interrupt or cut their rest or meal breaks shorts at
11 any given time to make rounds or to answer any calls/disturbances at their job sites. This made it
12 impossible for Plaintiff and members of the Class to have a duty-free uninterrupted meal break.
13 Defendant has never paid Plaintiff and members of the Class for the time they worked during their
14 breaks nor the premium pay to which they are/were entitled for the missed and non-compliant rest and
15 meal breaks.

16 67. Plaintiff and members of the Class did not waive their meal periods by mutual consent
17 with Defendant or otherwise.

18 68. The nature of Plaintiff and Class Members’ work, being security services, was rigorous
19 and nonstop. Plaintiff and Class Members were frequently prevented from taking meal breaks and if
20 they were provided they were routinely later or interrupted because, due to their constant work
21 demands and staffing shortages, they were not timely relieved of all duties to take such breaks. No
22 complaint meal breaks were provided if their original meal break was interrupted. When meal breaks
23 were taken late, Defendant would often alter timesheets to show “compliant” meal breaks to avoid
24 paying premium pay. Although security guards are allowed to take “on call” meal, if said breaks are
25 interrupted, Defendant must provide a subsequent uninterrupted meal break. At no point has Defendant
26 provided Plaintiff or the Class Members subsequent compliant meal breaks, nor has Defendant paid
27

Plaintiff or the Class Members the required and proper premium pay compensation for such failures in violation of Labor Codes §§ 226.7, 512 and IWC No. 4.

69. Plaintiff and the Class Members did not consent to missing their meal and rest breaks, nor did they waive their right to timely, uninterrupted meal and rest breaks.

70. Defendant discouraged, impeded and through threats and intimidation prevented and dissuaded Plaintiff and members of the Class from taking compliant 30-minute meal periods, nor did Defendant pay Plaintiff or Members of the Class with an additional hour of pay for these meal period violations, nor did Defendant pay Plaintiff and Class Members a premium pay penalty for missed, short, late or interrupted meal breaks pursuant to *Labor Code* § 226.7©.

71. As a result of Defendant's violations of *Labor Code* §§ 226.7(c), 512(a), 1198, and IWC Order No. 4-2001, Plaintiff seeks recovery of "premium pay" pursuant to the DLSE's Policy Manual Guidelines and *Labor Code* § 226.7.

72. Further, pursuant to *Labor Code* §218.6 and Civil Code §3287, the members of the Meal Period Subclass seek recovery of prejudgment interest on all amounts recovered herein.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

In Violation of Labor Code §§ 226.7(c), 1198 and IWC Order No. 4-2001

(Brought by Plaintiff on Behalf of Himself and Members of the Class or, in the Alternative, Rest Break Subclass Against Defendant and Does 1 – 50, inclusive)

73. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

74. Section 12(A) of IWC Order No. 4-2001 provides in relevant part: "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. . . . Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

1 75. *Labor Code* §1198 states: “The maximum hours of work and the standard conditions
2 of labor fixed by the commission shall be the maximum hours of work and the standard conditions of
3 labor for employees. The employment of any employee for longer hours than those fixed by the order
4 or under conditions of labor prohibited by the order is unlawful.”

5 76. *Labor Code* § 226.7(c) provides in relevant part: “If an employer fails to provide an
6 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
7 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
8 Commission, . . . the employer shall pay the employee one additional hour of pay at the employee’s
9 regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

10 77. Throughout the Class Period, Defendant failed to provide rest periods to Plaintiff and
11 the Class Members. The nature of Plaintiff and Class Members’ work, being security services, was
12 rigorous and nonstop requiring constant attention to the job site assigned to them. The nature of the
13 work combined with Defendants chronic understaffing created no coverage for Plaintiff and Class
14 Members to take breaks. Plaintiff and Class Members were frequently prevented from taking rest
15 breaks because, due to their constant work demands and staffing shortages, they were not timely
16 relieved of all duties to take such breaks. If breaks were provided on rare occasions they would not be
17 timely and they were routinely interrupted. Defendant did not allow time for complaint rest breaks in
18 their security guard and officer’s schedules and would not allow rest breaks to be taken during or in
19 between routes. Although security guards are allowed to take “on call” rest breaks, if said breaks are
20 interrupted, Defendant must provide a subsequent uninterrupted rest break. At no point has Defendant
21 provided Plaintiff or the Class Members subsequent compliant rest breaks, nor has Defendant paid
22 Plaintiff or the Class Members the required and proper premium pay compensation for such failures
23 in violation of Labor Codes §§ 226.7, 512 and IWC No. 4.

24 78. Defendant knew or reasonably should have known that Plaintiff and the Class Members
25 were not timely relieved of all duties and were impeded or prevented from timely taking timely all rest
26 breaks after every fourth hour of work (or major fraction thereof).

79. Plaintiff and the Class Members were never paid premium pay penalties pursuant to *Labor Code* § 226.7(c) for any of the workdays that Defendant failed to provide them timely, uninterrupted rest breaks.

81. Further, pursuant to *Labor Code* §218.6 and Civil Code §3287, the members of the Rest Period Subclass seek recovery of prejudgment interest on all amounts recovered herein.

FAILURE TO PAY OVERTIME WAGES

(Brought by Plaintiff on Behalf of Himself and Members of the Class or, in the Alternative, Overtime Subclass Against Defendant and Does 1 – 50, inclusive)

83. Plaintiff seeks to represent the proposed Class or in the alternative the proposed Overtime Subclass as a basis to enforce equal or greater protections for wages owed that are offered by California law. Because the practices alleged herein are uniform, systematic and continuous and affect each proposed member of the Class in a legally identical way, Plaintiff, at the appropriate time will move to certify the Class or Overtime Subclass to the extent permitted by *Cal. Code Civ. Proc.* § 382.

85. California law requires employers, such as Defendant, to pay overtime compensation to all nonexempt employees for all hours worked over 40 hours per week, or over 8 hours per day.

1 *Labor Code* § 204 establishes the fundamental right of all employees in the State of California to be
2 paid wages, including straight time and overtime, in a timely fashion for their work.

