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on behalf of themselves and all others similarly situated and aggrieved

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

KEVIN JOHNS, on behalf of himself and all
others similarly situated and aggrieved,

Plaintiff,

v.

WHELAN SECURITY OF CALIFORNIA,
INC., a California Corporation doing business
as GARDAWORLD SECURITY
SERVICES; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 22STCV35387

[Assigned to the Hon. Laura Seigle in
Dept. 17]

**STIPULATION OF SETTLEMENT OF
REPRESENTATIVE CLAIMS UNDER
THE LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT**

**EXHIBIT A: [PROPOSED]
JUDGMENT**

**EXHIBIT B: PROPOSED ORDER
GRANTING APPROVAL**

**EXHIBIT C: PROPOSED NOTICE OF
SETTLEMENT**

**EXHIBIT D: PROPOSED SECOND
AMENDED COMPLAINT**

Date: July 18, 2024
Time: 9:00 A.M.
Dept: 17

Action Filed: November 7, 2022
Trial Date: None set

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1 This Stipulation of Settlement of Representative Claims Under the Labor Code Private
2 Attorneys' General Act ("Settlement," "Agreement" or "Settlement Agreement") is made by and
3 between plaintiffs Kevin Johns ("Plaintiff Johns"), Rod Linsangan ("Plaintiff Linsangan"), and
4 Aneeta Carter ("Plaintiff Carter") (collectively, "Plaintiffs" or "PAGA Representatives"), on the
5 one hand; and Whelan Security of California, Inc. ("Defendant"), on the other hand. The
6 Agreement refers to Plaintiffs and Defendant collectively as "Parties," or individually as a
7 "Party."

8 **1. DEFINITIONS**

9 Terms not otherwise defined in this Agreement shall have the following meanings:

10 **1.1. "Action"** means the lawsuit captioned *Kevin Johns v Whelan Security of*
11 *California, Inc.*, Case No. Case No. 22STCV35387 initiated on November 7, 2022 in the Superior
12 Court of the State of California, County of Los Angeles. **"Linsangan Action"** means the lawsuit
13 captioned *Rod Linsangan and Aneeta Carter v. GardaWorld, et al.*, Case No. 21STCV09227,
14 filed on March 9, 2021, in the Superior Court of the State of California, County of Los Angeles.

15 **1.2. "Administrator"** means Apex Class Action, the neutral entity the Parties have
16 agreed to appoint to administer the Settlement.

17 **1.3. "Administration Expenses Payment"** means the amount the Administrator will
18 be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
19 accordance with the Administrator's "not to exceed" bid submitted to the Court in connection
20 with approval of this Settlement.

21 **1.4. "Aggrieved Employee"** means a person employed by Defendant in California
22 and classified as a non-exempt, hourly-paid employee during the PAGA Period.

23 **1.5. "Aggrieved Employee Data"** means Aggrieved Employee identifying
24 information in Defendant's possession including the Aggrieved Employee's name, last-known
25 mailing address, Social Security number, hire dates, termination dates (as applicable) and re-hire
26 dates (as applicable).

27 **1.6. "Aggrieved Employee Address Search"** means the Administrator's
28 investigation and search for current Aggrieved Employees' mailing addresses using all

1 reasonably available sources, methods and means, including, but not limited to, the National
2 Change of Address database, skip traces and direct contact by the Administrator with Aggrieved
3 Employees.

4 **1.7. “Approval Order”** means the proposed Court Order Granting Approval of
5 PAGA Settlement, in the same or similar form as Exhibit B.

6 **1.8. “Court”** means the Superior Court of California, County of Los Angeles.

7 **1.9. “Defense Counsel”** means Malcolm A. Heinicke and Joseph D. Lee of Munger,
8 Tolles & Olson, LLP.

9 **1.10. “Effective Date”** means the date by when both of the following have occurred:
10 (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the
11 Judgment is Final.

12 **1.11. “Final”** means the point at which the Judgment has become final and irreversible
13 because either (i) no appeal has been taken from the Judgment within 60 days of its entry or (ii)
14 an appeal or other review proceeding of the Judgment having been commenced, such appeal or
15 other review is finally concluded and is no longer subject to review, whether by direct appeal,
16 writ of certiorari, motion for reconsideration, or otherwise, and such appeal or other review has
17 been finally resolved in a manner that materially affirms the Judgment. Notwithstanding the
18 foregoing, any proceeding or order, or any appeal or petition for a writ pertaining solely to the
19 award of attorneys’ fees or costs shall not, by itself, in any way delay or preclude the Judgment
20 from becoming Final.

21 **1.12. “Gross Settlement Amount”** means Two Million Seven Hundred Seventy-five
22 Thousand Dollars and Zero Cents (\$2,775,000.00), which is the total gross amount Defendant
23 agrees to pay under the settlement except as provided in Paragraph 8.3 below. The Gross
24 Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment,
25 the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment, the
26 Administrator’s Expenses Payment, and the PAGA Service Payment.

1 **1.13. “Individual PAGA Payment”** means each Aggrieved Employee’s pro rata share
2 of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved
3 Employee worked during the PAGA Period.

4 **1.14. “Judgment”** means the judgment to be entered by the Court pursuant to this
5 Stipulation of Settlement, which shall be a judgment in the same or similar form as Exhibit A.

6 **1.15. “LWDA”** means the California Labor and Workforce Development Agency, the
7 agency entitled, under Labor Code section 2699, subd. (i).

8 **1.16. “LWDA PAGA Payment”** means the 75% of the PAGA Penalties paid to the
9 LWDA under Labor Code section 2699, subd. (i).

10 **1.17. “Net Settlement Amount”** means the Gross Settlement Amount, less the
11 following payments in the amounts approved by the Court: the LWDA PAGA Payment, the
12 PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment, the
13 Administration Expenses Payment, and the PAGA Service Payment. The Net Settlement
14 Amount is equal to the total of all Individual PAGA Payments.

15 **1.18. “Operative Complaint”** means the Second Amended Complaint to be filed in the
16 Action.

17 **1.19. “PAGA Counsel”** means, David D. Bibiyan, Jeffrey D. Klein, and Vedang J.
18 Patel of Bibiyan Law Group, P.C., as well as Cody R. Kennedy and Stephen P. O’Dell of Marlin
19 & Salzman, LLP. The term “PAGA Counsel” shall be used synonymously with the term
20 “Plaintiff’s Counsel.”

21 **1.20. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses**
22 **Payment”** mean the amounts allocated to PAGA Counsel for reimbursement of reasonable
23 attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

24 **1.21. “PAGA Pay Period” or “Pay Period”** means any pay period during which an
25 Aggrieved Employee worked for Defendant at least one (1) day during the PAGA Period, based
26 on hire dates, termination dates (if applicable) and re-hire dates (if applicable).

27 **1.22. “PAGA Period”** means the period from May 5, 2022 through May 9, 2024, unless
28 extended past May 9, 2024 pursuant to paragraph 8.3 hereof.

1 **1.23. “PAGA”** means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

2 **1.24. “PAGA Notices”** means Plaintiffs’ letters to Defendant and the LWDA providing
3 notice pursuant to Labor Code section 2699.3, subd. (a).

4 **1.25. “PAGA Penalties”** means the total amount of PAGA civil penalties to be paid
5 from the Net Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to
6 LWDA in settlement of PAGA claims.

7 **1.26. “PAGA Representative Service Payment”** means the payments to Plaintiff
8 Johns, Plaintiff Linsangan, and Plaintiff Carter for providing services in support of the Action
9 and providing a broader release.

10 **1.27. “Released PAGA Claims”** means the claims being released by the Plaintiffs, all
11 of the Aggrieved Employees, the State of California, and PAGA Counsel as described in
12 Paragraph (5) below.

13 **1.28. “Released Parties”** means Defendant and its predecessors and successors,
14 corporate parents, corporate subsidiaries, corporate affiliates (including, without limitation,
15 Garda CL West, Inc.; GardaWorld Security Management Company, Inc., and Whelan Security
16 Co.) and all of its and those entities’ former and present directors, officers, employees, managing
17 agents, shareholders, owners, members, attorneys, consultants, accountants, insurers, reinsurers,
18 predecessors, successors, and assigns.

19 **1.29. “Settlement Notice”** means the letter to be sent by the Administrator with each
20 payment to an Aggrieved Employee, in the same or substantially the same form as Exhibit C.

21 **2. RECITALS**

22 **2.1.** On November 7, 2022, Plaintiff Johns filed with the LWDA and served on
23 Defendant a notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy
24 of the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor
25 Code violations (the “Johns PAGA Notice”).

26 **2.2.** On November 6, 2020 and December 20, 2022, respectively, Plaintiff Linsangan
27 and Plaintiff Carter filed with the LWDA and served on Defendant notices under Labor Code
28 section 2699.3 stating Plaintiff intended to serve as a proxy of the LWDA to recover civil

1 penalties on behalf of Aggrieved Employees for alleged Labor Code violations (the
2 “Linsangan/Carter PAGA Notices” and, together with the Johns PAGA Notice, “the PAGA
3 Notices”).

4 **2.3.** On November 7, 2022, Plaintiff Johns filed a putative class action complaint in
5 Los Angeles Superior Court against Defendant for: (1) failure to pay overtime wages; (2) failure
6 to pay minimum wages; (3) failure to provide meal breaks or compensation in lieu thereof; (4)
7 failure to provide rest breaks or compensation in lieu thereof; (5) waiting time penalties; (6) wage
8 statement violations; (7) failure to timely pay wages; (8) failure to indemnify; and (9) Unfair
9 competition.

10 **2.4.** On February 28, 2023, Plaintiff amended his class action complaint to include a
11 cause of action seeking civil penalties under penalties under PAGA per Labor Code sections 210,
12 226.3, 558, 1197.1 and 2699.

13 **2.5.** The Parties agree that any PAGA claims asserted in the Action or the Linsangan
14 Action for penalties on or before May 4, 2022 are precluded by a prior PAGA settlement in the
15 action entitled *Akim Evans v. Whelan Security of California, Inc.*, Los Angeles Superior Court
16 Case No. 20STCV10973 and thus the settlement period for this case exists only beginning
17 May 5, 2022.

18 **2.6.** Defendant has filed Notices of Related Cases identifying, as Related Cases within
19 the meaning of Cal. R. Ct. 3.300, (a) the present action, (b) the Linsangan Action; and (c) other
20 pending class and/or PAGA suits alleging claims parallel or substantially parallel to those alleged
21 here (the “Other Actions”).¹ As a result of such Notices, this Action was transferred to the above-
22
23

24 ¹ The Other Actions include the following: (1) *Luis Garcia v. Whelan Security Services, Inc. et*
25 *al.*, Los Angeles Superior Court Case No: 23STCV07588; (2) *Celia Morris, Felicia Greeno,*
26 *and Ontaria Dezaree Gordon v. Garda World Security Corporation dba Whelan Security of*
27 *California, Inc. et al.*, San Bernardino Superior Court Case No: CIVSB2310580 (3) *Keandre*
28 *Butler v. Whelan Security of California, et al.*, Case No: 23STCV1256; (4) *Kenneth Teems v.*
Whelan Security of California, Inc. et al., Los Angeles Superior Court Case No.
22STCV34844; (4) *Kenneth Teems v. Whelan Security of California, Inc. et al.*, Los Angeles
Superior Court Case No. 22STCV20838; and (5) *Miguel Lucar v. GardaWorld Government*
Services, Inc., et al., Los Angeles Superior Court Case No. 22STCV31607.

entitled Department on or about October 10, 2023. The Parties agree that this Settlement includes within its scope all PAGA claims alleged in any of the Other Actions.

