

AARON C. GUNDZIK (State Bar No. 132137)
REBECCA G. GUNDZIK (State Bar No. 138446)
GUNDZIK GUNDZIK HEEGER LLP
14011 Ventura Blvd., Suite 206E
Sherman Oaks, CA 91423
Telephone: (818) 290-7461
Facsimile: (818) 918-2316

Attorneys for Plaintiff Carlos Salinas, individually,
on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CARLOS SALINAS, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

AMERICAN GUARD SERVICES, INC., a
California corporation; SEVEN SAFE
SERVICES, INC.; GUARDIAN
INTERNATIONAL SOLUTIONS, INC.; and
DOES 1 through 25,

Defendants.

Case No.: 21STCV23048
Assigned to Hon. Amy D. Hogue, SSC-7

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. Violation of Labor Code §510
(Failure to Pay Overtime Wages)**
- 2. Violation of Labor Code §2802
(Failure to reimburse necessary
expenditures)**
- 3. Violation of Labor Code §§226.7
and 512(a) (Failure to Provide Meal
and Rest Breaks)**
- 4. Violation of Labor Code §226 (non-
compliant wage statements)**
- 5. Violation of Labor Code §§201 and
202 (Failure to Pay Unpaid Wages
at Time of Discharge)**
- 6. Violation of Business & Professions
Code §§ 17200 *et seq.***
- 7. Recovery of Civil Penalties, Labor
Code §§2698, *et seq.***

Jury Trial Demanded

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Carlos Salinas is an individual and resident of California. Plaintiff worked for Defendants as a security guard from about June 2019 until about April 2021.

1 2. Defendant American Guard Services, Inc. is a corporation organized under
2 the laws of the state of California. This Defendant employed Plaintiff as a security guard
3 from about June 2019 until about December 31, 2019.

4 3. Defendant Seven Safe Services, Inc. is a corporation organized under the
5 laws of the state of California. This Defendant employed Plaintiff as a security guard from
6 January 2020 until about April 2021.

7 4. Defendant Guardian International Solutions, Inc. is a corporation organized
8 under the laws of the state of California. This Defendant employed Plaintiff as a security
9 guard from January 2020 until about April 2021.

10 5. Plaintiff does not know the true names or capacities of the Defendants sued
11 herein as Does 1 through 25, inclusive, and, for that reason, said Defendants are sued under
12 such fictitious names. Plaintiff is informed and believes, and based thereon, alleges that each
13 of said fictitious Defendants are and were responsible in some manner for the injuries
14 complained of herein. Plaintiff will amend this Complaint to identify such fictitiously named
15 Defendants pursuant to Code of Civil Procedure Section 474 once their identities become
16 known.

17 6. The relief sought by Plaintiff on behalf of himself and the Class defined
18 below exceeds the minimal jurisdictional limits of the Superior Court and will be established
19 according to proof at trial. The Court has personal jurisdiction over each of the parties
20 because they are either citizens of this State, doing business in this State or otherwise have
21 minimum contacts with this State.

22 7. Venue is proper in this County. Defendants' principal places of business is
23 located in Los Angeles County.

24 8. Plaintiff is informed and believes and, based thereon, alleges that the
25 Defendants were at all times relevant hereto members of, and engaged in, a joint venture,
26 partnership, association or common enterprise, and acting within the course and scope of,
27 and in pursuance of, said joint venture, partnership, association or common enterprise.
28 Furthermore, Plaintiff is informed and believes and based thereon, alleges that at all times

1 relevant hereto Defendants conspired together in, aided and abetted, contributed to, and/or
2 acted as agents or employees of each other with respect to, the commission of the acts
3 complained of herein. Defendants are therefore jointly and severally liable for the injuries
4 complained of herein.

5 **CLASS ALLEGATIONS**

6 9. Plaintiff brings this action pursuant to California Code of Civil Procedure
7 Section 382 on behalf of himself and the Class described below. The Class is comprised of
8 and defined as:

9 All persons who worked as security guards for Defendants in
10 California at any time within the four years prior to the initiation of
11 this action until the date that the class is certified (hereinafter “the
12 Class period”) who were also classified by Defendants as independent
13 contractors while working for Defendants.