3 86. *Labor Code* § 510(a) states in pertinent part: “Any work in excess of eight hours in one
4 workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate
5 of no less than one and one-half times the regular rate of pay for any employee.” In addition, *Labor*
6 *Code* § 510(a) provides that “[a]ny work in excess of 12 hours in one day shall be compensated at the
7 rate of no less than twice the regular rate of pay for an employee.”

8 87. Pursuant to *Labor Code* § 1198 it is unlawful to employ persons for longer than the
9 hours set by the IWC.

10 88. Pursuant to *Labor Code* § 1194, “...any employee receiving less than the legal
11 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover
12 in a civil action the unpaid balance of the full amount of this minimum wage or overtime
13 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

14 89. As set forth above, Plaintiff and the members of the Class were entitled to be paid
15 overtime compensation for all overtime hours worked. Plaintiff, and members of the Class, were
16 regularly and consistently required to work overtime during the Class Period but were not paid for all
17 overtime hours worked and were not paid at the correct overtime rate of pay.

18 90. Throughout the Class Period, Plaintiff and members of the Class worked in excess of
19 8 hours in a workday and/or 40 hours in a workweek. Plaintiff and members of the Class also worked
20 in excess of 12 hours in a workday.

21 91. Plaintiff and the Class Members would also routinely work off the clock during their
22 meal breaks. Due to this time worked off the clock, Plaintiff and Class Members would routinely
23 exceed eight-hour shifts and forty hour workweeks and would not be paid the required overtime pay.

24 92. Plaintiff and the Class Members were also required to call in before every shift while
25 off the clock and to complete training sessions on their “days off” while off the clock. Due to the time
26 worked off the clock, Plaintiff and the Class Members would routinely exceed eight-hour shifts and
27 forty-hour workweeks and would not be paid the required overtime pay.

93. During the Class Period, Defendant did not pay Plaintiff and members of the Class overtime pay for all overtime hours worked, included hours worked while off the clock and Defendant did not pay Plaintiff and members of the Class at the correct overtime rate of pay.

94. As a direct and proximate result of Defendant's unlawful conduct as set forth herein, Plaintiff and members of the Class have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendant in an amount to be established according to proof at trial, prejudgment interest, and costs and attorneys' fees, pursuant to *Labor Code* § 1194.2 and applicable California law.

FOURTH CAUSE OF ACTION

FAILURE TO COMPLY WITH CALIFONRIA'S "DAY OF REST" LAW

In Violation of Labor Code §§ 510, 551 and 552

(Brought by Plaintiff on Behalf of Himself and Members of the Class or, in the Alternative, Day of Rest Subclass Against Defendant and Does 1 – 50, inclusive)

95. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

96. *Labor Code* § 551 provides, “[e]very person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.”

97. *Labor Code* § 552 provides, “[n]o employer of labor shall cause his employees to work more than six days in seven.”

98. *Labor Code* § 556 determines that the Day of Rest laws will not apply “when the total hours of employment do not exceed 30 hour in any week or six hours in any one day thereof.”

99. If an employer does not provide its employee with the day of rest, *Labor Code* § 510(a) requires that “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 ... [and] 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.”

100. Due to chronic understaffing, Defendant would routinely schedule Plaintiff and the Class Members seven days in a week without the required day of rest. For approximately four weeks straight in the summer of 2019, Defendant required Plaintiff and members of the Class to work seven days a week, without the day of rest. Defendant also failed to pay Plaintiff and members of the Class required rate of pay required by Labor Code § 510. Therefore, Defendant has violated Labor Codes §§ 510, 551 and 552 and Plaintiff and the similarly situated Class Members and Subclass members seek compensation of these unpaid wages, as well as their attorneys' fees, penalties and interest thereon as permitted by the Labor Code.

101. As a direct and proximate result of Defendant's unlawful conduct as set forth herein, Plaintiff and members of the Class have sustained damages, including loss of earnings for hours of worked on the seventh day and days following on behalf of Defendant in an amount to be established according to proof at trial, prejudgment interest, and costs and attorneys' fees, pursuant to Labor Codes §§ 510, 551 and 552 and applicable California law.

FIFTH CAUSE OF ACTION

FAILURE TO MAINTAIN ACCURATE RECORDS

In Violation of Labor Code § 1174(d)

(Brought by Plaintiff on Behalf of Himself and Members of the Class or, in the Alternative, Wage Statement Subclass Against Defendant and Does 1 – 50, inclusive)

102. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

103. *California Labor Code* § 1174(d), which was in force and effect at all relevant times, herein, provides in pertinent part, that “Every person employing labor in this state shall 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.”

104. During the Class Period, Defendant knowingly and intentionally failed to accurately record, track, maintain and keep accurate records of each and every hour worked and wages earned for Plaintiff and the Class Members.

105. Upon information and belief and thereon, Plaintiff has alleged herein that in an effort to fabricate the appearance of compliance with the provisions of the Labor Code, (simultaneously motivated by Defendant’s effort to unlawfully avoid payment of premium pay penalties owed for missed or non-compliant rest and meal breaks, overtime pay, and day of rest pay) Defendant’s routinely prohibited Plaintiff and members of the Class from receiving proper, timely, and compliant meal and rest breaks and altered timesheets to get rid of any owed overtime pay.

106. Thus, at all times relevant, Defendant failed to maintain accurate records of all hours Plaintiff and Class Members worked, including hours they were working during rest and meal break period, hours working off the clock for training sessions or calling in before shifts to dispatch, and for the days they worked in excess of eight hours, or workweeks in excess of forty hours. As a result of Defendant’s failure to maintain proper accurate records, premium penalties to which Plaintiff and Class Members were entitled for rest and meal break violations was not properly recorded either.

107. Accordingly, Plaintiff as a direct and proximate result of Defendant’s unlawful conduct as set forth herein, Plaintiff and members of the Class have sustained damages, for Defendant’s violation of *Labor Code* § 1174(d), including loss of earnings for all hours worked, and loss of receipt of premium pay penalties, in amounts to be established at time.

108. Plaintiff and Class members are therefore entitled to and do seek to recover penalties, pursuant to § 1174.5, which provides that an employer who fails to properly maintain records pursuant to 1174(d) shall be subject to a civil penalty of five hundred dollars (\$500).

