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FILED
Superior Court of California
County of Los Angeles

01/23/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11 JESTIN BERTSCH, individually, and on
12 behalf of other members of the general
13 public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

14 Plaintiff,

15 vs.

16 PROTECT-US, a California corporation;
17 and DOES 1 through 10, inclusive,

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19 Defendants.
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Case No.: 22STCV36771

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of Labor Code § 1198 and California Code of Regulations, Title 8, Section 11040 Subdivision 5(A) (Failure to Provide Reporting Time Pay);

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- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Jestin Bertsch, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiff’s share of damages,
17 penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice. There is no basis for federal diversity jurisdiction in this action because there is no
23 complete diversity, and this case falls within the statutory exceptions to “minimal diversity”
24 jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information
25 and belief, two-thirds or more of the class members and Defendants are citizens of California
26 and/or (a) two-thirds of the class members and Defendants are citizens of California; (b) the
27 alleged wage and hour violations occurred in California; (c) significant relief is being sought
28 against Defendants whose violations of California wage and hour laws form a significant basis

1 for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years
2 on behalf of the same proposed class against Defendants asserting the same or similar factual
3 allegations.

4 3. Venue is proper in this Court, because Defendants employ persons in this county,
5 and employed Plaintiff in this county, and thus a substantial portion of the transactions and
6 occurrences related to this action occurred in this county.

7 **THE PARTIES**

8 4. Plaintiff Jestin Bertsch is a resident of Los Angeles, California. Defendants
9 employed Plaintiff as an hourly paid, non-exempt Security Guard from approximately May to
10 November 2021. Plaintiff worked for Defendants at their various clients' locations in Orange
11 and Los Angeles counties in California. During his employment, Plaintiff typically worked five
12 (5) hours or more per day, and five (5) or more days per week. Plaintiff's primary job duties
13 included, without limitation, patrolling venue premises, ensuring patron safety, searching
14 persons for weapons and illegal substances, responding to incidents, and completing event
15 setups and breakdowns.

16 5. PROTECT-US was and is, upon information and belief, a California corporation,
17 and at all times hereinafter mentioned, an employer whose employees are engaged throughout
18 this county, the State of California, or the various states of the United States of America.

19 6. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
20 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
21 complaint and serve such fictitiously named Defendants once their names and capacities
22 become known.

23 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
24 were the partners, agents, owners, or managers of PROTECT-US at all relevant times.

25 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
26 acts and omissions alleged herein was performed by, or is attributable to, PROTECT-US and/or
27 DOES 1 through 10 (collectively, "Defendants" or "PROTECT"), each acting as the agent,
28 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-

Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

10. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

11. Defendants provide private security guard services in California. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their corporate headquarters in Garden Grove, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

12. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions.

13. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in Garden Grove, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiff and class members. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief,

Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

14. Defendants continue to employ non-exempt or hourly paid employees in California.

15. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class members were not paid for all hours worked because all hours worked were not recorded.

17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and class members were not paid at least minimum wages for work done off-the-clock.

19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to meal periods in accordance with the California Labor Code or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members were not provided with all meal periods or payment of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to rest periods in accordance

1 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
2 additional hour of pay at their regular rates of pay when they were not authorized and permitted
3 to take a compliant rest period. In violation of the California Labor Code, Plaintiff and class
4 members were not authorized and permitted to take compliant rest periods, nor did Defendants
5 provide Plaintiff and class members with payment of one (1) additional hour of pay at their
6 regular rates of pay when they were not authorized and permitted to take a compliant rest period.

7 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to receive complete and
9 accurate wage statements in accordance with California law. In violation of the California
10 Labor Code, Plaintiff and class members were not provided complete and accurate wage
11 statements.

12 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that they had a duty to maintain accurate and complete payroll records in
14 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
15 knowingly, and intentionally failed to do so.

16 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to timely payment of all
18 wages earned upon termination of employment. In violation of the California Labor Code,
19 Plaintiff and class members did not receive payment of all wages due, including, but not limited
20 to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay
21 within permissible time periods.

22 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to timely payment of wages
24 during their employment. In violation of the California Labor Code, Plaintiff and class members
25 did not receive payment of all wages, including, but not limited to, overtime wages, minimum
26 wages, meal and rest period premiums, and/or reporting time pay, within permissible time
27 periods.

28 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to one day's rest in seven. In
2 violation of the California Labor Code, Defendants required Plaintiff and class members to work
3 more than six consecutive days without a day of rest, where the total hours worked exceeded 30
4 hours in any week or six hours in any one day thereof.

5 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to receive all reporting time
7 pay when Plaintiff and class members were required to report to work but were put to work for
8 less than half of their usual or scheduled shift. In violation of the California Labor Code and
9 applicable IWC Wage Order, Plaintiff and class members were not paid all reporting time pay.

10 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to be paid a split-shift
12 premium when they returned to work for an additional shift in the same day, after having been
13 clocked out for more than an hour. In violation of the California Labor Code and applicable
14 IWC Wage Order, Defendants did not pay Plaintiff and class members all split-shift premiums
15 due.

16 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to receive full reimbursement
18 for all business-related expenses and costs they incurred during the course and scope of their
19 employment and that they did not receive full reimbursement of applicable business-related
20 expenses and costs incurred.

21 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
22 mentioned, Defendants knew or should have known that Defendants had a duty to provide
23 Plaintiff and class members with written notice of the material terms of their employment with
24 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

25 30. Plaintiff is informed and believes, and thereon alleges, that at all times herein
26 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
27 and class members for all hours worked, and that Defendants had the financial ability to pay
28 such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely

1 represented to Plaintiff and class members that they were properly denied wages, all in order to
2 increase Defendants' profits.

3 **PAGA REPRESENTATIVE ALLEGATIONS**

4 31. At all times herein set forth, PAGA provides that any provision of law under the
5 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
6 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
7 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
8 behalf of themselves and other current or former employees pursuant to procedures outlined in
9 California Labor Code section 2699.3.

10 32. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
11 person who was employed by the alleged violator and against whom one or more of the alleged
12 violations was committed."

13 33. Plaintiff and other current and former employees of Defendants are "aggrieved
14 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
15 or former employees and one or more of the alleged violations were committed against them.

16 34. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
17 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
18 requirements have been met:

- 19 (a) The aggrieved employee or representative shall give written notice by
20 online filing with the LWDA and by certified mail to the employer of the
21 specific provisions of the California Labor Code alleged to have been
22 violated, including the facts and theories to support the alleged violation.
- 23 (b) An aggrieved employee's notice filed with the LWDA pursuant to
24 2699.3(a) and any employer response to that notice shall be accompanied
25 by a filing fee of seventy-five dollars (\$75).
- 26 (c) The LWDA shall notify the employer and the aggrieved employee or
27 representative by certified mail that it does not intend to investigate the
28 alleged violation ("LWDA Notice") within sixty (60) calendar days of the

1 postmark date of the aggrieved employee's notice. Upon receipt of the
2 LWDA Notice, or if no LWDA Notice is provided within sixty-five (65)
3 calendar days of the postmark date of the aggrieved employee's notice,
4 the aggrieved employee may commence a civil action pursuant to
5 California Labor Code section 2699 to recover civil penalties.

6 35. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
7 through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision
8 other than those listed in Section 2699.5 after the following requirements have been met:

9 (a) The aggrieved employee or representative shall give written notice by
10 online filing with the LWDA and by certified mail to the employer of the
11 specific provisions of the California Labor Code alleged to have been
12 violated (other than those listed in Section 2699.5), including the facts
13 and theories to support the alleged violation.

14 (b) An aggrieved employee's notice filed with the LWDA pursuant to
15 2699.3(c) and any employer response to that notice shall be accompanied
16 by a filing fee of seventy-five dollars (\$75).

17 (c) The employer may cure the alleged violation within thirty-three (33)
18 calendar days of the postmark date of the notice sent by the aggrieved
19 employee or representative. The employer shall give written notice
20 within that period of time by certified mail to the aggrieved employee or
21 representative and by online filing with the LWDA if the alleged violation
22 is cured, including a description of actions taken, and no civil action
23 pursuant to Section 2699 may commence. If the alleged violation is not
24 cured within the 33-day period, the aggrieved employee may commence
25 a civil action pursuant to Section 2699.

26 36. On November 18, 2022, Plaintiff provided written notice by online filing to the
27 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
28 Code alleged to have been violated, including facts and theories to support the alleged

1 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
2 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
3 PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff
4 PAGA Case Number LWDA-CM-920407-22. A true and correct copy of Plaintiff's written
5 notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

6 37. As of the filing date of this complaint, over 65 days have passed since Plaintiff
7 sent the notice described above to the LWDA, and the LWDA has not responded that it intends
8 to investigate Plaintiff's claims and Defendants have not cured the violations.

9 38. Thus, Plaintiff has satisfied the administrative prerequisites under California
10 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
11 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
12 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

13 39. Labor Code section 558(a) provides "[a]ny employer or other person acting on
14 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
15 provision regulating hours and days of work in any order of the Industrial Welfare Commission
16 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
17 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
18 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
19 each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)
20 provides "[t]he civil penalties provided for in this section are in addition to any other civil or
21 criminal penalty provided by law."

22 40. Defendants, at all times relevant to this complaint, were employers or persons
23 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
24 rights by violating various sections of the California Labor Code as set forth above.

25 41. As set forth below, Defendants have violated numerous provisions of both the
26 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
27 Order.

28 42. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),

1 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
2 private attorney general, seeks assessment and collection of civil penalties for himself, all other
3 aggrieved employees, and the State of California against Defendants for violations of California
4 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12,
5 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

6 **CLASS ACTION ALLEGATIONS**

7 43. Plaintiff brings this action on his own behalf, as well as on behalf of each and all
8 other persons similarly situated, and thus seeks class certification under California Code of Civil
9 Procedure section 382.

10 44. All claims alleged herein arise under California law for which Plaintiff seeks
11 relief authorized by California law.

12 45. Plaintiff's proposed class consists of and is defined as follows:

13 All persons who worked for Defendants as non-exempt, hourly
14 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial ("Class").

15 46. Plaintiff's proposed subclass consists of and is defined as follows:

16 All persons who worked for Defendants as non-exempt, hourly
17 paid employees in California and who received at least one wage
18 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

19 47. Members of the Class and Subclass are referred to herein as "class members."

