

FILED
Superior Court of California
County of Los Angeles
04/14/2023

David W. Slayton, Executive Officer / Clerk of Court
By: M. Arellanes Deputy

DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
JENICA LEONARD (SBN 245366)
jenica@spivaklaw.com
THE SPIVAK LAW FIRM
8605 Santa Monica Bl., PMB 42554
West Hollywood, CA 90069
Telephone: (213) 725-9094
Facsimile: (213) 634-2485

Attorneys for Plaintiff(s),
ALBERT JOHN LAMONTE, and all others similarly situated
(Additional attorneys for Plaintiff on the Next Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)

ALBERT JOHN LAMONTE, on behalf of
himself and all others similarly situated, the
general public, and as an “aggrieved employee”
on behalf of other “aggrieved employees” and the
State of California under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff,

vs.

A-ONE SECURITY SERVICES, INC., a
California corporation; and DOES 1–50,
inclusive,

Defendants.

Case No. 23STCV03497

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);
6. Waiting Time Penalties (Lab. Code § 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
8. Civil Penalties (Lab. Code §§ 2898, *et seq.*)

JURY TRIAL DEMANDED



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 Fl
Los Angeles, CA 90069

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

ADDITIONAL ATTORNEY FOR PLAINTIFF

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

Attorney for Plaintiff,
ALBERT JOHN LAMONTE 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 Fl
Los Angeles, CA 90069

1 Plaintiff, Albert John Lamonte (hereafter “Plaintiff” or “Lamonte”), on behalf of himself
2 and all others similarly situated, the general public, and as an “aggrieved employee” on behalf of
3 other “aggrieved employees” and the State of California under the Labor Code Private Attorneys
4 General Act of 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

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

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

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

16 (B) Provide all meal periods;

17 (C) Authorize and permit all rest breaks;

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

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

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

21 (G) Issue only accurate and complete itemized wage statements; and

22 (H) Timely pay wages upon termination of employment.

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

26 **II. THE PARTIES**

27 3. Plaintiff Albert John Lamonte is a resident of California. At all relevant times,
28 Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations § 11050
and an “aggrieved employee” within the meaning of Labor Code § 2699 (c).

4. Defendant A-One Security Services, Inc. is a corporation organized and existing
under the laws of California and 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 Fl
Los Angeles, CA 90069

1 5. 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 6. 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 7. 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 8. 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 9. 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 10. **Class Definition:** The Class is defined as follows: All persons Defendants
28 employed in California as 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 action (“Class” or “Class Members”).



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 Fl
Los Angeles, CA 90069



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 Fl
Los Angeles, CA 90069

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

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

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

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

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

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

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

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

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

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

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

28 14. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
Code, the Wage Order, and the Business and Professions Code.

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

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

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

20 **IV. STATEMENT OF FACTS**

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

25 professional, semiprofessional, managerial, supervisory, laboratory,
26 research, technical, clerical, office work, and mechanical occupations. Said
27 occupations shall include, but not be limited to, the following: accountants;
28 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; door-
 keepers; drafters; elevator operators; estimators; editors; graphic arts



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 Fl
Los Angeles, CA 90069

1 technicians; guards; guides; hosts; inspectors; installers; instructors;
2 interviewers; investigators; librarians; laboratory workers; machine
3 operators; mechanics; mailers; messengers; medical and dental technicians
4 and technologists; models; nurses; packagers; photographers; porters and
5 cleaners; process servers; printers; proof readers; salespersons and sales
6 agents; secretaries; sign erectors; sign painters; social workers; solicitors;
7 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

8 Wage Order, § 2(O). At all relevant times during the applicable limitations period, the
9 Defendants, Lamonte, and all other Class Members were covered by the Wage Order because
10 Lamonte and all other Class Members worked for the Defendants as security guards, their
11 assistants and other related occupations listed as professional, semiprofessional, technical,
12 clerical, mechanical, and kindred occupations. Accordingly, Lamonte and all other Class
13 Members are entitled to the protections the Wage Order provides.

14 19. On approximately June 30, 2020, the Defendants began to employ Lamonte in
15 Long Beach in the position of hourly, non-exempt security guard. The Defendants continuously
16 employed him in that capacity until on or about May 28, 2022, when his employment ended.

