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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Brenda Ramirez, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

RALPH SHAKESPEARE, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

IRON WALL SECURITY, a corporation;
BRAD HEATON, an individual; and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2023-00006539-CU-OE-CTL

*Assigned to the Hon. Loren G. Freestone
Department C-64*

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

1. Unlawful Wage Deductions
2. Meal Period Violations
3. Rest Period Violations
4. Untimely Payment of Wages
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Business Expenses
8. Failure to Provide Records
9. Unfair Competition
10. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

Action Filed: February 15, 2023

1 Plaintiff RALPH SHAKESPEARE, individually and on behalf of all others similarly situated
2 and the State of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST
3 AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants IRON
4 WALL SECURITY; BRAD HEATON; and DOES 1 through 50, inclusive (collectively
5 “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a class and representative action brought under California Code of Civil
8 Procedure § 382 for Defendants’ violations of the California Labor Code and Business and Professions
9 Code.

10 2. Plaintiff further seeks civil penalties under the Private Attorneys General Act of 2004
11 for Defendants’ violations of the California Labor Code.

12 3. Defendants’ employment policies and practices and payroll administration systems
13 enabled and facilitated these violations on a company-wide basis with respect to the Class Members.

14 **JURISDICTION & VENUE**

15 4. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
16 California Constitution as the causes of action are premised upon violations of California law.

17 5. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
18 the Superior Court.

19 6. This Court has jurisdiction over Defendants because, upon information and belief,
20 Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise
21 intentionally avail themselves to the California economy so as to render the exercise of jurisdiction
22 over them by the California courts consistent with traditional notions of fair play and substantial
23 justice.

24 7. Venue is proper in this Court under Code of Civil Procedure §§ 393(a), 395, and/or
25 395.5 because, upon information and belief, Defendants conduct business and committed some of the
26 alleged violations in this county.

PARTIES

A. Plaintiff Ralph Shakespeare

8. Plaintiff Shakespeare is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about June 2022 to October 2022. Plaintiff worked as a Security Guard.

9. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

B. Defendants

10. Through the respective statutory periods, each of the defendants was a legal employer of Plaintiff and Class Members.

11. Defendant IRON WALL SECURITY is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

12. Defendant BRAD HEATON is an individual over the age of 18, residing and doing business in the state of California, and is an officer, member, director, agent, and/or owner of the above corporate Defendant who is liable for the actions and conduct of the above corporate Defendant at all times stated herein.

13. Plaintiff is informed, believes, and alleges that no class action asserting similar factual allegations has been filed against any of the named defendants within the preceding three years, that the defendants and more than two-thirds of Class Members are citizens of California.

14. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure § 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

15. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

16. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code §§ 558, 558.1, and 1197.1.

17. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

18. Plaintiff is informed, believes and alleges that the above-mentioned defendants violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or regulating minimum wages and days of work and other provisions of the Labor Code with respect to the Class of aggrieved employees. As a result, they may be held personally liable under Labor Code sections 558, 558.1, and 1197.1. (*See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.)

CLASS ALLEGATIONS

19. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure § 382:

a. All current and former non-exempt employees who worked for Defendants in California at any time from four years prior to the filing of this action through date of class certification.

20. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

1 21. The class is ascertainable and shares a well-defined community of interest in this
2 litigation:

3 a. Numerosity: The class is estimated to exceed 50 individuals, although the
4 precise membership of the entire class is unknown at this time. The class is so
5 numerous that joinder of all class members is impracticable. The identities of
6 class members is ascertainable by inspection of Defendants' employment and
7 payroll records.

8 b. Typicality: Plaintiff's claims are typical of the claims of the other class
9 members. They were subject to the same policies and practices of Defendants,
10 which resulted in losses to the class. Proof of common unlawful business
11 practices, which Plaintiff experienced, will establish the right of the class to
12 recover on the causes of action alleged herein.

13 c. Adequacy: Plaintiff is an adequate class representative; will take all necessary
14 steps to protect the class members' interests adequately and fairly; has no
15 interest antagonistic to other class members; and is represented by attorneys
16 who have substantial experience prosecuting, defending, resolving, and
17 litigating wage and hour class, collective, and representative actions in
18 California state and federal courts.

