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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF SAN DIEGO

17 BUENAVENTURA SANTIAGO, GARY
18 BANUELOS, and JOSHUA GARRIDO on
19 behalf of themselves and all other aggrieved
20 employees of Defendants in the State of
21 California,

22 Plaintiffs,

23 v.

24 SECURITY INDUSTRY SPECIALISTS,
25 INC., a California Corporation, and DOES 1
26 THROUGH 50, inclusive,

27 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/25/2021 at 10:35:19 AM

Clerk of the Superior Court
By Elizabeth Reyes, Deputy Clerk

Case No.: 37-2021-00045337-CU-OE-CTL

Unlimited Civil
Amount Demanded exceeds \$25,000.00

COMPLAINT

**REPRESENTATIVE ACTION FOR
PAGA PENALTIES**

[Labor Code §§ 2698, *et seq.*]

1. Violation of the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*

– JURY TRIAL DEMANDED –

1 BUENAVENTURA SANTIAGO, GARY BANUELOS, and JOSHUA GARRIDO (“Plaintiffs”),
2 on behalf of themselves and all other aggrieved employees of SECURITY INDUSTRY SPECIALISTS,
3 INC., and DOES 1 through 50, inclusive, alleges as follows:

4 **I.**

5 **INTRODUCTION**

6 1. Plaintiffs BUENAVENTURA SANTIAGO, GARY BANUELOS, and JOSHUA
7 GARRIDO bring this representative action pursuant to the Private Attorneys General Act of 2004,
8 California Labor Code section 2698, *et seq.* (“PAGA”) against SECURITY INDUSTRY SPECIALISTS,
9 INC., (“SIS”), and DOES 1 through 50, inclusive (collectively, “Defendants”), on behalf of all other
10 current and former exempt Shift or Security Supervisors, who were employed by Defendants in the State
11 of California during the applicable relevant time period and suffered at least one wage and hour violation
12 alleged herein (“aggrieved employees”) for engaging in a pattern of wage and hour violations under the
13 California Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order.

14 2. Plaintiffs are informed and believe, and thereon alleges, that Defendants decreased their
15 employment-related costs by systematically violating California wage and hour laws.

16 3. Plaintiffs bring this action on behalf of all other current and former employees of
17 Defendants working as a Shift Supervisor or similar position in the State of California and were
18 misclassified as an exempt employee (hereinafter “Aggrieved Employees”).

19 4. Defendants’ systematic pattern of Labor Code and IWC Wage Order violations toward
20 Plaintiff and other aggrieved employees in California include, but are not limited to:

- 21 a. Willfully misclassifying employees as exempt;
22 b. Failure to provide off-duty and uninterrupted meal periods of at least 30-minutes before
23 the commencement of the sixth hour of work;
24 c. Failure to authorize and permit off-duty paid rest periods;
25 d. Failure to pay all minimum and regular wages for all hours worked;
26 e. Failure to pay all overtime wages;
27 f. Failure to maintain accurate records;
28 g. Failure to provide accurate itemized wage statements; and

h. Failure to timely pay all wages due during and upon separation of employment.

5. Plaintiffs bring this lawsuit seeking civil penalties only on behalf of themselves and all other Aggrieved Employees of Defendants in California. Plaintiffs seek civil penalties attorney's fees, and costs pursuant to the PAGA for Defendants' violation of Labor Code Sections 201, 202, 203, 204, 210, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.7, § 226.8, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198.

6. Plaintiffs reserve the right to name additional representatives throughout the State of California.

II.

PARTIES

A. Plaintiffs

7. Plaintiffs are former employees of Defendants, who, at all relevant times, worked as employees for Defendants in San Diego County. Plaintiffs currently reside in San Diego, California.

8. Plaintiff Buenaventura Santiago worked for Defendants as a Shift Supervisor from approximately June 17, 2020 to May 25, 2021 throughout San Diego County.

9. Plaintiff Joshua Garrido worked for Defendants as a Shift Supervisor from approximately October 16, 2019 to May 26, 2021 throughout San Diego County.

10. Plaintiff Gary Banuelos worked for Defendants as a Shift Supervisor from approximately October 2020 to May 2021 throughout San Diego County.

11. Plaintiffs are "aggrieved employees" within the meaning of Labor Code section 2699(c) because they were employed by Defendants and suffered one or more of the Labor Code violations committed by Defendants.

12. At all relevant times, Plaintiffs and, on information and belief, other aggrieved employees of Defendants in California were subject to the same policies, practices, and procedures governing the control and payment of wages earned and hours worked.

B. Defendants

13. Defendant Security Industry Specialists, Inc. is an international security company specializing in a range of contracted security functions including physical security, operation of global

1 security operations centers, and executive protection. SIS also offers clients a security training program,
2 a brand and content creation team, and a software development department. SIS has domestic corporate
3 offices in California, Washington, Florida, and New York. SIS has international corporate offices in
4 Mexico and Brazil. SIS is organized in the state of California and has its headquarters located in Culver
5 City, CA.

6 14. The true names and capacities of the Defendants named as DOES 1 THROUGH 50,
7 inclusive, are presently unknown to Plaintiffs. Plaintiffs will amend this Complaint, setting forth the true
8 names and capacities of the fictitious Defendants, if and when their true names and capacities are
9 ascertained. Plaintiffs are informed and believe, and on that basis allege, that each of the fictitious
10 Defendants participated in the acts alleged in this Complaint.

11 15. At all relevant times, Defendants were Plaintiffs' "employer" as defined in and subject to
12 the Labor Code and the IWC Wage Orders.