14 10. There exists a well-defined community of interest among the Class, and the
15 Class is readily ascertainable.

16 11. The members of the Class are so numerous that joinder of all members in a
17 single action would not be feasible or practical, and the amount of individual damages is not
18 large enough to make individual lawsuits by each class member practical or feasible.
19 Plaintiff is informed and believes and based upon such information and belief alleges that
20 there are in excess of 50 members of the Class.

21 12. Plaintiff’s claims are typical of the claims of the rest of the Class, and
22 Plaintiff will fairly and adequately represent the interests of the Class.

23 13. Common issues of fact and/or law predominate in this action over any
24 allegedly individual issues. Specifically, the following common questions of fact or law
25 predominate and make this action superior to individual actions:

26 (i) whether Plaintiff and the rest of the Class are entitled to recover
27 damages, penalties and other relief on the grounds that Defendants have used uniform
28

1 policies and procedures that have consistently violated California labor laws and regulations
2 and caused Plaintiff and the rest of the Class to suffer the same or similar injuries;

3 (ii) whether Defendants failed to pay class members overtime premium
4 wages for overtime work, as required by Labor Code section 510;

5 (iii) whether Defendants failed to provide wage statements containing all
6 of the information required by Labor Code section 226(a);

7 (iv) whether Defendants failed to provide Plaintiff and the rest of the
8 Class with legally required meal and rest breaks, in violation of Labor Code Sections 226.7
9 and 512(a);

10 (v) whether Defendants failed to indemnify the Class for all of the
11 necessary expenditures or losses incurred in direct consequence of the discharge of their
12 duties, or of their obedience to the directions of their employer, in violation of Labor Code
13 Section 2802; and

14 (vi) whether Defendants' practices constitute unfair, fraudulent, or illegal
15 business practices under Business and Professions Code Sections 17200 *et seq.*

16 12. California labor laws under which Plaintiff asserts the following causes of
17 action on behalf of himself and the rest of the Class are broadly remedial in nature. These
18 labor laws serve an important public interest in establishing minimum working conditions
19 and standards in California. They furthermore protect employees from exploitation by
20 employers who may seek to take advantage of their superior economic and bargaining power
21 in setting onerous terms and conditions of employment. The class action mechanism is a
22 particularly efficient and appropriate procedure to redress the injuries alleged herein. If each
23 employee in the Class was required to file an individual action, Defendants would be able to
24 use their superior financial and legal resources to gain an unfair advantage over each
25 individual class member. Moreover, requiring each class member to pursue an individual
26 action would also discourage the assertion of meritorious causes of action by employees
27 who would likely be disinclined to file such individual actions due to a justifiable fear of
28 retaliation and damage to their careers at subsequent employment.

13. In addition, even if feasible, individual actions by each Class member would create a substantial risk (i) of inconsistent or varying adjudications with respect to the claims of each Class member against Defendants, that in turn could establish potentially incompatible standards of conduct for Defendants, and/or (ii) of adjudications with respect to individual Class members that would, as a practical matter, be dispositive of the interests of the other Class members. Furthermore, the claims of each individual Class member are not sufficiently large enough to make it economically feasible to bring each Class member's claims on an individual basis.

GENERAL ALLEGATIONS

14. During the Class Period, Defendants wrongly classified Plaintiff and the rest of the Class as independent contractors and required them to sign independent contractor agreements. In fact, Plaintiff and Class Members were employees of Defendants.

15. Due to Defendants' misclassification of Class Members, Defendants violated various provisions of the California Labor Code and applicable Industrial Welfare Commission Wage Order, as alleged herein.

16. On information and belief, Plaintiff alleges that Defendants applied the same policies to all members of the proposed Class. As alleged below, these uniform policies, practices and procedures violated California's labor laws and constituted unfair, fraudulent or illegal business practices under Business & Professions Code Sections 17200 *et seq.*

FIRST CAUSE OF ACTION

FOR VIOLATION OF LABOR CODE SECTION 510

(Against all Defendants)

17. Plaintiff re-alleges and incorporates herein by this reference each of the allegations set forth in Paragraphs 1-16, inclusive.

