

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

04/04/2023 at 11:21:00 AM

Clerk of the Superior Court
By Elizabeth Reyes, Deputy Clerk

1 DAVID G. SPIVAK (SBN 179684)

david@spivaklaw.com

2 JENICA LEONARD (SBN 24366)

jenica@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 8605 Santa Monica Bl

PMB 42554

5 West Hollywood, CA 90069

6 Telephone: (213) 725-9094

7 Facsimile: (213) 634-2485

8 Attorneys for Plaintiff(s),

TIMOTHY G. GONZALES, and all others similarly situated

9 (additional attorney for Plaintiff(s) on following page)

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**
12 **(UNLIMITED JURISDICTION)**

13 TIMOTHY G. GONZALES, on behalf of
14 himself and all others similarly situated, the
15 general public, and as an “aggrieved employee”
16 on behalf of other “aggrieved employees” under
17 the Labor Code Private Attorneys General Act of
18 2004,

19 *Plaintiff,*

20 vs.

21 FIDELITY SECURITY SOLUTIONS, a
22 California corporation; and DOES 1–50,
23 inclusive,

24 *Defendants.*

Case No. 37-2022-00051765-CU-OE-CTL

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code §§ 226 and 246);
6. Waiting Time Penalties (Lab. Code § 203);
7. Failure to Provide Toilet or Storage Facilities (Lab. Code § 2350);
8. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*; and



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

9. Civil Penalties (Lab. Code §§ 2698, *et seq.*).

JURY TRIAL DEMANDED

ADDITIONAL ATTORNEY FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave
Suite 301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),
TIMOTHY G. GONZALES, and all others similarly situated



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 Plaintiff, Timothy G. Gonzales (hereafter “Plaintiff” or “Gonzales”), on behalf of himself
2 and all others similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class and representative action for alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage
6 Order”), and the California Business and Professions Code against Defendants Fidelity Security
7 Solutions, a California corporation, and Does 1 through 50, inclusive (collectively “Defendants”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 him and other similarly situated workers for unpaid wages, statutory penalties, interest, and
10 related relief. These claims are based on Defendants’ failures to:

11 (A) Pay all wages, including minimum, regular and overtime wages, earned for
12 all hours worked at the correct rates of pay;

13 (B) Provide all meal periods;

14 (C) Authorize and permit all rest breaks;

15 (D) Pay premium wages for unprovided meal periods;

16 (E) Pay premium wages for unprovided rest breaks;

17 (F) Indemnify for necessary work-related expenditures;

18 (G) Provide toilet and storage facilities, lockers, change rooms, and acceptable
19 work temperatures;

20 (H) Issue only accurate and complete itemized wage statements; and

21 (I) Timely pay wages upon termination of employment

22 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
23 restitution, statutory penalties, attorneys’ fees, costs, and related relief through this class action.

24 **II. THE PARTIES**

25 3. Plaintiff Timothy G. Gonzales is a resident of California.

26 4. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8
27 California Code of Regulations Section 11040 and an “aggrieved employee” within the meaning
28 of Labor Code Section 2699(c).

5. Defendant Fidelity Security Solutions is a corporation organized and existing
under the laws of California and also a citizen of California based on Plaintiff’s information and
belief.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
2 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
3 is informed and believes and thereon alleges that said Defendants are legally responsible for the
4 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
5 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
6 when ascertained.

7 7. Plaintiff is informed and believes and thereon alleges that, at all relevant times
8 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
9 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
10 within the course and scope of such agency, employment, direction and control, and with the
11 approval and ratification of each of the other Defendants.

12 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
13 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
14 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
15 Members or otherwise complying with their rights in accordance with applicable California labor
16 laws as alleged herein.

17 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
18 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
19 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
20 described class in accordance with applicable laws as alleged herein.

21 **III. CLASS ALLEGATIONS**

22 10. This action has been brought and may be maintained as a class action pursuant to
23 California Code of Civil Procedure section 382 because there is a well-defined community of
24 interest among the persons who comprise the readily ascertainable class defined below and
25 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
26 a class action.

27 11. **Class Definition:** The Class is defined as follows: All persons Defendants
28 employed in California as hourly and non-exempt employees, including security guards,
individuals performing work comparable to the aforementioned, compensated comparably to the
aforementioned, and individuals in similar positions, at any time during the period beginning four
years prior to the filing of this action and ending on the date that final judgment is entered in this



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 action ("Class" or "Class Members").

2 12. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
3 right to amend or modify the class definition with greater specificity, by further division into
4 subclasses and/or by limitation to particular issues.

5 13. **Numerosity:** The Class Members are so numerous that the individual joinder of
6 each individual Class Member is impractical. While Plaintiff does not currently know the exact
7 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
8 minimum required for numerosity under California laws.

9 14. **Commonality and Predominance:** Common questions of law and fact exist as to
10 all Class Members and predominate over any questions which affect only individual Class
11 Members. These questions include, but are not limited to:

12 A. Whether Defendants failed to pay all wages earned to Class Members for
13 all hours worked at the correct rates of pay, including minimum, regular, overtime, meal period
14 premium, and rest period premium wages;

15 B. Whether Defendants failed to provide the Class Members with all meal
16 periods in compliance with California law;

17 C. Whether Defendants failed to authorize and permit the Class Members to
18 take all rest periods in compliance with California law;

19 D. Whether Defendants failed to indemnify the Class Members for the
20 reasonable expenses they incurred during the course of performing their duties;

21 E. Whether Defendants knowingly and intentionally failed to provide the
22 class with accurate and complete itemized wage statements;

23 F. Whether Defendants willfully failed to provide the class with timely final
24 wages;

25 G. Whether Defendants willfully failed to provide the class with suitable toilet
26 and storage facilities;

27 H. Whether Defendants engaged in unfair competition within the meaning of
28 Business and Professions Code sections 17200, *et seq.*, with respect to the Class; and

I. Whether Class Members are entitled to restitution of money or property
that Defendants may have acquired from them through alleged Labor Code violations.

15. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
2 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
3 Code, the Wage Order, and the Business and Professions Code.

4 16. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
5 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
6 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
7 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
8 Members.

9 17. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
10 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
11 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
12 Plaintiff and absent Class Members.