13 16. Plaintiffs are informed and believe that at all relevant times, each Defendant, whether
14 named or fictitious, was the agent, employee or other person acting on behalf of every other Defendant,
15 and, in participating in the acts alleged in this Complaint, acted within the scope of such agency or
16 employment and ratified the acts of each other Defendant.

17 17. Plaintiffs are informed and believe that at all relevant times, each Defendant, whether
18 named or fictitious, exercised control over Plaintiff's and Aggrieved Employees' wages, hours and/or
19 working conditions and was the alter ego of each of the other Defendants. Thus, Plaintiffs are informed
20 and believe that each Defendant, whether named or fictitious, committed the violations alleged in this
21 Complaint within the scope of such agency or employment and ratified the acts of each other Defendant.

22 18. Plaintiffs are further informed and believe that at all relevant times, each Defendant,
23 whether named or fictitious, acted as the agent for the other Defendants in carrying out a joint scheme,
24 business plan or policy, and that a unity of interest and ownership between each Defendant exists such
25 that all Defendants acted as a single employer and that the acts of each Defendant are legally attributable
26 to all other Defendants.

27 19. Defendants, including DOES 1 THROUGH 50, were Plaintiffs' employers or persons
28 acting on behalf of Plaintiffs' employer, within the meaning of California Labor Code sections 558 and

1 558.1, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code
2 or any provision regulating hours and days of work in any order of the Industrial Welfare Commission
3 and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code sections
4 558 and 558.1, at all relevant times.

5 20. Defendants, including DOES 1 THROUGH 50, were Plaintiffs' employers or persons
6 acting on behalf of Plaintiffs' employer either individually or as an officer, agent, or employee of another
7 person, within the meaning of California Labor Code section 1197.1, who paid or caused to be paid to any
8 employee a wage less than the minimum fixed by California state law, and as such, are subject to civil
9 penalties for each underpaid employee.

10 III.

11 JURISDICTION AND VENUE

12 21. This Court has subject-matter jurisdiction to hear this case because Plaintiffs are informed
13 and believe that the penalties sought herein for Defendants' conduct exceeds the minimum jurisdictional
14 limits of the Superior Court.

15 22. Venue is proper in San Diego County pursuant to Code of Civil Procedure Sections 395(a)
16 and 395.5 because liability arose in San Diego County, at least some of the transactions that are the subject
17 matter of this Complaint occurred therein, and Defendants transact substantial business in San Diego
18 County.

19 23. Per Judicial Council Emergency Rule 9, the Statute of Limitations on all Causes of Action
20 in this Complaint were tolled from April 6, 2020 to October 1, 2020.

21 IV.

22 GENERAL ALLEGATIONS

23 24. Plaintiffs worked for the Defendants as a Shift Supervisors. As Shift Supervisors,
24 Plaintiffs' job duties included covering security posts, post reviews, specialist inspections, emergency
25 response, client liaison, post order compliance reviews, scheduling, training, and special projects as
26 assigned, among other duties. Plaintiffs were also expected to visit a minimum of 4 to 5 post locations per
27 day, documenting visits and persons contacted. As Shift Supervisors, Plaintiffs were improperly classified
28 as exempt employees, earning a weekly salary, but also required to work a certain number of hours and

1 set shifts.

2 25. Defendants employed, and continue to employ Aggrieved Employees in various exempt
3 positions who earned a salary and regularly worked at least eight hours per day and/or forty hours per
4 week. Upon information and belief, all policies, practices, procedures, and/or guidelines of Defendants
5 applicable to Plaintiffs were also applicable to all other Aggrieved Employees.

6 26. Defendants denied, and continues to deny, Plaintiffs and other Aggrieved Employees the
7 specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission
8 (“IWC”) Wage Order. Specifically, the Defendants failed, and continue to fail, to timely pay all minimum,
9 regular, and/or overtime wages to all Aggrieved Employees, including Plaintiffs; failed, and continues to
10 fail, to provide Plaintiffs and other Aggrieved Employees with legally compliant meal and/or rest periods
11 and/or pay them compensation in lieu thereof; failed to timely pay Aggrieved Employees all wages due
12 and owing upon separation of employment and/or pay the required waiting time penalties; failed, and
13 continues to fail, to furnish all Aggrieved Employees, including Plaintiffs, with accurate itemized wage
14 statements; and failed, and continues to fail, to maintain accurate employment records. Plaintiffs further
15 allege that the Defendants purposefully misclassified them and other Aggrieved Employees as “exempt”
16 employees when in fact Plaintiffs and other Aggrieved Employees should have been classified as “non-
17 exempt” employees.

18 27. Defendants have and continue to have a policy, practice, procedure, guideline and/or
19 culture of willfully misclassifying Plaintiffs and, on information and belief, other Aggrieved Employees
20 as exempt employees for their own benefit. As Shift Supervisors, Plaintiffs’ job duties with Defendants
21 should have primarily consisted of managerial or administrative-related tasks. However, in practice,
22 Plaintiffs and other Aggrieved Employees were required and expected to perform primarily non-
23 managerial tasks, such as doing all tasks delegating to them by their direct supervisors, perform duties of
24 non-exempt security guards, standing posts for other Security Guards, and working set schedules and
25 hours. Consequently, Plaintiffs, and, on information and belief, other Aggrieved Employees, performed
26 non-exempt duties more than 50% of the time they spent working for Defendants.

27 28. It necessarily follows that Plaintiffs and, on information and belief, other Aggrieved
28 Employees spent less than 50% of their working time engaged in exempt duties. Accordingly, at all times,

1 Plaintiffs and, on information and belief, other Aggrieved Employees should have been classified as non-
2 exempt employees and should have received the rights and protections afforded by the California Labor
3 Code and the applicable IWC Wage Order.