2.7. On August 9, 2023, Plaintiff Johns and Defendant participated in an all-day mediation with Tripper Ortman, Esquire, which led to the present settlement of this case on a PAGA basis only. As part of the Settlement, the Parties have agreed to stipulate to Plaintiff Johns filing a Second Amended Complaint, substantially in the form attached hereto as Exhibit D, including without limitation to add Plaintiff Linsangan and Plaintiff Carter as named Plaintiffs in this action; to add claims under PAGA relating to potable water (Labor Code § 2441) and rest break areas (Labor Code § 226.7); and to omit Plaintiff Johns' class claims, which are being dismissed without prejudice pursuant to paragraph 11.18 hereof. Concurrent with the filing of such stipulation, Plaintiff Linsangan and Plaintiff Carter shall file a Request for Dismissal of the Linsangan Action without prejudice. Such stipulation and request for dismissal shall be filed within seven days of the execution of this Agreement by all parties.

2.8. Prior to mediation, Defendant agreed to informally produce the following: (1) a sample of time records for 601 of the 7,347 non-exempt employees working for Defendant in California during the PAGA Period as of the time such sample was pulled; (2) a sample of pay records for 85 employees; (3) the number of employees who opted out of the purported arbitration agreement and the number of workweeks for these employees during the period from November 7, 2018 to the date of mediation; (4) data points, including final rates of pay, number of terminated/separated Aggrieved Employees in the waiting time penalty period of May 5, 2022 to the date of mediation; (5) the number of Aggrieved Employees; (6) the number of pay periods in PAGA Period; (7) all policy documents; (8) Employee Handbooks; and (9) Plaintiff's time records, pay records, and a sampling of Plaintiff's paystubs. Based on these records and in consultation with expert consultants, Plaintiff's counsel was able to extrapolate all pertinent data through the date of mediation, including the number of shifts worked, the number of meal period violations, the number of rest period violations, the number of Aggrieved Employees eligible for wage statement penalties and waiting time penalties, among others.

1 **2.9.** The Parties, PAGA Counsel and Defense Counsel represent that they are not
2 aware of any other pending matter or action asserting claims that will be extinguished or affected
3 by the Settlement.

4 **3. MONETARY TERMS**

5 **3.1. Gross Settlement Amount.** Except as otherwise provided by Paragraph 8.3
6 below, Defendant promises to pay \$2,775,000.00 and no more as the Gross Settlement Amount.
7 Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in
8 Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement
9 Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of
10 payment. None of the Gross Settlement Amount will revert to Defendant.

11 **3.2. Payments from the Gross Settlement Amount.** The Administrator will make
12 and deduct the following payments from the Gross Settlement Amount, in the amounts specified
13 by the Court in the Final Approval Order:

14 **3.2.1 To Plaintiff Johns, Plaintiff Linsangan, and Plaintiff Carter:** PAGA
15 Representative Service Payment to Plaintiff Johns of not more than \$7,500,
16 and to Plaintiff Linsangan and Plaintiff Carter of not more than \$5,000
17 each, for a total of \$17,500 (in addition to any Individual PAGA Payment
18 they are entitled to receive as a Participating PAGA Member). Defendant
19 will not oppose Plaintiffs' request for a PAGA Representative Service
20 Payment that does not exceed this amount. As part of the motion for
21 PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment,
22 Plaintiffs will seek Court approval for any PAGA Representative Service
23 Payments prior to the Final Approval Hearing. If the Court approves a
24 PAGA Representative Service Payment less than the amount requested,
25 the Administrator will allocate the remainder to the Net Settlement
26 Amount. The Administrator will pay the PAGA Representative Service
27 Payment using IRS Form 1099. Plaintiff Johns, Plaintiff Linsangan, and
28

1 Plaintiff Carter assume full responsibility and liability for any taxes owed
2 on the PAGA Representative Service Payments.

3 **3.2.2 To PAGA Counsel:** A PAGA Counsel Fees Payment of not more than
4 one third (1/3) of the Gross Settlement Amount, which is currently
5 estimated to be \$925,000, as well as PAGA Counsel Litigation Expenses
6 Payment of not more than \$50,000.00. Defendant will not oppose requests
7 for Court approval of these payments provided that they do not exceed
8 these amounts. Plaintiffs and/or PAGA Counsel will file an application or
9 motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses
10 Payment. If the Court approves a PAGA Counsel Fees Payment and/or a
11 PAGA Counsel Litigation Expenses Payment less than the amounts
12 requested, the Administrator will allocate the remainder to the Net
13 Settlement Amount. Released Parties shall have no liability to PAGA
14 Counsel arising from any claim to any portion any PAGA Counsel Fees
15 Payment and/or PAGA Counsel Litigation Expenses Payment. The
16 Administrator will pay the PAGA Counsel Fees Payment and PAGA
17 Counsel Litigation Expenses Payment using one or more IRS 1099 Forms.
18 The allocation as between PAGA Counsel of the amounts awarded for the
19 PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses
20 Payment shall be the sole responsibility of PAGA Counsel, who shall
21 provide written instruction to the administrator and Defendant on the
22 allocation before it is paid. PAGA Counsel assume full responsibility and
23 liability for taxes owed on the PAGA Counsel Fees Payment and the
24 PAGA Counsel Litigation Expenses Payment and holds Released Parties
25 harmless, and indemnifies Released Parties, from any dispute or
26 controversy regarding any division or sharing of any of these Payments, or
27 any taxes due or claimed to be due thereon.
28

1 **3.2.3 To the Administrator:** An Administrator Expenses Payment not to
2 exceed \$30,000 except for a showing of good cause and as approved by
3 the Court. To the extent the Administration Expenses are less or the Court
4 approves payment less than \$30,000, the Administrator will allocate the
5 remainder to the Net Settlement Amount.

6 **3.2.4 To the LWDA and Aggrieved Employees:** PAGA Penalties in the
7 estimated amount of approximately \$1,752,500 to be paid from the Gross
8 Settlement Amount, with 75%, or approximately \$1,314,375 allocated to
9 the LWDA PAGA Payment and 25%, or approximately \$438,125 (the
10 “Net Penalty Amount”) allocated to the Individual PAGA Payments.

11 **3.2.4.1** The Administrator will calculate each Individual PAGA Payment
12 by (a) dividing the Net Penalty Amount by the total number of
13 PAGA Pay Periods worked by all Aggrieved Employees during the
14 PAGA Period and (b) multiplying the result by each Aggrieved
15 Employee’s PAGA Pay Periods. Aggrieved Employees assume full
16 responsibility and liability for any taxes owed on their Individual
17 PAGA Payment.

18 **3.2.4.2** The Administrator will report the Individual PAGA Payments on
19 IRS 1099 Forms.

20 **4. SETTLEMENT FUNDING PAYMENTS**

21 **4.1. Aggrieved Employee Pay Periods.** Based on a review of its records to date,
22 Defendant estimates that as of November 29, 2023, there were 8,112 Aggrieved Employees who
23 worked a total of 259,457 PAGA Pay Periods.

24 **4.2. Aggrieved Employee Data.** Within 14 days of the Effective Date, Defendant will
25 deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel
26 spreadsheet. The Court’s approval of this Settlement shall constitute authorization to share this
27 information with the Administrator. To protect Aggrieved Employees’ privacy rights, the
28 Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved

1 Employee Data only for purposes of this Settlement and for no other purpose, and restrict access
2 to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved
3 Employee Data to effect and perform duties under this Agreement. Defendant has a continuing
4 duty to promptly notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted
5 employee identifying information and to provide corrected or updated Aggrieved Employee Data
6 to the Administrator as soon as reasonably feasible. Without any extension of the deadline by
7 which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and
8 their counsel will expeditiously use best efforts, in good faith, to address and resolve any issues
9 related to missing or omitted Aggrieved Employee Data.

10 **4.3. Funding of Gross Settlement Amount.** Defendant shall fully fund the Gross
11 Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the
12 Effective Date.

13 **4.4. Payments from the Gross Settlement Amount.** Within 7 days after Defendant
14 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA
15 Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA
16 Representative Service Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel
17 Litigation Expenses Payment. Disbursement of the PAGA Counsel Fees Payment and the PAGA
18 Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA
19 Payments.

20 **4.4.1.** The Administrator will issue checks for the Individual PAGA Payments
21 and send them to the Aggrieved Employees via First Class U.S. Mail,
22 postage prepaid. The face of each check shall prominently state the date
23 (180 days after the date of mailing) when the check will become void. The
24 Administrator will cancel all checks not cashed by the void date. Before
25 mailing any checks, the Settlement Administrator shall update the
26 recipients' mailing addresses using the National Change of Address
27 Database. Such payment checks will be sent with the Settlement Notice.
28 It will be conclusively presumed that an Aggrieved Employee's individual

1 settlement payment check was received if the payment check has not been
2 returned within thirty (30) days of the original mailing of the payment
3 check. The date of the initial mailing of the payment check shall be
4 conclusively determined according to the records of the Administrator.

5 **4.4.2.** The Administrator shall conduct an Aggrieved Employee Address Search
6 for all Aggrieved Employees whose checks are returned undelivered
7 without a USPS forwarding address. Within 7 days of receiving a returned
8 check, the Administrator shall re-mail checks to the USPS forwarding
9 address provided or to an address ascertained through an Aggrieved
10 Employee Address Search (provided, however, that no further action shall
11 be required if neither method yields a new mailing address). The
12 Administrator need not take further steps to deliver checks to Aggrieved
13 Employees whose re-mailed checks are returned as undelivered. The
14 Administrator shall promptly send a replacement check to any Aggrieved
15 Employee whose original check was lost or misplaced, if requested by the
16 Aggrieved Employee prior to the void date.

17 **4.4.3.** For any Aggrieved Employee whose Individual PAGA Payment check is
18 uncashed and cancelled after the void date, the Administrator shall
19 transmit the funds represented by such checks to the California Controller's
20 Unclaimed Property Fund in the name of the Aggrieved Employee.

21 **4.4.4.** The payment of Individual PAGA Payments shall not obligate Defendant
22 to confer any additional benefits or make any additional payments to the
23 Aggrieved Employees (such as 401(k) contributions or bonuses) beyond
24 those specified in this Agreement.