20 48. Plaintiff reserves the right to redefine the Class and Subclass and to add
21 additional subclasses as appropriate based on further investigation, discovery, and specific
22 theories of liability.

23 49. There are common questions of law and fact as to class members that
24 predominate over questions affecting only individual members, including, but not limited to:

25 (a) Whether Defendants required Plaintiff and class members to work over
26 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
27 hours per week and failed to pay all legally required overtime
28 compensation to Plaintiff and class members;

- (b) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;
- (c) Whether Defendants failed to provide Plaintiff and class members meal periods;
- (d) Whether Defendants failed to authorize and permit Plaintiff and class members to take rest periods;
- (e) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (f) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (g) Whether Defendants failed to pay earned overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay due to Plaintiff and class members upon their discharge;
- (h) Whether Defendants failed to timely pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay to Plaintiff and class members during their employment;
- (i) Whether Defendants failed to provide Plaintiff and class members one day's rest in seven;
- (j) Whether Defendants required Plaintiff and class members to report to work, but failed to provide them with work or provided them with less than half their usual or scheduled day's work, without properly compensating them as required by California Code of Regulations, Title 8, section 11040(5);
- (k) Whether Defendants required Plaintiff and class members to return to work for an additional shift in the same day, after having been clocked out for more than an hour, without paying Plaintiff and class members an addition hour of pay at the minimum wage as required by California Code

of Regulations, Title 8, section 11040(4)(C);

- (l) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (m) Whether Defendants failed to provide written notice of information material to Plaintiff's and class members' employment with Defendants;
- (n) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (o) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

50. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that she has an obligation to make known to the Court any relationship, conflicts or differences with any class member.

1 Plaintiff's attorneys, the proposed class counsel, are versed in the rules
2 governing class action discovery, certification, and settlement. Plaintiff
3 has incurred, and throughout the duration of this action, will continue to
4 incur costs and attorneys' fees that have been, are, and will be necessarily
5 expended for the prosecution of this action for the substantial benefit of
6 each class member.

7 (d) Superiority: The nature of this action makes the use of class action
8 adjudication superior to other methods. A class action will achieve
9 economies of time, effort, and expense as compared with separate
10 lawsuits, and will avoid inconsistent outcomes because the same issues
11 can be adjudicated in the same manner and at the same time for the entire
12 class.

13 (e) Public Policy Considerations: Employers in the State of California
14 violate employment and labor laws every day. Current employees are
15 often afraid to assert their rights out of fear of direct or indirect retaliation.
16 Former employees are fearful of bringing actions because they believe
17 their former employers might damage their future endeavors through
18 negative references and/or other means. Class actions provide the class
19 members who are not named in the complaint with a type of anonymity
20 that allows for the vindication of their rights while simultaneously
21 protecting their privacy.

22 **FIRST CAUSE OF ACTION**

23 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

24 **(Against all Defendants)**

25 51. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
26 and every allegation set forth above.

27 52. Labor Code section 1198 makes it illegal to employ an employee under
28 conditions of labor that are prohibited by the applicable wage order. California Labor Code

1 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
2 be the . . . standard conditions of labor for employees. The employment of any employee . . .
3 under conditions of labor prohibited by the order is unlawful.”

4 53. California Labor Code section 1198 and the applicable IWC Wage Order provide
5 that it is unlawful to employ persons without compensating them at a rate of pay either time-
6 and-one-half or two-times that person’s regular rate of pay, depending on the number of hours
7 worked by the person on a daily or weekly basis.

8 54. Specifically, the applicable IWC Wage Order provides that Defendants are and
9 were required to pay Plaintiff and class members working more than eight (8) hours in a day or
10 more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours
11 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

12 55. The applicable IWC Wage Order further provides that Defendants are and were
13 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
14 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
15 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
16 employee, including nondiscretionary bonuses and incentive pay.

17 56. California Labor Code section 510 codifies the right to overtime compensation
18 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
19 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
20 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
21 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
22 the seventh (7th) day of work.

23 57. During the relevant time period, Defendants willfully failed to pay all overtime
24 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class
25 members were not paid overtime premiums for all of the hours they worked in excess of eight
26 (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours
27 in a week, because all hours worked were not recorded.

28 58. First, Defendants had, and continue to have, a company-wide policy and/or

1 practice requiring Plaintiff and class members to perform various work-related tasks while off-
2 the-clock before and after their shifts. For example, approximately twice per week, Defendants’
3 managers required Plaintiff to prepare front entrance security guard stations, which included
4 removing tables and chairs or setting up podiums and barricades, before he clocked in for the
5 start of his shift, which could take up to 15 minutes. Further, Plaintiff and class members were
6 required to respond to phone communications from management before and after their shifts
7 and/or on their days off. For example, Plaintiff was required to download the “WhatsApp”
8 mobile application on his personal cellular phone and review and respond to text messages from
9 Defendants’ supervisors regarding work-related issues, such as client jobsite details, work
10 assignments or tasks, and the type of uniform required at clients’ jobsites. Thus, Defendants
11 failed to track all of the time that employees spent performing work-related tasks before and
12 after their shifts and/or on their days off, and Plaintiff and class members received no
13 compensation for this time.

14 59. In addition, Defendants had, and continue to have, a company-wide policy and/or
15 practice of requiring Plaintiff and class members to obtain certain training, certifications,
16 licensure, and/or registrations, such as Bureau of Security & Investigative Security Services
17 Guard Registrations (“Guard Cards”), and to keep their licenses and/or registrations up-to-date,
18 but Defendants failed to compensate Plaintiff and class members for this time spent doing so.
19 For example, Plaintiff was required to take an online training course to obtain a Guard Card
20 while he was at home, which took approximately 6-8 hours to complete, but was not
21 compensated for this time worked. Thus, Defendants failed to track the time Plaintiff and class
22 members spent completing the mandatory trainings and/or obtaining required licenses, and
23 Plaintiff and class members received no compensation for this time.

24 60. Second, on information and belief, Defendants maintained a company-wide on-
25 premises meal period policy, which mandated that Plaintiff and class members remain on their
26 clients’ jobsite premises during their unpaid meal periods. Because Plaintiff and class members
27 were restricted from leaving the premises during meal periods, they were denied the ability to
28 use their meal periods freely for their own purposes. For example, Plaintiff and class members

1 were unable to run personal errands because they were unable to leave the work premises. Thus,
2 Defendants effectively maintained control over Plaintiff and class members during their unpaid
3 meal periods.

4 61. Third, on information and belief, Defendants had, and continue to have, a
5 company-wide policy and/or practice of understaffing their locations while assigning heavy
6 workloads, resulting in a failure to provide Plaintiff and class members with adequate meal
7 period coverage. Defendants also had a practice of failing to schedule meal periods at all, which
8 further caused Plaintiff and class members to not be relieved of their duties for compliant meal
9 periods. For example, Plaintiff worked through all of his meal periods during his employment
10 with Defendants to keep up with work demands and complete his duties. Because Defendants
11 did not employ or staff a sufficient number of employees to meet their clients' needs, there was
12 no one available to relieve employees for meal periods, and Plaintiff and class members were
13 not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled
14 to receive a meal period. Consequently, Plaintiff and class members were required to work
15 through and/or had their unpaid meal periods interrupted to complete their assigned duties and
16 handle work demands, time for which they were not paid.

17 62. Fourth, during the relevant time period, on information and belief, Defendants
18 implemented a company-wide policy and/or practice of automatically deducting meal periods
19 from Plaintiff's and class members' time records, instead of requiring employees to clock in
20 and out for meal periods. As a result of this policy, Defendants deducted 30-minute meal
21 periods from Plaintiff's and class members' time records even when meal periods were missed,
22 short, and/or interrupted. Thus, Defendants did not record all hours worked during meal
23 periods, and Plaintiff and class members performed work during meal periods for which they
24 were not paid.

25 63. Defendants knew or should have known that as a result of these company-wide
26 practices and/or policies, Plaintiff and class members were performing their assigned duties off-
27 the-clock before and after their shifts and during meal periods, and were suffered or permitted
28 to perform work for which they were not paid. Because Plaintiff and class members sometimes

1 worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this
2 off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class members
3 were not paid overtime wages for all of the overtime hours they actually worked.

4 64. Defendants' failure to pay Plaintiff and class members the balance of overtime
5 compensation as required by California law, violates the provisions of California Labor Code
6 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
7 members are entitled to recover from Defendants their unpaid overtime compensation, as well
8 as interest, costs, and attorneys' fees.

9 **SECOND CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 11 **Minimum Wages** 12 **(Against all Defendants)**

13 65. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
14 and every allegation set forth above.

15 66. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
16 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
17 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
18 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as "the
19 time during which an employee is subject to the control of an employer, and includes all the
20 time the employee is suffered or permitted to work, whether or not required to do so." Cal.
21 Code. Regs. Tit. 8, § 11040(2)(K) (defining "Hours Worked").

22 67. As stated above, Defendants had a company-wide policy and/or practice
23 requiring Plaintiff and class members to perform various work-related tasks while off-the-clock
24 before and after their shifts and/or on their off days, including, but not limited to, preparing
25 security guard stations prior to clocking in and communicating with management regarding
26 work-related tasks via phone calls or text messages outside of their shifts or on days off.
27 Defendants failed to track or otherwise record and account for the time Plaintiff and class
28 members spent working off-the-clock, and Plaintiff and class members received no

1 compensation for this time. Additionally, as stated, Defendants required Plaintiff and class
2 members to complete mandatory trainings and/or obtain certain certifications, licenses, and
3 registrations while at home or outside of their scheduled shifts. However, Defendants did not
4 compensate Plaintiff and class members for their time spent working off-the-clock.

5 68. As also set forth above, due to Defendants' company-wide policies and/or
6 practices of requiring employees to remain on work premises during meal periods, Plaintiff and
7 class members were not relieved of all duties during unpaid meal periods. Moreover, as stated,
8 due to Defendants' uniform practices of understaffing, assignment of heavy workloads, failure
9 to schedule meal periods, and subsequent lack of meal period coverage, Plaintiff and class
10 members were impeded from taking all uninterrupted meal periods to which they were entitled
11 and were required to work off-the-clock. Furthermore, as stated, on information and belief,
12 Defendants had a company-wide practice and/or policy of automatically deducting meal periods
13 from Plaintiff's and class members' time records, even when meal periods were missed, short,
14 and/or interrupted. Thus, Defendants systematically failed to pay Plaintiff and class members
15 for actual hours worked during unpaid meal periods because these hours were not recorded.