4 29. Defendants failed to provide Plaintiffs and, on information and belief, other Aggrieved
5 Employees with 30-minute, off-duty, uninterrupted meal periods before the end of the fifth hour of work.
6 Because Plaintiffs and, on information and belief, other Aggrieved Employees were misclassified as
7 exempt employees, they were not provided a 30-minute, off-duty, uninterrupted meal period before the
8 end of the fifth hour of work. In addition, when Plaintiffs and, on information and belief, other Aggrieved
9 Employees did receive meal breaks, Plaintiffs and, on information and belief, other Aggrieved Employees
10 were required to remain on-duty and respond to their cell phones and walkie talkies. As a result, Plaintiffs
11 and, on information and belief, other Aggrieved Employees were routinely interrupted during their meal
12 breaks.

13 30. Defendants also failed to provide Plaintiffs and, on information and belief, other Aggrieved
14 Employees with compliant ten-minute, off-duty rest periods for every four hours of work, or major fraction
15 thereof. Plaintiffs and, on information and belief, other Aggrieved Employees were misclassified as
16 exempt employees, and thus, as a result, were not provided with compliant ten-minute, off-duty rest
17 periods for every four hours of work, or major fraction thereof. For the same reasons as meal breaks,
18 Plaintiffs and, on information and belief, other Aggrieved Employees were required to remain on-duty
19 during their rest breaks and were routinely interrupted breaks.

20 31. As a result, the Defendants have, and continue to have, a policy, practice, procedure,
21 guideline, and/or culture of failing to timely pay premium wages for all non-compliant meal and/or rest
22 periods. Because the Defendants misclassified Plaintiffs and, on information and belief, other Aggrieved
23 Employees as exempt employees, Defendants failed to provide meal and rest breaks. Thus, Plaintiffs and,
24 on information and belief, other Aggrieved Employees did not receive legally compliant meal and/or rest
25 periods, and Defendants did not pay Plaintiffs and, on information and belief, other Aggrieved Employees
26 the additional one hour of pay at the employee's regular rate of pay as required under Labor Code § 226.7
27 and the applicable IWC Wage Order. Therefore, Defendants owe Plaintiffs and, on information and belief,
28 other Aggrieved Employees a meal and/or rest period premium for each workday that Plaintiffs and other

1 Aggrieved Employees were not provided with a legally compliant meal and/or rest period.

2 32. Furthermore, as a direct result of the Defendants' scheme of purposefully misclassifying
3 Plaintiffs and, on information and belief, other Aggrieved Employees as exempt employees, the Aggrieved
4 Employees did not receive proper protections and benefits of the laws governing the compensation for
5 minimum wages, regular wages, and overtime wages. Defendants improperly paid Plaintiffs and, on
6 information and belief, other Aggrieved Employees a salary and failed to timely pay them for hours
7 worked more than eight hours per day and/or more than forty hours per week. As a result, Defendants
8 have failed to timely pay all minimum, regular, and/or overtime wages for all time actually worked.

9 33. Because Defendants misclassified Plaintiffs and, on information and belief, other
10 Aggrieved Employees as exempt employees, Defendants also failed to maintain accurate records
11 reflecting all of Plaintiffs and, on information and belief, other Aggrieved Employees' time worked, meal
12 and rest periods that were missed, and meal and rest premiums owed, in violation of California law.

13 34. Furthermore, because Defendants misclassified Plaintiffs and, on information and belief,
14 other Aggrieved Employees as exempt employees, the wage statements provided to Plaintiffs and, on
15 information and belief, other Aggrieved Employees fail to list the correct applicable hourly rates and the
16 corresponding number of hours worked at each rate, the one hour additional rate of regular pay for not
17 taking compliant meal and/or rest breaks, the correct amount of gross and net wages earned, and the total
18 hours worked.

19 35. Because Defendants misclassified Plaintiffs and, on information and belief, other
20 Aggrieved Employees as exempt employees, Defendants also did not pay Plaintiffs and, on information
21 and belief, other Aggrieved Employees all wages due and payable during and upon separation of
22 employment, including minimum, regular, and overtime wages for all hours worked, and meal and rest
23 premium wages, as required pursuant to Labor Code §§ 201, 202, and 204.

24 **THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**

25 **REPRESENTATIVE ACTION DESIGNATION**

26 36. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs
27 above, as though fully set forth herein.

28 37. The Causes of Action alleged herein are appropriately suited for a Labor Code Private

Attorneys General Act of 2004 (“PAGA”) action because:

a. Pursuant to California Labor Code section 2699(a), any provision of the Labor Code that provides for 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 a violation of the California Labor Code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and all other current or former employees pursuant to the procedures specified in section 2699;

b. This action involves allegations of violations of provisions of the California Labor Code that provide or do not provide for a civil penalty to be assessed and collected by the LWDA or any departments, divisions, commissions, boards, agencies or employees;

c. Plaintiffs are “aggrieved employees” because they were employed by the alleged violators and had one or more of the alleged violations committed against him;

d. On August 17, 2021, Plaintiffs satisfied the procedural requirements of section 2699.3 by serving the LWDA electronically and Defendant SECURITY INDUSTRY SPECIALISTS, INC. via Certified Mail with their notice for wage and hour violations and penalties, including the facts and theories to support each violation. A true and correct copy of Plaintiffs’ notice and proof of service is attached as **Exhibit A**.

e. More than 65 days have passed since Plaintiffs served notice via Certified Mail to the LWDA and their employers. Therefore, Plaintiffs satisfied all the administrative requirements to pursue civil penalties against Defendants pursuant to Labor Code section 2698, *et seq.*

f. Plaintiffs filed this action pursuant to Labor Code section 2699(a) and (f), on behalf of themselves and all other aggrieved employees of Defendants to recover civil penalties.

g. Defendants were Plaintiffs’ employers or persons acting on behalf of Plaintiffs’ employer, within the meaning of California Labor Code sections 558 and 558.1, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code sections 558 and 558.1, at all relevant times.