17 20. At all relevant times, the Defendants issued wages to Lamonte and all of the other
18 Class Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant
19 times, the Defendants classified Lamonte and all of the other Class Members as non-exempt
employees entitled to the protections of the Labor Code and the Wage Order.

20 21. At all relevant times, the Defendants failed to compensate Lamonte and all other
21 Class Members for all hours worked at the applicable minimum or regular rates of pay.

22 22. At all relevant times, the Defendants failed to compensate Lamonte and all other
23 Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a
24 week, and for the first eight hours of the seventh day of the workweek. The Defendants required
25 Lamonte and all other Class Members to be on-call or on standby at all times when not scheduled
26 to work. The Defendants required Lamonte and all other Class Members to immediately show up
27 for work on off-days, days the Defendants had not scheduled them to work. Additionally, the
28 Defendants required Lamonte and all other Class Members to report to their assigned posts at
least 30 minutes before their scheduled start times to receive briefings from the security guards



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 Fl
Los Angeles, CA 90069

1 they were scheduled to replace. However, the Defendants only paid Lamonte and the other Class
2 Members for their scheduled work time. The Defendants prohibited Lamonte and all other Class
3 Members from recording the work time spent in these pre-shift briefings and did not pay Lamonte
4 and the Class Members for this work time. Due to the Defendants' informal time keeping system
5 (a handwritten schedule), Lamonte and all other Class Members regularly worked hours for which
6 the Defendants did not compensate them. The Defendants failed to pay Lamonte and all other
7 Class Members at the correct rates of pay for all hours worked.

8 23. At all relevant times, the Defendants failed to compensate Lamonte and all other
9 Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over the
10 first eight of the seventh day of the workweek.

11 24. At all relevant times, the Defendants failed to provide Lamonte and all of the other
12 Class Members with all timely 30-minute, off-duty meal periods. The Defendants required
13 Plaintiff and all other Class Members to remain on-the-clock and at their posts at all times. The
14 Defendants did not allow Plaintiff and all other Class Members to clock-out during their meal
15 period. The Defendants required Plaintiff and all other Class Members to monitor work-related
16 communications and respond to other security issues any time they were on the clock. The
17 Defendants forced Plaintiff and all other Class Members to remain clocked-in their entire shift.
18 Consequently, the Defendants prevented Plaintiff and all other Class Members from taking their
19 30-minute, duty-free meal breaks. The Defendants also failed to pay premium wages for days on
20 which they failed to provide Lamonte and all other Class Members with meal periods as required
21 by law.

22 25. At all relevant times, the Defendants failed to authorize and permit Lamonte and
23 all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours
24 worked or major portion thereof. The Defendants required Plaintiff and all other Class Members
25 to remain on-the-clock and at their posts at all times. The Defendants required Plaintiff and all
26 other Class Members to monitor work-related communications and respond to other security
27 issues any time they were on the clock—they were never afforded breaks. The Defendants forced
28 Plaintiff and all other Class Members to remain clocked-in their entire shift. Consequently, the
29 Defendants prevented Plaintiff and all other Class Members from taking any 10-minute, duty-free
30 rest periods. The Defendants also failed to pay premium wages for days on which they failed to
31 authorize and permit Lamonte and all of the other Class Members to take rest breaks as required



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 Fl
Los Angeles, CA 90069

1 by law.

2 26. At all relevant times, the Defendants required Lamonte and all other Class
3 Members to incur certain business expenses in the course of performing their duties. The
4 Defendants required Lamonte and all other Class Members to supply mobile phones and telecom
5 to perform their job duties. The Defendants mandated Lamonte and all other Class Members use
6 their personal cell phones to check in with a manager at the beginning of their shift, alerting the
7 manager they were at their post. In addition, the Defendants required Lamonte and all other Class
8 Members to use their personal cell phones to check in with a manager at the end of their shift,
9 alerting the manager they were leaving their post for the day. Further, the Defendants relied on
10 Lamonte and all other Class Members personal cell phone usage and telecom to perform company
11 security business, however, the Defendants did not provide mobile phones (or an alternative
12 device to perform their duties with) and did not reimburse Lamonte and the other Class Members
13 for their cell phone use.