13 18. **Superiority:** A class action is vastly superior to other available means for fair and
14 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
15 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
16 and efficiently prosecute their common claims in a single forum without the unnecessary
17 duplication of effort and expense that numerous individual actions would entail. In addition, the
18 monetary amounts due to many individual Class Members are likely to be relatively small and
19 would thus make it difficult, if not impossible, for individual Class Members to both seek and
20 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
21 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
22 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

23 **IV. STATEMENT OF FACTS**

24 19. The Wage Order applies to "all persons employed in professional, technical,
25 mechanical, and similar occupations whether paid on a time, piece rate, commission, or other
26 basis..." Wage Order, § 1. The Wage Order defines "Professional, Technical, Clerical,
27 Mechanical, and Similar Occupations" to include

28 professional, semiprofessional, managerial, supervisory, laboratory, research,
technical, clerical, office work, and mechanical occupations. Said occupations
shall include, but not be limited to, the following: accountants; agents; appraisers;
artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters;
canvassers; carriers; cashiers; checkers; clerks; collectors; communications and



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 sound technicians; compilers; copy holders; copy readers; copy writers; computer
2 programmers and operators; demonstrators and display representatives;
3 dispatchers; distributors; door-keepers; drafters; elevator operators; estimators;
4 editors; graphic arts technicians; guards; guides; hosts; inspectors; installers;
5 instructors; interviewers; investigators; librarians; laboratory workers; machine
6 operators; mechanics; mailers; messengers; medical and dental technicians and
7 technologists; models; nurses; packagers; photographers; porters and cleaners;
8 process servers; printers; proof readers; salespersons and sales agents; secretaries;
9 sign erectors; sign painters; social workers; solicitors; statisticians; stenographers;
10 teachers; telephone, radiotelephone, telegraph and call-out operators; tellers;
11 ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants
12 and other related occupations listed as professional, semiprofessional, technical,
13 clerical, mechanical, and kindred occupations

14 Wage Order, § 2(O). At all relevant times during the applicable limitations period, the
15 Defendants, Gonzales, and all of the Class Members were covered by the Wage Order because
16 Gonzales and all of the Class Members worked for the Defendants as guards, their assistants and
17 other related occupations listed as professional, semiprofessional, technical, clerical, mechanical,
18 and kindred occupations. Accordingly, Gonzales and all of the other Class Members are entitled
19 to the protections the Wage Order provides.

20 20. On approximately February 13, 2022, the Defendants began to employ Gonzales
21 in San Diego in the position of hourly, non-exempt security guard. The Defendants continuously
22 employed him in that capacity until on or about August 19, 2022 when his employment ended.

23 21. At all relevant times, the Defendants issued wages to Gonzales and all of the other
24 Class Members on a semimonthly (24 paychecks/year) basis and paid them by the hour. At all
relevant times, the Defendants classified Gonzales and all of the other Class Members as non-
exempt employees entitled to the protections of the Labor Code and the Wage Order.

25 22. At all relevant times, the Defendants failed to compensate Gonzales and all of the
26 other Class Members for all hours worked at the applicable minimum or regular rates of pay.
27 Defendants required Gonzales and the Class Members to work off the clock and without pay
28 before their scheduled shifts began.

29 23. At all relevant times, the Defendants failed to compensate Gonzales and all of the
other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
in a week, and for the first eight hours of the seventh day of the workweek. The aforementioned
unpaid activities, combined with recorded hours worked, resulted in Gonzales and the Class
Members working overtime hours. However, The Defendants did not pay Gonzales and the Class



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

Members overtime premium pay for such overtime hours.

24. At all relevant times, the Defendants failed to provide Gonzales and all of the other Class Members with all timely 30-minute, off-duty meal periods. The Defendants also failed to pay premium wages for days on which they failed to provide Gonzales and all of the other Class Members with meal periods as required by law.

25. At all relevant times, the Defendants failed to authorize and permit Gonzales and all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Defendants required Gonzales and the Class Members to work during their rest periods. Further, The Defendants required Gonzales and the Class Members to remain in their assigned work area during their rest periods. The Defendants also failed to pay premium wages for days on which they failed to authorize and permit Gonzales and all of the other Class Members to take rest breaks as required by law.

26. At all relevant times, the Defendants required Gonzales and all of the other Class Members to incur certain business expenses in the course of performing their duties. The Defendants required Gonzales and all of the other Class Members to supply mobile phones, transportation between work sites, uniforms, uniform patches, utility belts, firearms, batons, two pairs of handcuffs, ammunition, equipment, holsters, magazine pouches, bullet proof vests, ballistic vests, protective gear and PPE to perform their job duties. However, the Defendants did not provide these items and did not reimburse Gonzales and the other Class Members for these items.

27. At all relevant times, the Defendants failed to issue to Gonzales and all of the other Class Members complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on the wage statements they issued to Gonzales and all of the other Class Members the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and related information.

28. At all relevant times, the Defendants also failed to timely pay Gonzales and all of the other Class Members all earned wages as described above during and at the conclusion of employment.

29. At all relevant times, the Defendants failed to maintain accurate employee records



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

of Gonzales and all of the other Class Members.

30. For the reasons stated herein, Plaintiff alleges that as a result of Defendants' unlawful practices and policies, Plaintiff and the Class Members were:

- A. Not provided with all off duty meal periods;
- B. Not authorized and permitted to take all rest break periods;
- C. Not paid one hour's pay for each workday in which Defendants failed to authorize and permit them to take one or more timely rest periods;
- D. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely meal periods;
- E. Not paid all wages earned, including, but not limited to, minimum, regular, overtime, and doubletime wages for work performed while clocked out and for all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned and all rest break premium wages earned;
- F. Not indemnified for all necessary business expenditures incurred during the discharge of their duties;
- G. Not provided with accurate and complete wage statements;
- H. Not provided with toilet and storage facilities, lockers, change rooms, and acceptable work temperatures; and
- I. Not timely paid all earned and unpaid wages at the time their employment ended.

FIRST CAUSE OF ACTION

FAILURE TO PAY OR WITHHOLDING ALL WAGES AT THE CORRECT RATES

Lab. Code §§ 510, 1194, 1197, and 1198

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

31. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

32. At all relevant times, Plaintiff and the Class Members have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

33. Section 2 of the Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

suffered or permitted to work, whether or not required to do so.”

34. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee’s regular hourly salary as one-fortieth (1/40) of the employee’s weekly salary.

35. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

36. Labor Code section 510 states:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

37. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

38. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

39. Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

40. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

41. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Class Members for all hours worked, including, but not limited to minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and doubletime hours, respectively, that they worked at the correct rates of pay. At all relevant times during the applicable limitations period, Defendants hired Plaintiff and the Class Members to work at a certain per hour rate but paid at a less per hourly rate and when the Fidelity Security Solutions Employers became aware of this, they took months to adjust the pay Plaintiff and the Class Members the higher, correct hourly rate and failed to compensate them for overtime pay at the correct rate. Defendants also required Plaintiff and the Class Members to be on duty and be responsible for acting and reacting to any security situations that would arise up to 15 minutes before their scheduled start time without compensation.

42. Plaintiff is informed and believes and thereon alleges that, at all relevant times,



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
2 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
3 rates of pay as required by California law.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PROVIDE MEAL PERIODS**

6 **Lab. Code §§ 226.7 and 512**

7 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

8 43. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

9 44. At all relevant times during the applicable limitations period, Plaintiff and the
10 Class Members have been employees of Defendants and entitled to the benefits and protections
11 of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

12 45. In relevant part, California Labor Code § 1198 states:

13 The maximum hours of work and the standard conditions of labor fixed by the
14 commission shall be the maximum hours of work and the standard conditions of
15 labor for employees. The employment of any employee for longer hours than those
16 fixed by the order or under conditions of labor prohibited by the order is unlawful.

17 46. In relevant part, In relevant part, California Labor Code § 512 states:

18 An employer shall not employ an employee for a work period of
19 more than five hours per day without providing the employee with
20 a meal period of not less than 30 minutes, except that if the total
21 work period per day of the employee is no more than six hours, the
22 meal period may be waived by mutual consent of both the
23 employer and employee.

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

47. In relevant part, Section 11 of the Wage Order states:

Meal Periods

(A) No employer shall employ any person for a work period of more



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 than five (5) hours without a meal period of not less than 30 minutes,
2 except that when a work period of not more than six (6) hours will
3 complete the day's work the meal period may be waived by mutual
4 consent of the employer and the employee. Unless the employee is
5 relieved of all duty during a 30 minute meal period, the meal period
6 shall be considered an "on duty" meal period and counted as time
7 worked. . . .

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

13 48. In relevant part, California Labor Code § 226.7 states:

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

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

27 49. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
28 Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
to a second 30-minute meal period when they worked more than 10 hours in a workday.

50. Defendants intentionally failed to provide Plaintiff and the Class Members with
all required 30-minute duty free meal periods in accordance with the Wage Order.

51. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members
their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants
failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

Members with timely meal periods. Defendants prohibited Plaintiff and the other Class Members from leaving their assigned work areas unless another employee was present and able to perform their job duties in their absence. Defendants failed to provide Plaintiff and the other Class Members the ability to clock out for meal periods and told Plaintiff and the other Class Members that they could not leave the work site for meal periods, causing and Plaintiff and the other Class Members to have to eat their lunch in front of customers, to be vigilant and on duty at all times throughout their entire shift.

56. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Class Members with all off-duty meal periods required by California law.

57. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

58. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more meal periods were not provided to them pursuant to California Labor Code § 226.7.

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

59. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

60. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7 and 1198, and the Wage Order.

61. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

62. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

63. In relevant part, California Labor Code § 226.7 states:

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

64. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

65. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order. Defendants prohibited Plaintiff and the other Class Members from leaving their



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 assigned work areas unless another employee was present and able to perform their job duties in
2 their absence. Defendants failed to provide Plaintiff and the Class Members the ability to clock
3 out for rest breaks and at times, Plaintiff and the Class Members had to wait for over an hour to
4 use the restroom because they had to make sure the store was completely empty before they could
5 use the restroom, as there were no other guards on site to relieve them. Defendants failed to
6 provide Plaintiff and the Class Members with sufficient security guards on duty to cover for them
7 while they took rest breaks, causing them to have to wait for another guard to relieve them, or to
8 wait until there were no more customers to be able to take a rest period or use the restroom.

9 66. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
10 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
11 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
12 Plaintiff and the other Class Members to take timely rest periods.

13 67. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
14 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
15 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
16 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
17 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
18 to authorize and permit them to take 10-minute rest periods every four hours worked or major
19 fraction thereof.

20 68. Plaintiff is informed and believes and thereon alleges that, at all relevant times
21 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
22 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
23 take all rest breaks required by California law.

24 69. Defendants failed to provide Plaintiff with all required rest breaks in accordance
25 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
26 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
27 which resulted in Defendants not providing the Class Members with all rest breaks required by
28 California law.

70. Defendants failed to pay Plaintiff the additional wages required by California
Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
thereon alleges that, at relevant times within the applicable limitations period, Defendants have



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
2 Class Members with additional wages for all rest breaks not provided to them as required by
3 California Labor Code § 226.7.

4 71. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
5 suffered damages in amounts subject to proof to the extent they were not paid additional wages
6 owed for all rest breaks not provided to them.

7 72. By reason of the above, Plaintiff and the Class Members are entitled to premium
8 wages for workdays in which one or more rest breaks were not provided to them pursuant to
9 California Labor Code § 226.7.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO INDEMNIFY**

12 **Lab. Code § 2802**

13 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

14 73. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

15 74. In pertinent part, California Labor Code § 2802(a) states: "An employer shall
16 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
17 consequence of the discharge of his or her duties."

18 75. California Labor Code § 1198 prohibits employers from employing their
19 employees under conditions prohibited by the Wage Order.

20 76. At all relevant times, Defendants required Plaintiff and the Class Members to incur
21 certain business expenses in the course of performing their duties.