19 d. Superiority: A class action is superior to other means for adjudicating this
20 dispute. Individual joinder is impractical. Class treatment will allow for
21 common issues to be resolved in a single forum, simultaneously, and without
22 duplication of effort and expense.

23 e. Public Policy Considerations: Certification of this lawsuit as a class action
24 advances the State of California's strong public interest in ensuring its
25 approximately millions of employed residents are properly paid the wages they
26 earned for the hours they worked. Class actions provide a mechanism for
27 enforcement of labor laws and allow for vindication of employee rights by
28 unnamed class members.

22. Common questions of law and fact as to the class members predominate over questions affecting only individual members. The common questions of law and fact exist as to whether the employment policies and practices formulated by Defendants and applied to the class members constitute violate California law.

GENERAL ALLEGATIONS

23. Plaintiff and the Class Members in this action worked for Defendants and were compensated on an hourly basis.

24. Defendants maintained an unlawful policy and practice of deducting wages and earnings from Plaintiff and the Class Members. Specifically, Defendants had the policy and practice of deducting the cost of the Class Members' uniforms and guard cards from their pay, which were required for the Class Members to perform their work duties.

25. Defendants also required Plaintiff and Class Members to incur costs for work-related purposes without full reimbursement, including but not limited to mileage, the purchase of uniforms that employees were required to wear on the job, guard cards, and the use of their personal cell phones to perform work duties.

26. Defendants had a policy and practice of requiring Plaintiff and Class Members to purchase three unique shirts from Defendants that served as the company's uniform and identified the Class Members as security guards. Plaintiff and Class Members were required to wear these uniforms in order to perform their work duties. Defendants charged the cost of these uniforms to Plaintiff and Class Members by unlawfully deducting the amount from their paychecks.

27. Defendants also required Plaintiff and Class Members to use their personal cellphones to call Defendants' mission control center once every hour they worked to report on their duties. Defendants were fully aware of the frequency of these calls, mandated that employees make the calls as an essential function of their work, and did not provide employees with company phones. The only reimbursement employees received was a payment of \$2.50 per week, below the reasonable percentage of the actual cost of the Class Members' phone bills for use of the phone and data on a workweek basis.

1 28. Furthermore, as part of carrying out their duties as security guards, Plaintiff and Class
2 Members were expected and required to patrol events that spanned a large area (for example, more
3 than one city block) in their personal vehicles. Defendants did not reimburse Plaintiff and the Class
4 Members for the mileage spent traveling in their personal vehicles to carry out their duties and during
5 work hours.

6 29. Defendants charged Plaintiff and Class Members to for guard cards, which were
7 required for their work with Defendants. Defendants unlawfully deducted this cost from Plaintiff and
8 the Class Members' pay.

9 30. In direct consequence of their job duties, Plaintiff and Class Members unavoidably and
10 necessarily incurred losses, expenditures, costs, and expenses that Defendants did not fully and
11 compliantly reimburse as a matter of policy and practice.

12 31. To the extent that Defendants reimbursed Plaintiff and Class Members, those amounts
13 were underpaid. At all relevant times, Defendants were required to comply with the reimbursement
14 mandate of Labor Code § 2800 and 2802.

15 32. Additionally, Defendants failed to provide compliant first and second meal periods to
16 Plaintiff and the Class Members. Plaintiff and the Class Members were subject to Defendants'
17 common policy and practice of never providing an opportunity to receive either a first meal break on
18 days when employees worked over 6 hours, or a second meal break on days when employees worked
19 over 10 hours. Employees were expected and required to remain on-duty all times throughout the
20 entirety of their shifts, regardless of the shift length. Coverage was not provided to relieve the Class
21 Members from their duties at any point during their shifts for the purpose of receiving a meal period.

22 33. As such, Plaintiff and the Class Members experienced missed meal periods nearly
23 every day, and the majority of any meal periods they did receive were short or late, in violation of
24 Labor Code §§ 226.7, 512, and § 11 of the applicable IWC Wage Orders.

25 34. When Defendants did not provide fully complaint meal periods, Defendants failed to
26 pay Plaintiff and Class Members a meal period premium at the regular rate of compensation in
27 violation of Labor Code § 226.7.