1 h. Defendants were Plaintiffs' employers or persons acting on behalf of Plaintiff's
2 employer either individually or as an officer, agent, or employee of another person, within the meaning of
3 California Labor Code section 1197.1, who paid or caused to be paid to any employee a wage less than
4 the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid
5 employee, as well as liquidated damages pursuant to Labor Code section 1194.2, and any applicable
6 penalties imposed pursuant to Labor Code section 203.

7 i. Plaintiffs seek to recover all applicable civil penalties under PAGA on behalf of
8 themselves and all other aggrieved employees of Defendants.

9 **FIRST CAUSE OF ACTION**

10 **PRIVATE ATTORNEYS GENERAL ACT OF 2004 CLAIM FOR CIVIL PENALTIES**
11 (Violation of Labor Code §§ 2698 *et seq.*)

12 (Alleged By Plaintiffs On Behalf of All Aggrieved Employees of Defendants Against All Defendants)

13 38. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs
14 above, as though fully set forth herein.

15 39. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that provides for
16 a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
17 commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered
18 through a civil action brought by an aggrieved employee on behalf of himself or herself and other current
19 or former employees pursuant to the procedures specified in Labor Code section 2699.3.

20 40. This cause of action involves allegations of violations of Labor Code sections 201, 202,
21 204, 223, 226(a), 226.7, 510, 512, 1174(d), 1197, 1198 which, pursuant to Labor Code section 2699.5,
22 provide for a civil penalty to be assessed and collected by the LWDA or recovered through a civil action
23 brought by an aggrieved employee on behalf of himself or herself and other current or former employees
24 pursuant to the procedures specified in Labor Code section 2699.3.

25 41. Defendants employed Plaintiffs and Plaintiffs had one or more of the alleged violations
26 committed against them. Therefore, Plaintiffs are "aggrieved employees" under PAGA because the
27 alleged violators employed them, and they had one or more of the alleged violations committed against
28 them. As such, Plaintiffs are properly suited to represent the interests of other aggrieved employees in a

1 PAGA Representative action.

2 42. Plaintiffs seek to recover civil penalties only pursuant to Labor Code sections 558 and
3 1197.1, on behalf of themselves and other aggrieved employees for Defendants' violations of the Labor
4 Code, including but not limited to Defendants' violations of Labor Code sections 201, 202, 204, 223,
5 226(a), 226.7, 510, 512, 1174(d), 1197, and 1198.

6 43. For all provisions of the Labor Code for which a civil penalty is not specifically provided,
7 Labor Code section 2699(f) imposes upon Defendants, and each of them, a penalty of one hundred dollars
8 (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars
9 (\$200.00) for each aggrieved employee per pay period for each subsequent violation.

10 44. Labor Code § 226.8(a) makes it unlawful for an employer to willfully misclassify an
11 individual as an exempt employee. Where an employer has engaged in, or is engaging in, a pattern or
12 practice of willfully misclassifying individuals as exempt employees, Labor Code § 226.8(c) requires the
13 employer to pay a civil penalty of no less than \$10,000, and up to and including \$25,000, in addition to
14 any other legally permitted penalties.

15 45. Defendants violated the Labor Code by willfully misclassifying Plaintiffs and other
16 Aggrieved Employees as exempt employees. Plaintiffs and, on information and belief, other members of
17 the Exempt Class spent more than 50% of their work time on nonexempt duties and thus were non-exempt
18 employees within the definition of the IWC Wage Order.

19 46. Defendants violated Labor Code sections 226.7, 512, and 1198 by failing to provide
20 Plaintiffs and aggrieved employees lawfully compliant meal periods and by failing to pay them meal
21 period premium wages for each day a meal period was not provided. Under Labor Code section
22 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period
23 for the initial violation of Labor Code sections 226.7 and 1198, and \$200 for each aggrieved employee
24 per pay period for each subsequent violation.

25 47. Defendants violated Labor Code sections 226.7 and 1198 by failing to authorize and permit
26 Plaintiffs and aggrieved employees to take duty-free rest periods and by failing to pay them rest period
27 premium wages for each day a rest period was not provided. Under Labor Code section 2699(f)(2),
28 Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial

1 violation of Labor Code sections 226.7 and 1198, and \$200 for each aggrieved employee per pay period
2 for each subsequent violation.

3 48. Defendants violated Labor Code sections 223, 1194, 1197, and 1198 by not paying
4 Plaintiffs and other aggrieved employees at least minimum and regular wages for all the time they were
5 suffered or permitted to work, engaged in work and/or under Defendants' control, as alleged herein. Thus,
6 under Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved
7 employee per pay period for the initial violation of Labor Code sections 223, 1194, and 1198, and \$200
8 for each aggrieved employee per pay period for each subsequent violation.

9 49. Defendants violated Labor Code sections 223, 510, 1194, and 1198 by not paying Plaintiffs
10 and other aggrieved employees all overtime wages earned for all the time they were suffered or permitted
11 to work, engaged in work and/or under Defendants' control, as alleged herein. At all relevant times,
12 Plaintiffs and, on information and belief, other aggrieved employees were not paid all overtime when they
13 worked in excess of eight hours a workday or forty hours in a workweek. Thus, under Labor Code section
14 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period
15 for the initial violation of Labor Code sections 223, 1194, and 1198, and \$200 for each aggrieved employee
16 per pay period for each subsequent violation.