25 **5. RELEASES OF CLAIMS**

26 Effective on the date when Defendant fully funds the Gross Settlement Amount,
27 Plaintiffs, all of the Aggrieved Employees, the State of California, and PAGA Counsel will
28 release claims against all Released Parties as follows:

1 **5.1. Plaintiffs' Release.** Plaintiffs and their respective former and present spouses,
2 representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors
3 and assigns generally release and discharge Released Parties from all claims, transactions or
4 occurrences that occurred prior to the execution of this Agreement, including, but not limited to,
5 all claims for civil penalties that were, or reasonably could have been alleged based on the facts
6 contained in the Operative Complaint and the PAGA Notices ("Plaintiffs' Release"). Plaintiffs'
7 Release herein does not extend to any claims or actions to enforce this Agreement or to any
8 claims for non-PAGA individual wage and hour claims, vested benefits, unemployment benefits,
9 disability benefits, social security benefits, or workers' compensation benefits. Plaintiffs
10 acknowledge that they may discover facts or law different from, or in addition to, the facts or law
11 that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall
12 be and remain effective in all respects, notwithstanding such different or additional facts or
13 Plaintiffs' discovery of them.

14 **5.1.1. Plaintiffs' Waiver of Rights Under California Civil Code Section 1542.**

15 Although a general release does not usually extend to claims that the
16 releasing party does not know or suspect to exist in his or her favor at the
17 time of executing the release and that, if known by him or her, would have
18 materially affected his or her settlement with the released party, here, the
19 foregoing release of PAGA claims includes a waiver of that limitation and
20 of rights under California Civil Code section 1542, so that the release set
21 forth above includes a release of unknown claims to the extent that those
22 unknown claims meet the definition of the Released Claims. The
23 Aggrieved Employees will not be deemed to have released any individual,
24 non-PAGA wage and hour claims by virtue of this Settlement. Section
25 1542 of the California Civil Code reads as follows:

26 **A general release does not extend to claims that the creditor or**
27 **releasing party does not know or suspect to exist in his or her favor at**
28 **the time of executing the release, and that if known by him or her**

1 **would have materially affected his or her settlement with the debtor**
2 **or Released Party.**

3 **5.1.2.** For the sake of clarity, the above release expressly excludes Plaintiffs'
4 non-PAGA individual wage and hour claims, claims for wrongful
5 termination, and related claims, which are being resolved by separate
6 agreements, and expressly does not extend to any current or pending
7 Workers' Compensation claims, FEHA and/or FMLA claims.

8 **5.2. Release by Aggrieved Employees, the State of California, and the Labor and**
9 **Workforce Development Agency.** Upon the entry of Judgment in accordance with this
10 Settlement and payment of the Gross Settlement Amount, Plaintiffs, all of the Aggrieved
11 Employees, the State of California, and the Labor and Workforce Development Agency will fully
12 release the Released Parties and be forever barred from pursuing against them, for the duration
13 of the PAGA Period: (a) all claims for civil penalties or relief of any kind under PAGA that were
14 alleged, or reasonably could have been alleged based on the facts stated in the Operative
15 Complaint or the PAGA Notices, including without limitation all claims for or relating to (i)
16 regular, overtime, or premium wages; (ii) failure to compensate Aggrieved Employees for all
17 hours worked; (iii) failure to pay the appropriate regular rate of pay; (iv) failure to comply with
18 payroll or wage record-keeping documentation or wage statement itemization requirements; (v)
19 failure to provide sufficient meal and/or rest periods or pay premiums in lieu thereof; (vi) failure
20 to timely pay wages due at termination or otherwise; (vii) failure to furnish accurate wage
21 statements; (viii) failure to pay minimum wages; (ix) failure to reimburse business or other
22 expenses and costs; (x) failure to pay sick or vacation pay; (xi) failure to provide suitable seating;
23 and (xii) failure to provide suitable facilities for meal and rest periods; (xiii) failure to provide
24 drinking water; and (b) any claims for PAGA penalties that could have been awarded pursuant
25 to Labor Code sections 201, 201.3, 202, 203, 204, 210, 216, 223, 225.5, 226, 226.3, 226.7, 227.3,
26 246, 256, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2441, 2699, and
27 2802
28

1 **5.3. Release by PAGA Counsel:** PAGA Counsel and their present and former
2 attorneys, employees, agents, successors and assigns hereby release the Released Parties from
3 all claims for PAGA Fees incurred in connection with the Operative Complaint, the facts stated
4 in the Operative Complaint, the operative complaint in the Linsangan Action, the facts stated in
5 the operative complaint in the Linsangan Action, or the PAGA Notices.

6 **6. MOTION OR APPLICATION FOR APPROVAL OF**
7 **SETTLEMENT**

8 The Parties agree to jointly prepare and file an application or motion for approval of this
9 Settlement.

10 **6.1. Plaintiffs' Responsibilities.** Plaintiffs will prepare and deliver to Defense
11 Counsel all documents necessary for obtaining approval of this Settlement under Labor Code
12 Section 2699, subd. (f)(2) including (i) a draft motion for approval of the PAGA Settlement and
13 a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from
14 the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting
15 to its willingness to serve; competency; operative procedures for protecting the security of
16 Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of
17 funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with
18 Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with
19 Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel
20 firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial
21 notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code
22 section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all
23 facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the
24 Administrator.

25 **6.2. Responsibilities of PAGA Counsel.** To comply with the requirements of
26 California Labor Code Section 2699(l), Plaintiffs shall file this Stipulation of Settlement and an
27 associated Motion to Approve PAGA Settlement (the “Approval Motion”) with the Court and
28 shall concurrently submit this Stipulation of Settlement to the LWDA as required by PAGA.

1 PAGA Counsel shall ensure that Counsel for Defendant will have sufficient time to review and
2 comment on the draft Approval Motion, in substantially final form, prior to its being filed with
3 the Court. Defendant shall not oppose the Approval Motion provided it comports with the terms
4 of this Stipulation of Settlement.

5 **6.3. Duty to Cooperate.** If the Parties disagree on any aspect of the proposed
6 application or motion for approval of this Settlement and/or the supporting declarations and
7 documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of
8 the Parties by meeting and conferring, and in good faith, to resolve the disagreement. If the Court
9 does not grant the motion for approval of this Settlement or conditions its approval on any
10 material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work
11 together on behalf of the Parties by meeting and conferring, and in good faith, to modify the
12 Agreement and otherwise satisfy the Court's concerns.

13 **6.4. LWDA Notice.** Labor Code section 2699(l)(3) requires notice to the LWDA of
14 an order or judgment approving the settlement. PAGA Counsel shall submit the Judgment to the
15 LWDA within seven days of entry.

16 **7. SETTLEMENT ADMINISTRATION**

17 **7.1. Selection of Administrator.** The Parties have jointly selected Apex Class Action
18 to serve as the Administrator and verified that, as a condition of appointment, Apex Class Action
19 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
20 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
21 represent that they have no interest or relationship, financial or otherwise, with the Administrator
22 other than a professional relationship arising out of prior experiences administering settlements.

23 **7.2. Employer Identification Number.** The Administrator shall have and use its own
24 Employer Identification Number for purposes of calculating payroll tax withholdings and
25 providing reports state and federal tax authorities.

26 **7.3. Qualified Settlement Fund.** The Administrator shall establish a settlement fund
27 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
28 Regulation section 468B-1.

1 **7.4. Administrator Duties.** The Administrator has a duty to perform or observe all
2 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

3 **8. AGGRIEVED EMPLOYEE SIZE ESTIMATES**

4 **8.1.** Based on its records, Defendant has estimated that there were approximately 8,112
5 Aggrieved Employees who worked approximately 259,457 PAGA Pay Periods from May 5,
6 2022, through November 29, 2023. Defendant will pay a Base Gross Settlement Amount of
7 \$2,600,000.00 for this period.

8 **8.2.** The Parties further agreed that in the event the number of PAGA Pay Periods
9 exceeded 259,457 by more than 10% (meaning more than 285,403 PAGA Pay Periods (the
10 “Mutually-Agreed Overage Amount”)), Defendant would have the option in its sole discretion
11 to either (i) deem the PAGA Period as having ended on the date the number of PAGA Pay Periods
12 equaled the Cutoff Amount; or (ii) to increase the Gross Settlement Amount in exchange for
13 extending the PAGA Period until the date judgment is entered. Based on Defendant’s records,
14 the number of PAGA Pay Periods exceeded the Mutually-Agreed Overage Amount on January
15 27, 2024. In view of that event, the Parties have further agreed that Defendant will pay an
16 additional \$175,000 to extend the PAGA Period through May 9, 2024, resulting in a Gross
17 Settlement Amount of \$2,775,000.00. Based on Defendant’s records there are 42,420 PAGA
18 Pay Periods between January 27, 2024, and May 9, 2024.

19 **8.3.** In the event that the Los Angeles Superior Court does not enter judgment in this
20 matter on or before May 9, 2024, Defendant shall retain the option in its sole discretion to either:
21 (i) deem the PAGA Period as having ended on May 9, 2024, or (ii) extend the PAGA Period
22 through the date of judgment by increasing the Gross Settlement Amount (for each PAGA Pay
23 Period ending between May 9 and the date of Judgment) at the same per-pay-period rate
24 applicable to PAGA Pay Periods between January 27, 2024, and May 9, 2024.

25 **8.4.** Except for any dollar increase pursuant to this section, Defendant will not in any
26 event pay more than the Gross Settlement Amount.
27
28

1 **9. CONTINUING JURISDICTION OF THE COURT**

2 The Parties agree that, as per Code Civ. Proc. Section 664.6, after entry of Judgment, the
3 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of
4 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,
5 and (iii) addressing such post-Judgment matters as are permitted by law.

6 **9.1. Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms
7 and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and
8 PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all
9 rights to appeal from the Judgment, including all rights to post-judgment and appellate
10 proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary
11 writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such
12 motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to
13 perform under this Agreement will be suspended until such time as the appeal is finally resolved
14 and the Judgment becomes final, except as to matters that do not affect the amount of the Net
15 Settlement Amount.

16 **10. ADMINISTRATOR DECLARATION**

17 No later than fourteen (14) calendar days prior to any status conference set by the Court
18 following its approval of the settlement, the Settlement Administrator shall provide counsel for
19 the Parties with a declaration attesting to the completion of the notice and payment process,
20 including the number of attempts to obtain valid mailing addresses for and re-sending of any
21 returned PAGA Payment Letters. PAGA counsel shall promptly file such declaration with the
22 Court, together with a notice acknowledging satisfaction of the Judgment.

23 **11. ADDITIONAL PROVISIONS**

24 **11.1. No Admission of Liability or Representative Manageability for Other**
25 **Purposes.** This Agreement represents a compromise and settlement of highly disputed claims.
26 Nothing in this Agreement is intended or should be construed as an admission by Defendant that
27 any of the allegations in the Operative Complaint or PAGA letters have merit or that Defendant
28 has any liability for any claims asserted; nor should it be intended or construed as an admission

1 by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that
2 representative treatment is for purposes of this Settlement only. If for any reason the Court does
3 not approve this Settlement, Defendant reserves all available defenses to the claims in the Action,
4 and Plaintiffs reserve the right to contest Defendant's defenses. The Settlement, this Agreement
5 and the Parties' willingness to settle the Action will have no bearing on, and will not be
6 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
7 Settlement and this Agreement, including without limitation efforts by Defendant to effectuate
8 the dismissal of the Other Actions based on the preclusive effect of the Judgment and this
9 Settlement).