1 35. Likewise, Defendants failed to provide compliant rest periods to Plaintiff and the Class
2 Members. Defendants maintained a common policy and practice of not authorizing or permitting
3 Plaintiff and the Class Members to take all their rest breaks. As described above, Class Members were
4 expected and required to remain on-duty all times throughout the entirety of their shifts, without rest.
5 Coverage was not provided to relieve Class Members from their duties at any point during their shifts
6 for the purpose of receiving a rest period. Indeed, the rest periods were effectively on-duty, but
7 Defendants failed to provide the corresponding rest period.

8 36. Defendants did not pay rest period premiums when Defendants did not provide Plaintiff
9 and the Class Members compliant rest periods, in violation of Labor Code section 226.7.

10 37. Defendants failed to provide all records upon Plaintiff's request. Specifically,
11 Defendants refused to produce Plaintiff's time records despite repeated follow ups and efforts by
12 Plaintiff.

13 38. Because of these violations, Defendants failed provide accurate itemized wage
14 statements to the Class Members that included the accurate total gross or net wages earned, as the
15 employees earned premium wages, that were not paid or otherwise not paid at the lawful rate.
16 Therefore, Defendants have provided inaccurate and non-compliant wage statements to the Class
17 Members.

18 39. These violations create derivative liability for failure to pay all wages owed each
19 payday or upon separation of employment.

20 40. As a result of the foregoing violations, Defendants also failed to timely pay all wages
21 as they were due to Plaintiff and Class Members while they were employed and also failed to timely
22 pay all wages due to Plaintiff and Class Members at their separation of employment.

23 41. Through this action, Plaintiff seeks to enforce the rights of the State of California,
24 through the LWDA, to enforce the Labor Code and collect civil penalties for Defendants' Labor Code
25 violations.

1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL WAGE DEDUCTIONS**

3 **Violation of Labor Code §§ 221 through 225**

4 **(All Claims Alleged by Plaintiff and Class Members Against All Defendants)**

5 42. All outside paragraphs of this Complaint are incorporated into this section.

6 43. This cause of action is brought pursuant to Labor Code §§ 221 through 225. Labor
7 Code § 221 renders it “unlawful for any employer to collect or receive from an employee any part of
8 wages theretofore paid by said employer to said employee.” Labor Code § 222 renders it illegal to
9 unlawfully withhold any part of wages agreed upon from the employee. Labor Code § 222.5 renders
10 it unlawful to deduct from employee compensation, or require employee payment, for pre-employment
11 medical or physical examination taken as a condition of employment. Labor Code § 223 states
12 “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall
13 be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by
14 contract.”

15 44. Defendants maintained an unlawful policy and practice of deducting wages and
16 earnings from Plaintiff and the Class Members. As a result, Plaintiff and the Class Members may
17 recover civil penalties, as provided under Labor Code sections 225.5 (\$100/\$200), per violation per
18 pay period per employee, along with all other civil penalties permitted by law.

19 **SECOND CAUSE OF ACTION**

20 **MEAL PERIOD VIOLATIONS**

21 **Violation of Labor Code §§ 226.7 and 512**

22 45. All outside paragraphs of this Complaint are incorporated into this section.

23 46. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
24 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
25 meal period premiums in lieu thereof), and which further provide a private right of action for an
26 employer’s failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
27 regular rate of compensation.

47. Defendants willfully failed in their affirmative obligation to consistently provide Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning before the fifth hour of hour for each work period of more than five hours per day and a second duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the “Meal Periods” sections of the applicable orders).

48. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant meal period was not provided, in violation of Labor Code sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the “Meal Periods” sections of the applicable orders).

49. Plaintiff and class members are entitled to recover to the full amount of the meal period premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7

50. All outside paragraphs of this Complaint are incorporated into this section.

51. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods (or rest period premiums in lieu thereof), and which further provide a private right of action for an employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful regular rate of compensation.

52. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiff and class members to receive compliant, duty-free rest periods of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the applicable orders).

53. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

FOURTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Violation of Labor Code §§ 204, 210, 218

54. All outside paragraphs of this Complaint are incorporated into this section.

55. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

56. Defendants willfully failed in their affirmative obligation to timely pay all wages, including paid sick leave and meal and rest premiums, earned by Plaintiff and class members twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the "Minimum Wages" sections of the applicable orders).

57. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

1 **FIFTH CAUSE OF ACTION**

2 **WAGE STATEMENT VIOLATIONS**

3 **Violation of Labor Code § 226**

4 58. All outside paragraphs of this Complaint are incorporated into this section.