18. During the Class period, Labor Code Section 510 applied to Defendants' employment of Plaintiff and the rest of the Class. At all times relevant hereto, Labor Code Section 510 required Defendants to compensate Plaintiff and the Class at no less than one and one-half times their regular rate of pay for any hours worked in excess of eight (8) hours

1 in any day and forty (40) hours in any one week and further required Defendants to
2 compensate Plaintiff and the Class at no less than twice their regular rate of pay for any
3 hours worked in excess of twelve (12) hours in any one day.

4 19. At times during the Class Period, Plaintiff and the Class were required to
5 work in excess of eight (8) hours in any day and/or more than forty (40) hours during the
6 workweek. Plaintiff and the Class were not compensated for this time at the rates required
7 by Labor Code Section 510.

8 20. Accordingly, Plaintiff and the rest of the Class are entitled to recover from
9 Defendants unpaid and underpaid overtime that they incurred within the applicable
10 limitations period until the date that the Class is certified, interest thereon, together with
11 their reasonable attorneys' fees and costs.

12 **SECOND CAUSE OF ACTION**

13 **FOR VIOLATION OF LABOR CODE SECTION 2802**

14 (Against all Defendants)

15 21. Plaintiff re-alleges and incorporates herein by this reference each of the
16 allegations set forth in Paragraphs 1-20, inclusive.

17 22. During the Class period, Labor Code Section 2802 applied to Defendants'
18 employment of Plaintiff and the rest of the Class and required employers such as Defendants
19 to reimburse their employees for all necessary expenditures or losses incurred by employees
20 in direct consequence of the discharge of their duties.

21 23. During the Class Period, Plaintiff and other Class members incurred expenses
22 as a necessary part of performing their duties for Defendants. Such expenses included,
23 without limitation, uniform and equipment-related expenses and liability insurance.

24 24. Defendants have failed and refused to compensate Plaintiff and the Class for
25 all such expenses. Accordingly, Plaintiff and the rest of the Class are entitled to recover
26 from Defendants the cost of their reimbursable expenses, interest thereon, together with their
27 reasonable attorneys' fees and costs.

28 //

1 //

2 **THIRD CAUSE OF ACTION**

3 **FOR VIOLATION OF LABOR CODE SECTIONS 226.7(b) AND 512(a)**

4 **AND THE APPLICABLE IWC WAGE ORDER**

5 (Against all Defendants)

6 25. Plaintiff re-alleges and incorporates herein by this reference each of the
7 allegations set forth in Paragraphs 1-24, inclusive.

8 26. During the Class Period, Labor Code Sections 226.7(b) and 512(a) and the
9 applicable IWC Wage Order applied to Defendants' employment of Plaintiff and the rest of
10 the Class.

11 27. At all times relevant hereto, Labor Code Section 512(a) and the applicable
12 IWC Order also required Defendants, every time Plaintiff and the Class worked a period of
13 five (5) or more hours per day, to permit Plaintiff and the Class the opportunity to take a
14 thirty (30) minute uninterrupted meal break during which Plaintiff and the Class were and
15 are relieved of all duty. Furthermore, at all times relevant hereto, Labor Code Section
16 512(a) and the applicable IWC Wage Order provided that employers such as Defendants
17 could not require or permit an employee such as Plaintiff or a member of the Class to work a
18 period of more than ten (10) hours per day without providing the employee with a second
19 uninterrupted meal period of not less than thirty (30) minutes.

20 28. At all relevant times, the applicable IWC Wage Order provides that "[e]very
21 employer shall authorize and permit all employees to take rest periods, which insofar as
22 practicable shall be in the middle of each work period" and that the "rest period time shall be
23 based on the total hours worked daily at the rate of ten (10) minutes net rest per four (4)
24 hours or major fraction thereof" unless the total daily work time is less than three and one-
25 half (3 ½) hours.

26 29. At all times relevant hereto, Labor Code Section 226.7(b) provided that
27 employers such as Defendants could not require employees such as the Class members to
28 work during any meal or rest period mandated by an applicable order of the IWC.