10 **11.2. Integrated Agreement.** Upon execution by all Parties and their counsel, this
11 Agreement together with its attached exhibits shall constitute the entire agreement between the
12 Parties relating to the Settlement, superseding any and all oral representations, warranties,
13 covenants, or inducements made to or by any Party.

14 **11.3. Attorney Authorization.** PAGA Counsel and Defense Counsel separately
15 warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take
16 all appropriate action required or permitted to be taken by such Parties pursuant to this
17 Agreement, to effectuate its terms, and to execute any other documents reasonably required to
18 effectuate the terms of this Agreement including any amendments to this Agreement.

19 **11.4. Cooperation.** The Parties and their counsel will cooperate with each other and
20 use their best efforts, in good faith, to implement the Settlement by, among other things,
21 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
22 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
23 the form or content of any document necessary to implement the Settlement, or on any
24 modification of the Agreement that may become necessary to implement the Settlement, the
25 Parties will seek the assistance of the mediator (Tripper Ortman) and/or the Court for resolution.

26 **11.5. No Prior Assignments.** The Parties separately represent and warrant that they
27 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
28 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of

1 action, or right released and discharged by the Party in this Settlement.

2 **11.6. No Tax Advice.** Nothing in this Settlement is intended to constitute legal advice
3 regarding federal, state, and/or local tax obligations, nor shall anything in this Settlement be
4 relied upon as such within the meaning of United States Treasury Department Circular 230 (31
5 CFR Part 10, as amended) or otherwise. The Parties make no representations to one another or
6 to any Aggrieved Employee as to the tax treatment or legal effect of the payments called for
7 hereunder, and Aggrieved Employees are not relying on any statement or representation by the
8 Parties, PAGA Counsel, or Defense Counsel in this regard. Aggrieved Employees understand
9 and agree that they will be responsible for the payment of any taxes and penalties assessed on the
10 payments to them described herein and will hold the Parties, PAGA Counsel and Defense
11 Counsel free and harmless from and against any claims, liabilities, costs and expenses, including
12 attorney's fees, resulting in any way from personal tax treatment of the payments made pursuant
13 to this Settlement. To the extent that this Settlement or any of its attachments is interpreted to
14 contain or constitute advice regarding any state or federal tax issue, such advice is not intended
15 or written to be used, and cannot be used, by any person for the purpose of avoiding penalties
16 under the Internal Revenue Code. Neither the Parties, PAGA Counsel, nor Defense Counsel are
17 responsible for any Aggrieved Employee's tax obligations arising from the settlement payments.

18 **11.7. Modification of Agreement.** This Agreement may be amended, modified,
19 changed, or waived only by an express written instrument signed by all Parties or their
20 representatives, and approved by the Court.

21 **11.8. Agreement Binding on Successors.** This Agreement will be binding upon, and
22 inure to the benefit of, the successors of each of the Parties.

23 **11.9. Applicable Law.** All terms and conditions of this Agreement and its exhibits will
24 be governed by and interpreted according to the internal laws of the state of California, without
25 regard to conflict of law principles.

26 **11.10. Cooperation in Drafting.** The Parties have cooperated in the drafting and
27 preparation of this Agreement. This Agreement will not be construed against any Party on the
28 basis that the Party was the drafter or participated in the drafting.

1 **11.11. Confidentiality.** To the extent permitted by law, all agreements made, and orders
2 entered during the Action and in this Agreement relating to the confidentiality of information
3 shall survive the execution of this Agreement. Plaintiffs and PAGA Counsel agree that prior to
4 moving for approval of this Settlement, they shall not publicize any terms of this Settlement.
5 After filing the motion for approval of this Settlement, Plaintiffs and PAGA Counsel shall not
6 publicize the Settlement or the terms thereof via (a) press releases, (b) Internet postings that
7 include the Defendant's name, other information that could identify Defendant in any way such
8 as its location, or the case name or number, or (c) communications with the media. This shall
9 not prohibit PAGA Counsel from discussing this case or any aspect of this Settlement with
10 Plaintiffs or any Aggrieved Employee and shall not prohibit PAGA Counsel from in any way
11 disclosing their status as counsel in the case or making objective and truthful reference to the
12 Settlement, or any attorney fee award, in any future pleading in another litigation.

13 **11.12. Use of Aggrieved Employee Data.** Information provided to PAGA Counsel
14 pursuant to Cal. Evid. Code §1152 or otherwise provided to PAGA Counsel by Defendant in
15 connection with the mediation, other settlement negotiations, or in connection with the
16 Settlement, may be used only with respect to this Settlement, and for no other purpose, and may
17 not be used in any way that violates any existing contractual agreement, statute, or rule of court.

18 **11.13. Calendar Days.** Unless otherwise noted, all reference to "days" in this Agreement
19 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
20 weekend or federal legal holiday, such date or deadline shall be on the first business day
21 thereafter.

22 **11.14. Notice.** All notices, demands or other communications between the Parties in
23 connection with this Agreement will be in writing and deemed to have been duly given as of the
24 third business day after mailing by United States mail, or the day sent by email or messenger,
25 addressed as follows:

26 To Plaintiffs:
27 **Bibiyon Law Group, P.C.**
28 8484 Wilshire Boulevard, Suite 500
 Beverly Hills, CA 90211
 David D. Bibiyon
 david@tomorrowlaw.com

Vedang J. Patel
vedang@tomorrowlaw.com
Brandon M. Chang
brandon@tomorrowlaw.com

MARLIN & SALTZMAN LLP
Cody R. Kennedy
ckennedy@marlinsaltzman.com
Stephen P. O'Dell
sodell@marlinsaltzman.com
29800 Agoura Hills, CA 91301
Tel: 818-991-8080; Fax: 818-991-8081

To Defendant:
MALCOLM A. HEINICKE
malcolm.heinicke@mto.com
MUNGER, TOLLES & OLSON LLP
560 Mission Street, 27th Floor
San Francisco, California 94105-2907
Telephone: (415) 512-4029

JOSEPH D. LEE
joseph.lee@mto.com
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, 50th floor
Los Angeles, California 90071-3426
Telephone: (213) 683-9157

11.15. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

11.16. Stay of Litigation. The Parties agree that upon the execution of this Agreement the Action and the Linsangan Action shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree, upon the signing of this Agreement and pursuant to CCP section 583.330, to tolling of the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process, for the Action and the Linsangan Action.

11.17. Effect of Court's Denial of Approval. If the Court denies approval of this Settlement due to concerns that the Parties cannot address through non-material or otherwise mutually agreeable modifications of this Stipulation of Settlement, (i) this Settlement shall be null and void; (ii) neither this Stipulation of Settlement nor any of the related negotiations or

1 proceedings shall have any force or effect; (iii) the Parties shall stand in the same position,
2 without prejudice, as if this Settlement had been neither entered into nor filed with the Court; and
3 (iv) the terms and negotiation of this Stipulation of Settlement shall remain subject to Federal
4 Rule of Evidence 408 and California Evidence Code sections 1119 and 1152. Plaintiffs and
5 PAGA Counsel understand and agree that this Stipulation of Settlement does not mean that
6 Defendant cannot contest whether this action can go forward on a representative basis in the
7 event the Settlement is not approved by the Court or litigation otherwise resumes (including
8 without limitation on the ground that representative claims would be unmanageable), and
9 Plaintiffs and PAGA Counsel agree not to argue otherwise; provided, however, that Plaintiffs
10 and PAGA Counsel reserve the right to contend that litigation of the suit on a representative basis
11 would be appropriate independent of this Stipulation of Settlement and do not waive the right to
12 so contend. Furthermore, Plaintiffs retain the right, and Defendant shall not oppose, the re-filing
13 of any actions or claims that were dismissed as part of this Agreement, including Plaintiff Johns'
14 class action claims and the Linsangan Action.

15 **11.18. Dismissal of Class Claims.** In view of purported binding arbitration agreements
16 between Defendant and the majority of Aggrieved Employees, Plaintiff Johns will file a request
17 to dismiss the class claims alleged in this Action without prejudice, with supporting attorney
18 declaration, pursuant to California Rule of Court 3.770. Plaintiff will file this motion within five
19 business days of the execution of this Stipulation by all parties, concurrently with Plaintiff's
20 motion for leave to file the Second Amended Complaint, if it has not already been filed prior to
21 execution of this Agreement.

22 **11.19. Severability.** In the event that one or more of the provisions contained in this
23 Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such
24 invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant's
25 Counsel and PAGA Counsel, on behalf of the Parties and the Aggrieved Employees, mutually
26 elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been
27 included in this Agreement.
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IT IS SO STIPULATED AND AGREED.

DATED: KEVIN JOHNS

DATED: ROD LINSANGAN

DATED: ANEETA CARTER

DATED: WHELAN SECURITY OF CALIFORNIA, INC.

By:

Name: _____

Title: _____

APPROVED AS TO FORM:

David D. Bibiyan
Vedang J. Patel
Counsel for Plaintiff Kevin Johns

Joseph Lee
Counsel for Defendant Whelan Security of
California, Inc.

Stephen P. O'Dell
Counsel for Plaintiffs Rod Linsangan and Aneeta Carter

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IT IS SO STIPULATED AND AGREED.

DATED: 4/15/24 KEVIN JOHNS

Kevin Johns (Apr 15, 2024 12:06 PDT)

DATED: ROD LINSANGAN

DATED: ANEETA CARTER

DATED: WHELAN SECURITY OF CALIFORNIA, INC.

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

 4/15/2024

David D. Bibiyan	Joseph Lee
Vedang J. Patel	Counsel for Defendant Whelan Security of
Counsel for Plaintiff Kevin Johns	California, Inc.


04/17/2024
Stephen P. O'Dell
Counsel for Plaintiffs Rod Linsangan and Aneeta Carter

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IT IS SO STIPULATED AND AGREED.

DATED: KEVIN JOHNS

DATED: 17/04/24 ROD LINSANGAN


Rod Linsangan (Apr 17, 2024 10:13 PDT)

DATED: ANEETA CARTER

DATED: WHELAN SECURITY OF CALIFORNIA, INC.

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

_____	_____
David D. Bibiyan	Joseph Lee
Vedang J. Patel	Counsel for Defendant Whelan Security of
Counsel for Plaintiff Kevin Johns	California, Inc.

Stephen P. O'Dell
Counsel for Plaintiffs Rod Linsangan and Aneeta Carter

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IT IS SO STIPULATED AND AGREED.

DATED: KEVIN JOHNS

DATED: ROD LINSANGAN

DATED: ANEETA CARTER

04 / 11 / 2024



DATED: WHELAN SECURITY OF CALIFORNIA, INC.

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

_____	_____
David D. Bibiyan	Joseph Lee
Vedang J. Patel	Counsel for Defendant Whelan Security of
Counsel for Plaintiff Kevin Johns	California, Inc.

Stephen P. O'Dell
Counsel for Plaintiffs Rod Linsangan and Aneeta Carter

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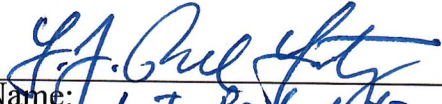
IT IS SO STIPULATED AND AGREED.