5 59. This cause of action is brought by the Wage Statement Subclass pursuant to Labor Code
6 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
7 pay period, and which further provide a private right of action for an employer's failure to comply
8 with this obligation.

9 60. Defendants knowingly and intentionally failed in their affirmative obligation provide
10 accurate itemized wage statements to Plaintiff and class members resulting in injury to Plaintiff and
11 class members. Specifically, the wage statements issued to Plaintiff and class members did not
12 accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

13 61. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
14 accurate itemized wage statements, causing confusion and concealing wage and premium
15 underpayments.

16 62. As a result, Plaintiff and class members are entitled to recover the statutory penalty of
17 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
18 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
19 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
20 Code section 226(e).

21 **SIXTH CAUSE OF ACTION**

22 **WAITING TIME PENALTIES**

23 **Violation of Labor Code §§ 201 *et seq.***

24 63. All outside paragraphs of this Complaint are incorporated into this section.

25 64. This cause of action is brought by the Waiting Time Class pursuant to Labor Code
26 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
27 employment, and which further provide a private right of action to recover statutory waiting time
28

penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

65. Defendants willfully failed and continue to fail in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and members of the Waiting Time Class immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

66. Plaintiff and the Waiting Time Class are entitled to recover to a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

Violation of Labor Code § 2802

67. All outside paragraphs of this Complaint are incorporated into this section.

68. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and the Reimbursement Class for all necessary expenditures, losses, expenses, and costs incurred by them in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

69. Defendants' unlawful acts and omissions deprived Plaintiff and class members of lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and class members are entitled to recover to amount of the unreimbursed expenses of Plaintiff and class members in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2802.

EIGHTH CAUSE OF ACTION

FAILURE TO PROVIDE RECORDS

Violation of Labor Code §§ 226, 432, and 1198.5

70. All outside paragraphs of this Complaint are incorporated into this section.

71. Plaintiff brings this cause of action exclusively *in an individual capacity*.

72. Labor Code section 432 states that [i]f an employee. . . signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.”

73. Labor Code section 226(b) grants employees the right to inspect or receive “a copy of records pertaining to their employment.” Labor Code section 226(f) authorizes a penalty of \$750 for an employer’s failure to comply with a request for records made under section 226.

74. Labor Code section 1198.5 requires employers to provide an employee's "personnel records" within 30 days of receipt of the request. Section 1198.5(k) authorizes a penalty of \$750 for an employer's failure to provide a copy of or permit inspection of personnel records. Section 1198.5(l) allows an employee to seek injunctive relief to obtain an employer's compliance with this section and authorizes the recovery of attorneys' fees and costs.

75. Section 7 (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, requires that employers maintain time records of when an employee begins and ends each work period and when the employee takes meal periods, among other required employment and payroll records. Section 7(C) states that “[a]n employee’s records shall be made available for inspection by the employee upon reasonable request.”

76. Plaintiff requested from Defendants all records due under the IWC Wage Orders (including the Records sections) and Labor Code sections 226, 432, and 1198.5. Defendants refused to produce Plaintiff's time records despite repeated follow ups and efforts by Plaintiff.

77. Defendants' unlawful acts and omissions deprived Plaintiff of the ability review the documents they received during their employment and to inspect and reconcile their actual time worked with the ultimate pay they received on their wage statements. Plaintiff is entitled to recover the penalties and injunctive relief, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5, and Labor Code sections 226 and 1198.5.

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

Violation of Business and Professions Code §§ 17200 *et seq.*

78. All outside paragraphs of this Complaint are incorporated into this section.

1 79. Defendants have engaged and continue to engage in unfair and/or unlawful business
2 practices in the State of California in violation of California Business and Professions Code § 17200
3 by committing the foregoing wage and hour violations alleged throughout this Complaint.

4 80. Defendants' dependence on these unfair and/or unlawful business practices deprived
5 Plaintiff and continue to deprive other class members of compensation to which they are legally
6 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
7 Defendants over competitors who have been and/or are currently employing workers in compliance
8 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
9 business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

10 81. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
11 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
12 restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired,
13 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

14 82. Plaintiff does not have an adequate remedy at law for past or future violations, to the
15 extent the statute of limitations on each of the alleged causes of action do not extend to the four year
16 limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order
17 violations do not provide a private right of action.