30. At times during the Class period, Plaintiff and the rest of the Class were not provided with any meal period at all, or were required by Defendants to work more than five (5) hours per day before they were given the opportunity to take a thirty (30) minute uninterrupted meal break and were and are relieved of all duty. Furthermore, at times during the Class period, Plaintiff and the Class were required by Defendants to work more than ten (10) hours per day without being provided with the opportunity to take a second meal period of not less than thirty (30) minutes.

31. In addition, during the Class Period, Defendants failed to provide Plaintiff and the rest of the Class with all of the required compliant rest periods in violation of Labor Code Section 226.7(b) and the applicable IWC Wage Order.

32. Accordingly, pursuant to Labor Code Section 226.7(c), Plaintiff and the rest of the Class are entitled to recover from Defendants one additional hour of pay at the Class members' regular rate of compensation for each workday that a compliant meal or rest period was required, but not provided.

FOURTH CAUSE OF ACTION

FOR VIOLATIONS OF LABOR CODE SECTION 226

(Against all Defendants)

33. Plaintiff re-alleges and incorporates herein by this reference each of the allegations set forth in Paragraphs 1-32, inclusive.

34. During the Class period, Labor Code Section 226(a) applied to Defendants' employment of Plaintiff and the rest of the Class. At all times relevant hereto, Labor Code Section 226(a) required that employers such as Defendants furnish to their employees, semi-monthly or at the time of each payment of wages, an accurate itemized statement in writing showing: "(1) gross wages earned, (2) total hours worked by the employee, . . . (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a

1 social security number, (8) the name and address of the legal entity that is the employer . . .
2 and (9) all applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee.”

4 35. Plaintiff is informed and believes and, based thereon, alleges that during the
5 Class Period Defendants knowingly and intentionally failed to provide such accurate
6 itemized wage statements to Plaintiff and the members of the Class. Plaintiff and the rest of
7 the Class suffered injury as a result of Defendants’ failure to comply with Labor Code
8 Section 226(a).

9 36. Accordingly, pursuant to Labor Code Section 226(e), Plaintiff and each
10 member of the Class are entitled to recover from Defendants the greater of their actual
11 damages or fifty dollars (\$50) for the initial violation of Labor Code Section 226(a) and one
12 hundred dollars (\$100) for each subsequent violation during the applicable limitations
13 period, up to a maximum of \$4,000 per Class member or the then applicable legal rates at
14 the time of adjudication, plus their reasonable attorneys’ fees and costs.

15 **FIFTH CAUSE OF ACTION**

16 **FOR VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

17 **(Against all Defendants)**

18 37. Plaintiff re-alleges and incorporates herein by the reference each of the
19 allegations in Paragraphs 1-36, inclusive.

20 38. During the Class period, Labor Code Sections 201 and 202 applied to
21 Defendants’ employment of Plaintiff and the rest of the Class. At all times relevant hereto,
22 Labor Code Section 201 provided that, if an employer such as Defendants discharged an
23 employee such as a member of the Class, the wages earned and unpaid at the time of
24 discharge were due and payable immediately.

25 39. Furthermore, at all relevant times Labor Code Section 202 provided and
26 provides that, if an employee such as a member of the Class voluntarily leaves his or her
27 employment, the wages earned and unpaid must be paid by the employer within seventy-two
28 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice

1 of his or her intention to leave, in which case the employee is entitled to receive his or her
2 wages immediately at the time of quitting.

3 40. Plaintiff and other members of the Class left their positions of employment at
4 Defendants' business during the Class period. However, Defendants willfully did not pay
5 Plaintiff and the Class all of the wages that were due to them within the time required by
6 sections 201 and 202. Defendants therefore violated Labor Code Section 201 and 202.

7 41. During the Class period, Labor Code Section 203 provided that, if an
8 employer such as Defendants fails to pay any wages of an employee who is discharged or
9 who quits, the wages of the employee shall continue as a penalty from the due date thereof
10 at the same rate until paid or until an action therefore is commenced, but the wages shall not
11 continue for more than thirty (30) days. Accordingly, Plaintiff and the members of the Class
12 who were discharged or who quit during the Class period are entitled to receive their wages
13 for each day they were not paid, at their regular rate of pay, up to a maximum of thirty (30)
14 days, plus interest, costs and reasonable attorneys' fees.