16 69. Defendants did not pay minimum wages for all hours worked by Plaintiff and
17 class members. To the extent that these off-the-clock hours did not qualify for overtime
18 premium payment, Defendants did not pay at least minimum wages for those hours worked off-
19 the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

20 70. Defendants' failure to pay Plaintiff and class members minimum wages violates
21 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California
22 Labor Code section 1194.2, Plaintiff and class members are entitled to recover from Defendants
23 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

24 **THIRD CAUSE OF ACTION**

25 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

26 **Violations**

27 **(Against all Defendants)**

28 71. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 72. At all relevant times herein set forth, California Labor Code section 512(a)
3 provides that an employer may not require, cause, or permit an employee to work for a period
4 of more than five (5) hours per day without providing the employee with a meal period of not
5 less than thirty (30) minutes, except that if the total work period per day of the employee is not
6 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
7 and the employee. Under California law, first meal periods must start after no more than five
8 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

9 73. At all relevant times herein set forth, California Labor Code sections 226.7,
10 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
11 meal period mandated by an applicable order of the IWC.

12 74. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
13 the applicable IWC Wage Order also require employers to provide a second meal period of not
14 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
15 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
16 hours worked is no more than twelve (12) hours, the second meal period may be waived by
17 mutual consent of the employer and the employee only if the first meal period was not waived.

18 75. Under California law, an employer cannot evade meal break requirements via the
19 use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec.*
20 *Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be provided
21 with the opportunity to eat his or her meal while performing the duties required and any on-duty
22 meal period must, like any off-duty meal period, be at least 30 minutes long. *L'Chaim House,*
23 *Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141 (2019).

24 76. During the relevant time period, as set forth above, on information and belief,
25 Defendants maintained and implemented a company-wide on-premises meal period policy for
26 employees, which mandated that Plaintiff and class members remain on the work premises
27 during the meal periods. Because Plaintiff and class members were restricted from leaving the
28 premises during meal periods, they were denied the ability to use their meal periods freely for

1 their own purposes. Thus, Defendants effectively maintained control over Plaintiff and class
2 members during meal periods.

3 77. Further, as stated, Defendants had, and continue to have, company-wide policies
4 and/or practices of understaffing their locations, which, combined with heavy workloads and a
5 failure to schedule meal periods entirely, has resulted in a lack of meal period coverage and
6 prevented Plaintiff and class members from taking timely, uninterrupted meal periods to which
7 they were entitled. As a result, Plaintiff and class members had to work through all or part of
8 their meal periods, had their meal periods interrupted, and/or had to wait extended periods of
9 time before taking meal periods. For example, as stated, Plaintiff had to forego nearly all of his
10 meal periods, due to the lack of meal period coverage and to meet Defendants' work demands.

11 78. In addition, to the extent Defendants required their employees to sign written
12 "on-duty" meal period agreements, such agreements were invalid under California law.
13 Defendants' "on-duty" meal period policy results from the company's own staffing and business
14 decisions, not because the nature of the work required on-duty meal periods. There were
15 multiple employees employed by Defendants at Plaintiff's and class members' jobsite locations
16 and Defendants' clients' jobsites are not in remote or isolated areas. Defendants could have
17 provided rover break coverage for Plaintiff and class members or staffed more employees at
18 their locations, but chose not to do so. Further, the work of Defendants' employees is not of
19 the kind that could be said to meet the "nature of the work" exception. Plaintiff and class
20 members were responsible for patrolling premises, responding to incidents, and setting up and
21 breaking down events. None of these tasks is akin to the kind that the California Division of
22 Labor Standards Enforcement ("DLSE") has found warrant an "on-duty" meal period, such as
23 transporting hazardous materials via vehicles that must be monitored at all times pursuant to
24 federal regulation. Therefore, Defendants' use of an "on-duty" meal period agreement is
25 improper and unlawful. Because of Defendants' company-wide "on-duty" meal period policy,
26 Plaintiff and class members did not receive all required off-duty meal periods and did not
27 receive premium pay for missed, late, or interrupted meal periods.

28 79. Alternatively, as stated, on information and belief, Defendants implemented a

1 company-wide policy and practice of automatically deducting meal periods from Plaintiff's and
2 class members' time records, instead of requiring employees to clock in and out for meal
3 periods. As a result of this policy, Defendants deducted 30 minutes from Plaintiff's and class
4 members' time records even when meal periods were missed, short, and/or interrupted. Thus,
5 Defendants systematically failed to correctly record meal periods.

6 80. Defendants also did not provide Plaintiff and class members with second 30-
7 minute meal periods on days that they worked in excess of ten (10) hours in one day. For
8 example, Plaintiff worked shifts in excess of ten (10) or more hours in one day approximately
9 twice per week, but did not receive second 30-minute meal periods on those days. Plaintiff and
10 class members did not sign valid meal period waivers on days that they were entitled to meal
11 periods and were not relieved of all duties.

12 81. At all times herein mentioned, Defendants knew or should have known that, as a
13 result of these policies, Plaintiff and class members were prevented from being relieved of all
14 duties and required to perform some of their assigned duties during meal periods. Defendants
15 further knew or should have known that Defendants did not pay Plaintiff and class members all
16 meal period premiums when meal periods were late, missed, shortened, or interrupted.

17 82. Furthermore, Defendants engaged in a company-wide practice and/or policy of
18 not paying all meal period premiums owed when compliant meal periods were not provided.
19 Because of this practice and/or policy, Plaintiff and class members have not received all
20 premium pay for missed, late, and interrupted meal periods. As a result, Defendants failed to
21 provide Plaintiff and class members compliant meal periods in violation of California Labor
22 Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

23 83. Defendants' conduct violates the applicable IWC Wage Order, and California
24 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
25 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
26 rate of compensation for each work day that the meal period was not provided.

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FOURTH CAUSE OF ACTION
Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations
(Against all Defendants)

84. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

85. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff’s and class members’ employment by Defendants.

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

87. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

88. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ company-wide

1 practices of understaffing their clients' jobsites and assigning of heavy workloads resulted in a
2 lack of rest period coverage and prevented Plaintiff and class members from being relieved of
3 all duty in order to take compliant rest periods. Additionally, Defendants also failed to schedule
4 rest periods, which, coupled with Defendants' failure to provide adequate rest period coverage,
5 further led to Plaintiff and class members not being authorized and permitted to take rest
6 periods.

7 89. Furthermore, upon information and belief, during the relevant time period,
8 Defendants maintained and implemented a company-wide on-premises rest period policy,
9 which mandated that Plaintiff and class members remain on the Defendants' client's jobsite
10 premises during their rest periods. Because Plaintiff and class members were restricted from
11 leaving the jobsite premises during rest periods, they were denied the ability to use their rest
12 periods freely for their own purposes, such as running personal errands. Thus, Defendants
13 effectively maintained control over Plaintiff and class members during rest periods.

14 90. As a result of Defendants' practices and policies, Plaintiff and class members
15 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
16 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
17 throughout his employment, Plaintiff had to forego his rest periods because he did not have
18 coverage and there was an expectation for employees to work through their rest periods.

19 91. Defendants have also engaged in a systematic, company-wide practice and/or
20 policy of not paying rest period premiums owed when rest periods are not authorized and
21 permitted. As a result of this practice and/or policy, Plaintiff and class members have not
22 received premium pay for all missed rest periods.

23 92. Defendants' conduct violates the applicable IWC Wage Order and California
24 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
25 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
26 compensation for each work day that a compliant rest period was not authorized and permitted.

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1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
3 **Statements and Failure to Maintain Accurate Payroll Records**
4 **(Against all Defendants)**

5 93. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 94. At all relevant times herein set forth, California Labor Code section 226(a)
8 provides that every employer shall furnish each of his or her employees an accurate and
9 complete itemized wage statement in writing, including, but not limited to, the name and address
10 of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked,
11 and all applicable rates of pay.

12 95. At all relevant times, Defendants have knowingly and intentionally provided
13 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For
14 example, Defendants issued uniform wage statements to Plaintiff and Subclass members that
15 fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
16 applicable hourly rates in effect during the pay period, including rates of pay for overtime
17 wages, and the corresponding number of hours worked at each hourly rate. Specifically,
18 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

19 96. Because Defendants did not accurately record the time Plaintiff and Subclass
20 members spent working off-the-clock and deducted time from their records for meal periods
21 that were interrupted and/or missed (and therefore time for which they should have been paid),
22 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and
23 Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same reason,
24 Defendants failed to accurately list the total number of hours worked by Plaintiff and Subclass
25 members in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay
26 in effect during the pay period and corresponding accurate number of work hours worked at
27 each hourly rate in violation of section 226(a)(9).

28 97. The wage statement deficiencies also include, without limitation, failing to list

1 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
2 piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for
3 which employees were paid; failing to list the name of the employee and only the last four digits
4 of his or her social security number or an employee identification number other than a social
5 security number; failing to list the name and address of the legal entity that is the employer;
6 and/or failing to state all hours worked as a result of not recording or stating hours worked off-
7 the-clock.

8 98. California Labor Code section 1174(d) provides that “[e]very person employing
9 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
10 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
11 plants or establishments at which employees are employed, payroll records showing the hours
12 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
13 applicable piece rate paid to, employees employed at the respective plants or
14 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
15 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
16 members showing the daily hours they worked and the wages paid thereto as a result of failing
17 to record the off-the-clock hours that they worked.

18 99. California Labor Code section 1198 provides that the maximum hours of work
19 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
20 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
21 of any employees for longer hours than those fixed by the order or under conditions of labor
22 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
23 are required to keep accurate time records showing when the employee begins and ends each
24 work period. During the relevant time period, Defendants engaged in company-wide practices
25 and/or policies of failing to record actual hours worked (including falsifying time records by
26 recording that compliant meal periods were taken regardless of if or when meal periods were
27 actually taken), and thereby failed to keep accurate records of work period and meal period start
28 and stop times for Plaintiff and Subclass members, in violation of section 1198. Furthermore,

1 in light of Defendants' failure to provide Plaintiff and Subclass members with second 30-minute
2 meal periods to which they were entitled, Defendants kept no records of meal start and end
3 times for second meal periods.