18 83. Plaintiff and class members are entitled to injunctive relief against Defendants,
19 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
20 an ownership interest and to prevent future damage and the public interest under Business and
21 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
22 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
23 § 1021.5.

1 **TENTH CAUSE OF ACTION**

2 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

3 **Violation of Labor Code §§ 2698 *et seq.***

4 **(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)**

5 84. All outside paragraphs of this Complaint are incorporated into this section.

6 85. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
7 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
8 codified as Labor Code section 2698 *et seq.*:

9 a. All current and former non-exempt employees who worked for Defendants in
10 California at any time from one year prior to the postmark date of the initial
11 PAGA notice through date of trial.

12 86. Plaintiff reserves the right to amend, supplement, or add to this description of the
13 aggrieved employees, according to proof.

14 87. The State of California, via the Labor and Workforce Development Agency
15 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
16 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
17 files suit is always the real party in interest.”])

18 88. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
19 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
20 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
21 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
22 action brought by an aggrieved employee on behalf of himself or herself and other current or former
23 employees pursuant to the procedures specified in Section 2699.3. “

24 89. Labor Code section 2699(f) provides: “For all provisions of this code except those for
25 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
26 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
27 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
28

1 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
2 each subsequent violation.”

3 90. Any allegations regarding violations of the IWC Wage Orders are enforceable as
4 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
5 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

6 91. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
7 penalties under the PAGA.

8 92. On or about February 15, 2023, Plaintiff paid the requisite PAGA filing fee and
9 provided written notice (by online electronic filing with the LWDA and by certified mail to
10 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
11 the alleged violations.

12 93. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor
13 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
14 forth herein (the “PAGA notice”).

15 94. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
16 written PAGA notice from the LWDA.

17 95. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
18 Plaintiff nor Plaintiff’s counsel has received written notice by certified mail from any defendant
19 providing a description of any actions taken to cure the alleged violations.

20 96. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
21 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
22 the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all
23 prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

24 97. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this
25 Complaint, Defendants committed the following violations and are liable for all corresponding civil
26 penalties:

27 a. ***Unlawful Wage Deductions.*** Violation of Labor Code §§ 221 through 225.
28

- b. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- c. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- d. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- e. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- f. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- g. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- h. ***Failure to Provide Employee Records.*** Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders.

98. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of damages in amount according to proof;
- f. For all recoverable pre- and post-judgment interest;
- g. For recovery of all civil and statutory penalties and liquidated damages;
- h. For disgorgement of all amounts wrongfully obtained;
- i. For this action to be maintained as a representative action under the PAGA;

- 1 j. For Plaintiff and counsel of record to be provided with all enforcement capability as if
2 the action were brought by the State of California or the California Division of Labor
3 Enforcement;
4 k. For recovery of all civil penalties and other recoverable amounts under the PAGA;
5 l. For restitution and injunctive relief;
6 m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
7 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
8 1194, 2802, 2699, and Code of Civil Procedure section 1021.5; and
9 n. For such other relief the Court deems just and proper.

10
11 Dated: April 24, 2023

Ferraro Vega Employment Lawyers, Inc.

12
13 

Nicholas J. Ferraro

Attorneys for Plaintiff Ralph Shakespeare

Exhibit 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
3160 Camino del Rio South, Suite 308
San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

February 15, 2023

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt

Iron Wall Security, Inc.
2100 Palomar Airport Road, Suite 204
Carlsbad, California 92011

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Brad Heaton
President, Iron Wall Security
2100 Palomar Airport Road, Suite 204
Carlsbad, California 92011

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **RALPH SHAKESPEARE** (“Plaintiff”) and all other “aggrieved employees” of the following “Defendant(s)”:

IRON WALL SECURITY, a corporation;
BRAD HEATON, an individual

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that

employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in a settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case be conducted in coordination with Plaintiff’s counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Security Guard from about June 2022 to October 2022. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS –

Unlawful Wage Deductions

Violation of Labor Code §§ 221 through 225

Defendants violated Labor Code sections 221 through 225 with respect to the aggrieved employees.