15 **SIXTH CAUSE OF ACTION**

16 **FOR VIOLATION OF BUSINESS AND PROFESSIONS CODE**

17 **SECTIONS 17200 *ET SEQ.***

18 **(Against all Defendants)**

19 42. Plaintiff re-alleges and incorporates herein by this reference each of the
20 allegations in Paragraphs 1-41, inclusive.

21 43. During the Class period, Defendants' practices, as alleged above, have been
22 and continue to be unfair, fraudulent and illegal, and harmful to Plaintiff, the rest of the
23 Class and the general public. Defendants' above-alleged practices constitute violations of
24 Business and Professions Code Sections 17200 *et seq.* Specifically, a practice that violates
25 any state law or regulation may constitute the basis of an unlawful business practice
26 prohibited by Business and Professions Code Sections 17200 *et seq.*

27 44. Among other things, the following practices of Defendants, as alleged
28 above, constitute unfair business practices:

1 a. Defendants’ failure to pay overtime premium wages to Plaintiff and
2 Class members in violation of Labor Code section 510.

3 b. Defendants’ failure to provide mandated meal and rest breaks, as
4 required by Labor Code Sections 226.7(b) and 512(a) and the applicable IWC order and to
5 compensate Plaintiff and Class members for such non-compliant breaks, as required by
6 Labor Code section 226.7(c).

7 c. Defendants’ failure to reimburse Plaintiff and the Class for their
8 reimbursable expenses as required by Labor Code Section 2802.

9 45. Accordingly, pursuant to Business and Professions Code Section 17200
10 *et seq.*, Plaintiff and the rest of the Class are entitled to restitution of wages and other
11 property held by Defendants during the Class Period.

12 46. Plaintiff meets the standing requirements for seeking relief pursuant to
13 Business and Professions Code Section 17203, in that he has suffered an injury in fact and
14 has lost money as a result of Defendants’ policies, practices and procedures, as more fully
15 set forth elsewhere in this pleading.

16 **SEVENTH CAUSE OF ACTION**

17 **RECOVERY OF CIVIL PENALTIES,**

18 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**

19 47. Plaintiff re-alleges and incorporates herein by this reference each of the
20 allegations in Paragraphs 1-46, inclusive.

21 48. Plaintiff brings this cause of action on behalf of the LWDA under the Private
22 Attorneys General Act of 2004 (“PAGA”), California Labor Code §§ 2698-2699.5. In
23 pursuing his PAGA claim, Plaintiff represents the same legal right and interest as state labor
24 law enforcement agencies. PAGA permits him to recover civil penalties that otherwise
25 would have been assessed and collected by the LWDA. Plaintiff does do not bring his
26 PAGA claim as an individual but as an agent of the LWDA, and as such brings this
27 representative action on behalf of all other current and former employees who were
28

1 aggrieved within the statutory time periods for the specific violations of the California Labor
2 Code alleged herein.

3 49. Plaintiff has complied with the notice requirements of Labor Code section
4 2699.3. On June 18, 2021, Plaintiff's representative notified the LWDA and Defendants in
5 writing of the Labor Code violations set forth herein. Sixty-five days later, the LWDA had
6 not responded to Plaintiff's notice. Pursuant to section 2699.3(a)(2)(A), Plaintiff was
7 entitled to commence this action, and pursuant to section 2699.3(a)(2)(C) is entitled to
8 amend his pleading to include this claim.

9 **Violations of Labor Code sections 226.7(b) and 512(a)**

10 55. Labor Code Sections 226.7(b) and 512(a) and the applicable IWC Wage
11 Order applied to Defendants' employment of Plaintiff and the rest of the aggrieved
12 employees. At all times relevant hereto, Labor Code Section 226.7(b) provided that
13 employers such as Defendants could not require employees such as the aggrieved employees
14 to work during any meal or rest period mandated by an applicable order of the IWC.

15 56. At all times relevant hereto, Labor Code Section 512(a) and the applicable
16 IWC Order also required Defendants, every time Plaintiff and the aggrieved employees
17 worked a period of five (5) or more hours per day, to permit Plaintiff and the aggrieved
18 employees the opportunity to take a thirty (30) minute uninterrupted meal break during
19 which Plaintiff and the aggrieved employees were and are free to leave the premises and
20 were and are relieved of all duty. Furthermore, at all times relevant hereto, Labor Code
21 Section 512(a) and the applicable IWC Wage Order provided that employers such as
22 Defendants could not require or permit an employee such as Plaintiff or the aggrieved
23 employees to work a period of more than ten (10) hours per day without providing the
24 employee with a second uninterrupted meal period of not less than thirty (30) minutes.