4 100. Plaintiff and Subclass members are entitled to recover from Defendants the
5 greater of their actual damages caused by Defendants' failure to comply with California Labor
6 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
7 employee.

8 **SIXTH CAUSE OF ACTION**

9 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon**

10 **Termination**

11 **(Against all Defendants)**

12 101. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
13 and every allegation set forth above.

14 102. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
15 that if an employer discharges an employee, the wages earned and unpaid at the time of
16 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
17 her employment, his or her wages shall become due and payable not later than seventy-two (72)
18 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
19 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
20 quitting.

21 103. On information and belief, Defendants had a company-wide practice and/or
22 policy of paying departing employees their final wages on the next regular pay cycle instead of
23 adhering to the time requirements set forth in Labor Code sections 201 and 202. Alternatively,
24 Defendants have, on information and belief, a company-wide practice and/or policy of failing
25 to pay terminated employees their final wages. For example, Defendants terminated Plaintiff
26 on or about the end of November 2021 and, as of the date of this complaint, have not paid him
27 final wages owed. Thus, Defendants failed to pay Plaintiff and class members their final wages
28 immediately, in violation of California Labor Code section 201.

104. Additionally, Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

105. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code § 204—Failure to Timely Pay Wages During Employment (Against all Defendants)

106. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

107. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were not timely paid to Plaintiff and class members during their employment.

108. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following

1 month.

2 109. At all times relevant herein, Labor Code section 204 provides that all wages
3 earned for labor in excess of the normal work period shall be paid no later than the payday for
4 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
5 204 provides that the requirements of this section are deemed satisfied by the payment of wages
6 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7)
7 calendar days following the close of the payroll period.

8 110. During the relevant time period, Defendants willfully failed to pay Plaintiff and
9 class members all wages due including, but not limited to, overtime wages, minimum wages,
10 meal and rest period premiums, and/or reporting time pay, within the time periods specified by
11 California Labor Code section 204.

12 111. Defendants' failure to pay Plaintiff and class members all wages due violates
13 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
14 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

15 **EIGHTH CAUSE OF ACTION**

16 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section**
17 **11040 Subdivision 5(A)—Failure to Provide Reporting Time Pay**
18 **(Against all Defendants)**

19 112. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
20 and every allegation set forth above.

21 113. California Labor Code section 1198 dictates that no employer may employ an
22 employee under conditions of labor that are prohibited by the applicable IWC wage order.
23 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
24 fixed by the commission shall be the . . . standard conditions of labor for employees. The
25 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

26 114. The applicable IWC Wage Order, California Code of Regulations, Title 8,
27 section 11040(5)(A), provides that “[e]ach workday an employee is required to report for work
28 and does report, but is not put to work or is furnished less than half said employee's usual or

1 scheduled day's work, the employee shall be paid for half the usual or scheduled day's work,
2 but in no event for less than two (2) hours nor more than four (4) hours, at the employee's
3 regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of
4 the reporting time regulation" is "to guarantee at least partial compensation for employees who
5 report to work expecting to work a specified number of hours, and who are deprived of that
6 amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v.*
7 *AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

8 115. During the relevant time period, Defendants violated California Labor Code
9 section 1198 and California Code of Regulations, Title 8, section 11040(5)(A), because
10 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
11 work for their usual or scheduled shift but were put to work for less than half of their usual or
12 scheduled day's work.

13 116. Defendants had a company-wide practice of sending Plaintiff and class members
14 home early from their shifts, including before they had worked at least half of their usual or
15 scheduled shift, but would not pay Plaintiff and class members for half of their scheduled shift.
16 For example, on at least five (5) occasions, Defendants' managers sent Plaintiff home within
17 one (1) or two (2) hours from the start of his shift, but Plaintiff was only paid for the time he
18 had worked. Although Plaintiff and class members reported to work based on the schedule that
19 was provided to them, Defendants would send them home before they worked at least half of
20 their usual or scheduled shifts. When this occurred, Defendants did not pay Plaintiff and class
21 members for at least half of their scheduled day's work or the minimum reporting time pay.

22 117. Accordingly, Plaintiff and class members were not properly compensated with
23 reporting time pay in violation of California Labor Code section 1198 and California Code of
24 Regulations, Title 8, section 11040(5)(A). Plaintiff and class members are therefore entitled to
25 recover from Defendants unpaid wages and interest.

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1 **NINTH CAUSE OF ACTION**

2 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**
3 **(Against all Defendants)**

4 118. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 119. At all times herein set forth, California Labor Code section 2802 provides that
7 an employer must reimburse employees for all necessary expenditures and losses incurred by
8 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
9 to prevent employers from passing off their cost of doing business and operating expenses on
10 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
11 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: “[w]hen the
12 employer requires the use of tools or equipment or they are necessary to the performance of a
13 job, such tools and equipment shall be provided and maintained by the employer, except that an
14 employee whose wages are at least two (2) times the minimum wage may provide and maintain
15 hand tools and equipment customarily required by the particular trade or craft.”

16 120. During the relevant time period, Defendants, on a company-wide basis, required
17 that Plaintiff and class members use their own personal mobile devices, including, but not
18 limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to
19 reimburse them for the costs of their work-related mobile device expenses. For example,
20 Plaintiff and class members were required to use their personal mobile devices for work-related
21 tasks, including responding to calls or text messages from Defendants’ management.
22 Specifically, Defendants required Plaintiff to download the “WhatsApp” mobile application to
23 his personal cellular phone in order to review and respond to text messages from his managers
24 regarding work-related issues, such as client jobsite details, work assignments or tasks, and the
25 type of uniform he was required to wear at clients’ jobsites. Although Defendants required
26 Plaintiff and class members to utilize their personal mobile devices and/or mobile data to carry
27 out their work-related responsibilities, Defendants failed to reimburse them for these costs.

28 121. Second, Defendants, on a company-wide basis, required Plaintiff and class

1 members to obtain and pay for certain certifications, licenses, and/or registrations, such as a
2 Guard Card registration, which were required for their continued employment, as well as
3 associated costs such as training and/or examination fees. For example, Plaintiff complied with
4 Defendants' requirement and spent money out-of-pocket for his Guard Card registration, but
5 Defendants did not reimburse him for the costs of obtaining the registration. Thus, Defendants
6 failed to reimburse Plaintiff and class members for the costs of obtaining these certifications,
7 licenses, or registrations, including training and/or examination fees.

8 122. Third, during the relevant time period, Defendants required Plaintiff and class
9 members to purchase supplies and equipment necessary for the performance of their duties, but
10 failed to reimburse them for their out-of-pocket costs. For example, Plaintiff was required to
11 spend approximately \$25 on a flashlight which he used during his shifts to ensure safety at
12 poorly lit nightclub venues, because Defendants failed to provide him with the necessary
13 equipment required for him to complete his duties. Although Defendants required Plaintiff and
14 class members to purchase supplies and equipment to carry out their work-related
15 responsibilities, Defendants failed to reimburse them for their out-of-pocket costs.

16 123. Defendants could have provided Plaintiff and class members with the actual
17 equipment for use on the job, such as company mobile devices and supplies and equipment. Or,
18 Defendants could have reimbursed employees for the costs of their mobile device usage; supply
19 and equipment expenses; and certification, licensure, and registration fees. Instead, Defendants
20 passed these operating costs off onto Plaintiff and class members. At all relevant times, Plaintiff
21 did not earn at least two (2) times the minimum wage.

22 124. Defendants' company-wide policy and/or practice of passing on their operating
23 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
24 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
25 business-related expenses and costs.

26 125. Plaintiff and class members are entitled to recover from Defendants their
27 business-related expenses incurred during the course and scope of their employment, plus
28 interest.

1 **TENTH CAUSE OF ACTION**

2 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

3 **(Against all Defendants)**

4 126. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 127. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
8 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510,
9 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
10 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
11 those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and
12 2810.5.

13 128. Defendants’ conduct, as alleged herein, violates numerous sections of the
14 California Labor Code, including, but not limited to, the following:

- 15 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
16 Wage Order for Defendants’ failure to compensate Plaintiff and other
17 aggrieved employees with all required overtime pay, as alleged herein;
- 18 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198,
19 and the applicable IWC Wage Order for Defendants’ failure to
20 compensate Plaintiff and other aggrieved employees with at least
21 minimum wages for all hours worked, as alleged herein;
- 22 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
23 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
24 and other aggrieved employees with meal periods, as alleged herein;
- 25 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
26 IWC Wage Order for Defendants’ failure to authorize and permit Plaintiff
27 and other aggrieved employees to take rest periods, as alleged herein;
- 28 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable

- 1 IWC Wage Order for failure to provide accurate and complete wage
2 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 3 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
4 IWC Wage Order for failure to maintain payroll records, as alleged
5 herein;
- 6 (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned
7 wages upon termination, as alleged herein;
- 8 (h) Violation of Labor Code section 204 for failure to pay all earned wages
9 during employment, as alleged herein;
- 10 (i) Violation of Labor Code sections 551 and 552 for failure to provide one
11 day's rest in seven, as set forth below;
- 12 (j) Violation of Labor Code section 1198 and the applicable IWC Wage
13 Order for failing to pay reporting time pay to Plaintiff and other aggrieved
14 employees, as alleged herein;
- 15 (k) Violation of Labor Code section 1198 and the applicable IWC Wage
16 Order for failure to pay split-shift premiums when Plaintiff and other
17 aggrieved employees returned to work for an additional shift in the same
18 day, after having been clocked out for more than an hour, as set forth
19 below;
- 20 (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
21 and other aggrieved employees for all business expenses necessarily
22 incurred, as alleged herein; and
- 23 (m) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
24 provide written notice of information material to Plaintiff's and other
25 aggrieved employees' employment with Defendants, as set forth below.

26 129. At all relevant times herein, California Labor Code section 551 provides that
27 every person employed in any occupation of labor is entitled to one day's rest in seven.
28 Additionally, California Labor Code section 552 prohibits employers from requiring employees

1 to work more than six consecutive days without a day of rest.

2 130. At all relevant times herein set forth, California Labor Code section 556 exempts
3 an employer from the day-of-rest requirement when the total hours worked by an employee do
4 not exceed 30 hours in any week or six hours in any one day thereof.