22 77. As described above, the Defendants required Gonzales and all of the other Class
23 Members to incur certain business expenses in the course of performing their duties. The
24 Defendants required Gonzales and all of the other Class members to supply mobile phones,
25 transportation between work sites, uniforms, uniform patches, utility belts, firearms, batons, two
26 pairs of handcuffs, ammunition, equipment, holsters, magazine pouches, bullet proof vests,
27 ballistic vests, protective gear and PPE to perform their job duties. However, the Defendants did
28 not provide these items and did not reimburse Gonzales and the other Class members for these
items. Additionally, the Defendants did not provide tools to Gonzales and the other Class
members they required them to use to perform their work, nor did they reimburse them for such
tools, including firearms, magazines for required firearms, ammunition for required firearms,



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 utility belts, batons, two pairs of handcuffs and tasers.

2 78. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
3 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
4 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
5 during the course of performing their duties.

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

8 **Lab. Code § 226**

9 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

10 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
11 **STATEMENTS**

12 79. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

13 80. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
14 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
15 statement showing:

16 A. Gross wages earned;

17 B. Total hours worked by the employee, except for any employee whose
18 compensation is solely based on a salary and who is exempt from payment of overtime under
19 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

20 C. The number of piece rate units earned and any applicable piece rate if the
21 employee is paid on a piece-rate basis;

22 D. All deductions, provided that all deductions made on written orders of the
23 Employee may be aggregated and shown as one item;

24 E. Net wages earned;

25 F. The inclusive dates of the period for which the employee is paid;

26 G. The name of the employee and his or her social security number, except
27 that by January 1, 2008, only the last four digits of his or her social security number or an
28 employee identification number other than a social security number may be shown on the itemized
statement;

H. The name and address of the legal entity that is the employer; and

I. All applicable hourly rates in effect during the pay period and the



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 corresponding number of hours worked at each hourly rate by the employee.

2 4. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury if
3 the employer fails to provide a wage statement. Also, an employee is deemed to suffer
4 injury if the employer fails to provide accurate and complete information as required
5 by California Labor Code § 226(a) and the employee cannot “promptly and easily
6 determine” from the wage statement alone one or more of the following:

7 A. The amount of the gross wages or net wages paid to the employee during
8 the pay period or any of the other information required to be provided on the itemized wage
9 statement pursuant to California Labor Code § 226(a);

10 B. Which deductions the employer made from gross wages to determine the
11 net wages paid to the employee during the pay period;

12 C. The name and address of the employer and, if the employer is a farm labor
13 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
14 and address of the legal entity that secured the services of the employer during the pay period;

15 D. The name of the employee and only the last four digits of his or her social
16 security number or an employee identification number other than a social security number; and

17 E. The number of piece-rate units earned and the piece rate.

18 81. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
19 means a reasonable person would be able to readily ascertain the information without reference
20 to other documents or information.

21 82. As alleged herein, at all relevant times during the applicable limitations period,
22 Defendants violated California Labor Code section 226 because they did not properly and
23 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
24 the corresponding number of hours worked at each rate by the employee and other requirements
25 of California Labor Code section 226. Defendants failed to state in the wage statements they
26 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
27 including, but not limited to, regular and overtime wages for work they performed off-the-clock
28 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
Members that state all minimum wages earned, all regular wages earned, all overtime wages



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 earned, all meal period premium wages earned, all rest break premium wages earned, and related
2 information.

3 83. Defendants' failure to provide Plaintiff and the other Class Members with accurate
4 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
5 the other Class Members with accurate wage statements but intentionally provided wage
6 statements that Defendants knew were not accurate.

7 84. As a result of being provided with inaccurate wage statements by Defendants,
8 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
9 wage statements were violated and they were misled about the amount of wages they had actually
10 earned and were owed. In addition, the absence of accurate information on their wage statements
11 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
12 and mathematical computations to determine the amounts of wages owed, has caused difficulty
13 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
14 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
15 and the other Class Members were not able to ascertain from the wage statements whether
16 Defendants complied with their obligations under California Labor Code section 226(a).

17 **B. FAILURE TO PROVIDE NOTICE OF AVAILABLE SICK LEAVE**

18 85. Labor Code § 246 states

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

24 Lab.Code § 246(h) (effective July 1, 2015). As a matter of policy and practice, the Defendants
25 failed to provide Plaintiff and all of the other Class Members with an itemized wage statement or
26 separate writing that set forth the amount of paid sick leave available.

27 86. Pursuant to California Labor Code § 226(e), Plaintiff and the other Class Members
28 are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the
initial pay period in which a violation of California Labor Code § 226(a) occurred and one
hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are
also entitled to an award of costs and reasonable attorneys' fees.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

SIXTH CAUSE OF ACTION

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

Lab. Code §§ 201, 202, and 203

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

87. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

88. At all relevant times during the applicable limitations period, Plaintiffs and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201, 202, and 203, and the Wage Order.

89. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

90. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours' notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours' notice before quitting are due and payable within 72 hours.

91. The Defendants failed to pay Gonzales and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Gonzales, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation.

92. By failing to pay such earned wages to Plaintiff and the Class Members, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

93. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Class Members all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

94. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

///



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE TOILET AND STORAGE FACILITIES, LOCKERS,**
3 **CHANGE ROOMS, AND ACCEPTABLE WORK TEMPERATURES**

4 **Lab. Code § 2350**

5 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

6 95. California Labor Code section 2350 states:

7 “Every factory, workshop, mercantile or other establishment in which one or more
8 persons are employed, shall be kept clean and free from the effluvia arising from
9 any drain or other nuisance, and shall be provided, within reasonable access, with
10 a sufficient number of toilet facilities for the use of the employees. When there are
11 five or more employees who are not all of the same gender, a sufficient number of
12 separate toilet facilities shall be provided for the use of each sex, which shall be
13 plainly so designated.”

14 96. In relevant part, § 13 of the Wage Order states:

15 (A) Employers shall provide suitable lockers, closets, or equivalent for
16 the safekeeping of employees’ outer clothing during working hours,
17 and when required, for their work clothing during non-working
18 hours. When the occupation requires a change of clothing, change
19 rooms or equivalent space shall be provided in order that employees
20 may change their clothing in reasonable privacy and comfort. These
21 rooms or spaces may be adjacent to but shall be separate from toilet
22 rooms and shall be kept clean.

23 NOTE: This section shall not apply to change rooms and storage
24 facilities regulated by the Occupational Safety and Health Standards
25 Board.