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SIXTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED WHEN DUE

In Violation of Labor Code § 204

(Brought by Plaintiff on Behalf of Himself and Members of the Class or, in the

Alternative, the Untimely Payment of Wages Subclass

Against Defendant and Does 1 – 50, inclusive)

109. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

110. The California Labor Code requires employers to pay all wages due within the time specified by law. *California Labor Code* § 204 was in full force and effect at all relevant times herein.

111. Pursuant to § 204, for employees entitled to pay twice per month, two periods of pay are required. Labor performed between the 1st and 15th of the month must be paid between the 16th and 26th of the same month and labor performed on the 16th and the end of the month must be paid on pay days between the 1st and 10th of the following month. *Labor Code* § 210 provides that “ ... (a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in §§ 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

112. Plaintiff and the Class Members were entitled to be paid twice monthly for labor performed. Although Plaintiff and the Class Members are and/or were paid twice monthly, Defendant failed and intentionally refused to pay Plaintiff and the Class Members all wages they were entitled to, twice monthly, including overtime pay during each and every pay period of their employment.

1 113. As alleged herein, Plaintiff and the Class Members were not paid for all of their wages,
2 for each and every hour worked, including inter alia time worked during rest and meal breaks, time
3 worked off the clock, and overtime hours, as alleged herein, during every single pay period during the
4 term(s) of their employment.

5 114. Accordingly, as a result of the unlawful acts of Defendant, Plaintiff and the Class
6 Members have been deprived of wages in amounts to be determined according to proof at trial, and
7 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs
8 of suit, pursuant to *Labor Code* §§ 210, 218 and 1194.

9 **SEVENTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

11 **In Violation of Labor Code § 226(a)**

12 **(Brought by Plaintiff on Behalf of Himself and Members of the Class or, in the**
13 **Alternative, the Wage Statement Subclass Against Defendant and Does 1 – 50, inclusive)**

14 115. Plaintiff realleges and incorporates by reference all preceding paragraphs as though
15 fully set forth herein.

16 116. *Labor Code* § 226(a) requires employers to provide employees itemized wage
17 statements that accurately report, among other things, the total hours worked and total wages earned
18 in each pay period. Section 226(a) states in pertinent part, that “[e]very employer shall, semimonthly
19 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable
20 part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid
21 by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned,
22 (2) total hours worked by the employee ..., (5) net wages earned, (6) the inclusive dates of the period
23 for which the employee is paid ..., and (9) all applicable hourly rates in effect during the pay period
24 and the corresponding number of hours worked at each hourly rate by the employee ...”

25 117. *Labor Code* § 226 (e)(1) states that “[a]n employee suffering injury as a result of a
26 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover
27 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation

1 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
2 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
3 costs and reasonable attorney's fees."

4 118. *Labor Code* § 226(e)(1) provides: "An employee suffering injury as a result of a
5 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover
6 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
7 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
8 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
9 costs and reasonable attorney's fees."

10 119. *Labor Code* § 226(e)(2)(C) defines "promptly and easily determine" to mean "a
11 reasonable person would be able to readily ascertain the information without reference to other
12 documents or information."

13 120. *Labor Code* § 226(e)(3) states that the phrase "knowing and intentional failure" "does
14 not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake."

15 121. *Labor Code* § 226(h) provides: "An employee may also bring an action for injunctive
16 relief to ensure compliance with this section, and is entitled to an award of costs and reasonable
17 attorney's fees."

18 122. As alleged supra, during the Class Period, Defendant failed to maintain accurate
19 records, including records of time worked through rest and meal break periods, or time worked off the
20 clock for trainings or calling in before shifts, resulting in failure pay them overtime wages they were
21 owed when they worked shifts in excess of eight hours or in excess of forty hours per week.

22 123. In addition, because of Defendant's intentional and knowing failure to maintain proper
23 and accurate records, overtime hours and wages earned were also never recorded, and never appeared
24 on the Plaintiff's and Class Members' wage statements.

25 124. During the Class Period Defendant knowingly and willingly failed to comply with
26 *Labor Code* § 226. As a common policy and practice Defendant did not include all hours worked,
27 including hours worked during on-duty rest and meal breaks, overtime hours worked and wage

1 statements failed to include premium pay penalties for Plaintiff and Class Members' regularly missed
2 or otherwise, non-compliant, rest and meal breaks. Defendant also would alter timesheets of Plaintiff
3 and the Class Members to avoid paying premium pay. The wage statements issued to the Plaintiff and
4 Class Members were not accurate, did not reflect or include all wages earned during each and every
5 pay period of the Class Period. Defendant's knowing, and intentional omissions caused the Plaintiff
6 and Class Members to suffer "injury" by, among other things, impeding them from knowing the
7 amount of wages to which they are/were lawfully entitled.

8 125. As a result of Defendant's violations of *Labor Code* § 226(a), Plaintiff seeks an award
9 of penalties pursuant to *Labor Code* § 226(e)(1), and injunctive relief, attorneys' fees, and costs
10 pursuant to *Labor Code* § 226(h).

11 **EIGHTH CAUSE OF ACTION**

12 **FAILURE TO REIMBURSE WORK EXPENSES**

13 **In Violation of Labor Code § 2802**

14 **(Brought by Plaintiff on Behalf of Himself and Members of the Class or, in the**

15 **Alternative, the Reimbursement of Business Expense Subclass**

16 **Against Defendant and Does 1 – 50, inclusive)**

17 126. Plaintiff realleges and incorporates by reference all preceding paragraphs as though
18 fully set forth herein.

19 127. *Labor Code* § 2802(a) requires employers to reimburse employees for all expenses they
20 incur in direct consequence of the discharge of their duties or obedience to their employers'
21 instructions.

22 128. As alleged, during the Class Period, Defendant required Plaintiff and Class Members
23 to use their personal cell phones to perform their job duties each workday throughout their
24 employment. At all times during Plaintiff's and the Class Members' employment they were required
25 to utilize their personal cell phones for daily calls prior to their shift with Defendant's dispatch team
26 to confirm scheduling details and for other work-related phone calls and text messages. Plaintiff and
27 the Class Members also downloaded applications onto their personal cell phones through which

1 applications they clocked in and clocked out every day and which enabled them to view pay stubs, as well as, using the app PayCom for completing mandatory video trainings.