DATED: KEVIN JOHNS

DATED: ROD LINSANGAN

DATED: ANEETA CARTER

DATED: 4/9/24 WHELAN SECURITY OF CALIFORNIA, INC.

By: 
Name: L.J. Paul
Title: General Counsel

APPROVED AS TO FORM:

David D. Bibiyan
Vedang J. Patel
Counsel for Plaintiff Kevin Johns


Joseph Lee
Counsel for Defendant Whelan Security of California, Inc.

Stephen P. O'Dell
Counsel for Plaintiffs Rod Linsangan and Aneeta Carter

EXHIBIT A

BIBIYAN LAW GROUP, P.C.

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29800 Agoura Hills, CA 91301

Tel: 818-991-8080; Fax: 818-991-8081

Attorneys for Plaintiffs,
on behalf of themselves and all others
similarly situated and aggrieved

Additional Counsel Listed on Next Page

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KEVIN JOHNS, on behalf of himself and all
others similarly situated and aggrieved,

Plaintiff,

v.

WHELAN SECURITY OF CALIFORNIA,
INC., a California Corporation doing business
as GARDAWORLD SECURITY
SERVICES; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 22STCV35387

[Assigned to the Hon. Laura Seigle in
Dept. 17]

[PROPOSED] JUDGMENT

Date: July 18, 2024

Time: 9:00 A.M.

Dept: 17

Action Filed: November 7, 2022

Trial Date: None set

1 **MALCOLM A. HEINICKE** (SBN 194174)
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3 560 Mission Street, 27th Floor
4 San Francisco, California 94105-2907
5 Telephone:(415) 512-4029

6 **JOSEPH D. LEE** (SBN 110840)
joseph.lee@mto.com

7 **ANDREW J. DELAPLANE** (SBN 329825)
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8 MUNGER, TOLLES & OLSON LLP
9 350 South Grand Avenue, 50th floor
10 Los Angeles, California 90071-3426
11 Telephone:(213) 683-9157

12 Attorney for Defendant
13 Whelan Security of California Inc.
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1 It is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

2 1. Judgment in this matter is entered in accordance with the terms of the Parties’
3 Stipulation of Settlement (the “Stipulation,” “Settlement”, “Agreement, or “Settlement Agreement”).
4 Unless otherwise provided, all capitalized terms used herein shall have the same meaning as those
5 defined by the Settlement.

6 2. The “Aggrieved Employees” who are covered by the Settlement Agreement are all
7 persons employed by Defendant in California and classified as non-exempt, hourly-paid employees
8 during the period from May 5, 2022, through May 9, 2024, unless extended according to the terms
9 of the Settlement Agreement through the date the Court enters this Judgment (“PAGA Period”).

10 3. Pursuant to the Order Granting Approval and Settlement Agreement, Defendant must
11 fund the settlement account with the Gross Settlement Amount, which unless escalated pursuant to
12 the Settlement Agreement, amounts to \$2,775,000.00. All funds shall be disbursed to Plaintiffs’
13 Counsel, Plaintiffs, the Labor Workforce and Development Agency (“LWDA”), the Settlement
14 Administrator, and Aggrieved Employees pursuant to the Order Granting Final Approval and
15 Settlement Agreement. The funds associated with uncashed expired checks shall be remitted to the
16 California State Controller’s Office, Unclaimed Property Division in the name of each Aggrieved
17 Employee.

18 4. This Judgment shall be binding on Plaintiffs, all Aggrieved Employees, and the State
19 of California, who are hereby barred by the doctrine of res judicata from asserting any and all of the
20 Released Claims, as that term is defined by the Settlement. (See *Arias v. Superior Court* (2009) 46
21 Cal.4th 969, 986 [judgment in a representative action brought by an aggrieved employee under
22 PAGA is binding not only on the named employee plaintiff but also on state labor law enforcement
23 agencies and any aggrieved employee not a party to the proceeding].)

24 5. Upon the entry of Judgment in accordance with this Settlement and payment of the
25 Gross Settlement Amount, Plaintiffs, all of the Aggrieved Employees, the State of California, and
26 the Labor and Workforce Development Agency will fully release the Released Parties and be forever
27 barred from pursuing against them, for the duration of the PAGA Period: (a) all claims for civil
28 penalties or relief of any kind under PAGA that were alleged, or reasonably could have been alleged

1 based on the facts stated in the Operative Complaint or the PAGA Notices, including without
2 limitation all claims for or relating to (i) regular, overtime, or premium wages; (ii) failure to
3 compensate Aggrieved Employees for all hours worked; (iii) failure to pay the appropriate regular
4 rate of pay; (iv) failure to comply with payroll or wage record-keeping documentation or wage
5 statement itemization requirements; (v) failure to provide sufficient meal and/or rest periods or pay
6 premiums in lieu thereof; (vi) failure to timely pay wages due at termination or otherwise; (vii)
7 failure to furnish accurate wage statements; (viii) failure to pay minimum wages; (ix) failure to
8 reimburse business or other expenses and costs; (x) failure to pay sick or vacation pay; (xi) failure
9 to provide suitable seating; and (xii) failure to provide suitable facilities for meal and rest periods;
10 (xiii) failure to provide drinking water; and (b) any claims for PAGA penalties that could have been
11 awarded pursuant to Labor Code sections 201, 201.3, 202, 203, 204, 210, 216, 223, 225.5, 226,
12 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198,
13 2441, 2699, and 2802.

14 6. Without affecting the finality of the Judgment, the Court shall retain exclusive and
15 continuing jurisdiction over the above-captioned action and the Parties for purposes of enforcing
16 the terms of the Judgment and the Settlement.

17 7. Neither this Judgment, the Settlement, any document referred to herein, any exhibit
18 to any document referred to herein, any action taken to carry out the Settlement, nor any negotiations
19 or proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
20 admission or concession with regard to, the claims asserted by Plaintiffs or the denials or defenses
21 of Defendant, and shall not be offered in evidence in any proceeding against the Parties hereto in
22 any court, administrative agency, or other tribunal for any purpose whatsoever other than to enforce
23 the provisions of the Settlement or this Judgment, including without limitation efforts by Defendant
24 to effectuate the dismissal of other, parallel PAGA litigation against it based on the preclusive effect
25 of this Judgment and the Settlement.

26 8. Neither this Judgment, the Settlement, any document referred to herein, any exhibit
27 to any document referred to herein, any action taken to carry out the Settlement, nor any negotiations
28 or proceedings related to the Settlement shall have any collateral estoppel or other preclusive effect

1 against Defendant; provided, however, that Defendant and any of the Released Parties can use this
2 Judgment to enforce the release and extinguishment of the Released Claims, including without
3 limitation by way of defense to any claims that have been or may hereafter be asserted in any lawsuit
4 or other judicial, administrative, or arbitral proceeding.

5 9. This document shall constitute a judgment under California Code of Civil Procedure
6 § 664.6 and California Rules of Court, Rule 7.69(h).

7 10. This Judgment shall be posted on the Settlement Administrator’s website for a period
8 of no less than one (1) year.

9 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

10 DATED: _____, 2024

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13 _____
14 Hon. Laura Seigle
15 Los Angeles Superior Court Judge
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EXHIBIT B

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10 Attorneys for Plaintiffs, KEVIN JOHNS, ROD LINSANGAN

11 and ANEETA CARTER, as aggrieved employees, and on behalf all other
12 aggrieved employees

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF LOS ANGELES**

15
16 KEVIN JOHNS, on behalf of himself and all
17 others similarly situated and aggrieved,

18 Plaintiff,

19 v.

20 WHELAN SECURITY OF CALIFORNIA,
21 INC., a California Corporation doing business
22 as GARDAWORLD SECURITY SERVICES;
23 and DOES 1 through 100, inclusive,

24 Defendants.
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CASE NO.: 22STCV35387

[Assigned to the Hon. Lauren Seigle in Dept.
17]

PAGA REPRESENTATIVE ACTION

**[PROPOSED] ORDER APPROVING
REPRESENTATIVE ACTION
SETTLEMENT**

1 This Court, having considered the Motion of plaintiffs Kevin Johns, Rod Linsangan and
2 Aneeta Carter (collectively “Plaintiffs”) for Approval of Representative Action Settlement
3 (“Motion”), and the declarations and other papers filed in support thereof, and good cause appearing
4 therefor, the Court hereby **ORDERS, ADJUDGES AND DECREES THAT:**

5 1. The definitions set out in the Settlement of Representative Claims Under the Labor
6 Code Private Attorneys General Act (“Settlement Agreement” or “Agreement”) are incorporated by
7 reference into this Order; all terms defined therein shall have the same meaning in this Order.

8 2. The Motion concerns Plaintiffs’ action under the Private Attorneys’ General Act of
9 2004 (“PAGA”) against defendant Whelan Security of California, Inc. (“Defendant”), entitled *Kevin*
10 *Johns v. Whelan Security of California, Inc., dba Gardaworld Security Services*, Los Angeles
11 County Superior Court, Case No. 22STCV35387. Hereinafter, Plaintiffs and Defendant will be
12 collectively referred to as “the Parties”.

13 3. The Settlement resolves the representative action brought on behalf of Aggrieved
14 Employees defined as follows: all persons employed by Defendant in California and classified as
15 non-exempt, hourly-paid employees during the period from May 5, 2022, through May 9, 2024,
16 unless extended through the date the Court enters the Judgment according to the terms of the
17 Settlement Agreement (“PAGA Period”).

18 4. “PAGA Pay Period” or “Pay Period” means any pay period during which an
19 Aggrieved Employee worked for Defendant at least one (1) day during the PAGA Period, based on
20 hire dates, termination dates (if applicable) and re-hire dates (if applicable).

21 5. The Settlement is based on the Parties’ agreement that Defendant will pay a Base
22 Gross Settlement Amount of \$2,600,000 for the PAGA Pay Periods from May 5, 2022, through
23 November 29, 2023, which total 259,457 PAGA Pay Periods based on Defendant’s records. The
24 Parties further agreed that in the event the number of PAGA Pay Periods exceeded 259,457 by more
25 than 10% (meaning more than 285,403 PAGA Pay Periods (the “Mutually-Agreed Overage
26 Amount”)), Defendant would have the option in its sole discretion to either (i) deem the PAGA
27 Period as having ended on the date the number of PAGA Pay Periods reached 285,403 PAGA Pay
28 Periods; or (ii) to increase the Gross Settlement Amount ratably for the pay periods above 285,403

1 PAGA Pay Periods. Based on Defendant's records, the number of PAGA Pay Periods exceeded the
2 Mutually-Agreed Overage Amount on January 27, 2024. In view of that event and Defendant's
3 comprehensive remedial measures, the Parties further agreed that Defendant will pay an additional
4 \$175,000 to extend the PAGA Period through May 9, 2024, resulting in a Gross Settlement Amount
5 of \$2,775,000.00. Based on Defendant's records there are 42,420 PAGA Pay Periods between
6 January 27, 2024, and May 9, 2024. In the event that the Los Angeles Superior Court does not enter
7 judgment in this matter on or before May 9, 2024, Defendant retained the option in its sole discretion
8 to either: (i) deem the PAGA Period as having ended on May 9, 2024, or (ii) extend the PAGA
9 Period through the date of judgment by increasing the Gross Settlement Amount (for each PAGA
10 Pay Period ending between May 9 and the date of Judgment) at the same per-pay-period rate
11 applicable to PAGA Pay Periods between January 27, 2024, and May 9, 2024.