26 (B) Suitable resting facilities shall be provided in an area separate from
27 the toilet rooms and shall be available to employees during work
28 hours.

29 97. In relevant part, § 15(C) of the Wage Order states: “A temperature of not
30 less than 68 degrees shall be maintained in the toilet rooms, resting rooms, and change
31 rooms during hours of use.”

32 98. California Labor Code § 1198 prohibits employers from employing their
33 employees under conditions prohibited by the Wage Order.

34 99. At all relevant times during the applicable limitations period, Defendants failed to
35 provide any toilet facilities for use by Plaintiff and the Aggrieved Employees within reasonable



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 access. Defendants also failed to provide lockers, closets, storage facilities, and changing rooms
2 for use by Plaintiff and all the other Aggrieved Employees. Moreover, Defendants failed to
3 provide acceptable temperatures for the work areas they expected Plaintiff and the Aggrieved
4 Employees to perform their job duties in.

5 100. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
6 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
7 failure to provide Plaintiff and the Aggrieved Employees with toilet and storage facilities, lockers,
8 change rooms, and acceptable work temperatures.

9 **EIGHTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 **Bus. & Prof. Code §§ 17200, *et seq.***

12 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

13 101. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 102. At all relevant times during the applicable limitations period, Plaintiff and the
15 Class Members have been employees of Defendants and entitled to the benefits and protections
16 of the Business and Professions Code §§ 17200, *et seq.*

17 103. The unlawful conduct of Defendants alleged herein amount to and constitutes
18 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
19 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
20 gained a competitive advantage over other comparable companies doing business in California
21 that comply with their legal obligations to compensate employees for all earned wages.

22 104. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
23 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
24 Members were deprived of minimum wages, regular wages, overtime wages, missed meal period
25 premium wages, missed rest period premium wages, uniform expenses, phone expenses, mileage
26 expenses, expenses for tools and equipment, and comparable money and property.

27 105. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
28 Class Members are entitled to restitution of all monies rightfully belonging to them that
Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
practices.

106. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

NINTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

107. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

108. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

109. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief,



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 Plaintiff alleges that Defendants also failed to pay the aggrieved employees on such intervals for
2 all wages earned and all hours worked.

3 110. During the applicable time period, Defendants violated California Labor Code §§
4 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1174, 1194, 1197, 1198, 2350 and 2802.

5 111. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
6 behalf of themselves and other current or former employees, to bring a civil action to recover civil
7 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

8 112. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
9 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
10 §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1174, 1194, 1197, 1198, 2350 and 2802 during
11 the applicable limitations period in the following amounts:

12 A. For violations of California Labor Code § 204, one hundred dollars
13 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
14 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully
15 withheld from each aggrieved employee for each subsequent, willful or intentional violation
16 (penalty amounts established by California Labor Code § 210).

17 B. For violations of California Labor Code § 226, two hundred fifty dollars
18 (\$250.00) for each aggrieved employee for initial violation and one thousand dollars (\$1,000.00)
19 for each aggrieved employee for each subsequent violation (penalty amounts established by
20 California Labor Code § 226.3).

21 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
22 (\$50.00) for each aggrieved employee for initial violation and one hundred dollars (\$100.00) for
23 each aggrieved employee for each subsequent violation, per pay period in addition to an amount
24 sufficient to recover underpaid wages (penalty amounts established by California Labor Code §
25 558).

26 D. For violations of California Labor Code § 1197, one hundred dollars
27 (\$100.00) for each aggrieved employee for each initial and intentional violation and two hundred
28 fifty dollars (\$250.00) for each aggrieved employee for each subsequent violation, per pay period
(regardless of whether the initial violations were intentionally committed), in addition to an
amount sufficient to recover unpaid wages (penalty amounts established by California Labor
Code § 1197.1).



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 E. For violations of California Labor Code § 1174, \$500 for Each Aggrieved
2 employee for each violation of Labor Code section 1174 (penalties set by Labor Code
3 section 1174.5).

4 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 246,
5 1194, 1198, 2350 and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
6 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
7 per pay period for each subsequent violation (penalty amounts established by California Labor
8 Code § 2699(f)(2)).

9 113. Plaintiff has complied with the procedures for bringing suit specified in California
10 Labor Code § 2699.3. By letter dated November 8, 2022, Plaintiff filed written notice online with
11 the Labor and Workforce Development Agency (“LWDA”) and gave written notices by certified
12 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
13 violated, including the facts and theories to support the alleged violations. A true and correct copy
14 of the notice to the LWDA dated November 8, 2022 is attached as **Exhibit A**. Plaintiff
15 accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take
16 action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates
17 that the LWDA will provide written notice to Plaintiff informing him that it does not intend to
18 investigate these allegations.

19 114. Pursuant to California Labor Code § 2699(g), Plaintiff and the aggrieved
20 employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
21 connection with their claims for civil penalties.

22 **V. PRAYER FOR RELIEF**

23 115. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for
24 relief and judgment against Defendants as follows:

25 A. An order that the action be certified as a class action with respect to
26 Plaintiff’s claims for violations of California law;

27 B. An order that Plaintiff be appointed class representative;

28 C. An order that counsel for Plaintiff be appointed class counsel;

D. Unpaid wages, including minimum, regular, overtime, double-time,
missed meal period, missed rest period premium wages;

E. Liquidated damages;



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

- 1 F. Statutory penalties, including waiting time penalties;
2 G. Civil penalties;
3 H. Restitution;
4 I. Declaratory relief;
5 J. Actual damages;
6 K. Pre-judgment interest;
7 L. Costs of suit;
8 M. Reasonable attorneys' fees; and
9 N. Such other relief as the Court deems just and proper.

10 **VI. DEMAND FOR JURY TRIAL**

11 Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial
12 on all issues so triable.