2
3 129. Plaintiff and the Class Members also were required to use their personal computer and
4 internet for completing required video trainings.

5 130. Moreover, Plaintiff and the Class Members were required to utilize their own personal
6 vehicles for work related travel to and from multiple jobsite locations as directed by the Defendant.

7 131. Despite Defendant's requirement that Plaintiff and Class Members incur expenses
8 using their personal cell phones, computers, internet, and vehicles to perform their job duties,
9 Defendant never reimbursed them for doing so. Defendant's failure to reimburse Plaintiff and the
10 Class Members violated *Labor Code* § 2802(a).

11 132. As a result of Defendant's failure to indemnify and reimburse Plaintiff and Class
12 Members for the expenses they necessarily incurred in the performance and discharge of their work-
13 related duties, Plaintiff and the Class Members have sustained economic damages in amount to be
14 proven at trial.

15 133. As a result of Defendant's violation of *Labor Code* § 2802, Plaintiff seeks
16 reimbursement for all business-related expenses Plaintiff and the Class Members have incurred
17 working for Defendant, in amounts to be determined at trial, with interest thereon as well as attorney's
18 fees and costs of suit pursuant to *Labor Code* § 2802(c).

19 **NINTH CAUSE OF ACTION**

20 **FAILURE TO TIMELY PAY WAGES UPON TERMINATION**

21 **In Violation of Labor Code §§ 201-203**

22 **(Brought by Plaintiff on Behalf of Himself and Members of the Class or, in the**
23 **Alternative, Waiting Time Subclass Against Defendant and Does 1 – 50, inclusive)**

24 134. Plaintiff realleges and incorporates by reference all preceding paragraphs as though
25 fully set forth herein.

26 135. *Labor Code* § 201(a) provides in relevant part: "If an employer discharges an
27 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

1 136. *Labor Code* § 202(a) provides in relevant part: “If an employee not having a written
2 contract for a definite period quits his or her employment, his or her wages shall become due and
3 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of
4 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
5 quitting.”

6 137. As a further result of Defendant’s manipulation of Plaintiff and Class Members time
7 records, and failing to pay Plaintiff and Class Members wages due for missed rest and meal periods,
8 time worked off the clock, unpaid overtime, and day of rest pay rates, Defendant violated Labor Codes
9 §§ 201 and 202 by failing to timely pay all wages due for each and every hour worked, including
10 overtime wages, upon Plaintiff and such Class Members who separated from Defendant’s employment
11 during the Class Period, within the required time of discharge or termination.

12 138. *Labor Code* § 203(a) provides in relevant part: “If an employer willfully fails to pay,
13 without abatement or reduction, in accordance with § § 201 . . . 202 . . . any wages of an employee
14 who is discharged or who quits, the wages of the employee shall continue as a penalty from the due
15 date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall
16 not continue for more than 30 days.”

17 139. Despite Defendant’s willful violations of *Labor Code* §§ 201 and 202 by failing to
18 timely pay all wages due upon Plaintiff and such Class Members who separated from Defendant’s
19 employment during the Class Period upon their discharge or quitting, Defendant failed to pay Plaintiff
20 and such Class Members “waiting time” penalties pursuant to *Labor Code* § 203(a).

21 140. As alleged *supra*, Defendant failed to lawfully compensate Plaintiff and the Class
22 Members as required by law. Therefore, Defendant has willfully failed to make timely payment of the
23 full wages due to Plaintiff and such Class Member employees who have resigned or been discharged
24 during the Class Period.

25 141. *Labor Code* § 218.5(a) states in relevant part: “In any action brought for the
26 nonpayment of wages . . . the court shall award reasonable attorney’s fees and costs to the prevailing
27 party if any party to the action requests attorney’s fees and costs upon the initiation of the action.”

142. As a result of Defendant’s violations of Labor Code §§ 201 and 202, Plaintiff seeks an award of “waiting time penalties” pursuant to Labor Code § 203, and attorney’s fees and costs pursuant to *Labor Code* § 218.5.

TENTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

In Violation of Bus. & Prof. Code § 17200 et seq.

(Brought by Plaintiff on Behalf of Himself and Members of the Class or, in the Alternative, the UCL Subclass Against Defendant and Does 1 – 50, inclusive)

143. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

144. California Business and Professions Code § 17200, et seq. prohibits unfair competition in the form of any unlawful, unfair or fraudulent business act or practice.

145. California Business and Professions Code § 17202 provides: “Notwithstanding § 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in case of unfair competition.”

146. California Business and Professions Code § 17203 provides in relevant part that the court may “restore to any person in interest any money or property, real or person, which may have been acquired by means of such unfair competition.”

147. California Business and Professions Code § 17203 also provides that any person who meets the standing requirements of § 17204 and complies with *California Code of Civil Procedure* § 382 may pursue representative claims for relief on behalf of others.

148. California Business and Professions Code § 17204 allows any “person who has suffered injury in fact and has lost money or property as a result of such unfair competition” to prosecute a civil action for violation of the Unfair Business Practices Act.

149. Pursuant to § 17204, Plaintiff and all similarly situated employees are entitled to enforce all applicable provisions of the Labor Code.

1 150. Beginning at an exact date unknown, but at least since the date four years prior to the
2 filing of this Complaint, Defendant has committed acts of unfair competition as defined by the Unfair
3 Business Practices Act, by engaging in the unlawful, unfair and fraudulent practices and acts described
4 in the Complaint, including, but not limited to violations of Labor Codes §§ 201-203, 204, 226 (a),
5 226.7, 510, 512, 551, 552, 1194, 1198, 2802 and the provisions of IWC No. 4-2001.

6 151. The violations of these laws and regulations, as well as of fundamental California
7 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of
8 Business and Professions Code § 17200 et seq.

9 152. The acts and practices described above constitute unfair, unlawful, and fraudulent
10 business practices, and unfair competition, within the meaning of Business and Professions Code §
11 17200, et seq. Among other things, Defendant's acts and practices have forced Plaintiff and Class
12 Members to labor without receiving appropriate wages and/or to incur personal cell phone, computer,
13 internet, and vehicle expenses in the discharge of their duties.

