

BIBIYAN LAW GROUP, P.C.
David D. Bibiyan (SBN 287811)
david@tomorrowlaw.com
Vedang J. Patel (SBN 328647)
vedang@tomorrowlaw.com
Brandon M. Chang (SBN 316197)
brandon@tomorrowlaw.com
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
Tel: (310) 438-5555; Fax: (310) 300-1705

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

1 **MARLIN & SALTZMAN LLP**
Cody R. Kennedy (SBN 296061)
2 *ckennedy@marlinsaltzman.com*
Stephen P. O'Dell (SBN 132279)
3 *sodell@marlinsaltzman.com*
29800 Agoura Hills Road, Suite 210
4 Agoura Hills, California 91301
5 Tel: (818)991-8080; Fax: (818)991-8081

6 **LAW OFFICES OF PETER M. HART**
Peter M. Hart (SBN 198691)
7 *hartpeter@msn.com*
Ashlie E. Fox (SBN 294407)
8 *ashlie.fox.loph@gmail.com*
12121 Wilshire Blvd., Suite 525
9 Los Angeles, California 90025
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
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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;

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

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

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

15 Violation of Labor Code § 1174.5

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

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

26 49. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
27 every person employing labor in California to “[k]eep, at a central location in the state or at the
28 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.

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

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

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

20 **DEMAND FOR JURY TRIAL**

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

22 **PRAYER**

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

- 25 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
26 1174.5, 1197.1, and 2699;
- 27 B. An award of reasonable attorneys’ fees and costs pursuant to Labor Code sections
28 210, 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: April 25, 2024

BIBIYAN LAW GROUP, P.C.

Vedang J. Patel

6 BY: _____
7

8 DAVID D. BIBIYAN

VEDANG J. PATEL

9 BRANDON M. CHANG

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

11 Dated: April 25, 2024

MARLIN & SALTZMAN, LLP

12 BY: /s/ Stephen P. O'Dell
13 _____

14 CODY R. KENNEDY

STEPHEN P. O'DELL

15 Attorneys for Plaintiffs ROD LINSANGAN and
16 ANEETA CARTER on behalf of themselves and
Aggrieved Employees

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

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my mailing address is 1460 Westwood Boulevard, Los Angeles, CA 90024.

On April 25, 2024, I caused a true and correct copy of the foregoing document(s) described as **SECOND AMENDED COMPLAINT** to be served by electronic transmission via Case Anywhere to the parties and/or counsel who are registered to use Case Anywhere and also via e-mail addresses set forth in the below service list:

MARLIN & SALTZMAN LLP

Cody R. Kennedy, Esq.
Stephen P. O'Dell, Esq.
29800 Agoura Hills Road, Suite 210
Agoura Hills, California 91301
Tel: (818)991-8080; Fax: (818)991-8081
Email: ckennedy@marlinsaltzman.com
Email: sodell@marlinsaltzman.com

LAW OFFICES OF PETER M. HART

Peter M. Hart, Esq.
Ashlie E. Fox , Esq.
12121 Wilshire Blvd., Suite 525
Los Angeles, California 90025
Tel: (310) 439-9298; Fax (509) 561-6441
Email: hartpeter@msn.com
Email: ashlie.fox.loph@gmail.com

**Attorneys for Plaintiffs, ROD LINSANGAN and
ANEETA CARTER**

MUNGER, TOLLES & OLSON LLP

Andrew Delaplane, Esq.
Joseph Lee, Esq.
350 South Grand Avenue, 50th Floor
Los Angeles, CA 90071
Phone: (213) 683-9100
Fax: (213) 687-3702
Email: Andrew.delaplane@mto.com
Email: joseph.lee@mto.com

MUNGER, TOLLES & OLSON LLP

Malcolm Heinicke, Esq.
560 Mission Street, 27th Floor
San Francisco, CA 94105
Phone: (415) 512-4000
Fax: (415) 512-4077
Email: malcolm.heinicke@mto.com

**Attorney for Defendants,
WHELAN SECURITY OF CALIFORNIA, INC. dba GARDAWORLD SECURITY
CORPORATION**

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 25, 2024, at Los Angeles, California.

/s/ Araceli Marquez
Araceli Marquez