5 131. During the relevant time period, on information and belief, Defendants scheduled
6 Plaintiff and other aggrieved employees to work six (6) or more hours per day and seven (7)
7 consecutive days in a workweek. For example, during certain times of the year, Defendants
8 required employees to work “black-out weeks,” where Plaintiff and other aggrieved employees
9 worked seven (7) consecutive days without being afforded the opportunity to take one day of
10 rest. Defendants would threaten to discipline employees, including Plaintiff and class members,
11 if they refused to accept “black-out week” scheduling. Because Plaintiff and other aggrieved
12 employees worked over 30 hours per week and over six (6) hours per day in any one day in a
13 workweek, they were not exempt from the day-of-rest requirement. To the extent that Plaintiff
14 and other aggrieved employees may have signed purported waivers of their right to a day’s rest
15 in seven, such waivers are invalid. Thus, Defendants willfully caused Plaintiff and other
16 aggrieved employees to work more than six days in seven, in violation of Labor Code sections
17 551 and 552. Plaintiff and other aggrieved employees are therefore entitled to recover civil
18 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

19 132. At all relevant times herein, California Code of Regulations, Title 8, section
20 11040(4)(C) provides that, “When an employee works a split shift, one (1) hour’s pay at the
21 minimum wage shall be paid in addition to the minimum wage for that workday, except when
22 the employee resides at the place of employment.” California Code of Regulations, Title 8,
23 defines a split shift as “a work schedule, which is interrupted by non-paid non-working periods
24 established by the employer, other than bona fide rest or meal periods.”

25 133. Defendants willfully violated California Labor Code section 1198 and California
26 Code of Regulations, Title 8, section 11040(4)(C), because Defendants failed to pay Plaintiff
27 and other aggrieved employees a split-shift premium when they returned to work for an
28 additional shift in the same day, after having been clocked out for several hours. For instance,

1 Plaintiff would be scheduled to work a five-hour shift, clock out for several hours, and then
2 return to work later in the day for an additional five-hour shift. When this occurred, Defendants
3 did not always pay Plaintiff and other aggrieved employees an additional hour at minimum
4 wage. At all relevant times, Plaintiff and other aggrieved employees did not reside at
5 Defendants' locations. Accordingly, Defendants required Plaintiff and other aggrieved
6 employees to work split shifts but failed to pay them an additional hour at minimum wage, in
7 violation of California Labor Code section 1198.

8 134. Defendants' failure to provide Plaintiff and other aggrieved employees with split-
9 shift pay when they returned to work for an additional shift in the same day, after having been
10 clocked out for more than an hour, violates California Labor Code section 1198 and California
11 Code of Regulations Title 8, Section 11040(4)(C). Plaintiff and other aggrieved employees are
12 therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
13 (g).

14 135. At all relevant times herein, California's Wage Theft Prevention Act was enacted
15 to ensure that employers provide employees with basic information material to their
16 employment relationship at the time of hiring, and to ensure that employees are given written
17 and timely notice of any changes to basic information material to their employment. Codified
18 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
19 time of hiring, an employer must provide written notice to employees containing basic and
20 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
21 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
22 any rates for overtime, the regular payday designated by the employer, and any allowances
23 claims as part of the minimum wage, including meal or lodging allowances. Labor Code
24 § 2810.5(a)(1)(A)-(C).

25 136. At all relevant times, on information and belief, Defendants failed, on a
26 company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that
27 lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants'
28 failure to provide Plaintiff and other aggrieved employees with written notice of basic

1 information regarding their employment with Defendants is in violation of Labor Code section
2 2810.5. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties
3 pursuant to Labor Code sections 2699(a), (f), and (g).

4 **ELEVENTH CAUSE OF ACTION**

5 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

6 **Unlawful Business Practices**

7 **(Against all Defendants)**

8 137. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
9 and every allegation set forth above.

10 138. Defendants are “persons” as defined by California Business & Professions Code
11 section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
12 associations.

13 139. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
14 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
15 suffered injury in fact and has lost money as a result of Defendants’ unlawful business practices.
16 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
17 Code of Civil Procedure section 1021.5.

18 140. Defendants’ activities, as alleged herein, are violations of California law, and
19 constitute unlawful business acts and practices in violation of California Business & Professions
20 Code sections 17200, *et seq.*

21 141. A violation of California Business & Professions Code sections 17200, *et seq.*
22 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
23 policies and practices have violated state law in at least the following respects:

- 24 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
25 class members, to work overtime without paying them proper
26 compensation in violation of California Labor Code sections 510 and
27 1198, and the applicable IWC Wage Order, as alleged herein;
28 (b) Failing to pay at least minimum wage to Plaintiff and class members in

violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;

(c) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;

(d) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;

(e) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;

(f) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein;

(g) Failing to provide one day's rest in seven to Plaintiff and class members in violation of California Labor Code sections 551 and 552, as set forth below;

(h) Failing to pay reporting time pay in violation of California Labor Code section 1198 and the applicable IWC Wage Order, as alleged herein;

(i) Failing to pay Plaintiff and class members a split-shift premium wage of an additional hour of pay at the minimum wage, when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, in violation of California Labor Code section 1198 and the applicable IWC Wage Order, as set forth below;

(j) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein; and

1 (k) Failing to provide written notice of information material to Plaintiff's and
2 class members' employment with Defendants in violation of California
3 Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

4 142. At all relevant times herein, California Labor Code section 551 provides that
5 every person employed in any occupation of labor is entitled to one day's rest in seven.
6 Additionally, California Labor Code section 552 prohibits employers from requiring employees
7 to work more than six consecutive days without a day of rest.

8 143. At all relevant times herein set forth, California Labor Code section 556 exempts
9 an employer from the day-of-rest requirement when the total hours worked by an employee do
10 not exceed 30 hours in any week or six hours in any one day thereof.

11 144. During the relevant time period, on information and belief, Defendants scheduled
12 Plaintiff and class members to work six (6) or more hours per day and seven (7) consecutive
13 days in a workweek. For example, during certain times of the year, Defendants required
14 employees to work "black-out weeks," where Plaintiff and class members worked seven (7)
15 consecutive days without being afforded the opportunity to take one day of rest. Defendants
16 would threaten to discipline employees, including Plaintiff and class members, if they refused
17 to accept "black-out week" scheduling. Because Plaintiff and class members worked over 30
18 hours per week and over six (6) hours per day in any one day in a workweek, they were not
19 exempt from the day-of-rest requirement. To the extent that Plaintiff and class members may
20 have signed purported waivers of their right to a day's rest in seven, such waivers are invalid.
21 Thus, Defendants willfully caused Plaintiff and class members to work more than six days in
22 seven, in violation of Labor Code sections 551 and 552.

23 145. At all times relevant herein, Labor Code section 1198 provides that no employer
24 may employ an employee under conditions of labor that are prohibited by the applicable IWC
25 Wage Order. California Code of Regulations, Title 8, section 11040(4)(C) provides that, "When
26 an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in
27 addition to the minimum wage for that workday, except when the employee resides at the place
28 of employment." Plaintiff and class members did not reside at Defendants' locations.

1 California Code of Regulations, Title 8, defines a split shift as “a work schedule, which is
2 interrupted by non-paid non-working periods established by the employer, other than bona fide
3 rest or meal periods.”

4 146. Defendants violated California Labor Code section 1198 and California Code of
5 Regulations, Title 8, section 11040(4)(C), because Defendants have failed to pay Plaintiff and
6 class members a split-shift premium when they returned to work for an additional shift in the
7 same day, after having been clocked out for several hours. For instance, Plaintiff would be
8 scheduled to work a five-hour shift, clock out for several hours, and then return to work later in
9 the day for an additional five-hour shift. When this occurred, Defendants did not always pay
10 Plaintiff and class members an additional hour at minimum wage.

11 147. Accordingly, Defendants required Plaintiff and class members to work split
12 shifts but failed to pay them the split-shift premium wage in violation of California Labor Code
13 section 1198. Defendants’ failure to compensate Plaintiff and class members with split-shift
14 pay when they returned to work for an additional shift in the same day, after having been clocked
15 out for more than an hour, violates California Labor Code section 1198 and California Code of
16 Regulations, Title 8, section 11040(4)(C).

17 148. At all relevant times herein, California’s Wage Theft Prevention Act was enacted
18 to ensure that employers provide employees with basic information material to their
19 employment relationship at the time of hiring, and to ensure that employees are given written
20 and timely notice of any changes to basic information material to their employment. Codified
21 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
22 time of hiring, an employer must provide written notice to employees containing basic and
23 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
24 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
25 any rates for overtime, the regular payday designated by the employer, and any allowances
26 claims as part of the minimum wage, including meal or lodging allowances. Labor Code
27 § 2810.5(a)(1)(A)-(C).

28 149. At all relevant times, on information and belief, Defendants failed, on a

1 company-wide basis, to provide written notice to Plaintiff and class members that lists the
2 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
3 to provide Plaintiff and class members with written notice of basic information regarding their
4 employment with Defendants is in violation of California Labor Code section 2810.5.

5 150. As a result of the violations of California law herein described, Defendants
6 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have
7 suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

8 151. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
9 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
10 Defendants during a period that commences four years prior to the filing of this complaint; a
11 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
12 class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure
13 section 1021.5 and other applicable laws; and an award of costs.

14 **TWELFTH CAUSE OF ACTION**

15 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

16 **Unfair Business Practices**

17 **(Against all Defendants)**

18 152. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 153. Defendants are "persons" as defined by California Business & Professions Code
21 section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
22 associations.

23 154. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and
24 harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in
25 fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to
26 enforce important rights affecting the public interest within the meaning of Code of Civil
27 Procedure section 1021.5.

28 155. Defendants' activities, namely Defendants' company-wide practice and/or policy

1 of not paying Plaintiff and class members all meal and rest period premiums due to them under
2 Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee
3 and enhanced enforcement implemented by section 226.7. The statutory remedy provided by
4 section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and
5 secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th
6 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and
7 class members as part of their employment with Defendants, and thus Defendants’ practice
8 and/or policy of denying these statutory benefits constitutes an unfair business practice in
9 violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

10 156. A violation of California Business & Professions Code sections 17200, *et seq.*
11 may be predicated on any unfair business practice. In the instant case, Defendants’ policies and
12 practices have violated the spirit of California’s meal and rest period laws and constitute acts
13 against the public policy behind these laws.