25 57. The applicable IWC Wage Order provides that "[e]very employer shall
26 authorize and permit all employees to take rest periods, which insofar as practicable shall be
27 in the middle of each work period" and that the "rest period time shall be based on the total
28

1 hours worked daily at the rate of ten (10) minutes net rest per four (4) hours or major
2 fraction thereof” unless the total daily work time in less than three and one-half (3 ½) hours.

3 58. Plaintiff and the rest of the aggrieved employees were required by
4 Defendants to work more than five (5) hours per day before they were given the opportunity
5 to take a thirty (30) minute uninterrupted meal break during which Plaintiff and the
6 aggrieved employees were and are free to leave the premises and were and are relieved of all
7 duty. Furthermore, at times Plaintiff and the aggrieved employees were required by
8 Defendants to work more than ten (10) hours per day without receiving a second meal
9 period of not less than thirty (30) minutes, with the exception of those employees who
10 worked twelve (12) hours or less per day and legally waived their second meal periods by
11 mutual written consent. Among other things, at times Defendants did not provide thirty-
12 minute uninterrupted meal breaks during which Plaintiff and the aggrieved employees were
13 free to leave the premises and were relieved of all duty. In addition, Defendants failed to
14 provide Plaintiff and the rest of the aggrieved employees with required rest periods in
15 violation of Labor Code Section 226.7(b) and the applicable IWC Wage Order.

16 59. Accordingly, Plaintiff and the rest of the aggrieved employees are entitled to
17 recover penalties as provided in Labor Code section 558 and 2699.

18 **Violations of Labor Code section 510**

19 60. During the relevant time period, Defendants maintained an unlawful policy of
20 failing to pay overtime premium wages to employees for all overtime hours worked at
21 overtime premium rates, in violation of Labor Code section 510. In addition, aggrieved
22 employees were regularly required to work through their meal periods and were not paid for
23 all hours worked, and much of this unpaid time was required to be paid at overtime premium
24 rates.

25 61. Accordingly, Plaintiff and the rest of the aggrieved employees are entitled to
26 recover penalties as provided in Labor Code section 558 and 2699.

1 **Violations of Labor Code section 226**

2 62. At all times relevant hereto, Labor Code Section 226(a) applied to
3 Defendants' employment of Plaintiff and the rest of the aggrieved employees and required
4 that employers such as Defendants furnish to its employees, semi-monthly or at the time of
5 each payment of wages, an accurate itemized statement in writing showing such matters as
6 the employer's name and address, the gross wages earned, the total hours worked, the net
7 wages earned and all applicable hourly rates, during the pay period.

8 63. Plaintiff is informed and believe and based thereon, alleges that at various
9 times, Defendants knowingly and intentionally failed to provide such accurate itemized
10 wage statements to Plaintiff and the other aggrieved employees, in that, among other things,
11 such statements do not include gross wages earned because they do not include overtime and
12 other wages that should have been paid. The missing gross wages include premium wages
13 that should have been paid for overtime worked and premium wages for non-compliant
14 and/or missed meal and rest breaks. The wage statements also do not include the total hours
15 worked by employees or the hourly rates in effect. Also missing from the wage statements
16 are the employer's name and address.

17 64. Accordingly, Plaintiff and the rest of the aggrieved employees are entitled to
18 recover penalties as provided for in Labor Code sections 226.3 and 2699.

19 **Violations of Labor Code sections 201 and 202.**

20 65. At all times relevant hereto, Labor Code Sections 201 and 202 applied to
21 Defendants' employment of Plaintiff and the other aggrieved employees. At all times
22 relevant hereto, Labor Code Section 201 provided that, if an employer such as Defendants
23 discharged an employee such as Plaintiff or the other aggrieved employees, the wages
24 earned and unpaid at the time of discharge were due and payable immediately. Furthermore,
25 at all relevant times Labor Code Sections 202 provided and provides that, if an employee
26 such as Plaintiff or one of the other aggrieved employees voluntarily leaves his or her
27 employment, the wages earned and unpaid must be paid by the employer within seventy-two
28 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice

1 of his or her intention to leave, in which case the employee is entitled to receive his or her
2 final wages immediately.