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

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

24 29. At all relevant times, the Defendants failed to maintain accurate employee records
25 of Lamonte and all other Class Members.

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

- 28 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;



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 Fl
Los Angeles, CA 90069

1 D. Not paid one hour's pay for each workday in which Defendants failed to
2 provide them with one or more timely meal periods;

3 E. Not paid all wages earned, including, but not limited to, minimum, regular,
4 overtime, and doubletime wages for work performed while clocked out;

5 F. Not indemnified for all necessary business expenditures incurred during
6 the discharge of their duties;

7 G. Not provided with accurate and complete wage statements; and

8 H. Not timely paid all earned and unpaid wages at the time their employment
9 ended.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY ALL WAGES AT THE CORRECT RATES**

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

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

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

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

17 33. Section 2 of the Wage Order defines "hours worked" as "the time during which an
18 employee is subject to the control of an employer, and includes all the time the employee is
19 suffered or permitted to work, whether or not required to do so."

20 34. Section 3 of the Wage Order states:

21 (A) Daily Overtime - General Provisions

22 (1) The following overtime provisions are applicable to
23 employees 18 years of age or over and to employees 16 or
24 17 years of age who are not required by law to attend school
25 and are not otherwise prohibited by law from engaging in the
26 subject work. Such employees shall not be employed more
27 than eight (8) hours in any workday or more than 40 hours
28 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:



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 Fl
Los Angeles, CA 90069

- 1 (a) One and one-half (1 ½) times the employee's regular
2 rate of pay for all hours worked in excess of eight (8)
3 hours up to and including 12 hours in any workday,
4 and for the first eight (8) hours worked on the seventh
5 (7th) consecutive day of work in a workweek.
6
7 (b) Double the employee's regular rate of pay for all
8 hours worked in excess of 12 hours in any workday
9 and for all hours worked in excess of eight (8) hours
10 on the seventh (7th) consecutive day of work in a
11 workweek.
12
13 (c) The overtime rate of compensation required to be
14 paid to a nonexempt full-time salaried employee
15 shall be computed by using the employee's regular
16 hourly salary as one-fortieth (1/40) of the employee's
17 weekly salary.

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

21 36. Labor Code section 510 states:

22 Eight hours of labor constitutes a day's work. Any work in excess of eight
23 hours in one workday and any work in excess of 40 hours in any one
24 workweek and the first eight hours worked on the seventh day of work in
25 any one workweek shall be compensated at the rate of no less than one and
26 one-half times the regular rate of pay for an employee. Any work in excess
27 of 12 hours in one day shall be compensated at the rate of no less than twice
28 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



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 Fl
Los Angeles, CA 90069

1 employee under conditions that violate the Wage Order.

2 40. In conjunction, these provisions of the Labor Code require employers to pay non-
3 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
4 worked, including unrecorded hours when the employer knew or reasonably should have known
5 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000)
6 22 Cal.4th 575, 585.)

7 41. At all relevant times during the applicable limitations period, Defendants failed to
8 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
9 minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and
10 doubletime hours, respectively, that they worked at the correct rates of pay. The Defendants
11 required Lamonte and all other Class Members to be on-call or on standby at all times when not
12 scheduled to work. The Defendants required Lamonte and all other Class Members to
13 immediately show up for work on off-days, days the Defendants had not scheduled them to work.
14 Additionally, the Defendants required Lamonte and all other Class Members to report to their
15 assigned posts at least 30 minutes before their scheduled start times to receive briefings from the
16 security guards they were scheduled to replace. However, the Defendants only paid Lamonte and
17 the other Class Members for their scheduled work time. The Defendants prohibited Lamonte and
18 all other Class Members from recording the work time spent in these pre-shift briefings and did
19 not pay Lamonte and the Class Members for this work time. Due to the Defendants' informal
20 time keeping system (a handwritten schedule), Lamonte and all other Class Members regularly
21 worked hours for which the Defendants did not compensate them. The Defendants failed to pay
22 Lamonte and all other Class Members at the correct rates of pay for all hours worked.

23 42. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
24 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
25 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
26 rates of pay as required by California law.