Labor Code section 221 renders it “unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code

section 222 renders it illegal to unlawfully withhold any part of wages agreed upon from the employee. Labor Code section 222.5 renders it unlawful to deduct from employee compensation, or require employee payment, for pre-employment medical or physical examination taken as a condition of employment. Labor Code section 223 states “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

Defendants maintained an unlawful policy and practice of deducting wages and earnings from Plaintiff and the aggrieved employees. Specifically, Defendants had the policy and practice of deducting the cost of the aggrieved employees’ uniforms and guard cards from their pay, which were required for the aggrieved employees to perform their work duties.

Ralph Shakespeare		xxx-xx-1683		MEMO: Thank you for your hard work.							
Check #: 3977		Check Date: 10/28/2022		EMP#: 4423179154							
Period Start: 10/28/2022		Period Ending: 10/28/2022									
Gross Wages					Withholding Taxes			Deductions/Benefits			
Desc	Hours	Rate	Amt	YTD	Desc	Amt	YTD	Desc	Ben	Amt	YTD
Regular	24.000	16.250	390.00	8688.50	SS	24.34	785.36	Uniform De		0.00	140.00
Overtime	0.000	24.375	0.00	3527.40	FIT	14.35	891.40	Guard Card		0.00	100.00
Double O	0.000	32.500	0.00	16.64	FIT (Supp)	0.00	0.00				
Holiday	0.000	24.000	0.00	384.00	MEDI	5.69	183.67				
Cell Pho	0.000	2.500	2.50	50.00	Add MEDI	0.00	0.00				
					California SDI	4.32	139.30				
					California SDI	0.00	0.00				
					California Sta	4.63	301.53				
					California Sta	0.00	0.00				
										0.00	240.00
			392.50	12666.54		53.33	2301.26		0.00		0.00
Accruals					ACH			Net Pay		Company	
Vacation: 0.00 used 0.00 accr 0.00 remn								Net: \$339.17		Iron Wall Security, Inc.	
Sick: 0.00 used 0.00 accr 24.00 remn										2100 Palomar Airport Road Ste 204	
										Carlsbad CA 92011	

Plaintiff's Payroll Records Demonstrating Unlawful Wage Deductions

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 225.5 (\$100/\$200), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Meal Period Premium Wages Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858,

862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is “exceedingly narrow” and applies only when (1) “the nature of the work prevents the employee from being relieved of all duty” and (2) *both* “the employer and employee have agreed, in writing, to the on-duty meal period.” *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Defendants failed to provide compliant first and second meal periods to Plaintiff and the aggrieved employees. Plaintiff and the aggrieved employees were subject to Defendants’ common policy and practice of never providing an opportunity to receive either a first meal break on days when employees worked over 6 hours, or a second meal break on days when employees worked over 10 hours. Employees were expected and required to remain on-duty all times throughout the entirety of their shifts, regardless of the shift length. Coverage was not provided to relieve the aggrieved employees from their duties at any point during their shifts for the purpose of receiving a meal period.

Furthermore, Defendants failed to pay meal period premiums when Defendants did not provide Plaintiff and the aggrieved employees compliant meal periods (or when meal periods were “on-duty”), in violation of Labor Code section 226.7.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Rest Period Premium Wages **Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Defendants failed to provide compliant rest periods to Plaintiff and the aggrieved employees. Defendants maintained a common policy and practice of not authorizing or permitting Plaintiff and the aggrieved employees to take all their rest breaks. As described above, aggrieved employees were expected and required to remain on-duty all times throughout the entirety of their shifts, without rest. Coverage was not provided to relieve the aggrieved employees from their duties at any point during their shifts for the purpose of receiving a rest period. Indeed, the rest periods were effectively on-duty, but Defendants failed to provide the corresponding rest period.

Defendants did not pay rest period premiums when Defendants did not provide Plaintiff and the aggrieved employees compliant rest periods, in violation of Labor Code section 226.7.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment **Violation of Labor Code §§ 204, 204b, 210**

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides "every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil

penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As discussed above, Defendants underpaid Plaintiff and other aggrieved employees’ meal and rest period premium pay at the lawful rate of compensation. Defendants are separately liable for not paying the full amount owed to Plaintiff and other aggrieved employees each pay period in violation of Labor Code sections 204 and/or 204(b).

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment **Violation of Labor Code §§ 201, 202, 203, 256**

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours’ notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours’ notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub. Additionally, because Defendants failed to correctly state the meal or rest period premiums *earned* (and at the lawful rate), Defendants violated Labor Code § 226(a)(9) because the wage statements did not list the applicable hourly rates in effect (the premium rates) or the hours worked at those rates.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unreimbursed Employee Expenses
Violation of Labor Code §§ 2802, 2804

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement.