3 66. Plaintiff and other aggrieved employees left their positions of employment at
4 Defendants' business. However, Defendants did not pay Plaintiff and the other aggrieved
5 employees all of the wages that were due to them within the time required by sections 201
6 and 202. Plaintiff and the other aggrieved employees are informed and believe and, based
7 thereon, allege that at all times relevant hereto, Defendants willfully failed to pay Plaintiff
8 and the other aggrieved employees their earned and unpaid wages, either at the time of their
9 discharge or within seventy-two (72) hours of their quitting. Defendants therefore violated
10 Labor Code Section 201 and 202.

11 67. As a result of the acts alleged above and the allegations incorporated herein,
12 Plaintiff is entitled to recover penalties as provided in Labor Code section 2699.

13 **Unlawful Failure to Reimburse Necessary Expenses**

14 68. Labor Code Section 2802 requires Employer to reimburse employees for all
15 necessary expenditures and losses incurred in order to discharge their duties for Employer.

16 69. During the relevant time period, Plaintiff and the other aggrieved employees
17 were required to use their own vehicles and cell phones for work but were not reimbursed by
18 Defendants for these expenses. Additionally, some of the aggrieved employees were
19 required to provide their own tools, without reimbursement from Defendants.

20 70. Accordingly, pursuant to Labor Code Section 2699, Plaintiff and the rest of
21 the aggrieved employees are entitled to recover penalties for Defendants' failure to properly
22 reimburse them for their necessary expenditures.

23 **Unlawful Misclassification of Employees as Independent Contractors**

24 71. Pursuant to Labor Code section 2775, Plaintiff and the aggrieved employees
25 were employees of Defendants and not independent contractors.

26 72. Labor Code section 226.8 provides for the imposition of penalties against an
27 employer who misclassifies employees as independent contractors.

73. Defendants have violated Labor Code section 2775 by improperly misclassifying aggrieved employees as independent contractors.

74. Accordingly, Plaintiff is entitled to recover penalties as provided for in Labor Code section 226.8.

PRAAYER

WHEREFORE, Plaintiff prays for judgment on behalf of himself and the rest of the Class against all Defendants, as follows:

ON THE FIRST CAUSE OF ACTION

1. For unpaid overtime premium wages;
2. For prejudgment interest pursuant to Labor Code section 218.6; and
3. For reasonable attorneys' fees and costs under Labor Code section 218.5.

ON THE SECOND CAUSE OF ACTION

1. For unreimbursed expenses incurred by Plaintiff and the Class;
2. For prejudgment interest;
3. For reasonable attorneys' fees and costs under Labor Code section 2802.

ON THE THIRD CAUSE OF ACTION

1. For unpaid wage premiums for failing to provide compliant meal periods and/or rest periods;
2. For prejudgment interest; and
3. For reasonable attorneys' fees and costs under Code of Civil Procedure section 1021.5.

ON THE FOURTH CAUSE OF ACTION

1. For damages under Labor Code Section 226(e) for the failure to provide accurate wage statements in accordance with Labor Code §226(a);
2. For reasonable attorneys' fees under Labor Code Section 226(e).

ON THE FIFTH CAUSE OF ACTION

1. For the wages of each Class member who is no longer employed by Defendant at their regular daily rate up to a maximum of thirty (30) days;

2. For prejudgment interest pursuant to Labor Code section 218.6; and
3. For reasonable attorneys' fees pursuant to Labor Code section 218.5.