13 Respectfully submitted,

14 THE SPIVAK LAW FIRM

15 Dated: April 4, 2023

16 By: 

17 DAVID G. SPIVAK,
18 JENICA LEONARD, Attorneys for
19 Plaintiff(s), TIMOTHY G.
20 GONZALES, and all others similarly
21 situated



22 SPIVAK LAW
23 EMPLOYEE RIGHTS

24 Mail:
25 8605 Santa Monica Bl
26 PMB 42554
27 West Hollywood, CA 90069
28 (213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

EXHIBIT A



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

8605 Santa Monica Bl PMB 42554 West Hollywood CA 90069

1801 Century Park East 25th Floor Los Angeles CA 90067

(213) 725-9094

(213) 634-2485

spivaklaw.com

Mail

Office

Tel

Fax

Web

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

December 12, 2022

Attn: PAGA Administrator
Labor and Workforce Development Agency
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Timothy G. Gonzales / Fidelity Security Solutions

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Timothy G. Gonzales (hereafter “Gonzales” or “Complainant”) provides notice that Fidelity Security Solutions, a California corporation, and related entities (collectively “the Fidelity Security Solutions Employers” or “the Employers”) violated his rights and those of all other individuals the Fidelity Security Solutions Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including but not limited to security guards, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1174, 1194, 1197, 1198, 2350, 2802, and other Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Gonzales hereby provides this notice to the Labor & Workforce Development Agency and the Fidelity Security Solutions Employers and their agents and representatives.

At all relevant times, the Fidelity Security Solutions Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Gonzales and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately February 13, 2022, the Fidelity Security Solutions Employers began to employ Gonzales in San Diego in the position of hourly, non-exempt security guard. The Fidelity Security Solutions Employers continuously employed him in that capacity until on or about August 19, 2022 when his employment ended.

At all relevant times, the Fidelity Security Solutions Employers issued wages to Gonzales and all of the other Aggrieved Employees on a semimonthly (24 paychecks/year) basis and paid them by the hour. At all relevant times, the Fidelity Security Solutions Employers classified Gonzales and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Fidelity Security Solutions Employers failed to compensate Gonzales and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Fidelity Security Solutions Employers hired Gonzales to work at a certain per hour rate but paid at a less per hourly rate and when the Fidelity Security Solutions Employers became aware of this, they took months to adjust the pay to the higher, correct hourly rate and failed to compensate them for overtime pay at the correct rate. The Fidelity Security Solutions Employers also required Gonzales and the Aggrieved Employees to be on duty and be responsible for acting and reacting to any security situations that would arise up to 15 minutes before their scheduled start time without compensation.

The Fidelity Security Solutions Employers failed to compensate Gonzales and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Fidelity Security Solutions Employers failed to pay Gonzales the correct overtime pay of 1.5 times his correct hourly rate for all hours he worked over 40 in a week or for all hours he worked over 8 in a day. The Fidelity Security Solutions Employers also failed to pay Gonzales 1.5 times his correct hourly pay rate for his first 8 hours worked on the seventh workday of the week. The aforementioned unpaid activities, combined with recorded hours worked, resulted in Gonzales and the Aggrieved Employees working overtime hours. However, The Fidelity Security Solutions Employers did not pay Gonzales and the Aggrieved Employees overtime premium pay for such overtime hours.

At all relevant times, the Fidelity Security Solutions Employers failed to provide Gonzales and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Fidelity Security Solutions Employers failed to provide Gonzales the ability to clock out for meal periods and told Gonzales and all of the other Aggrieved Employees that they could not leave the work site for meal periods, causing and Gonzales and all of the other Aggrieved Employees to have to eat their lunch in front of customers, to be vigilant and on duty at all times throughout their entire shift. The Fidelity Security Solutions Employers also failed to pay premium wages for days on which they failed to provide Gonzales and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Fidelity Security Solutions Employers failed to authorize and permit Gonzales and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Fidelity Security Solutions Employers prohibited Gonzales and the other Aggrieved Employees from leaving their assigned work areas unless another employee was present and able to perform their job duties in their absence. The Fidelity Security Solutions Employers failed to provide Gonzales the ability to clock out for rest breaks and at times, Gonzales and the other Aggrieved Employees had to wait for over an hour to use the restroom because they had to make sure their assigned business sites were completely empty before they could use the restroom, as there were no other guards on site to relieve them. The Fidelity Security Solutions Employers failed to provide Gonzales and all of the other Aggrieved Employees with sufficient security guards on duty to cover for them while they took rest breaks, causing them to have to wait for another guard to relieve them, or to wait until there were no more customers to be able to take a rest period or use the restroom. The Fidelity Security Solutions Employers required Gonzales and the Aggrieved Employees to work during their rest periods. Further, The Fidelity Security Solutions Employers required Gonzales and the Aggrieved Employees to remain in their assigned work area during their rest periods. The Fidelity Security Solutions Employers required Gonzales and the Aggrieved Employees to remain onsite, nearby and vigilant at all times, even during times that should have been their rest periods. The Fidelity Security Solutions Employers also failed to pay premium wages for days on which they failed to authorize and permit Gonzales and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Fidelity Security Solutions Employers required Gonzales and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Fidelity Security Solutions Employers required Gonzales and all of the other Aggrieved Employees to supply mobile phones, transportation between work sites, uniforms, uniform patches, utility belts, firearms, batons, two pairs of handcuffs, ammunition, equipment, holsters, magazine pouches, bullet proof vests, ballistic vests, protective gear and PPE to perform their job duties. However, the Fidelity Security Solutions Employers did not provide these items and did not reimburse Gonzales and the other Aggrieved Employees for these items.

At all relevant times, the Fidelity Security Solutions Employers failed to issue to Gonzales and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Fidelity Security Solutions Employers knowingly and intentionally failed to state on the wage statements they issued to Gonzales and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

The Fidelity Security Solutions Employers also failed to provide Gonzales and all of the other Aggrieved Employees with an itemized wage statement or separate writing that set forth the amount of paid sick leave available.

The Fidelity Security Solutions Employers also failed to timely pay Gonzales and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Fidelity Security Solutions Employers failed to provide Gonzales and all of the other Aggrieved Employees with toilet and storage facilities, change rooms, and acceptable work temperatures.

The Fidelity Security Solutions Employers failed to provide Gonzales and all of the other Aggrieved Employees with an adequate number of suitable seats.

The Fidelity Security Solutions Employers failed to maintain accurate employee records of Gonzales and all of the other Aggrieved Employees.