14 157. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
15 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
16 benefits implemented by section 226.7 withheld and retained by Defendants during a period that
17 commences four years prior to the filing of this complaint; a permanent injunction requiring
18 Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class
19 members; an award of attorneys’ fees pursuant to California Code of Civil Procedure section
20 1021.5 and other applicable laws; and an award of costs.

21 **REQUEST FOR JURY TRIAL**

22 Plaintiff requests a trial by jury.

23 **PRAYER FOR RELIEF**

24 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against
25 Defendants, jointly and severally, as follows:

26 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in
27 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
28 reserves the right to amend his prayer for relief to seek a different amount.

1 **Class Certification**

- 2 2. That this case be certified as a class action;
- 3 3. That Plaintiff be appointed as the representative of the Class and Subclass;
- 4 4. That counsel for Plaintiff be appointed as class counsel.

5 **As to the First Cause of Action**

- 6 5. That the Court declare, adjudge, and decree that Defendants violated California
- 7 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
- 8 pay all overtime wages due to Plaintiff and class members;
- 9 6. For general unpaid wages at overtime wage rates and such general and special
- 10 damages as may be appropriate;
- 11 7. For pre-judgment interest on any unpaid overtime compensation commencing
- 12 from the date such amounts were due, or as otherwise provided by law;
- 13 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
- 14 California Labor Code section 1194(a); and
- 15 9. For such other and further relief as the Court may deem equitable and
- 16 appropriate.

17 **As to the Second Cause of Action**

- 18 10. That the Court declare, adjudge and decree that Defendants violated California
- 19 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
- 20 Order by willfully failing to pay minimum wages to Plaintiff and class members;
- 21 11. For general unpaid wages and such general and special damages as may be
- 22 appropriate;
- 23 12. For pre-judgment interest on any unpaid compensation from the date such
- 24 amounts were due, or as otherwise provided by law;
- 25 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
- 26 California Labor Code section 1194(a);
- 27 14. For liquidated damages pursuant to California Labor Code section 1194.2; and
- 28 15. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such

1 amounts were due, or as otherwise provided by law;

2 28. For attorneys' fees pursuant to California Code of Civil Procedure section
3 1021.5, or as otherwise provided by law; and

4 29. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Fifth Cause of Action**

7 30. That the Court declare, adjudge and decree that Defendants violated the
8 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
9 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate
10 itemized wage statements thereto;

11 31. For all actual, consequential, and incidental losses and damages, according to
12 proof;

13 32. For injunctive relief pursuant to California Labor Code section 226(h);

14 33. For statutory penalties pursuant to California Labor Code section 226(e);

15 34. For attorneys' fees and costs pursuant to California Labor Code section
16 226(e)(1); and

17 35. For such other and further relief as the Court may deem equitable and
18 appropriate.

19 **As to the Sixth Cause of Action**

20 36. That the Court declare, adjudge and decree that Defendants violated California
21 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
22 meal and rest period premiums, and/or reporting time pay owed at the time of termination of
23 the employment of Plaintiff and other terminated class members;

24 37. For all actual, consequential and incidental losses and damages, according to
25 proof;

26 38. For waiting time penalties according to proof pursuant to California Labor Code
27 section 203 for all employees who have left Defendants' employ;

28 39. For pre-judgment interest on any unpaid wages from the date such amounts were

1 due, or as otherwise provided by law;

2 40. For attorneys' fees pursuant to California Code of Civil Procedure section
3 1021.5, or as otherwise provided by law; and

4 41. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Seventh Cause of Action**

7 42. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime
9 wages, minimum wages, meal and rest period premiums, and/or reporting time pay during their
10 employment;

11 43. For all actual, consequential and incidental losses and damages, according to
12 proof;

13 44. For statutory penalties according to proof pursuant to California Labor Code
14 section 210;

15 45. For pre-judgment interest on any unpaid wages from the date such amounts were
16 due, or as otherwise provided by law;

17 46. For attorneys' fees pursuant to California Code of Civil Procedure section
18 1021.5, or as otherwise provided by law; and

19 47. For such other and further relief as the Court may deem equitable and
20 appropriate.

21 **As to the Eighth Cause of Action**

22 48. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(5)(A) by
24 failing to provide Plaintiff and class members with reporting time pay;

25 49. For all actual, consequential and incidental losses and damages, according to
26 proof;

27 50. For pre-judgment interest on any unpaid wages from the date such amounts were
28 due, or as otherwise provided by law; and

1 51. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 **As to the Ninth Cause of Action**

4 52. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related
6 expenses and costs incurred by Plaintiff and class members;

7 53. For unpaid business-related expenses and such general and special damages as
8 may be appropriate;

9 54. For pre-judgment interest on any unpaid business-related expenses from the date
10 such amounts were due, or as otherwise provided by law;

11 55. For all actual, consequential, and incidental losses and damages, according to
12 proof;

13 56. For attorneys' fees and costs pursuant to California Labor Code section 2802(c),
14 or as otherwise provided by law; and

15 57. For such other and further relief as the Court may deem equitable and
16 appropriate.

17 **As to the Tenth Cause of Action**

18 58. That the Court declare, adjudge and decree that Defendants violated the
19 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
20 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
21 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
22 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
23 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
24 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
25 earned wages upon termination); 204 (by failing to timely pay all earned wages during
26 employment); 551 and 552 (by failing to provide one day's rest in seven); 1198 and the
27 applicable IWC Wage Order (by failing to provide reporting time pay); 1198 and the applicable
28 IWC Wage Order (by failing to pay split-shift premiums); 2802 (by failing to reimburse

business expenses); and 2810.5 (by failing to provide written notice of information material to employment);

59. For civil penalties pursuant to the California Labor Code, including sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

60. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

61. For pre-judgment and post-judgment interest as provided by law; and for such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

62. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, failing to provide one day's rest in seven, failing to pay Plaintiff and class members reporting time pay, failing to properly compensate Plaintiff and class members for split shifts, failing to reimburse Plaintiff and class members for business-related expenses, and failing to provide written notice of material terms of employment, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

63. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

64. For the appointment of a receiver to receive, manage and distribute any and all

1 funds disgorged from Defendants and determined to have been wrongfully acquired by
2 Defendants as a result of violations of California Business & Professions Code sections 17200,
3 *et seq.*;

4 65. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
5 California Code of Civil Procedure section 1021.5; and

6 66. For such other and further relief as the Court may deem equitable and
7 appropriate.

8 **As to the Twelfth Cause of Action**

9 67. That the Court declare, adjudge and decree that Defendants' conduct of denying
10 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an
11 unfair business practice in violation of California Business and Professions Code sections
12 17200, *et seq.*;

13 68. For restitution of the statutory benefits under section 226.7 unfairly withheld
14 from Plaintiff and class members and prejudgment interest from the day such amounts were due
15 and payable;

16 69. For the appointment of a receiver to receive, manage and distribute any and all
17 funds disgorged from Defendants and determined to have been wrongfully acquired by
18 Defendants as a result of violations of California Business & Professions Code sections 17200,
19 *et seq.*;

20 70. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
21 California Code of Civil Procedure section 1021.5;

22 71. For pre-judgment and post-judgment interest as provided by law; and

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1 72. For such other and further relief as the Court may deem equitable and
2 appropriate.

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4 Dated: January 23, 2023,

Respectfully submitted,

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Capstone Law APC

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By: 
Bevin Allen Pike
Daniel S. Jonathan
Trisha K. Monesi

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Attorneys for Plaintiff Jestin Bertsch

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EXHIBIT “1”



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ALEXANDER LIMA
310.712.8154 Direct
Alexander.Lima@capstonelawyers.com

November 18, 2022

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Jestin Bertsch v. Protect-US*

Dear PAGA Administrator:

This office represents Jestin Bertsch in connection with his claims under the California Labor Code. Mr. Bertsch was an employee of PROTECT-US ("PROTECT").

The employer may be contacted directly at the address below:

PROTECT-US
12391 LEWIS ST, SUITE #201
GARDEN GROVE, CA 92840

Mr. Bertsch intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Bertsch seeks relief on behalf of himself, the State of California, and other persons who are or were employed by PROTECT as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

PROTECT employed Mr. Bertsch as an hourly paid, non-exempt employee from approximately May 2021 to November 20, 2021. Mr. Bertsch worked as a Security Guard for PROTECT at its various clients' locations in Orange and Los Angeles counties in California. During his employment, Mr. Bertsch typically worked five (5) hours or more per day, and five (5) or more days per week. At the time Mr. Bertsch's employment with PROTECT ended, he earned \$15.00 per hour. His job duties included, without limitation, patrolling venue premises, ensuring patron safety, searching persons for weapons and illegal substances, responding to incidents, and completing event setup and breakdown.

PROTECT committed one or more of the following Labor Code violations against Mr. Bertsch, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

PROTECT’s Company-Wide and Uniform Payroll and HR Practices

PROTECT-US, a California corporation, provides private security guard services in California. Upon information and belief, PROTECT maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Garden Grove, California, for all non-exempt, hourly paid employees working for PROTECT in California, including Mr. Bertsch and other aggrieved employees. At all relevant times, PROTECT issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Bertsch and other aggrieved employees, regardless of their location or position.

Upon information and belief, PROTECT maintains a centralized Payroll department at its corporate headquarters in Garden Grove, California, which processes payroll for all non-exempt, hourly paid employees working for PROTECT in California, including Mr. Bertsch and other aggrieved employees. Further, PROTECT issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees in California, including Mr. Bertsch and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, PROTECT utilized the same methods and formulas when calculating wages due to Mr. Bertsch and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

PROTECT willfully failed to pay all overtime wages owed to Mr. Bertsch and other aggrieved employees. During the relevant time period, Mr. Bertsch and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

¹ These facts, theories, and claims are based on Mr. Bertsch’s experience and counsel’s review of those records currently available relating to Mr. Bertsch’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Bertsch reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

First, PROTECT had, and continues to have, a company-wide policy and/or practice of requiring Mr. Bertsch and other aggrieved employees to perform various work-related tasks off-the-clock, before and after their shifts. For example, approximately twice per week, PROTECT's managers required Mr. Bertsch to prepare front entrance security guard stations, which included removing tables and chairs or setting up podiums and barricades, before he clocked in for the start of his shift, which could take up to 15 minutes. Further, Mr. Bertsch and other aggrieved employees were required to respond to phone communications from management before and after their shifts and/or on their days off. For example, Mr. Bertsch was required to download the "WhatsApp" mobile application on his personal cellular phone and review and respond to text messages from PROTECT's supervisors regarding work-related issues, such as client jobsite details, work assignments or tasks, and the type of uniform required at clients' jobsites. Thus, PROTECT failed to track all of the time that employees spent performing work-related tasks before and after their shifts and/or on their days off, and Mr. Bertsch and other aggrieved employees received no compensation for this time.