ON THE SIXTH CAUSE OF ACTION

1. For restitution of all unpaid wages, overtime and other monies withheld from Plaintiff and the rest of the Class as a result of Defendants' unfair, unlawful or fraudulent business practices;

2. For reasonable attorneys' fees and costs under Code of Civil Procedure Section 1021.5.

ON THE SEVENTH CAUSE OF ACTION

1. For an award of civil penalties; and

2. For reasonable attorney's fees and costs pursuant to Labor Code section 2699(g).

ON ALL CAUSES OF ACTION

1. For certification of the First through Sixth Causes of Action as a class action;

2. For attorneys' fees and costs pursuant to Civil Procedure Section 1021.5, the "common fund" theory, the "substantial benefit" theory and/or any other applicable theory or doctrine; and,

3. For such further relief as the Court may deem appropriate.

DATED: October 21, 2021

GUNDZIK GUNDZIK HEEGER LLP

By: 

Aaron C. Gundzik
Attorneys for Plaintiff Carlos Salinas,
individually and on behalf of all others
similarly situated

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

DATED: October 21, 2021

GUNDZIK GUNDZIK HEEGER LLP



By: _____
Aaron C. Gundzik
Attorneys for Plaintiff Carlos Salinas,
individually and on behalf of all others
similarly situated

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 14011 Ventura Blvd., Suite 206E, Sherman Oaks, CA 91423.

On October 21, 2021, I served the following document described as

- **FIRST AMENDED CLASS ACTION COMPLAINT**

on the interested parties in this action:

(X) by serving () the original (X) true copies thereof as follows:

Please see attached service list

() BY MAIL I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.	() BY FACSIMILE TRANSMISSION I caused said document(s) to be transmitted by facsimile transmission to the name(s) and facsimile telephone number(s) of the person(s) named on the attached service list. The facsimile machine telephone number of the sending facsimile machine was (818) 918-2316. A transmission report was issued by the sending facsimile machine confirming that the transmission was completed without error. A true and correct copy of said transmission report is attached hereto.
() BY OVERNIGHT DELIVERY Said document was placed in an envelope designated by the express service center and placed for collection in a box regularly maintained by said carrier with whom we have a direct billing account, to be delivered to the office of the addressee listed above on the next business day.	(XX) BY ELECTRONIC TRANSMISSION I caused the above-described document to be electronically served through Case Anywhere pursuant to the Court's Order Authorizing Electronic Service dated September 2, 2021, to the names and email addresses listed on the Service List attached hereto.

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

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

(X) EXECUTED on October 21, 2021, at Sherman Oaks, California.



Nicole Salazar

Case Anywhere Electronic Service List

Case Name: **Salinas, et al. v. American Guard Services, Inc., et al.**

Case Info: **21STCV23048, Los Angeles Superior Court**

Gundzik Gundzik Heeger LLP

Aaron Gundzik, Esq. (aaron.gundzik@gghllp.com)
Rebecca Gundzik, Esq. (rebecca.gundzik@gghllp.com)
14011 Ventura Boulevard, Suite 206E
Sherman Oaks, CA 91423
Phone: (818) 290-7461
Fax: (818) 918-2316

Representing:

Carlos Salinas, individually and on behalf of all others similarly situated

Law Offices of John K. Fu

John Fu, Esq. (jkfu@earthlink.net)
1505 N. San Fernando Blvd., #A
Burbank, CA 91504
Phone: (714) 856-4565
Fax: (818) 239-1583

Representing:

Guardian International Solutions, Inc.
Seven Safe Services, Inc.

Lewis Brisbois Bisgaard & Smith LLP

Steven Gatley, Esq. (steven.gatley@lewisbrisbois.com)
Edward Seo, Esq. (edward.seo@lewisbrisbois.com)
633 West Fifth Street, Suite 4000
Los Angeles, CA 90071
Phone: (213) 250-1800
Fax: (213) 250-7900

Representing:

American Guard Services, Inc.

Lewis Brisbois Bisgaard & Smith LLP

William Anderson, Esq. (william.anderson@lewisbrisbois.com)
Vincent Fisher, Esq. (vincent.fisher@lewisbrisbois.com)
Daniel Qualls, Esq. (daniel.qualls@lewisbrisbois.com)
333 Bush Street, Suite 1100
San Francisco, CA 94104
Phone: (415) 362-2580
Fax: (415) 434-0882

Representing:

American Guard Services, Inc.

The Service List is compiled from information provided to Case Anywhere and is not independently reviewed for accuracy.

Only attorneys are listed. Other authorized users may also receive case notifications by email.