12 6. Pursuant to Labor Code § 2698, *et seq.*, the Court finds that the Settlement of the
13 Action is fair, adequate and reasonable, and that it furthers PAGA's objectives.

14 7. The Court appoints plaintiffs Kevin Johns, Rod Linsangan and Aneeta Carter
15 (collectively "Plaintiffs") as PAGA Representatives for Settlement purposes only.

16 8. The Court appoints David D. Bibiyan, Jeffrey D. Klein and Vedang J. Patel of
17 Bibiyan Law Group, P.C., as well as Cody R. Kennedy and Stephen P. O'Dell of Marlin & Salzman,
18 LLP, as Plaintiffs' Counsel for the Aggrieved Employees for settlement purposes only.

19 9. The Court appoints Apex Class Action as the Settlement Administrator.

20 10. The Court approves, as to form and content, the PAGA Payment Letter attached as
21 Exhibit "C" to the declaration of Vedang J. Patel.

22 11. The Court approves the Gross Settlement Amount of \$2,775,000.00, as the same may
23 be escalated pursuant to the Settlement Agreement, and orders it to be distributed as follows:

24 a. One-third (1/3) thereof shall be allocated as reasonable attorneys' fees for
25 Plaintiffs' Counsel which, unless escalated pursuant to the Settlement
26 Agreement, shall amount to \$925,000.00.

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- 1 b. The sum of \$41,268.83 shall be allocated as reasonable litigation costs and
2 paid to Plaintiffs' Counsel, to be divided between the two law firms
3 representing Plaintiffs as those firms may agree.
- 4 c. The sum of \$7,500.00 shall be paid to Plaintiff Johns, and the sum of \$5,000
5 shall be paid to Plaintiffs Linsangan and Carter, for a total of \$22,500.00, as
6 Service Awards for serving as PAGA Representatives in the Action and
7 providing a broader release to Defendant.
- 8 d. The sum of \$30,000 shall be paid to the Settlement Administrator for its
9 services in administering the Settlement.
- 10 e. After deducting the above amounts, the Court approves the estimated
11 remaining PAGA Penalties of (as may be increased pursuant to the
12 Settlement Agreement) for PAGA penalties and orders 75% of that sum to be
13 paid to the California Labor and Workforce Development Agency and 25%
14 to be paid to the Aggrieved Employees pursuant to Labor Code § 2699(i).

15 12. Within 14 days of the Effective Date, Defendant will deliver the Aggrieved
16 Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. "Aggrieved
17 Employee Data" means Aggrieved Employee identifying information in Defendant's possession
18 including the Aggrieved Employee's name, last-known mailing address, Social Security number,
19 hire dates, termination dates (as applicable) and re-hire dates (as applicable).

20 13. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
21 Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the
22 Effective Date.

23 14. Within 7 days after Defendant funds the Gross Settlement Amount, the Administrator
24 will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
25 Expenses Payment, the PAGA Representative Service Payments, the PAGA Counsel Fees Payment,
26 and the PAGA Counsel Litigation Expenses Payment.

27 15. The Administrator will issue checks for the Individual PAGA Payments and send
28 them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. Such payment checks

1 will be sent with the Settlement Notice.

2 16. Because this is a PAGA action, based on the Parties' understanding of the PAGA
3 statutory scheme, the Parties agree that no Aggrieved Employee can exclude himself or herself from
4 the Settlement or object to the terms of the Settlement Agreement. All Aggrieved Employees will
5 be bound by the Settlement Agreement, upon its approval by the Court, regardless of whether he or
6 she negotiates his or her settlement check.

7 17. Pursuant to PAGA, seventy-five percent (75%), of the Net Settlement Amount will
8 be paid to the LWDA, and the remaining twenty-five percent (25%) will be paid ratably to all
9 Aggrieved Employees.

10 18. The Administrator will cancel all checks not cashed by the void date (180 days after
11 the date of mailing). For any Aggrieved Employee whose Individual PAGA Payment check is
12 uncashed and cancelled after the void date, the Administrator shall transmit the funds represented
13 by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved
14 Employee.

15 19. The Court finds the Gross Settlement Amount, the Net Settlement Amount and the
16 methodology used to calculate and pay the Aggrieved Employees' payments to be fair and
17 reasonable and authorizes the Settlement Administrator to pay the Aggrieved Employees' payments
18 to the Aggrieved Employees in accordance with the terms of the Settlement Agreement. The Court
19 also authorizes the Settlement Administrator to make the LWDA payment to the California Labor
20 and Workforce Development Agency ("LWDA").

21 20. The Court finds that Plaintiffs' Counsel's request for attorneys' fees in the amount
22 of one third of the Gross Settlement Amount, which, unless escalated pursuant to the Settlement
23 Agreement, amounts to \$925,000.00, is reasonable. The Court awards Plaintiffs' Counsel fees in the
24 amount of \$925,000.00 to be paid from the Gross Settlement Amount.

25 21. The Court finds that Plaintiffs' Counsel have incurred a total \$41,268.83 in litigation
26 costs and expenses. Such costs and expenses were reasonably incurred in prosecuting this Actions.
27 The Court awards \$41,268.83 from the Gross Settlement Amount to be paid to Plaintiffs' Counsel
28

1 in litigation costs and expenses, allocated between such firms in such amounts as they specify and
2 agree upon.

3 22. Upon the entry of Judgment in accordance with this Settlement, and payment of the
4 Gross Settlement Amount, Plaintiffs, all of the Aggrieved Employees, the State of California, and
5 the Labor and Workforce Development Agency will fully release the Released Parties and be forever
6 barred from pursuing against them, for the duration of the PAGA Period: (a) all claims for civil
7 penalties or relief of any kind under PAGA that were alleged, or reasonably could have been alleged
8 based on the facts stated in the Operative Complaint or the PAGA Notices, including without
9 limitation all claims for or relating to (i) regular, overtime, or premium wages; (ii) failure to
10 compensate Class Members for all hours worked; (iii) failure to pay the appropriate regular rate of
11 pay; (iv) failure to comply with payroll or wage record-keeping documentation or wage statement
12 itemization requirements; (v) failure to provide sufficient meal and/or rest periods or pay premiums
13 in lieu thereof; (vi) failure to timely pay wages due at termination or otherwise; (vii) failure to
14 furnish accurate wage statements; (viii) failure to pay minimum wages; (ix) failure to reimburse
15 business or other expenses and costs; (x) failure to pay sick or vacation pay; (xi) failure to provide
16 suitable seating; and (xii) failure to provide suitable facilities for meal and rest periods; (xiii) failure
17 to provide drinking water; and (b) any claims for PAGA penalties that could have been awarded
18 pursuant to Labor Code sections 201, 201.3, 202, 203, 204, 210, 216, 223, 225.5, 226, 226.3, 226.7,
19 227.3, 246, 256, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2441, 2699,
20 and 2802.

21 23. The Parties are ordered to carry out the Settlement according to the terms of the
22 Settlement Agreement.

23 24. As per Code of Civ. Proc. Section 664.6, after entry of Judgment, the Court will
24 retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing
25 this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii)
26 addressing such post-Judgment matters as are permitted by law.

1 25. A Final Hearing re: Disbursement of funds is set for _____. At
2 least five (5) Court days prior to the hearing, Plaintiffs' Counsel shall file a declaration of the
3 Administrator attesting to the completion of the settlement administration process.

4
5 **IT IS SO ORDERED.**

6
7 Dated: _____, 2024

Hon. Laura Seigle
Judge of the Superior Court

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EXHIBIT C

[Mailing Date]

[RETURN ADDRESS OF SETTLEMENT ADMINISTRATOR]

Re: *Kevin Johns, et al. v. Whelan Security of California, Inc.*, Los Angeles County
Superior Court, Case No. 22STCV35387, filed on November 7, 2022

To [MERGE NAME]:

Plaintiffs Kevin Johns, Rod Linsangan and Aneeta Carter (collectively, “Plaintiffs”) pursued the above-referenced lawsuit against Defendant Whelan Security of California Inc. dba GardaWorld Security Services (“Whelan Security” or “Defendant”). These lawsuits asserted wage and hour claims under the California Private Attorneys General Act of 2004 (“PAGA”). Plaintiffs were employed in California as security officers, and sought to assert claims on behalf of themselves and other hourly Whelan Security employees in California. This letter refers to these employees as the “Covered Employees.” In addition to their PAGA claims, the lawsuits alleged wage and hour claims on behalf of a putative class of Whelan Security employees; under the settlement, these class claims will be dismissed without prejudice 30 days after [the date the Court enters judgment], in view of the fact that most such employees are parties to valid dispute resolution agreements that prohibit class claims.

Whelan Security strenuously denies Plaintiffs’ allegations, and contends that it has at all times complied with all wage and hour requirements and the PAGA statute. Further, the court overseeing this lawsuit has not made any determination that the Plaintiffs’ claims are valid. Nevertheless, Whelan Security highly values its employees, and has chosen to resolve this matter and make payments to its employees instead of incurring further disruption and expense in this litigation. Whelan Security has not admitted to any liability by entering into this settlement.

The Covered Employees are all persons employed by Whelan Security in California and classified as a non-exempt, hourly-paid employee during the PAGA Period, which is the period between May 5, 2022 through <May 9, 2024 OR the date the Court enters Judgment>. You have been identified as one of the Covered Employees entitled to receive proceeds from the settlement.

On [DATE], the California Superior Court for the County of Los Angeles County approved the resolution of this matter. Under this resolution, payments are being made to the Covered Employees on a pro-rata basis calculated according to the number of pay periods each Covered Employee worked between May 5, 2022 and <May 9, 2024 OR the date the Court enters Judgment>. This resolution and resulting judgment extinguish all claims for civil penalties under PAGA that the Plaintiffs, the Covered Employees, and the State of California may have arising from the allegations in the lawsuits or that could have been asserted based on the facts alleged in the lawsuits.

Upon the entry of Judgment in accordance with this Settlement and payment of the Gross Settlement Amount, Plaintiffs, all of the Aggrieved Employees, the State of California, and the Labor and Workforce Development Agency will fully release the Released Parties and be forever barred from pursuing against them, for the duration of the PAGA Period: (a) all claims for civil penalties or relief of any kind under PAGA that were alleged, or reasonably could have been alleged based on the facts stated in the Operative Complaint or the PAGA Notices, including

without limitation all claims for or relating to (i) regular, overtime, or premium wages; (ii) failure to compensate Aggrieved Employees for all hours worked; (iii) failure to pay the appropriate regular rate of pay; (iv) failure to comply with payroll or wage record-keeping documentation or wage statement itemization requirements; (v) failure to provide sufficient meal and/or rest periods or pay premiums in lieu thereof; (vi) failure to timely pay wages due at termination or otherwise; (vii) failure to furnish accurate wage statements; (viii) failure to pay minimum wages; (ix) failure to reimburse business or other expenses and costs; (x) failure to pay sick or vacation pay; (xi) failure to provide suitable seating; and (xii) failure to provide suitable facilities for meal and rest periods; (xiii) failure to provide drinking water; and (b) any claims for PAGA penalties that could have been awarded pursuant to Labor Code sections 201, 201.3, 202, 203, 204, 210, 216, 223, 225.5, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2441, 2699, and 2802.