In addition, PROTECT had, and continues to have, a company-wide policy and/or practice of requiring Mr. Bertsch and other aggrieved employees to obtain certain training, certifications, licensure, and/or registrations, such as Bureau of Security & Investigative Security Services Guard Registrations ("Guard Cards"), and to keep their licenses and/or registrations up-to-date, but PROTECT failed to compensate Mr. Bertsch and other aggrieved employees for this time spent doing so. For example, Mr. Bertsch was required to take an online training course to obtain a Guard Card while he was at home, which took approximately six (6) to eight (8) hours to complete, but was not compensated for this time worked. Thus, PROTECT failed to track the time Mr. Bertsch and other aggrieved employees spent completing the mandatory trainings and/or obtaining required licenses, and Mr. Bertsch and other aggrieved employees received no compensation for this time.

Second, on information and belief, PROTECT maintained a company-wide on-premises meal period policy, which mandated that Mr. Bertsch and other aggrieved employees remain on its clients' jobsite premises during their unpaid meal periods. Because Mr. Bertsch and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. For example, Mr. Bertsch and other aggrieved employees were unable to run personal errands because they were unable to leave the work premises. Thus, PROTECT effectively maintained control over Mr. Bertsch and other aggrieved employees during their unpaid meal periods.

Third, on information and belief, PROTECT had, and continues to have, a company-wide policy and/or practice of understaffing its locations while assigning heavy workloads, resulting in a failure to provide Mr. Bertsch and other aggrieved employees with adequate meal period coverage. PROTECT also had a practice of failing to schedule meal periods at all, which further caused Mr. Bertsch and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Bertsch worked through all of his meal periods during his employment with PROTECT to keep up with work demands and complete his duties. Because PROTECT did not employ or staff a sufficient number of employees to meet its clients' needs, there was no one available to relieve employees for meal periods, and Mr. Bertsch and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Consequently, Mr. Bertsch and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted to complete their assigned duties and handle work demands, time for which they were not paid.

Fourth, during the relevant time period, on information and belief, PROTECT implemented a company-wide policy and/or practice of automatically deducting meal periods from Mr. Bertsch's and other aggrieved employees' time records, instead of requiring employees to clock in and out for meal periods. As a result of this policy, PROTECT deducted 30-minute meal periods from Mr. Bertsch's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted. Thus, PROTECT did not record all hours worked during meal periods, and Mr. Bertsch and other aggrieved employees performed work during meal periods for which they were not paid.

PROTECT knew or should have known that as a result of these company-wide practices and/or policies, Mr. Bertsch and other aggrieved employees were performing assigned duties off-the-clock after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Bertsch and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

Furthermore, PROTECT did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, on information and belief, PROTECT paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, PROTECT failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, PROTECT failed to pay all overtime wages by paying a lower overtime rate than required.

PROTECT's failure to pay Mr. Bertsch and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Bertsch and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

As stated above, PROTECT had a company-wide policy and/or practice requiring Mr. Bertsch and other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts and/or on their off days, including, but not limited to, preparing security guard stations prior to clocking in and communicating with management regarding work-related tasks via phone calls or text messages outside of his shifts or on days off. PROTECT failed to track or otherwise record and account for the time Mr. Bertsch and other aggrieved employees spent working off-the-clock, and Mr. Bertsch and other aggrieved employees received no compensation for this time.

Additionally, as stated, PROTECT required Mr. Bertsch and other aggrieved employees to complete mandatory trainings and/or obtain certain certifications, licenses, and registrations while at home or outside of their scheduled shifts. However, PROTECT did not compensate Mr. Bertsch and other aggrieved employees for their time spent working off-the-clock.

As also set forth above, due to PROTECT's company-wide policies and/or practices of requiring employees to remain on work premises during meal periods, Mr. Bertsch and other aggrieved employees were not relieved of all duties during unpaid meal periods. Moreover, as stated, due to PROTECT's uniform practices of understaffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Mr. Bertsch and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Furthermore, as stated, on information and belief, PROTECT, had a company-wide practice and/or policy of automatically deducting meal periods from Mr. Bertsch's and other aggrieved employees' time records, even when meal periods were missed, short, and/or interrupted. Thus, PROTECT systematically failed to pay Mr. Bertsch and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not recorded.

Thus, PROTECT did not pay at least minimum wages for all hours worked by Mr. Bertsch and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, PROTECT did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, PROTECT regularly failed to pay at least minimum wages to Mr. Bertsch and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Bertsch and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

Under California law, an employer cannot evade meal break requirements via the use of “on-duty” meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 2011 U.S. Dist. LEXIS 156685 (C.D. Cal. Jan. 11, 2011).

As stated, on information and belief, PROTECT maintained and implemented a company-wide on-premises meal period policy for employees, which mandated that Mr. Bertsch and other aggrieved employees remain on the work premises during the meal periods. Because Mr. Bertsch and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, PROTECT effectively maintained control over Mr. Bertsch and other aggrieved employees during meal periods.

Further, as stated, PROTECT had, and continues to have, company-wide policies and/or practices of understaffing its locations, which, combined with heavy workloads and a failure to schedule meal periods entirely, has resulted in a lack of meal period coverage and prevented Mr. Bertsch and other aggrieved employees from taking timely, uninterrupted meal periods to which they were entitled. As result, Mr. Bertsch and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Mr. Bertsch had to forego nearly all of his meal periods, due to the lack of meal period coverage and to meet PROTECT’s work demands.

In addition, to the extent PROTECT required its employees to sign written “on-duty” meal period agreements, such agreements were invalid under California law. PROTECT’s “on-duty” meal period policy results from the company’s own staffing and business decisions, not because the nature of the work required on-duty meal periods. There were multiple employees employed by PROTECT at Mr. Bertsch’s and other aggrieved employees’ jobsite locations and PROTECT’s clients’ jobsites are not in remote or isolated areas. PROTECT could have provided rover break coverage for Mr. Bertsch and other aggrieved employees or staffed more employees at its locations, but chose not to do so. Further, the work of PROTECT’s employees is not of the kind that could be said to meet the “nature of the work” exception. Mr. Bertsch and other aggrieved employees were responsible for patrolling premises, responding to incidents, and setting up and breaking down events. None of these tasks is akin to the kind that the California Division of Labor Standards Enforcement (“DLSE”) has found warrant an “on-duty” meal period, such as transporting hazardous materials via vehicles that must be monitored at all times pursuant to federal regulation. Therefore, PROTECT’s use of an “on-duty” meal period agreement is improper and unlawful. Because of PROTECT’s company-wide “on-duty” meal period policy, Mr. Bertsch and other aggrieved employees did not receive all required off-duty meal periods and did not receive premium pay for missed, late, or interrupted meal periods.

Alternatively, as stated, on information and belief, PROTECT implemented a company-wide policy and practice of automatically deducting meal periods from Mr. Bertsch’s and other aggrieved employees’ time records, instead of requiring employees to clock in and out for meal periods. As a result of this policy, PROTECT deducted 30 minutes from Mr. Bertsch’s and other aggrieved employees’ time records even when meal periods were missed, short, and/or interrupted. Thus, PROTECT systematically failed to correctly record meal periods.

PROTECT also did not provide Mr. Bertsch and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Mr. Bertsch worked shifts in excess of ten (10) or more hours in one day approximately twice per week, but did not receive second 30-minute meal periods on those days. Mr. Bertsch and other aggrieved

employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

PROTECT knew or should have known that as a result of its non-compliant policies and practices, Mr. Bertsch and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. PROTECT further knew or should have known that it did not pay Mr. Bertsch and other aggrieved employees all meal period premiums when meal periods were missed, late, short, and/or interrupted.

Furthermore, PROTECT engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Bertsch and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that PROTECT did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, PROTECT did not pay other aggrieved employees at the correct rate of pay for premiums because PROTECT systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, PROTECT failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Bertsch and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, PROTECT regularly failed to authorize and permit Mr. Bertsch and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, PROTECT's company-wide practices, including understaffing its clients' jobsites and assignment of heavy workloads, resulted in a lack of rest period coverage and prevented Mr. Bertsch and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, PROTECT also failed to schedule rest periods,

which, coupled with PROTECT's failure to provide adequate rest period coverage, further led to Mr. Bertsch and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, PROTECT maintained a company-wide on-premises rest period policy, which mandated that Mr. Bertsch and other aggrieved employees remain on PROTECT's clients' jobsites during their rest periods. Because Mr. Bertsch and other aggrieved employees were restricted from leaving jobsite premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, PROTECT effectively maintained control over Mr. Bertsch and other aggrieved employees during rest periods.

As a result, Mr. Bertsch and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, throughout his employment, Mr. Bertsch had to forego his rest periods because he did not have coverage and there was an expectation for employees to work through their rest periods.

PROTECT also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Bertsch and other aggrieved employees have not received all premium pay for missed rest periods. Alternatively, to the extent that PROTECT did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, PROTECT did not pay other aggrieved employees at the correct rate of pay for premiums because PROTECT failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, PROTECT failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Bertsch and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover 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 to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, PROTECT has knowingly and intentionally provided Mr. Bertsch and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PROTECT issued uniform wage statements to Mr. Bertsch and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all

applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, PROTECT violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because PROTECT did not record the time Mr. Bertsch and other aggrieved employees spent working off-the-clock and deducted time from their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), PROTECT did not list the correct amount of gross wages and net wages earned by Mr. Bertsch and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, PROTECT failed to accurately list the total number of hours worked by Mr. Bertsch and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Additionally, because PROTECT did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, PROTECT did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, PROTECT also failed to list the correct amount of net wages in violation of section 226(a)(5). PROTECT also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[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. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), PROTECT willfully failed to maintain accurate payroll records for Mr. Bertsch and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, PROTECT engaged in company-wide practices and/or policies of

failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Bertsch and other aggrieved employees in violation of section 1198. Furthermore, in light of PROTECT's failure to provide Mr. Bertsch and other aggrieved employees with second 30-minute meal periods to which they were entitled, PROTECT kept no records of meal start and end times for second meal periods.