17 50. Defendants violated Labor Code sections 201, 202, and 1198 by not paying Plaintiffs and
18 aggrieved employees all minimum, regular, and overtime wages owed, and all meal and rest premium
19 wages owed by the time set forth by law upon their separation of employment, as alleged herein. Thus,
20 under Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved
21 employee per pay period for the initial violation of Labor Code sections 201, 202, and 1198, and \$200 for
22 each aggrieved employee per pay period for each subsequent violation.

23 51. Defendants violated Labor Code sections 204 and 1198 by not paying Plaintiffs and
24 aggrieved employees all minimum, regular, and overtime wages owed, and all meal and rest premium
25 wages owed by the time set forth by law during their employment, as alleged herein. Thus, under Labor
26 Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee
27 per pay period for the initial violation of Labor Code sections 204 and 1198, and \$200 for each aggrieved
28 employee per pay period for each subsequent violation.

52. Defendants violated Labor Code sections 226(a), 1174(d), and 1198 by failing to maintain records detailing the start and end times of work shifts and meal periods, and knowingly and intentionally failing to maintain and provide Plaintiffs and other aggrieved employees of Defendants with wage statements itemizing accurately all information required by Labor Code section 226(a), as alleged herein, including the total hours worked, all regular hours worked, all overtime hours worked, the applicable hourly rate per hour worked, and the total wages earned. Thus, under Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code sections 226(a) and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

53. Alternatively, Labor Code section 226.3 provides for a civil penalty in the amount of \$250 per violation in an initial citation and \$1,000 for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of section 226.

54. Labor Code section 1174.5 provides for a civil penalty of \$500 for any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of section 1174.

55. Defendants are and were Plaintiffs and aggrieved employees' employers or other person(s) acting either individually or as an officer, agent, or employee of another person(s), who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the Commission, and, as such, are subject to civil penalties for each underpaid employee pursuant to Labor Code section 1197.1.

56. Labor Code section 1197.1 imposes upon Defendants for each initial violation of Labor Code section 1197 by paying or causing an employee to be paid less than the minimum wage, a civil penalty of \$100.00 for each underpaid employee for each pay period for which the employee is underpaid. Furthermore, Labor Code section 1197.1 imposes upon Defendants for each subsequent violation a civil penalty of \$250.00 for each underpaid employee for each pay period for which the employee was underpaid.

57. Defendants are and were Plaintiffs and other aggrieved employees' employers, or persons acting on their behalf, within the meaning of Labor Code section 558, who violated or caused to be

1 violated, a section of Part 2, Chapter 1 of the Labor Code or any provision regulating hours and days of
2 work in any IWC Wage Order and, as such, are subject to civil penalties for each underpaid employee as
3 set forth in Labor Code section 558.

4 58. Pursuant to Labor Code section 558, Defendants are subject to a civil penalty of \$50.00 for
5 an initial violation of Labor Code sections 510 and 512, for each aggrieved employee, for each pay period
6 for which the aggrieved employee was not provided with a timely off-duty 30-minute meal period and all
7 overtime wages for all hours worked, as alleged herein. Furthermore, Labor Code section 558 imposes
8 upon Defendants for each subsequent violation of Labor Code sections 510 and 512 a civil penalty of
9 \$100.00 for each aggrieved employee for each pay period for which the aggrieved employee was not
10 provided with a timely off-duty 30-minute meal period and all overtime wages for all hours worked, as
11 alleged herein.

12 59. Labor Code section 558 also imposes upon Defendants for each initial violation of the
13 Hours and Days of Work section of the applicable IWC Wage Order a civil penalty of \$50.00 for each
14 aggrieved employee for each pay period for which the aggrieved employee was not provided with a paid
15 uninterrupted 10-minute rest period, as alleged herein. Furthermore, Labor Code section 558 imposes
16 upon Defendants for each subsequent violation of the Hours and Days of Work section of the applicable
17 IWC Wage Order a civil penalty of \$100.00 for each aggrieved employee for each pay period for which
18 the aggrieved employee was not provided with a paid uninterrupted 10-minute rest period, as alleged
19 herein.

20 60. For bringing this action, Plaintiffs are additionally entitled to attorney's fees and costs
21 incurred herein.

22 61. Plaintiffs seeks to recover civil penalties on behalf of themselves and other aggrieved
23 employees for Defendants' violations of the Labor Code, including but not limited to Defendants'
24 violations of Labor Code sections 201, 202, 204, 223, 226(a), 226.7, 510, 512, 1174(d), 1197, and 1198,
25 pursuant to Labor Code section 2698, *et seq.* The exact amount of the applicable penalties is in an amount
26 to be shown according to proof at trial and within the jurisdictional limitations of this Court.

27 WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

28 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- a. For reasonable attorney fees, cost of suit, and interest to the extent permitted by law, including pursuant to Code of Civil Procedure Section 1021.5 and the Private Attorneys General Act, Labor Code Sections 2698, et seq.;
- b. For civil penalties to the extent permitted by law pursuant to the California Labor Code under the Private Attorneys General Act;
- c. For reasonable attorney's fees and costs of suit to the extent permitted by law, including those pursuant to Labor Code sections 2699; and
- d. For an award of such other and further relief as this Court deems proper and just.

Respectfully submitted,

Dated: October 25, 2021

GRAHAMHOLLIS APC

By: 

GRAHAM S.P. HOLLIS
VILMARIE CORDERO
HALI M. ANDERSON
ERIK A. DOS SANTOS
Attorneys for Plaintiffs

EXHIBIT A

August 17, 2021

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VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

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6071 Bristol Pkwy
Culver City, CA 90230

Security Industry Specialists, Inc.
c/o CSC- Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, California 95833

Re: **Buenaventura Santiago III, Joshua Garrido, and Gary
Banuelos's Wage and Hour Claims Against Security
Industry Specialists, Inc.**

Dear California Labor and Workforce Development Agency and Security
Industry Specialists, Inc.:

Please be advised that Buenaventura Santiago III, Joshua Garrido, and Gary Banuelos ("Claimants") have retained our firm, **GrahamHollis APC**, to represent them for various claims against Security Industry Specialists, Inc. (the "Company").