For the reasons stated herein, Gonzales alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Fidelity Security Solutions Employers failed to pay Gonzales and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular and overtime wages;
- (b) The Fidelity Security Solutions Employers failed to provide Gonzales and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Fidelity Security Solutions Employers failed to authorize and permit Gonzales and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Fidelity Security Solutions Employers failed to compensate Gonzales and all of the other Aggrieved Employees at one hour's pay for each day in which the Fidelity Security Solutions Employers failed to provide them with one or more meal periods as required by law;
- (e) The Fidelity Security Solutions Employers failed to compensate Gonzales and all of the other Aggrieved Employees at one hour's pay for each day in which the Fidelity Security Solutions Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Fidelity Security Solutions Employers failed to indemnify Gonzales and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

- (g) The Fidelity Security Solutions Employers knowingly and intentionally failed to provide Gonzales and all of the other Aggrieved Employees with accurate wage statements;
- (h) The Fidelity Security Solutions Employers willfully failed to timely pay Gonzales and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Fidelity Security Solutions Employers and when their employment ended;
- (i) The Fidelity Security Solutions Employers failed to provide Gonzales and all of the other Aggrieved Employees with toilet and storage facilities, change rooms, and acceptable work temperatures;
- (j) The Fidelity Security Solutions Employers failed to provide Gonzales and all of the other Aggrieved Employees with an adequate number of suitable seats; and
- (k) The Fidelity Security Solutions Employers failed to maintain accurate employment records pertaining to Gonzales and all of the other Aggrieved Employees.

Accordingly, Gonzales now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Fidelity Security Solutions Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to “all persons employed in professional, technical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis...” Wage Order, § 1. The Wage Order defines “Professional, Technical, Clerical, Mechanical, and Similar Occupations” to include

professional, semiprofessional, managerial, supervisory, laboratory, research, technical, clerical, office work, and mechanical occupations. Said occupations shall include, but not be limited to, the following: accountants; agents; appraisers; artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters; canvassers; carriers; cashiers; checkers; clerks; collectors; communications and sound technicians; compilers; copy holders; copy readers; copy writers; computer programmers and operators; demonstrators and display representatives; dispatchers; distributors; doorkeepers; drafters; elevator operators; estimators; editors; graphic arts technicians; guards; guides; hosts; inspectors; installers; instructors; interviewers; investigators; librarians; laboratory workers; machine operators; mechanics; mailers; messengers; medical and dental technicians and technologists; models; nurses; packagers; photographers; porters and cleaners; process servers; printers; proof readers; salespersons and sales agents; secretaries; sign erectors; sign painters; social workers; solicitors; statisticians; stenographers; teachers; telephone, radiotelephone, telegraph and call-out operators; tellers; ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations

Wage Order, § 2(O). At all relevant times during the applicable limitations period, the Fidelity Security Solutions Employers, Gonzales, and all of the Aggrieved Employees were covered by the Wage Order because the Fidelity Security Solutions Employers operated, and Gonzales, and all of the Aggrieved Employees, worked for the Fidelity Security Solutions Employers as guards, their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations. Accordingly, Gonzales and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

- (a) In relevant part, Labor Code section 1194 states:) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in

any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ($1\frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth ($1/40$) of the employee's weekly salary

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Ca⁴th 575, 585.

The Fidelity Security Solutions Employers required Gonzales and the Aggrieved Employees to work off the clock and without pay before their scheduled shifts began. The Fidelity Security Solutions Employers required Gonzales and the Aggrieved Employees to wait off the clock and without pay for Fidelity Security Solutions Employers for several minutes to be allowed into their work areas at their scheduled start times. The Fidelity Security Solutions Employers required Gonzales and the Aggrieved Employees to be on duty and be responsible for acting and reacting to any security situations that would arise up to 15 minutes before their scheduled start time without compensation. The aforementioned unpaid activities, combined with recorded

hours worked, resulted in Gonzales and the Aggrieved Employees working overtime hours. However, The Fidelity Security Solutions Employers did not pay Gonzales and the Aggrieved Employees overtime premium pay for such overtime hours.

At all relevant times during the applicable limitations period, the Fidelity Security Solutions Employers failed to compensate Gonzales and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, and overtime wages for all hours they worked at the correct rates of pay. Accordingly, Gonzales now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

/ / /

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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

In relevant part, section 11 of the Wage Order states:

Meal Periods

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. ...

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

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Fidelity Security Solutions Employers failed to provide Gonzales and all of the other Aggrieved Employees with all timely meal periods. The Fidelity Security Solutions Employers denied Gonzales and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Fidelity Security Solutions Employers required Gonzales and the Aggrieved Employees to work during their meal periods. Furthermore, the Fidelity Security Solutions Employers failed to pay premium wages for days on which they failed to provide Gonzales and all of the other Aggrieved Employees with timely meal periods. Accordingly, Gonzales now seeks civil penalties for these Labor Code violations that the Fidelity Security Solutions Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a

rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

(f) In addition, Labor Code section 226.7 states) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

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

The Fidelity Security Solutions Employers failed to authorize and permit Gonzales and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Fidelity Security Solutions Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Fidelity Security Solutions Employers required Gonzales and the Aggrieved Employees to work during their rest periods. Further, The Fidelity Security Solutions Employers required Gonzales and the Aggrieved Employees to remain in their assigned work area during their rest periods. The Fidelity Security Solutions Employers failed to provide Gonzales the ability to clock out for rest breaks and at times, Gonzales and the other Aggrieved Employees had to wait for over an hour to use the restroom because they had to make