Because PROTECT failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Bertsch and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Bertsch and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Bertsch and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that 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. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, PROTECT failed to pay Mr. Bertsch and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Bertsch and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy two (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.

On information and belief, PROTECT has a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. Alternatively, PROTECT has, on information and belief, a company-wide practice and/or policy of failing to pay terminated employees their final wages. For example, PROTECT terminated Mr. Bertsch on or about November 20, 2021 and, as of the date of this notice, has not paid him final wages owed. Thus, PROTECT failed to pay Mr. Bertsch and other aggrieved employees their final wages immediately, in violation of California Labor Code section 201.

Additionally, PROTECT willfully failed to pay Mr. Bertsch and other aggrieved employees who are no longer employed by PROTECT all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving PROTECT's employ, in violation of California Labor Code sections 201 or 202.

Mr. Bertsch and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six (6) hours in any one day thereof.

During the relevant period, PROTECT required Mr. Bertsch and other aggrieved employees to work approximately six (6) or more hours per day and seven (7) consecutive days in a workweek. For example, during certain times of the year, PROTECT required employees to work "black-out weeks," where Mr. Bertsch and other aggrieved employees worked seven (7) consecutive days without being afforded the opportunity to take one day of rest. PROTECT would threaten to discipline employees, including Mr. Bertsch and other aggrieved employees, if they refused to accept "black-out week" scheduling. Because Mr. Bertsch and other aggrieved employees worked over thirty (30) hours per week and over six (6) hours in any one day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Mr. Bertsch and other aggrieved employees signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, PROTECT caused Mr. Bertsch and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Mr. Bertsch and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11040(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, PROTECT violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(5)(A), because PROTECT failed to pay Mr. Bertsch and other aggrieved employees reporting time pay when they reported to work for their usual or scheduled shift but were put to work for less than half of their usual or scheduled day’s work.

PROTECT had a company-wide practice of sending Mr. Bertsch and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Mr. Bertsch and other aggrieved employees for half of their scheduled shift. For example, on at least five (5) occasions, PROTECT’s managers sent Mr. Bertsch home within one (1) or two (2) hours from the start of his shift, but Mr. Bertsch was only paid for the time he had worked. Although Mr. Bertsch and other aggrieved employees reported to work based on the schedule that was provided to them, PROTECT would send them home before they worked at least half of their usual or scheduled shifts. When this occurred, PROTECT did not pay Mr. Bertsch and other aggrieved employees for at least half of their scheduled day’s work or the minimum reporting time pay.

Mr. Bertsch and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11040(4)(C) provides that, “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum

wage for that workday, except when the employee resides at the place of employment.” California Code of Regulations, Title 8, defines a split shift as “a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

PROTECT willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(4)(C), because PROTECT failed to pay Mr. Bertsch and other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for several hours. For example, Mr. Bertsch would be scheduled to work a five-hour shift, clock out for several hours, and then return to work later in the day for an additional five-hour shift. When this occurred, PROTECT did not pay Mr. Bertsch and other aggrieved employees an additional hour at minimum wage. Accordingly, PROTECT required Mr. Bertsch and other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage, in violation of California Labor Code section 1198.

PROTECT’s failure to provide Mr. Bertsch and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for several hours, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11040(4)(C).

Mr. Bertsch and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, The applicable wage order, IWC Wage Order No. 4-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.” IWC Wage Order No. 4-2001, further provides that: “[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.”

First, during the relevant time period, PROTECT, on a company-wide basis, required Mr. Bertsch and other aggrieved employees to use their own personal mobile devices, including, but not limited to cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the cost of their work-related mobile device expenses. Mr. Bertsch and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including responding to calls or text messages from PROTECT’s management. Specifically, PROTECT required Mr. Bertsch to download the “WhatsApp” mobile application to his personal cellular phone in order to review and respond to text messages from his managers regarding work-related issues, such as client jobsite details, work assignments or tasks, and the type of uniform he was required to wear at clients’ jobsites. Although PROTECT required Mr. Bertsch and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, PROTECT failed to reimburse them for these costs.

Second, PROTECT, on a company-wide basis, required Mr. Bertsch and other aggrieved employees to obtain and pay for certain certifications, licenses, and/or registrations, such as a Guard Card registration, which were required for their continued employment, as well as associated costs such as training and/or examination fees. For example, Mr. Bertsch complied with this requirement and spent money out-of-pocket for his Guard Card registration, but PROTECT did not reimburse him for the costs of obtaining the registration. Thus, PROTECT failed to reimburse Mr. Bertsch and other aggrieved employees for the costs of obtaining these certifications, licenses, or registrations, including training and/or examination fees.

Third, during the relevant time period, PROTECT required Mr. Bertsch and other aggrieved employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Mr. Bertsch was required to spend approximately \$25 on a flashlight which he used during his shifts to ensure safety at poorly lit nightclub venues, because PROTECT failed to provide him with the necessary equipment required for him to complete his duties. Although PROTECT required Mr. Bertsch and other aggrieved employees to purchase supplies and equipment to carry out their work-related responsibilities, PROTECT failed to reimburse them for their out-of-pocket costs.

PROTECT could have provided Mr. Bertsch and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and supplies and equipment. Or, PROTECT could have reimbursed employees for the costs of their mobile device usage; supply and equipment expenses; and certification, licensure, and registration fees. Instead, PROTECT passed these operating costs off onto Mr. Bertsch and other aggrieved employees. At all relevant times, Mr. Bertsch did not earn at least two (2) times the minimum wage.

Thus, PROTECT had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Bertsch and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

PROTECT failed to provide Mr. Bertsch and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). PROTECT's failure to

provide Mr. Bertsch and other aggrieved employees with written notice of basic information regarding their employment with PROTECT is in violation of Labor Code section 2810.5.

Mr. Bertsch and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." PROTECT, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Bertsch's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Bertsch seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Bertsch, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against PROTECT for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Bertsch seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Bertsch's reasonable attempt to settle his dispute with PROTECT prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform PROTECT of Mr. Bertsch's aforementioned grievances and the proposed remedies as detailed below, while affording PROTECT a reasonable opportunity to satisfy Mr. Bertsch's demands.

Demand is hereby made that PROTECT shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. PROTECT shall pay Mr. Bertsch and all other aggrieved employees employed by PROTECT at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.

2. PROTECT shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods.
3. PROTECT shall conduct a survey or interview all current and former aggrieved employees in California who worked for PROTECT in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for certification, licensure, or registration fees; uniform laundering expenses; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. PROTECT shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. PROTECT also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. PROTECT shall reimburse Mr. Bertsch and all aggrieved employees who were required to pay for any business expenses incurred for PROTECT's benefit, including, but not limited to, mobile device expenses; certification, licensure, or registration fees; and supplies and equipment, as required by Labor Code section 2802.
6. PROTECT shall pay accrued legal interest to Mr. Bertsch and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. PROTECT shall provide Mr. Bertsch and all aggrieved employees employed by PROTECT at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. PROTECT shall provide Mr. Bertsch and all aggrieved employees who worked over thirty (30) hours per week and over six (6) hours per day in a workweek with one day's rest in seven, as required by Labor Code sections 551 and 552.
9. PROTECT shall provide pay all aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
10. PROTECT shall pay Mr. Bertsch and all aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, as required by California Labor Code section 1198 and California Code of Regulations Title 8, Section 11040(4)(C).

11. PROTECT shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
12. PROTECT shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
13. PROTECT shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 4-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', followed by three dots.

Alexander Lima

Copy: PROTECT-US (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

7022 2410 0000 2406 3980



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Postage \$

Total Postage and Fees \$

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12391 Lewis St., Suite 201

City, State, ZIP+4®
Garden Grove, CA 92840

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

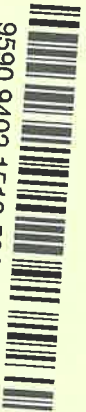
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**Bertsch v.
Protect-US**

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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

PROTECT-US
12391 Lewis St., Suite 201
Garden Grove, CA 92840



9590 9402 1512 5362 2478 22

2. Article Number (Transfer from service label)

7022 2410 0000 2406 3980

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

☐ Agent

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No

If YES, enter delivery address below:

3. Service Type

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☒ Adult Signature Restricted Delivery

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☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery

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LOS ANGELES, CA 90067-9997
(800)275-8777

11/18/2022

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Product	Qty	Unit Price	Price
First-Class Mail®	1		\$1.92
Large Envelope			
Garden Grove, CA 92840			
Weight: 0 lb 3.30 oz			
Estimated Delivery Date			
Mon 11/21/2022			
Certified Mail®			\$4.00
Tracking #:			
70222410000024063980			
Return Receipt			\$3.25
Tracking #:			
9590 9402 1512 5362 2478 22			
Total			\$9.17

Grand Total: \$9.17

Credit Card Remit \$9.17

Card Name: MasterCard
Account #: XXXXXXXXXXXX1005
Approval #: 067042
Transaction #: 142
AID: A0000000041010 Chip
AL: MASTERCARD
PIN: Not Required CHASE MASTERCARD

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☒ Return Receipt (hardcopy)	\$2.75
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$1.92
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00

Postage \$1.92

Total Postage and Fees \$9.17

Sent To PROTECT-US

Street and Apt. No., or PO Box No.
12391 Lewis St., Suite 201

City, State, ZIP+4®
Garden Grove, CA 92840

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

USPS CENTURY CITY MALL
LOS ANGELES 90067-9997
2022 0137 05
Postmark Here
Bertsch v. Protect-US

UFN: 054606-0137
Receipt #: 840-59000079-1-1800101-2
Clerk: 05

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

PROTECT-US
12391 Lewis St., Suite 201
Garden Grove, CA 92840



9590 9402 1512 5362 2478 22

2. Article Number (Transfer from service label)

7022 2410 0000 2406 3980

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

[Handwritten Signature]

☐ Agent

☐ Addressee

B. Received by (Printed Name)

[Handwritten Signature]

C. Date of Delivery

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- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

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