14 153. The acts and practices described above have allowed Defendant to gain an unfair
15 competitive advantage over law-abiding employers and competitors.

16 154. As a result of the acts and practices described herein, Plaintiff and Class Members have
17 been denied compensation in an amount to be proven at trial.

18 155. Plaintiff and Class Members are therefore, entitled to restitution pursuant to Business
19 and Professions Code § 17203 and 17208 for all wages and other compensation unlawfully withheld
20 from them during the Class Period.

21 156. As a result of the aforementioned acts and practices, Defendant has received and
22 continues to receive ill-gotten gains belonging to Plaintiff and Class Members.

23 157. Injunctive relief is necessary and appropriate to prevent Defendant from repeating and
24 continuing their unlawful, unfair and fraudulent business acts and practices described herein.

25 158. Pursuant to § 17203 and/or any other applicable law, Plaintiff seeks an order preventing
26 Defendant from engaging in unlawful, unfair and fraudulent conduct and preventing Defendant from
27 profiting and benefiting from their illegal and wrongful acts.

159. Plaintiff's success in this action will enforce important rights affecting the public interest.

160. An award of attorneys' fees is appropriate pursuant to California Civil Code § 1021.5 because 1) this action will confer a significant benefit upon a large class of persons; and 2) there is a financial burden involved in pursuing this action; and 3) it would be against the interest of justice to force Plaintiff to pay attorneys' fees from any amount recovered in this action.

ELEVENTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEY GENERALS ACT OF 2004

Labor Code §2698 et seq.

(Against Defendant and Does 1-50, Inclusive)

161. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

162. The PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (the “LWDA”), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

163. Plaintiff, by his employment with Defendant and Defendant's violations of the Labor Code as alleged herein, is an aggrieved employee with standing to bring an action under the PAGA.

164. Plaintiff, by virtue of **Exhibit A** has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws including, without limitation, the penalty provisions identified in Labor Code § 2699.5. Since the LWDA took no steps within the time period required to intervene and because Defendant took no corrective action to remedy the allegations set forth above, Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the

DLSE. This includes violation of any of the following provisions of the California Labor Code, as is set forth in Labor Code § 2699.5, which states:

“The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7.”

165. Plaintiff is informed and believes that Defendant has violated and continues to violate the provisions of the Labor Code and applicable Wage Order No. 4-2001.

166. Pursuant to Labor Code section 2699, any provision of the Labor Code that already provides a civil penalty to be assessed and collected by the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code or does not provide a civil penalty may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees pursuant to the procedures set forth in Labor Code, section 2699.3.

167. Plaintiff, on his own behalf, and on behalf of the other similarly situated Aggrieved Employees is an “aggrieved employee” because he was employed by the violators (the named Defendant herein and its related Doe affiliates and subsidiaries), during the one-year statutory time period and during such time period, was subjected to one or more violations, including Labor Code

sections 201-203, 204, 226(a), 226.7, 510, 512, 551, 552, 1174, 1194(a), 2802 and IWC No. 4, and are therefore properly suited to represent the interests of a PAGA person.

168. Plaintiff is informed and believes that Defendant has violated and continue to violate provisions of the Labor Code and applicable Wage Order No. 4. Despite mailing of **Exhibit A** at least 65-days prior to the filing of the filing of this Complaint, the LWDA has not notified Plaintiff that it intends to investigate the alleged Labor Code violations identified in **Exhibit A**, such that, by operation of law Plaintiff is entitled to commence this cause of action as a representative action under the PAGA. *See Lab. Code 2699.3(a)(2)(A).*

Failure to Provide Meal Periods and Rest Periods

169. In accordance with the mandates of Labor Code §226.7 and 512, Defendant was required to authorize and relinquish control to permit their non-exempt employees to take a ten-minute, uninterrupted, duty-free rest break for every four (4) hours worked or a major fraction thereof and were further required to provide their non-exempt employees with a full, uninterrupted 30-minute meal period for every five (5) hours of labor performed.

170. As alleged, as a pattern and practice, Defendant failed to provide Plaintiff and the Aggrieved Employees with legally mandated rest break period and uninterrupted meal break periods and failed to pay proper premium pay compensation for such failures in violation of Labor Codes §§ 226.7, 512 and IWC No. 4. Although security guards are allowed to take “on call” meal and rest breaks, if said breaks are interrupted, Defendant must provide a subsequent uninterrupted meal or rest break. At no point has Defendant provided Plaintiff or the Aggrieved Employees subsequent compliant meal or rest breaks, nor has Defendant paid Plaintiff or the Aggrieved Employees the required and proper premium pay compensation for such failures in violation of Labor Codes §§ 226.7, 512 and IWC No. 4.

Failure to Pay Overtime Wages

171. At all times relevant herein, Defendant was required to compensate their non-exempt employees overtime wages for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the mandates of Labor Code §§ 510, 1194, and 1198.

1 172. As a pattern and practice, Defendant routinely failed to pay Plaintiff and the Aggrieved
2 Employees for hours worked off the clock, including the 10-15 minutes of labor performed each
3 workday prior to clocking in, during mandatory trainings, and for labor performed during rest and
4 meal break periods. Such off-the-clock work performed caused Plaintiff and the Aggrieved Employees
5 to work overtime hours for which they were not paid by Defendant.

6 173. Thus, during the relevant statutory period, Defendant failed to compensate Plaintiff and
7 the Aggrieved Employees for all hours worked, resulting in a failure to pay all overtime wages they
8 were due in amounts to be proven at trial.

9 **Failure to Comply with California's "Day of Rest" Law**

10 174. At all times relevant herein, Defendant was required to provide their employees with
11 the day of rest after six (6) days of work without a day off. If an employee works on such day of rest,
12 Defendant was required to compensate the first eight (8) hours on the seventh day at the employee's
13 overtime rate, and every following day after the seventh day must be compensated at no less than twice
14 the employee's regular rate.

15 175. As a pattern and practice, Defendant failed to provide Plaintiff and the Aggrieved
16 Employees with the day of rest required by California law. Such work performed caused Plaintiff and
17 the Aggrieved Employees to work overtime and double time hours for which they were not paid by
18 Defendant.