27 ///

28 ///

///



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 Fl
Los Angeles, CA 90069

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7, 512, 1198

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

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

44. 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, 512, 1198, and the Wage Order.

45. 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.

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

An employer shall 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 shall 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.

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 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. . . .



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 Fl
Los Angeles, CA 90069

(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.

48. 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.

49. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the 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. The Defendants required Plaintiff and all other Class Members to remain on-the-clock and at their posts at their posts at all times. The Defendants did not allow Plaintiff and all other Class Members to clock-out during their meal period. The Defendants required Plaintiff and all other Class Members to monitor work-related communication and respond to other security issues any time they were on the clock. Furthermore, the Defendants forced Plaintiff and all other Class Members to remain clocked-in their entire shift. Consequently, the Defendants prevented Plaintiff and all other Class Members from taking their 30-minute, duty-free meal breaks.

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. Additionally, Defendants



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 Fl
Los Angeles, CA 90069

1 denied Plaintiff and all other Class Members a second 30-minute meal period on days they
2 required Plaintiff and all other Class Members to work for more than 8 hours. Furthermore,
3 Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and
4 the other Class Members with timely meal periods.

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

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

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

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

17 **Lab. Code § 226.7**

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

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

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

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

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

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

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest



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 Fl
Los Angeles, CA 90069

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.

59. 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.

60. 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.

61. 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.

62. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take all timely rest periods. The Defendants required Plaintiff and all other Class Members to remain on-the-clock and at their posts at all times. The Defendants required Plaintiff and all other Class Members to monitor work-related communications and respond to



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 Fl
Los Angeles, CA 90069

1 other security issues any time they were on the clock—they were never afforded breaks. The
2 Defendants forced Plaintiff and all other Class Members to remain clocked-in their entire shift.
3 Consequently, the Defendants prevented Plaintiff and all other Class Members from taking any
4 10-minute, duty-free rest periods. Furthermore, Defendants failed to pay premium wages to
5 Plaintiff and the Class Members for days on which they failed to authorize and permit Plaintiff
6 and the other Class Members to take timely rest periods.

6 63. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
7 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
8 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
9 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
10 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
11 to authorize and permit them to take 10-minute rest periods every four hours worked or major
12 fraction thereof.

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

17 65. Defendants failed to provide Plaintiff with all required rest breaks in accordance
18 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
19 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
20 which resulted in Defendants not providing the Class Members with all rest breaks required by
21 California law.

22 66. Defendants failed to pay Plaintiff the additional wages required by California
23 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
24 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
25 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
26 Class Members with additional wages for all rest breaks not provided to them as required by
27 California Labor Code § 226.7.

28 67. 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 rest breaks not provided to them.



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 Fl
Los Angeles, CA 90069

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

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO INDEMNIFY**

6 **Lab. Code § 2802**

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

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

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

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

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

16 73. As described above, the Defendants required Lamonte and all of the other Class
17 Members to incur certain business expenses in the course of performing their duties. The
18 Defendants required Lamonte and all other Class members to supply mobile phones and telecom
19 to perform their job duties. Defendants mandated Lamonte and all other Class Members use their
20 personal cell phones to check in with a manager at the beginning of their shift, alerting the
21 manager they were at their post. In addition, the Defendants required Lamonte and all other Class
22 Members to use their personal cell phones to check in with a manager at the end of their shift,
23 alerting the manager they were leaving their post for the day. Further, the Defendants relied on
24 Lamonte and all other Class Members personal cell phone usage and telecom to perform company
25 security business, however, the Defendants did not provide mobile phones (or an alternative
26 device to perform their duties with) and did not reimburse Lamonte and the other Class Members
27 for their cell phone use.

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



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 Fl
Los Angeles, CA 90069

FIFTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code §§ 226

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

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

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

A. Gross wages earned;

B. 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;

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

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

E. Net wages earned;

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

G. 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;

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

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

A. The amount of the gross wages or net wages paid to the employee during



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 Fl
Los Angeles, CA 90069

1 the pay period or any of the other information required to be provided on the itemized wage
2 statement pursuant to California Labor Code § 226(a);

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

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

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

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

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

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

27 80. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
28 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
the other Class Members with accurate wage statements but intentionally provided wage
statements that Defendants knew were not accurate.