The "Released Parties" are Defendant and its predecessors and successors, corporate parents, corporate subsidiaries, corporate affiliates (including, without limitation, Garda CL West, Inc.; GardaWorld Security Management Company, Inc., and Whelan Security Co.) and all of its and those entities' former and present directors, officers, employees, managing agents, shareholders, owners, members, attorneys, consultants, accountants, insurers, reinsurers, predecessors, successors, and assigns

Your enclosed check, payable in the gross amount of [\$ Amount], is valid for one hundred and eighty (180) days from the date of its issuance. After that date, it will be null and void, the check will be canceled, and the funds from the canceled check will be tendered to the State Controller's Office, Unclaimed Property Fund in the your name. Covered Employees who do not cash their checks will remain subject to the judgment and the release of PAGA claims described above.

Whelan Security encourages you to cash this check, and it will not take any adverse action against you for doing so.

If you have any questions regarding the settlement, please contact the Settlement Administrator at [INSERT ADDRESS [AND PHONE] INFORMATION].

EXHIBIT D

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Attorneys for Plaintiff, KEVIN JOHNS
on behalf of himself and Aggrieved Employees

Additional Counsel Listed on Next Page

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

KEVIN JOHNS, an individual, ROD
LINSANGAN, an individual, and ANEETA
CARTER, an individual, on behalf themselves
and Aggrieved Employees,

Plaintiffs,

v.

WHELAN SECURITY OF CALIFORNIA,
INC., a California corporation doing business
as GARDAWORLD SECURITY SERVICES;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 22STCV35387

SECOND AMENDED COMPLAINT FOR:

1. CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (2004) FOR VIOLATIONS OF
LABOR CODE SECTIONS 210, 226.3,
558, 1174.5, 1197.1, AND 2699, et seq.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

Complaint Filed: November 7, 2022

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10 Tel: (310) 439-9298; Fax (509) 561-6441

11 Attorneys for Plaintiffs ROD LINSANGAN and
12 ANEETA CARTER on behalf of themselves and
Aggrieved Employees
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1 COME NOW plaintiffs KEVIN JOHNS (“Plaintiff Johns”), ROD LINSANGAN (“Plaintiff
2 Linsangan”), and ANEETA CARTER (“Plaintiff Carter”) (collectively “Plaintiffs”), on behalf of
3 themselves and other Aggrieved Employees, and allege as follows:

4 **GENERAL ALLEGATIONS**

5 **INTRODUCTION**

6 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
7 Act of 2004, codified at Labor Code section 2698, et seq. (“PAGA”), against WHELAN
8 SECURITY OF CALIFORNIA, INC., doing business as GARDAWORLD SECURITY
9 SERVICES, and any of its respective subsidiaries or affiliated companies within the State of
10 California (“WHELAN” and, with DOES 1 through 100, as further defined below, “Defendants”),
11 and any of their respective subsidiaries or affiliated companies within the State of California, as a
12 proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on
13 behalf of Plaintiffs and all other current and former non-exempt employees of Defendants working
14 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims
15 for violations of the Labor Code, including but not limited to, failure to comply with Labor Code
16 section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, et seq.,
17 Labor Code section 2802, on behalf of all employees of Defendants working within the Civil Penalty
18 Period (collectively, “Aggrieved Employees”).

19 **PARTIES**

20 **A. Plaintiffs**

21 2. Plaintiff Johns is a resident of the State of California. At all relevant times herein,
22 Plaintiff Johns is informed and believes, and based thereon allege that Defendants employed
23 Plaintiff Johns as a non-exempt employee, with duties that included, but were not limited to, security
24 guard services. Plaintiff Johns is informed and believes and based thereon allege that Plaintiff Johns
25 worked for Defendants from approximately June of 2017 through approximately August of 2022.
26 Defendants paid (or purportedly paid) Plaintiff Johns an hourly wage for his services.

27 3. Plaintiff Linsangan is a resident of the State of California. At all relevant times
28 herein, Plaintiff Linsangan is informed and believes, and based thereon allege that Defendants

1 employed Plaintiff Linsangan as a non-exempt employee, with duties that included, but were not
2 limited to, security guard services. Plaintiff Linsangan is informed and believes and based thereon
3 allege that Plaintiff Linsangan worked for Defendants beginning on or about January 2020 to the
4 present. At all times relevant, Defendants paid (or purportedly paid) Plaintiff Linsangan an hourly
5 wage for his services.

6 4. Plaintiff Carter is a resident of the State of California. At all relevant times herein,
7 Plaintiff Carter is informed and believes, and based thereon allege that Defendants employed
8 Plaintiff Carter as a non-exempt employee, with duties that included, but were not limited to,
9 security guard services. Plaintiff Carter is informed and believes and based thereon allege that
10 Plaintiff Carter worked for Defendants from approximately April 2018 to the present. Defendants
11 paid (or purportedly paid) Plaintiff Carter an hourly wage for her services.

12 **B. Defendants**

13 5. Plaintiffs are informed and believe, and based thereon allege, that defendant
14 WHELAN is, and at all times relevant hereto was, corporation organized and existing under and by
15 virtue of the laws of the State of California and doing business in the County of Los Angeles, State
16 of California. At all relevant times herein, WHELAN employed Plaintiffs and similarly situated
17 employees within the State of California.

18 6. The true names and capacities, whether individual, corporate, associate, or otherwise,
19 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiffs,
20 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
21 Plaintiffs are informed and believe, and based thereon allege, that each of the defendants designated
22 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
23 Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities
24 of the defendants designated hereinafter as DOES when such identities become known. Plaintiffs
25 are informed and believe, and based thereon allege, that each defendant acted in all respects pertinent
26 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
27 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
28 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall

1 include WHELAN, and any of their parent, subsidiary, or affiliated companies within the State of
2 California, as well as DOES 1 through 100 identified herein.

3 **JOINT LIABILITY ALLEGATIONS**

4 7. Plaintiffs are informed and believe, and based thereon allege, that all the times
5 mentioned herein, each of the Defendants were the agent, principal, employee, employer,
6 representative, joint venture or co-conspirator of each of the other defendants, either actually or
7 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
8 employment, joint venture, and conspiracy.

9 8. All of the acts and conduct described herein of each and every corporate defendant
10 was duly authorized, ordered, and directed by the respective and collective defendant corporate
11 employers, and the officers and management-level employees of said corporate employers. In
12 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
13 their said employees, agents, and representatives, and each of them; and upon completion of the
14 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
15 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
16 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
17 aforementioned corporate employees, agents and representatives.

18 9. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
19 thereon allege, that Defendants, and each of them, are joint employers.

20 **JURISDICTION**

21 10. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
22 of Civil Procedure section 410.10.

23 11. Venue is proper in Los Angeles County, California pursuant to Code of Civil
24 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the
25 causes of action complained of herein arose; the county in which the employment relationship
26 began; the county in which performance of the employment contract, or part of it, between Plaintiffs,
27 and Defendants was due to be performed; and the county in which the employment contract, or part
28 of it, between Plaintiffs and Defendants was actually performed. Moreover, the unlawful acts

1 alleged herein have a direct effect on Plaintiffs and Aggrieved Employees in Los Angeles County,
2 and because Defendants employ Aggrieved Employees in Los Angeles County.

3 12. Plaintiffs are “aggrieved employees” under PAGA, as they were employed by
4 Defendants during the applicable statutory period and suffered one or more of the Labor Code
5 violations set forth herein. Accordingly, Plaintiffs seek to recover, on behalf of themselves and all
6 other aggrieved current and former employees of Defendants, the civil penalties provided by PAGA
7 plus reasonable attorneys’ fees and costs, as the term “civil penalty” is defined under *ZB N.A. v.*
8 *Superior Court* (2019) 8 Cal.5th 175.

9 13. Plaintiffs seek to recover the PAGA civil penalties through a representative action
10 permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior*
11 *Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA
12 allegations described herein is not required.

13 14. During the period beginning one (1) year preceding the provision of notice to the
14 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
15 Defendants violated, inter alia, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 256,
16 432, 510, 512, 558, 1174, 1194, 1197, 1198.5, 2802, and 2810.3, and 2810.5, among others.

17 15. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
18 such as Plaintiffs, on behalf of themselves and all other aggrieved current and former employees
19 within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
20 specified in Labor Code section 2699.3.

21 16. On or around November 6, 2020, Plaintiff Linsangan gave written notice under Labor
22 Code section 2699.3 to Defendant Whelan Security of California, Inc. by certified mail, return
23 receipt requested, and to the California Labor and Workforce Development Agency (“LWDA”)
24 electronically.

25 17. On or around November 7, 2022, Plaintiff Johns provided written notice under Labor
26 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
27 violation of various, including the herein-described, provisions of the Labor Code, to the Labor and
28 LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of them.

18. In accordance with Labor Code § 2699.3, on or about December 20, 2022, Plaintiff Carter gave written notice to Defendants by certified mail, return receipt requested, and to the LWDA electronically.

19. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the November 7, 2022 postmarked date of the herein-described notice sent by Plaintiff Johns to the LWDA and Defendants.

20. On April 6, 2020, the Judicial Council of California approved Appendix I – Emergency Rules Related to COVID-19. Pursuant to the Amended Emergency Rule 9 of the California Rules of Court, subdivision (a), the statutes of limitations and repose for civil causes of action were tolled from April 6, 2020 until October 1, 2020.

FACTUAL BACKGROUND

21. At all relevant times mentioned herein, Defendants have, at times, failed to pay overtime wages to Plaintiffs and Aggrieved Employees, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiffs and Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, failing to accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working and/or auto-deducting time for meal periods even when a meal period was not actually taken, to attend company meetings off the clock, to make phone calls or drive off the clock, failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime

1 rate of pay; detrimental rounding of employee time entries, and for paying straight pay instead of
2 overtime pay to the detriment of Plaintiffs and Aggrieved Employees. In addition, Defendants would
3 also be liable for civil penalties pursuant to Labor Code sections 558 and 2699

4 22. At all relevant times mentioned herein , Defendants have, at times, failed to pay
5 minimum wages to Plaintiffs and Aggrieved Employees, or some of them, in violation of California
6 state wage and hour laws as a result of, among other things, at times, failing to accurately track
7 and/or pay for all hours actually worked at their regular rate of pay that is above the minimum wage;
8 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
9 by requiring employees: to complete pre-shift tasks before clocking in and post-shift tasks after
10 clocking out, to clock out for meal periods and continue working, to attend company meetings off
11 the clock, to make phone calls or drive off the clock; detrimental rounding of employee time entries,
12 all to the detriment of Plaintiffs and Aggrieved Employees. Defendants would also be liable for civil
13 penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

14 23. At all relevant times mentioned herein , Defendants have, at times, failed to provide
15 Plaintiffs and Aggrieved Employees, or some of them, full, timely thirty (30) minute uninterrupted
16 meal period for days on which they worked more than five (5) hours in a work day and a second
17 thirty (30) minute uninterrupted meal period for days on which they worked in excess of ten (10)
18 hours in a work day, and failing to provide compensation for such unprovided meal periods as
19 required by California wage and hour laws. Defendants would also be liable for civil penalties
20 pursuant to Labor Code sections 558 and 2699.