This letter shall serve as Claimants' written notice to the California Labor and Workforce Development Agency ("LWDA") and the Company of the alleged California Labor Code ("Labor Code") violations the Company committed against him and all other current or former exempt who worked for the Company in California during the relevant statutory period and should have been classified as non-exempt employees. Claimants provide this notice, which includes the facts and theories to support his Labor Code violations alleged

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herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, “PAGA”), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimants intends to represent all current” or former employees of the Company in California who were misclassified as exempt employees (“Aggrieved Employees”). All Aggrieved Employees, including Claimants, are believed to have suffered at least one of the Labor Code violations described herein.

FACTUAL BACKGROUND

Security Industry Specialists, Inc. (the “Company”) is an international security company specializing in a range of contracted security functions including physical security, operation of global security operations centers, and executive protection. The Company also offers clients a security training program, a brand and content creation team, and a software development department. The Company has domestic corporate offices in California, Washington, Florida, and New York. The Company has international corporate offices in Mexico and Brazil. The Company is organized in the state of California and has its headquarters located in Culver City, CA.

Claimants worked and/or continue to work for the Company as a Shift Supervisors (“SS”) As an SS, Claimants’ job duties included covering security posts, post reviews, specialists inspections, emergency response, client liaison, post order compliance reviews, scheduling, training, and special projects as assigned, among other duties. Claimant was also expected to visit a minimum of 4 to 5 post locations per day, documenting visits and persons contacted. As a SS, Claimants were improperly classified as exempt employees, earning a weekly salary.

Claimant contends that during the relevant time period, the Company employed, and continues to employ, other Aggrieved Employees in various exempt positions who earned a salary and regularly worked at least eight hours per day and/or forty hours per week. Upon information and belief, all policies, practices, procedures, and/or guidelines of the Company applicable to Claimants were also applicable to all other Aggrieved Employees.

Claimants allege that the Company denied, and continues to deny, Claimants and other Aggrieved Employees the specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Specifically, the Company failed, and continues to fail, to timely pay all minimum, regular, and/or overtime wages to all Aggrieved Employees, including Claimants; failed, and continues to fail, to provide Claimants and other Aggrieved Employees with legally compliant meal and/or rest periods and/or pay them compensation in lieu thereof; failed to timely pay Aggrieved Employees all wages due and owing upon separation of employment and/or pay the required waiting time penalties; failed, and continues to fail, to furnish all Aggrieved Employees, including Claimants, with accurate itemized wage statements; and failed, and continues to fail, to maintain accurate employment

records. Claimants further allege that the Company purposefully misclassified them and other Exempt Employees as “exempt” employees when in fact Claimants and other Exempt Employees should have been classified as “non-exempt” employees.

Claimants contend that the Company had, and continues to have a policy, practice, procedure, guideline and/or culture of willfully misclassifying Claimants and, on information and belief, other Exempt Employees as exempt employees for its own benefit. As a SS, Claimants’ job duties with the Company should have primarily consisted of managerial or administrative related tasks. However, in practice, Claimants and other Exempt Employees were required and expected to perform primarily non-managerial tasks, such as doing all tasks delegating to them by their direct supervisors, perform duties of non-exempt security guards, and standing posts for other Security Guards. Consequently, Claimants and, on information and belief, other Exempt Employees, performed non-exempt duties more than 50% of the time they spent working for the Company. It necessarily follows that Claimants and other Exempt Employees spent less than 50% of their working time engaged in exempt duties. Accordingly, at all times, Claimants and other Exempt Employees should have been classified as non-exempt employees and should have received the rights and protections afforded by the California Labor Code and the applicable IWC Wage Order.

The Company failed to provide Claimants and other aggrieved employees with 30-minute, off-duty, uninterrupted meal periods before the end of the fifth hour of work. Because Claimants and Aggrieved Employees were misclassified as exempt employees, and thus, as a result, were not provided a 30-minute, off-duty, uninterrupted meal period before the end of the fifth hour of work. In addition, when Claimants and Aggrieved Employees did receive meal breaks, Claimants and Aggrieved Employees were required to remain on-duty and respond to their cell phones and walkie talkies. As a result, Claimants and Aggrieved Employees were routinely interrupted during their meal breaks.

The Company also failed to provide Claimants and, on information and belief, other aggrieved employees with compliant ten-minute, off-duty rest periods for every four hours of work, or major fraction thereof. Claimants and Aggrieved Employees were misclassified as exempt employees, and thus, as a result, were not provided with compliant ten-minute, off-duty rest periods for every four hours of work, or major fraction thereof. For the same reasons as meal breaks, Claimants and Aggrieved Employees were required to remain on-duty during their rest breaks and were routinely interrupted breaks.

As a result, the Company had, and continues to have, a policy, practice, procedure, guideline, and/or culture of failing to timely pay premium wages for all non-compliant meal and/or rest periods. Because the Company misclassified Claimants and other Aggrieved Employees as exempt employees, the Company failed to provide meal and rest breaks. Thus, Claimants and other Aggrieved Employees did not receive legally compliant meal and/or rest periods, and the Company did not pay Claimants and, on information and belief, other Aggrieved Employees the additional one hour of pay at the employee’s regular rate of pay as required under

Labor Code § 226.7 and the applicable IWC Wage Order. Therefore, the Company owes Claimants and, on information and belief, other Aggrieved Employees a meal and/or rest period premium for each workday that Claimant and other Aggrieved Employees were not provided with a legally compliant meal and/or rest period.