sure the locations they were guarding was completely empty before they could use the restroom, as there were no other guards on site to relieve them. The Fidelity Security Solutions Employers failed to provide Gonzales and all of the other Aggrieved Employees with sufficient security guards on duty to cover for them while they took rest breaks, causing them to have to wait for another guard to relieve them, or to wait until there were no more customers to be able to take a rest period or use the restroom. The Fidelity Security Solutions Employers required Gonzales and the Aggrieved Employees to work during their rest periods. Further, The Fidelity Security Solutions Employers required Gonzales and the Aggrieved Employees to remain in their assigned work area during their rest periods. The Fidelity Security Solutions Employers prohibited Gonzales and the other Aggrieved Employees from leaving their assigned work areas unless another employee was present and able to perform their job duties in their absence. The Fidelity Security Solutions Employers required Gonzales and the Aggrieved Employees to remain onsite, nearby and vigilant at all times, even during times that should have been their rest periods. Moreover, the Fidelity Security Solutions Employers failed to pay Gonzales and all of the other Aggrieved Employees premium wages on workdays the Fidelity Security Solutions Employers failed to provide Gonzales and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Gonzales now seeks civil penalties for these Labor Code violations that the Fidelity Security Solutions Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
- ...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, § 9(B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Fidelity Security Solutions Employers required Gonzales and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Fidelity Security Solutions Employers required Gonzales and all of the other Aggrieved Employees to supply mobile phones, transportation between work sites, uniforms, uniform patches, utility belts, firearms, batons, two pairs of handcuffs, ammunition, equipment, holsters, magazine pouches, bullet proof vests, ballistic vests, protective gear and PPE to perform their job duties. However, the Fidelity Security Solutions Employers did not provide these items and did not reimburse Gonzales and the other Aggrieved Employees for these items. Additionally, the Fidelity Security Solutions Employers did not provide tools to Gonzales and the other Aggrieved Employees it required them to use to perform their work, nor did they reimburse them for such tools, including firearms, and related tools. Accordingly, Gonzales seeks civil penalties for these Labor Code violations that the Fidelity Security Solutions Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent

violation, per pay period (penalties set by Labor Code section 2699(f)(2));
and

2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Fidelity Security Solutions Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Fidelity Security Solutions Employers failed to state in the wage statements they issued to Gonzales and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Fidelity Security Solutions Employers knowingly and intentionally failed to state on the wage statements they issued to Gonzales and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

Accordingly, Gonzales seeks civil penalties for the Labor Code violations that the Fidelity Security Solutions Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Provide Notice of Available Sick Leave
(Lab. Code § 246)

Labor Code § 246 states,

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

Lab.Code § 246(h) (effective July 1, 2015). The Fidelity Security Solutions Employers failed to provide Gonzales and all of the other Aggrieved Employees with an itemized wage statement or separate writing that set forth the amount of paid sick leave available. Accordingly, Gonzales seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: For violations of Labor Code § 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 246 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Fidelity Security Solutions Employers failed to compensate Gonzales and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation, at the intervals stated above. As a result, the Fidelity Security Solutions Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Gonzales now seeks civil penalties for the Labor Code violations that the Fidelity Security Solutions Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Fidelity Security Solutions Employers failed to pay Gonzales and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Gonzales, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation. By failing to pay Gonzales and all of the other Aggrieved Employees as set forth above at the end of employment, the Fidelity Security Solutions Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Gonzales seeks civil penalties from the Fidelity Security Solutions Employers as follows:

- a. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

- b. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
- c. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

**Failure to Provide Toilet and Storage Facilities, Lockers, Change Rooms, and
Acceptable Work Temperatures**
(Lab. Code §§ 1198 and 2350)

Labor Code § 2350 states,

Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.

Section 13 of Wage Order states,

- (a) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

- (a) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

Section 15 of Wage Order states,

...

- (a) (c) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

Throughout the relevant time period, the Fidelity Security Solutions Employers failed to provide any toilet facilities for use by Gonzales and all of the other Aggrieved Employees within reasonable access. Accordingly, on behalf of himself and aggrieved employees, Gonzales demands that the Fidelity Security Solutions Employers cure the violations of Labor Code § 2350 and provide sufficient toilets to all aggrieved employees. The Fidelity Security Solutions Employers also failed to provide lockers, closets, storage facilities, and changing rooms for use by Gonzales and all of the other Aggrieved Employees. Moreover, the Fidelity Security Solutions Employers failed to provide acceptable temperatures for the work areas it expected Gonzales and all of the other Aggrieved Employees to perform their job duties in. If within 33 days of this notice, the Fidelity Security Solutions Employers fail to notify my office in writing by certified mail that they have cured the violations of Labor Code § 2350 and the Wage Order mentioned above, Gonzales, on behalf of himself and all of the other Aggrieved Employees, will commence a civil action and seek civil penalties from the Fidelity Security Solutions Employers as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 2350, and \$200 for each aggrieved employee for each

subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Provide an Adequate Number of Suitable Seats
(Lab. Code § 1198)

Section 14 of the Wage Order states as follows:

Seats.

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The nature of the work the Fidelity Security Solutions Employers expected Gonzales and all of the other Aggrieved Employees to perform reasonably permits the use of seats. However, the Fidelity Security Solutions Employers, in violation of the Wage Order and Labor Code § 1198, did not provide Gonzales and all of the other Aggrieved Employees with an adequate number of suitable seats. Additionally, the Fidelity Security Solutions Employers did not place an adequate number of suitable seats in reasonable proximity to their work area, nor did they permit Gonzales and all of the other Aggrieved Employees to use such seats when it did not interfere with the performance of their duties.

Pursuant to Labor Code Sections 2699(a) and (f), Gonzales, on behalf of himself and all of the other Aggrieved Employees, seeks \$100.00 for each employee per pay period for each initial violation of § 1198 and \$200.00 for each employee per pay period for

each subsequent violation of § 1198 (penalty amounts established by Labor Code Section 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

///

Section 7 of Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:
 - (1) Full name, home address, occupation, and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
 - (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
 - (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Fidelity Security Solutions Employers failed to compensate Gonzales and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and related information. As a result, the Fidelity Security Solutions Employers have failed to

LWDA / The Fidelity Security Solutions Employers
Re: Timothy G. Gonzales
December 12, 2022
Page 26 of 27

accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Gonzales and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Gonzales seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Timothy G. Gonzales will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Mr. Timothy G. Gonzales

Mr. Walter L. Haines Esq.
United Employees Law Group
4276 Katella Ave
Suite 301
Los Alamitos, CA 90720
walter@uelglaw.com

// /

LWDA / The Fidelity Security Solutions Employers
Re: Timothy G. Gonzales
December 12, 2022
Page 27 of 27

Fidelity Security Solutions
c/o Agent for service of process
Ms. Valerie Owen
Secretary
Fidelity Security Solutions
649 W. Mission Ave.
Escondido, CA 92025