19 176. Thus, during the relevant statutory period, Defendant failed to compensate Plaintiff and
20 the Aggrieved Employees for all hours worked, resulting in a failure to pay all overtime wages they
21 were due in amounts to be proven at trial.

22 **Failure to Provide Maintain Accurate Records**

23 177. At all times relevant herein, Defendant was required to keep accurate records showing
24 the names and addresses of all employees employed and showing the hours worked daily and wages
25 earned and paid, pursuant to the mandates of Labor Code §1174.

26 178. As a result of and in addition to Defendant's various Labor Code violations, including
27 Defendant's failure to records all hours worked, including overtime hours worked and time worked

1 during rest and meal break periods, Defendant failed in their affirmative obligation to maintain
2 accurate records regarding Plaintiff and the Aggrieved Employees including accurate records of all
3 hours actually worked and wages paid at their applicable respective corresponding rates of pay in
4 violation of Labor Code §1174.

5 **Failure to All Wages When Due**

6 179. Pursuant to Labor Code §204, all wages earned by Plaintiff and the Aggrieved
7 Employees were and/or are “due and payable twice during each calendar month, on days designated
8 in advance by the employer as regular paydays.” For [l]abor performed between the 1st and 15th days,
9 inclusive of any calendar month” payment is due no later than the 26th day of the month. “... for labor
10 performed between the 16th and the last day, inclusive, of any calendar month, payment is due no later
11 than the 10th day of the following month...”

12 180. By failing to pay Plaintiff and the Aggrieved Employees properly for all hours worked
13 at the proper corresponding rates of pay, including overtime hour and overtime rates of pay, Defendant
14 deprived them of timely payment of all wages earned, when due and owing at these regularly
15 scheduled intervals throughout the relevant time period in violation of Labor Code §204.

16 **Failure to Timely Pay All Wages Earned Twice Monthly**

17 181. At all times relevant, Labor Code § 200 was in force and effect. Subdivision (a) of §
18 200 defines “wages” as “all amounts for labor performed by employees of every description, whether
19 the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other
20 method of calculation.” Subdivision (b) of Section 200 defines “labor” as all work or service whether
21 rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the
22 labor to be paid for is performed personally by the person demanding payment.

23 182. At all times relevant, Labor Code § 204 was in force and effect. Subdivision (a) of §
24 204 requires employers to pay employees all wages earned no less than twice monthly. As a result of
25 Defendant’s failure to pay Plaintiff and the Aggrieved Employees all wages they earned, Defendant
26 likewise violated Labor Code section 204 by failing to pay them all wages earned no less than twice
27 monthly.

1 183. At all times relevant, Labor Code § 210 was in force and effect. Labor Code § 210
2 provides in relevant part that an employer that violates Labor Code § 204 is subject to a penalty of one
3 hundred dollars (\$100.00) for any initial violation for each failure to pay each employee, and two
4 hundred dollars for each subsequent violation or any willful or intentional violation, plus 25 percent
5 of the amount unlawfully withheld.

6 184. Due to the aforementioned failure by Defendant to pay all wages owed to Plaintiff and
7 the Aggrieved Employees, a result of Defendant's willful and intentional violations of Labor Code §
8 204, Defendant is liable to the Plaintiff and Aggrieved Employees for the penalties described above.

9 **Failure to Provide Complete and Accurate Wage Statements**

10 185. Pursuant to Labor Code §§ 226 "every employer shall, semimonthly or at the time of
11 each payment of wages, furnish each of his or her employees, either as a detachable part of the check,
12 draft, or voucher paying the employees' wages or separately when wages are paid by personal check
13 or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
14 worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the
15 employee is paid..., and (9) all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee..."

17 186. As a result of the alleged and various Labor Code violations, Defendant failed to keep
18 maintain accurate records of all hours actually worked/wages earned and thus, consequently failed in
19 their affirmative obligation to provide Plaintiff and the Aggrieved Employees with accurately itemized
20 wage statements regarding the true total number of hours each of them actually worked during each
21 and every pay period, their gross wages earned, all deductions, and net wages earned, along with their
22 applicable corresponding hourly rates, including premium pay for missed rest and/or meal breaks and
23 including overtime rates for each respective hourly rate of overtime worked. The inaccurate wage
24 statements were not caused by inadvertent and occasional clerical mistakes, but rather were the result
25 of a pre-determined, deliberate and uniform deliberate operational policies and practices of Defendant.

26 ///

27 ///

1 **Failure to Reimburse Expenses**

2 187. California Labor Code § 2802 provides than an employer shall indemnify his or her
3 employees for all necessary expenditures or losses incurred by the employee in direct consequence of
4 the discharge of his or her duties.

5 188. As alleged supra, Defendant required or requires as a condition of employment that
6 Plaintiff and the Aggrieved Employees utilize their personal cell phones in the daily and routine
7 discharge of their duties to communicate with Defendant's managers, supervisors, and colleagues.
8 Defendant does not and has not reimbursed Plaintiff and the Aggrieved Employees for expenses they
9 incurred in the routine and daily use of their personal cell phone for work related duties and
10 communications.

11 189. As a direct result of Defendant's failure to reimburse Plaintiff and the Aggrieved
12 Employees for their personal cell phone expenses they necessarily incurred in the discharge of their
13 work-related duties, Defendant has violated Labor Code Section 2802.

14 **Damages**

15 190. Defendant's actions constitute continuing and ongoing unlawful activity prohibited by
16 the California Labor Code, as alleged and therefore these acts constitute violations of the PAGA.

17 191. Pursuant to California Labor Code § 2699, Plaintiff requests and is entitled to recover
18 from Defendant civil penalties in the amount of a hundred dollars (\$100) for each aggrieved employee
19 per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee
20 per pay period for each subsequent violation; and

21 192. Attorneys' fees and costs pursuant to Labor Code § 2699(g) and any other applicable
22 statute.

23 193. As alleged supra, notice of these violations was provided pursuant to Labor Code
24 §2699.3 asking the LWDA if it intends to investigate the alleged violations. More than 65 days have
25 passed since notice was provided and Plaintiff has not received any notification from the LWDA that
26 it intends to investigate the alleged violations. Therefore, the representative Plaintiff is entitled to
27 prosecute his PAGA claims under Labor Code §2699, et seq.