First, Defendants had a policy and practice of requiring Plaintiff and the aggrieved employees to purchase three unique shirts from Defendants that served as the company’s uniform and identified the aggrieved employees as security guards. Plaintiff and the aggrieved employees were required to wear these uniforms in order to perform their work duties. Defendants charged the cost of these uniforms to Plaintiff and the aggrieved employees by unlawfully deducting the amount from their paychecks.

Second, Defendants required Plaintiff and the aggrieved employees to use their personal cellphones to call Defendants’ mission control center once every hour they worked to report on their duties. Defendants were fully aware of the frequency of these calls, mandated that employees make the calls as an essential function of their work, and did not provide employees with company phones. The only reimbursement employees received was a payment of \$2.50 per week, below the reasonable percentage of the actual cost of the aggrieved employees’ phone bills for use of the phone and data on a workweek basis.

Ralph Shakespeare xxx-xx-1683
 Check #: 3977 Check Date: 10/28/2022
 Period Start: 10/28/2022 Period Ending: 10/28/2022

MEMO: Thank you for your hard work.
 EMP#: 4423179154

Gross Wages					Withholding Taxes			Deductions/Benefits			
Desc	Hours	Rate	Amt	YTD	Desc	Amt	YTD	Desc	Ben	Amt	YTD
Regular	24.000	16.250	390.00	8688.50	SS	24.34	785.36	Uniform De		0.00	140.00
Overtime	0.000	24.375	0.00	3527.40	FIT	14.35	891.40	Guard Card		0.00	100.00
Double O	0.000	32.500	0.00	16.64	FIT (Supp)	0.00	0.00				
Holiday	0.000	24.000	0.00	384.00	MEDI	5.69	183.67				
Cell Pho	0.000	2.500	2.50	50.00	Add MEDI	0.00	0.00				
					California SDI	4.32	139.30				
					California SDI	0.00	0.00				
					California Sta	4.63	301.53				
					California Sta	0.00	0.00				
										0.00	240.00
			392.50	12666.54		53.33	2301.26		0.00		0.00
Accruals					ACH	Net Pay			Company		
Vacation: 0.00 used 0.00 accr 0.00 remn							Net: \$339.17		Iron Wall Security, Inc.		
Sick: 0.00 used 0.00 accr 24.00 remn									2100 Palomar Airport Road Ste 204		
									Carlsbad CA 92011		

Plaintiff's Payroll Records Demonstrating Noncompliant Cellphone Reimbursement

Third, as part of carrying out their duties as security guards, Plaintiff and the aggrieved employees were expected and required to patrol events that spanned a large area (for example, more than one city block) in their personal vehicles. Defendants did not reimburse Plaintiff and the aggrieved employees for the mileage spent traveling in their personal vehicles to carry out their duties and during work hours.

Fourth, Defendants charged Plaintiff and the aggrieved employees to for guard cards, which were required for their work with Defendants. Defendants also unlawfully deducted this cost from Plaintiff and the aggrieved employees' pay.

In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Provide Employee Records Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders

Defendants violated Labor Code sections 226, 432, 1198.5, and 1174 with respect to the aggrieved employees.

Labor Code section 226(b) requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer." Labor Code section 432 states that "[i]f an employee ... signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request." Labor Code section 1198.5 grants "[e]very current and former employee, or his or her representative, ... the right to inspect and receive a copy of the

personnel files that the employer maintains relating to the employee's performance or to any grievance concerning the employee." Section 7(A) (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates that employers maintain and make available "time records showing when the employee begins and ends each work period" as well as time records showing "[m]eal periods, split shift intervals, and daily hours worked[.]" Labor Code section 1174(d) requires these and other records be maintained for at least three years.

Defendants failed to provide all records upon Plaintiff's request. Specifically, Defendants refused to produce Plaintiff's time records despite repeated follow ups.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000), 1174.5 (\$500), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive, flowing style.

Nicholas J. Ferraro

Cc Plaintiff Ralph Shakespeare

Cyrus Moshiri, Defense Counsel
cmoshiri@fisherphillips.com

Boris Sorsher
bsorsher@fisherphillips.com