21 24. At all relevant times mentioned herein, Defendants have, at times, failed to authorize
22 and permit Plaintiffs and Aggrieved Employees, or some of them, to take rest periods of at least ten
23 (10) minutes per four (4) hours worked or major fraction thereof and failed to provide compensation
24 for such unprovided rest periods as required by California wage and hour laws. Defendants would
25 also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

26 25. At all relevant times mentioned herein, Defendants have, at times, failed to pay
27 Plaintiffs and Aggrieved Employees, or some of them, the full amount of their wages owed to them
28 upon termination and/or resignation as required by Labor Code sections 201 and 202, including for,

1 without limitation, failing to pay overtime wages, minimum wages, and premium wages. Defendants
2 would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

3 26. At all relevant times mentioned herein, Defendants have, at times, failed to furnish
4 Plaintiffs and Aggrieved Employees, or some of them, with itemized wage statements that
5 accurately reflect gross wages earned; total hours worked; net wages earned; all applicable hourly
6 rates in effect during the pay period and the corresponding number of hours worked at each hourly
7 rate; and other such information as required by Labor Code section 226, subdivision (a). As a result
8 thereof, Defendants have further failed to furnish employees with an accurate calculation of gross
9 and gross wages earned, as well as gross and net wages paid. Defendants would also be liable for
10 civil penalties pursuant to Labor Code sections 226.3, 558 and 2699.

11 27. At all relevant times mentioned herein, Defendants have, at times, failed to pay
12 Plaintiffs and Aggrieved Employees, or some of them, the full amount of their wages for labor
13 performed in a timely fashion as required under Labor Code section 204. Defendants would be liable
14 for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

15 28. At all relevant times mentioned herein, Defendants have, at times, failed to
16 indemnify Plaintiffs and Aggrieved Employees, or some of them, for the costs incurred in mileage
17 costs incurred in driving personal vehicles for work-related purposes, for purchase and maintenance
18 of personal cellular phones to use for work-related purposes, and for costs incurred in separately
19 laundering mandatory work uniforms from their other clothes.

20 29. Plaintiffs bring this action pursuant to, including but not limited to, Labor Code
21 sections 200, 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 2802, and California
22 Code of Regulations, Title 8, section 11040, seeking overtime wages, minimum wages, payment of
23 premium wages for missed meal and rest periods, failure to pay timely wages, waiting time
24 penalties, wage statement penalties, failure to indemnify work-related expenses, other such
25 provisions of California law, and reasonable attorneys' fees and costs.

26 30. At all relevant times mentioned herein, Defendants have had a policy or practice of
27 failing to comply with the notice requirements of Labor Code section 2810.5 (i.e., the Wage Theft
28 Protection Act of 2011) by, among other things, failing to provide Plaintiffs and other Aggrieved

1 Employees with the rates of pay and overtime rates of pay applicable to their employment;
2 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
3 name, address, and telephone number of the workers' compensation insurance carrier; information
4 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
5 under Labor Code section 2810.5.

6 31. At all relevant times mentioned herein, Defendants failed to provide Plaintiffs and
7 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
8 California law (including, without limitation Labor Code section 246, et seq.), and also did not
9 permit its use upon request as contemplated under California laws, to the detriment of Plaintiffs and
10 all other Aggrieved Employees.

11 32. Defendant has failed to provide fresh and pure drinking water to his or her employees
12 during working hours. Access to water shall be permitted at reasonable and convenient times and
13 places. Yet, Defendant failed to provide any drinking water. Rather Plaintiffs were required to bring
14 their own drinking water. Plaintiff alleges that Defendant has failed to comply with Labor Code
15 section 2441.

16 33. Plaintiffs allege they did not have not have a facility in which they could take their
17 meal and rest periods, and thus Defendant violated the Labor Code and IWC Wage Order section
18 13(B) by failing to provide a suitable area in which Plaintiffs could eat on premises or take breaks
19 in designated areas.

20 34. Plaintiffs, in their representative capacity, seek civil penalties under Labor Code
21 sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the
22 California Labor Code as described above, including on behalf of Plaintiffs and other Aggrieved
23 Employees pursuant to PAGA

24 **FIRST CAUSE OF ACTION**

25 **(Civil Penalties under the Private Attorneys General Act (2004) – Against All Defendants)**

26 35. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
27 preceding paragraphs as though fully set forth hereat.

28 **Civil Penalties Under Labor Code § 210**

1 36. At all relevant times herein, Labor Code section 204, requires and required that:
2 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid
3 for between the 16th and 26th day of the month during which the labor was performed, and labor
4 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
5 between the 1st and 10th day of the following month.”

6 37. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
7 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
8 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
9 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
10 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
11 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
12 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

13 38. At all relevant times herein, Defendants have had a consistent policy or practice of
14 failing to pay Plaintiffs and/or Aggrieved Employees during their employment on a timely basis as
15 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiffs and other
16 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
17 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
18 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
19 for each subsequent violation in connection with each payment that was made in violation of Labor
20 Code section 204.

21 Civil Penalties Under Labor Code § 226.3

22 39. Defendants had and have a policy or practice of failing to comply with Labor Code
23 section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and Aggrieved Employees
24 with itemized wage statements that accurately reflect: reflect gross wages earned; total hours
25 worked; net wages earned; all applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate; and other such information as required
27 by Labor Code section 226, subdivision (a).

28 40. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)

1 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
2 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
3 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
4 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

5 41. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
6 this section are in addition to any other penalty provided by law.”

7 42. Plaintiffs are informed and believe, and based thereon allege, that Defendants had
8 and have a policy or practice of failing to furnish non-exempt employees, including, without
9 limitation, Plaintiffs and other Aggrieved Employees, itemized wage statements that accurately
10 reflect: reflect gross wages earned; total hours worked; net wages earned; all applicable hourly rates
11 in effect during the pay period and the corresponding number of hours worked at each hourly rate;
12 and other such information as required by Labor Code section 226, subdivision (a).

13 43. Pursuant to Labor Code section 226.3, Plaintiffs and other Aggrieved Employees are
14 entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision
15 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
16 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
17 period for each subsequent violation.

18 Violation of Labor Code § 558

19 44. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
20 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
21 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil
22 penalty as follows:

23 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and
24 for each pay period for which the employee was underpaid in addition to an amount sufficient to
25 recover underpaid wages;

26 (2) For each subsequent violation, one hundred dollars (\$100) for each
27 underpaid employee for each pay period for which the employee was underpaid in addition to an
28 amount sufficient to recover underpaid wages;

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

45. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and each of them, violated, or caused to be violated, the Labor Code sections described herein, including causing Plaintiffs and other Aggrieved Employees not to: be paid with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employer, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information.

46. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 558, Plaintiffs and other Aggrieved Employees are entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

Violation of Labor Code § 1174.5

47. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required every person employing labor in California to “[a]llow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person.”

48. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required every person employing labor in California to “[k]eep a record showing the names and addresses of all employees employed and the ages of all minors.”

49. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required every person employing labor in California to “[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

1 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
2 piece rate paid to, employees employed at the respective plants or establishments. These records
3 shall be kept in accordance with rules established for this purpose by the commission, but in any
4 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
5 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
6 earned.”

7 50. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
8 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
9 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
10 member of the commission or employees of the division to inspect records pursuant to subdivision
11 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

12 51. Plaintiffs are informed and believe, and based thereon allege, that Defendants have
13 willfully failed keep adequate or accurate time records including wage statements and similar
14 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
15 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
16 under Labor Code section 1174.

17 52. As a direct and proximate result of the herein-described Labor Code violations,
18 pursuant to Labor Code section 1174.5, Plaintiffs and other Aggrieved Employees are entitled to
19 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
20 hundred dollars (\$500) per violation per Aggrieved Employee.

21 Violation of Labor Code § 1197.1

22 53. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
23 person acting either individually or as an officer, agent, or employee of another person, who pays
24 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
25 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
26 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
27 Section 203 as follows:

28 A. For any initial violation that is intentionally committed, one hundred dollars

1 (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This
2 amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages
3 pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

4 B. For each subsequent violation for the same specific offense, two hundred fifty
5 dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid
6 regardless of whether the initial violation is intentionally committed. This amount shall be in
7 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section
8 1194.2, and any applicable penalties imposed pursuant to Section 203.

9 C. Wages, liquidated damages, and any applicable penalties imposed pursuant to
10 Section 203, recovered pursuant to this section shall be paid to the affected employee.”

11 54. Plaintiffs are informed and believe, and based thereon allege, that Defendants caused
12 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
13 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ minimum
14 wages for all hours worked, entitling Employee and other aggrieved employees to actual and
15 liquidated damages.

16 55. As a direct and proximate result of the herein-described Labor Code violations,
17 pursuant to Labor Code section 1197.1, Plaintiffs and other Aggrieved Employees are entitled to
18 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
19 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
20 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
21 subsequent violation.

22 Civil Penalties Under Labor Code § 2699

23 56. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
24 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
25 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
26 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
27 action brought by an aggrieved employee on behalf of himself or herself and other current or former
28 employees pursuant to the procedures specified in Labor Code section 2699.3.

57. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor Code except those for which a civil penalty is specifically provided, the established civil penalty for a violation of those provisions is as follows: if, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

58. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and each of them, violated the Labor Code sections described herein, including, without limitation, for the failure to: pay the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employer under Labor Code section 2810.5, failing to provide Employee and other aggrieved employees with the amount of paid sick leave required to be provided pursuant to California and local laws; failing to provide fresh and pure drinking water during working hours; and, failing to provide a facility for meal and rest periods.

59. Moreover, Plaintiffs and other Aggrieved Employees within the State of California whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in connection with their herein-described claims for civil penalties.

DEMAND FOR JURY TRIAL

60. Plaintiffs demand a trial by jury on all causes of action contained herein.

PRAAYER

WHEREFORE, on behalf of Plaintiffs and Aggrieved Employees, Plaintiffs prays for judgment against Defendants as follows:

- A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;

- 1 C. Prejudgment and post-judgment interest at the maximum rate allowed by law;
2 D. For attorneys' fees in prosecuting this action;
3 E. For costs of suit incurred herein; and
4 F. For such other and further relief as the Court deems just and proper.

5 Dated: _____, 2024 BIBIYAN LAW GROUP, P.C.

6
7 BY: _____
8 DAVID D. BIBIYAN
9 VEDANG J. PATEL
10 BRANDON M. CHANG

11 Attorneys for Plaintiff KEVIN JOHNS on behalf of
12 himself and Aggrieved Employees

13 Dated: _____, 2024 MARLIN & SALTZMAN, LLP

14 BY: _____
15 CODY R. KENNEDY
16 STEPHEN P. O'DELL
17 Attorneys for Plaintiffs ROD LINSANGAN and
18 ANEETA CARTER on behalf of themselves and
19 Aggrieved Employees
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