Furthermore, as a direct result of the Company's scheme of purposefully misclassifying Claimants and other Aggrieved Employees as exempt employees, the Aggrieved Employees did not receive proper protections and benefits of the laws governing the compensation for minimum wages, regular wages, and overtime wages. The Company improperly paid Claimants and other Aggrieved Employees a salary and failed to timely pay them for hours worked more than eight hours per day and/or more than forty hours per week. As a result, the Company has failed to timely pay all minimum, regular, and/or overtime wages for all time actually worked.

Because the Company misclassified Claimants and other Aggrieved Employees as exempt employees, the Company also failed to maintain accurate records reflecting all of Claimant's and Company Employees' time worked, meal and rest periods that were missed, and meal and rest premiums owed, in violation of California law.

Furthermore, because the Company misclassified Claimants and other Aggrieved Employees as exempt employees, the wage statements provided to Claimants and Aggrieved Employees' fail to list the correct applicable hourly rates and the corresponding number of hours worked at each rate, the one hour additional rate of regular pay for not taking compliant meal and/or rest breaks, the correct amount of gross and net wages earned, and the total hours worked.

Because the Company misclassified Claimants and other Aggrieved Employees as exempt employees, the Company also did not pay Claimants and, on information and belief, other Aggrieved Employees all wages due and payable during and upon separation of employment, including minimum, regular, and overtime wages for all hours worked, and meal and rest premium wages, as required pursuant to Labor Code §§ 201, 202, and 204.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Security Industry Specialists, Inc., and its managers, are liable for the PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations alleged herein. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)), or 'pays or causes to be paid to an employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); see also *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 40851 (holding the same).

Due to the foregoing Labor Code violations, the Company denied, and continues to deny, Claimants and other Aggrieved Employees certain rights afforded them under the Labor Code

and the applicable IWC Wage Order. Claimants make these claims against the Company on behalf of himself and all other Aggrieved Employees.

All facts, claims and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimants and all other Aggrieved Employees. The facts and/or claims contained in this written notice are based on information available at the time of this writing. Since Claimants' investigation is ongoing, Claimants reserves their rights to assert any and all related facts, claims, and/or theories discovered after the sending of this letter on behalf of themselves and other current or former Aggrieved Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the Labor Code violations, wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained of herein, and those who were acting within the authority and/or scope of the Company. Claimants reserve the right to revise these facts and/or add any new claims by amending this letter and/or by adding facts and/or claims to his civil complaint.

WILLFUL MISCLASSIFICATION OF INDIVIDUALS AS EXEMPT EMPLOYEES

(Labor Code §§ 226.8(a) and 226.8(c))

Section 1 of the applicable IWC Wage Order provides the requirements necessary in determining whether an employee's duties qualify for an exemption from the protections afforded in Sections 3 through 12 of the Order. According to the IWC Wage Order, an exempt employee means any employee "[w]ho is primarily engaged in duties which meet the test of the exemption." Section 2 of the IWC Order defines "primarily" to mean more than one-half the employee's work time.

The IWC Order further provides,

"[e]xempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the workweek must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement."

Accordingly, to determine whether employees are properly classified as exempt employees, courts evaluate the realistic requirements of a job, as opposed to the job description. See *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 802. Substantial consideration is afforded to how an employee actually spends his time working. *Id.* Only where an employee spends more than 50% of his time working on exempt duties is he appropriately deemed an exempt employee. See e.g. *Ramirez v. ISB Mehta Corp.* (2017) Calif. Ct. App., No. H042072 (holding that a restaurant manager who spent less than 50 percent of his workweek on non-exempt tasks is an exempt employee under California law).

Labor Code § 226.8(a) makes it unlawful for an employer to willfully misclassify an individual as an exempt employee. Where an employer has engaged in, or is engaging in, a pattern or practice of willfully misclassifying individuals as exempt employees, Labor Code § 226.8(c) requires the employer to pay a civil penalty of no less than ten thousand dollars, and up to and including twenty-five thousand dollars, in addition to any other legally permitted penalties.

As set forth above, the Company violated the Labor Code by willfully misclassifying Claimants and other Aggrieved Employees as exempt employees. Claimants and, on information and belief, other members of the Exempt Class spent more than 50% of their work time on non-exempt duties and thus were non-exempt employees within the definition of the IWC Wage Order.

Claimants will pursue all available remedies for the Company's violations on behalf of themselves and aggrieved employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, AND/OR OVERTIME WAGES

(Labor Code §§ 204, 210, 510, 1194, 1197, 1197.1, 1198 and 1199, and the "Minimum Wages" and "Hours and Days of Work" sections of the applicable IWC Wage Order)

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Labor Code § 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal. App. 4th 36, 44 [providing that an employer may not pay "less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise"].) The "Minimum Wages" section of the applicable IWC Wage Order further provides that "[e]very employer shall pay to each employee, on the established payday for the

period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 1198 states,

[t]he 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.

Labor Code § 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code § 1198.

Labor Code § 510(a), which codifies an employee’s right to overtime compensation, 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.

The “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Order mandate the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal. App. 4th 1420, 1430.)

Labor Code § 1197.1 states,

[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 1194(a) provides:

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 § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 210 states that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company has a policy, practice, procedure, guideline, and/or culture of failing to timely pay all minimum, regular, and/or overtime wages to Claimants and, on information and belief, other Aggrieved Employees for all hours actually worked. Therefore, the Company failed to pay at least minimum wages, contractual wages and/or the legal overtime compensation for these hours Claimants and other Aggrieved Employees worked.