194. The proper measure of penalties under the PAGA is as to all Aggrieved Employees, whether a part of this action or not. Further this claim needs no certification to proceed with recovery. See *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 970-975.

195. Accordingly, Plaintiff respectfully requests that the Court award judgment and relief in their favor including an award of civil penalties under California Labor Code §2699 in the amount of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent violation during the relevant period, according to proof.

196. Plaintiff as the personal representative of the Aggrieved Employees, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the liability period, in an amount according to proof, as to those penalties that are otherwise only available to public agencies. Said funds recovered will be distributed in accordance with the PAGA, with at least 75% of said PAGA penalty recovery being reimbursed to the State of California and the LWDA.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF ON BEHALF OF HIMSELF AND ALL MEMBERS OF THE CLASS AND/OR SUBCLASSES THEY SEEK TO REPRESENT, PRAYS FOR RELIEF AS FOLLOWS:

ON THE FIRST THROUGH TENTH CAUSES OF ACTION

1. For an order certifying the First through Tenth causes of action and maintaining said causes of action as a class action pursuant to Cal. Code Civ. Proc. § 382 on behalf of the members of the Class and/or Subclasses who were either employed or who performed work here in the State of California within the Class Period and that notice of the pendency of this action be provided to members of the Class;
2. Designation of Plaintiff as the Class Representative for the Class and/or Subclasses and Plaintiff's attorneys as Class Counsel for the Class and/or Subclasses;

3. A declaratory judgment that the practices complained of herein are unlawful under California law;
4. Appropriate equitable relief to remedy Defendant's violations of California law including, but not necessarily limited to, an order enjoining Defendant from continuing their unlawful practices;
5. For an award of unpaid wages for all labor performed and liquidated damages in an amount equal to the amount unlawfully unpaid pursuant to Labor Code §§ 200, 218, 1194 and 1194.2;
6. For an award of unpaid overtime wages pursuant to Labor Code §§ 510 and 1194;
7. For an award of wages owed pursuant to Labor Code §§ 510, 551 and 552;
8. All appropriate California statutory penalties;
9. Compensation at the rate of one hour of regular pay for each instance in which a member of the Class was not provided a first or second meal period;
10. Compensation at the rate of one hour of regular pay for each instance in which a member of the Class worked through a rest break or was not provided a proper rest break for every four hours worked or major fraction thereof;
11. Labor Code § 203 penalties;
12. Damages and penalties pursuant to Labor Code §§ 226(a) and 226.3 and 210;
13. Reimbursement of the necessary expenses incurred by the Class in the discharge of their duties;
14. For an order that Defendant makes restitution to Plaintiff and the Class due to its unlawful business practices, including unlawfully-collected compensation pursuant to Business and Professions Code §§ 17203 and 17204;
15. Pre-judgment and post-judgment interest, as provided by law;
16. Such other equitable relief as the Court may deem just and proper;

17. Attorneys' fees and costs of suit, including expert fees and fees pursuant to California Labor Code §§ 218.5, 226, 1194, Code of Civil Procedure § 1021.5, and other applicable California laws; and

ON THE ELEVENTH CAUSE OF ACTION

1. Upon the PAGA Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code §2698 et seq., for Defendant's violations of Labor Code §§ 201-203, 204, 226(a), 226.7, 510, 512, 551, 552, 1174(d), 1194, 1198, 2802 and applicable Wage Order No. 4;
2. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor Code §2699 and any other applicable statute; and
3. For such other and further relief the Court may deem just and proper.

DEMAND FOR JURY TRIAL

PLAINTIFF hereby requests a jury trial on all causes of action and claims with respect to which they each have a state and/or federal constitutional right to a jury trial.

DATED: January 27, 2022

SW EMPLOYMENT LAW GROUP

By: _____


Jacob N. Whitehead, Esq.

Meghan N. Higday, Esq.

Attorneys for Plaintiff, Putative Class, and all others
similarly situated

EXHIBIT A



April 21, 2021

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Via Certified Return Receipt Mail

W.M F. Cummings Jr. Registered Agent for
California Security Services, Inc., dba Elite
Universal Security
2001 West Magnolia Boulevard D
Burbank, California 91506

Sent Via First-Class Mail

Monty Hecker, President
California Security Services, Inc., dba Elite
Universal Security
5548 Feather River Boulevard
Olivehurst, California 95961

Via First Class Mail & Email

Jaimee K. Wellerstein, Esq.
BRADLEY & GMELICH, LLP
Attorneys for California Security Services,
Inc., dba Elite Universal Security
700 N. Brand Blvd.
Glendale, CA 91203

Re: Notice Pursuant to the Private Attorneys General Act, California Labor
Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that representative plaintiff, Gregory Eberly ("Plaintiff") has retained Whitehead Employment Law to represent him and other similarly situated current and former employees (collectively, the "Aggrieved Employees") of California Security Services, Inc. dba Elite Universal Security, a California corporation (hereinafter "Defendant") regarding claims of violation of the California Labor Code.

Defendant currently or formerly employed Plaintiff and other Aggrieved Employees, who work or have worked as security guards for Defendant at various assigned posts for Defendant's clientele. This notice formally serves to inform Defendant of Plaintiff's intent to file a complaint against Defendant and bring causes of action for violations of the California Labor Code and the seeks to bring an action for civil penalties under the Private Attorney Generals Act of 2004 (the "PAGA") and for injunctive relief for the violations further detailed below.

Factual Summary and Theories of Liability

Plaintiff was formerly employed by Defendant from on or about April 10, 2019 to November 20, 2019. During the relevant statutory period, Plaintiff and the Aggrieved Employees incurred work related expenses for which they were never reimbursed by the Defendant.

At all times during Plaintiff's employment he was required to utilize his personal cell phone for daily calls with Defendant's dispatch team to confirm scheduling details and for other work-related phone calls and text messages. Plaintiff and the similarly situated aggrieved employees also downloaded applications onto their personal cell phones through which applications they clocked in and clocked out every day and which enabled them to view pay stubs. Moreover, Plaintiff and similarly situated Aggrieved Employees were required to utilize their own personal vehicles for work related travel to and from multiple jobsite locations as directed by the Defendant. Defendant has never reimbursed Plaintiff and similarly situated Aggrieved Employees for these work-related expenses.