Claimants will pursue all available remedies against the Company for its violations of the Labor Code on behalf of themselves and all other Aggrieved Employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS
AND/OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204, 226.7 and 512, and the "Meal Periods" section of the applicable IWC Wage Order)

Labor Code § 512(a) provides:

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

consent of the employer and the employee only if the first meal period was not waived.

In pertinent part, the “Meal Periods” section of the applicable IWC Wage Order states:

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

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

(C) 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....

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

A meal period generally comports with the requirements of California law if the employee has at least 30 minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from “...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.* at 1040 [internal citations omitted].)

Pursuant to Labor Code § 226.7(c),

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

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

As set forth above, the Company failed to provide Claimants and, on information and belief, other Aggrieved Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth (6th) hour of work and/or a second off-duty 30-minute meal period when they worked in excess of ten (10) hours. Consequently, Claimant and other Aggrieved Employees are entitled to receive one-hour of premium wages for each day a compliant meal period was not provided.

Claimants will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS
AND/OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204 and 226.7, and the "Rest Periods" section of the applicable IWC Wage Order)

The "Rest Periods" section of the applicable IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273.)

In pertinent part, Labor Code § 226.7 states:

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

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

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Company failed to authorize and permit Claimants and, on information and belief, other Aggrieved Employees to take an off-duty, uninterrupted rest period of at least 10-minutes for every four hours worked or major fraction thereof. Therefore, Claimants and other Aggrieved Employees are entitled to receive one-hour of premium wages for each day a legally compliant rest period was not provided.

Claimants will pursue all available remedies against the Company for its violations of the Labor Code on behalf of themselves and all Aggrieved Employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226(a), 226 (e)(1), 1174, 1174.5, 1198, and the “Records” section of the applicable IWC Wage Order)

Labor Code § 1174 states,

[e]very person employing labor in this state shall... [k]eep, 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. See also Labor Code §226 (a).

The “Records” section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal period, total daily hours worked, total wages paid each payroll period, total hours worked in the payroll period, and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides,

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

As set forth above, the Company failed to keep accurate records. Claimants will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved employees to the extent allowed by law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, 246, 1198, and the “Records” section of the applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, ... (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, ... (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code § 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney’s fees. Labor Code § 226.3 imposes an additional civil penalty on the employer of \$250 per employee per violation of Labor Code § 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 246(i) provides that,

[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.

The penalties described in this article for a violation of this subdivision shall be in lieu of the penalties for a violation of § 226.

The “Records” section of the applicable IWC Wage Order states that,

[e]very employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee’s social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

As set forth above, the Company failed to provide Claimants and other Aggrieved Employees with accurate wage statements. The wage statements fail to list the correct applicable hourly rates and the corresponding number of hours worked at each rate, the one hour additional rate of regular pay for not taking compliant meal and/or rest breaks, and the correct amount of gross and net wages earned, and the total hours worked, as required under Labor Code section 226.

FAILURE TO TIMELY PAY ALL WAGES DUE

(Labor Code §§ 201, 202, 203, 204, 210, and the “Minimum Wages” section of the applicable IWC Wage Order)

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code § 202 states, in pertinent part,

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Labor Code § 203(a) states, in pertinent part,

[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, 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.

Labor Code § 204(a) states in pertinent part, “[a]ll wages...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.”

Furthermore, Labor Code § 204(b)(1) states, “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.”

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

The “Minimum Wages” section of the applicable IWC Wage Order also states that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

As set forth above, the Company failed to pay Claimants and other Aggrieved Employees all minimum, regular, and overtime wages or all meal and rest period premium wages that they were owed within the required time during their employment. Furthermore, the Company failed to pay Claimants all wages owed at the time of termination of his employment. As a result of the Companies’ failure to comply with the aforementioned Labor Code provisions, the Company owes waiting time penalties. Claimants will pursue all available remedies for the Company’s violations on behalf of herself and other aggrieved employees to the extent allowed by law.

ATTORNEY’S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES, AND PENALTIES

(Labor Code sections 210, 218.5, 218.6, 225.5, 226(e), 248.5, 558, 1194, 1194.2, 1197.1, 2802, and 2699, *et seq.*)

Pursuant to Labor Code section 2699, *et seq.*, an aggrieved employee is entitled to 25% of the penalty assessment, which is \$100 for the first violation and \$200 for each subsequent violation. Accordingly, the Company is liable for these items in addition to the unpaid wages. Claimant has already incurred actual damages, costs and attorney’s fees and he will continue to incur costs as a result of the Company’s unlawful actions. Claimants will pursue all available remedies, including those provided by PAGA, for these violations on behalf of herself and other aggrieved employees.

CONCLUSION

Based on the foregoing, the Company has violated the Labor Code and the applicable IWC Wage Order, thereby depriving Claimants and other Aggrieved Employees of the rights and

protections afforded to them. Claimants have satisfied the prerequisites of the PAGA to serve as a representative of all Aggrieved Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within the time prescribed by the PAGA, Claimants may elect to initiate and/or amend a civil action, on behalf of themselves and all other Aggrieved Employees, as permitted by the PAGA.

Very truly yours,

A handwritten signature in black ink, appearing to read "Erik Dos Santos", with a stylized flourish at the end.

Erik Dos Santos

EDS/MV

GrahamHollis APC
3555 5TH AVE STE 200
SAN DIEGO CA 92103-5057

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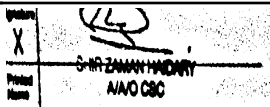
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Location: SACRAMENTO, CA 95813
Postal Product: First-Class Mail®
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Shipment Details

Weight: 4.0oz

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