Furthermore, Mr. Eberly and similarly situated Aggrieved Employees also had to participate in employer mandated training sessions every six months, utilizing their personal data plans and which sessions (which they took while off duty) were approximately four hours in duration. However at no time has Defendant recorded nor compensated Plaintiff or the Aggrieved Employees for the hours worked for the work-related trainings, which were taken while off the clock, nor was Plaintiff and nor those similarly situated ever reimbursed for the expenses incurred for the usage of their personal data plans in taking those training sessions.

As stated, Defendant failed to record nor compensate Plaintiff and similarly situated employees for the off the clock work for trainings or while engaging with Defendant's supervisors and managers while on their own personal time about work-related matters.

Due to Plaintiff and the Aggrieved Employees working off the clock their shifts frequently exceeded 8 hours in a day or over 40 hours in a workweek, yet Defendant failed to ever record nor compensate them for such overtime hours actually worked.

As a direct consequence of the foregoing practices, Defendant has failed to maintain accurate records of all hours worked in violation of California Labor Code § 1174(d); has failed to compensate Plaintiff and the Aggrieved Employees for all wages when due during each and every pay period in violation of Labor Code § 204; has failed to pay all wages earned, including overtime wages earned in violation of Labor Code § 510 and 1194; has failed to furnish accurate wage statements in violation of Labor Code § 226(a); has failed to pay all wages due upon termination or separation of employment in violation of Labor Code Section 201; and has failed to reimburse for all work related expenses in violation of Labor Code §2802.

Plaintiff is informed and believes that the said violations are ongoing, systematic and uniform. Plaintiff intends to bring an action against Defendant under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of § 213, § s 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of § 226, § s 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of § 232, subdivision (c) of § 232.5, § s 233, 234, 351, 353, and 403, subdivision (b) of § 404, § s 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101,

Failure to Compensate Employees For Every Hour Worked

Labor Code § 204 (a) states *“All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, 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.”*

Under Labor Code §1194 (a) *“Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”*

Labor Code §§ 204 and 1194 (a) have been violated and Plaintiff and the Aggrieved Employees are entitled to recover payment for all hours worked, including time worked off the clock, and for late payment of wages with penalties and interest thereon, as well as their attorney’s fees and costs.

Failure to Pay Overtime Pay

Labor Code § 510 (a) provides, *“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.”*

As indicated above, the Plaintiff and the Aggrieved Employees engaged in off the clock communications regarding work related matters with Defendant and also took employer mandated training while off the clock on their own time. Such time was never recorded, nor compensated by defendant. The time worked while off the clock meant that Plaintiff and the Aggrieved Employees were had on innumerable occasions worked more than an eight-hour shift but were not paid overtime wages. Plaintiff and the Aggrieved Employees were working more than eight hours in a day and more than forty hours in a week throughout the relevant statutory period.

Labor Code § 510 (a) and 1194 have been violated. Thus, Plaintiff and the Aggrieved Employees are entitled to recover unpaid overtime for all hours worked, plus penalties and interest, as well as their attorney’s fees.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, *“Every person employing labor in this state shall:... (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*

1102, 1102.5, and 1153, subdivisions (c) and (d) of § 1174, § s 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of § 1198.3, § s 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of § 1695.5, § s 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, § s 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of § 2673.1, § s 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of § 2929, and § s 3073.4, 6310, 6311, and 6399.7.

respective plants or establishments...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."

As indicated above, due to Defendant's operational policies, procedures and practices, Plaintiff and the Aggrieved Employees often engaged in work related communications and activities while off the clock. However, the time Plaintiff and the Aggrieved Employees spent working while off the clock is/was not ever tracked or recorded by the Defendant in violation of Lab. Cod. § 1174(d).

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendant's derelict record keeping and unlawful business and compensation practices, Plaintiff and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226 requires Defendant to *"furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, 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."*

As indicated above, Plaintiff and the Aggrieved Employees often work/worked on their own personal time while off the clock. Due to Defendant's derelict and inaccurate time keeping practices such time and hours work was never recorded by Defendant. Consequently, such hours worked, including overtime hours and corresponding correct rates of pay is and was not reflected on the Plaintiff and Aggrieved Employees' wage statements during the statutory period.

In failing to account and compensate with accuracy, all of the hours worked by the Plaintiff and the Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, Defendant violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Plaintiff and the Aggrieved Employees' respective (1) gross wages earned, (2) net wages earned, and (3) all applicable hourly rates and the corresponding number of hour worked at each applicable hourly rate.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

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

During the statutory period, when Plaintiff and certain of the Aggrieved Employees' employment relationships with Defendant terminated, Defendant failed to pay them all of their

earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, Defendant has failed to pay the waiting time penalties to which such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, Defendant has failed to pay the Plaintiff and the Aggrieved Employees all of their earned wages, included overtime wages earned, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Failure To Reimburse Work Related Expenses

Labor Code § 2802(a) provides, “*An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.*”

As described above, the Plaintiff and certain of the Aggrieved Employees daily utilize or utilized their personal cell phones in the course of performing their work-related duties without being reimbursed for these work-related cell phone expenses by Defendant and also incurred but were not reimbursed for mileage for work related travel, nor were they ever compensated for expenses incurred in utilizing their personal data plans to participate in mandatory training sessions. Defendant has violated Labor Code § 2802 and the Plaintiff and the similarly situated Aggrieved Employees seek reimbursement of these work-related expenses incurred, as well as their attorneys’ fees, penalties and interest thereon as permitted by §2802.

Conclusion

In sum, as has been factually alleged, Defendant has violated Labor Code §§ 201-203, 204, 226, 510, 512, 1174(d), 1194 (a) and 2802. Plaintiff on his own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable statutory penalties, interest as provided by California law and attorneys’ fees and civil penalties as provided for under Labor Code 2699.

Plaintiff requests the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA’s provisions. Alternatively, Plaintiff requests the agency inform him if it does not intend to investigate these violations so that he may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW


Meghan Higday, Esq.