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 Fl
Los Angeles, CA 90069

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

11 **SIXTH CAUSE OF ACTION**

12 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

13 **Lab. Code §§ 201, 202, and 203**

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

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

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

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

21 85. Labor Code § 202 provides that all earned and unpaid wages of an employee who
22 quits after providing at least 72-hours' notice before quitting are due and payable at the time of
23 quitting and that all earned and unpaid wages of an employee who quits without providing at least
24 72-hours' notice before quitting are due and payable within 72 hours.

25 86. The Defendants failed to pay Lamonte and all of the other Class Members whose
26 employment ended all of the earned, but unpaid wages described above by the conclusion of their
27 employment, including all minimum wages earned, all regular wages earned, all overtime wages
28 earned, all doubletime wages earned, all meal period premium wages earned, all rest break
premium wages earned, and related information.

 87. 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



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 Fl
Los Angeles, CA 90069

1 § 201 or § 202.

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

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

10 **SEVENTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

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

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

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

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

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

23 93. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
24 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
25 Members were deprived of all minimum wages earned, all regular wages earned, all overtime
26 wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break
27 premium wages earned, phone expenses, telecom expenses, and comparable money and property.

28 94. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
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.



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 Fl
Los Angeles, CA 90069

1 95. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
2 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
3 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

4 **EIGHTH CAUSE OF ACTION**

5 **CIVIL PENALTIES**

6 **Lab. Code §§ 2698, *et seq.***

7 **(By Plaintiff, on behalf of himself, the Aggrieved Employees, and the State of California,**
8 **against all Defendants)**

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

10 97. The "Aggrieved Employees" are all members of the Class defined above who
11 Defendants employed during the period beginning February 7, 2022, and ending on the date that
12 final judgment is entered in this action.

13 98. Labor Code § 204 states:

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

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

26 (2) An employer is in compliance with the requirements of
27 subdivision (a) of Section 226 relating to total hours worked
28 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.



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 Fl
Los Angeles, CA 90069

(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.

99. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

100. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

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

102. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established by California Labor Code § 558).

D. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per



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 Fl
Los Angeles, CA 90069

1 pay period (regardless of whether the initial violations were intentionally committed) (penalty
2 amounts established by California Labor Code § 1197.1).

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

7 103. Plaintiff has complied with the procedures for bringing suit specified in
8 California Labor Code § 2699.3. By letter dated February 7, 2023, Plaintiff filed written notice
9 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
10 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
11 to have been violated, including the facts and theories to support the alleged violations. A true
12 and correct copy of the notice to the LWDA dated February 7, 2023 is attached as **Exhibit A**.
13 Plaintiff submitted his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed
14 to take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff
15 anticipates that the LWDA will provide written notice to Plaintiff informing him that it does not
16 intend to investigate these allegations.

17 104. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
18 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
connection with their claims for civil penalties.

19 **V. PRAYER FOR RELIEF**

20 105. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for
21 relief and judgment against Defendants as follows:

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

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

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

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

27 E. Liquidated damages;

28 F. Statutory penalties, including waiting time penalties;



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 Fl
Los Angeles, CA 90069

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

9 **VI. DEMAND FOR JURY TRIAL**

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

12 Respectfully submitted,

13 THE SPIVAK LAW FIRM

14 Dated: April 14, 2023

15 By:



16 DAVID G. SPIVAK,
17 JENICA P. LEONARD,
18 Attorneys for Plaintiff(s), ALBERT
19 JOHN LAMONTE, and all others
20 similarly situated
21
22
23
24
25
26



27 SPIVAK LAW
28 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 Fl
Los Angeles, CA 90069

EXHIBIT A



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

8605 Santa Monica Bl PMB 42554 West Hollywood CA 90069 Mail
1801 Century Park East 25th Fl Los Angeles CA 90067 Office
(213) 725-9094 Tel
(213) 634-2485 Fax
spivaklaw.com Web

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

February 7, 2023

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

Re: Albert John Lamonte / A-One Security Services Inc.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Albert John Lamonte (hereafter “Lamonte” or “Complainant”) provides notice that A-One Security Services Inc., a California corporation, and related entities (collectively “the A-One Security Services Employers” or “the Employers”) violated his rights and those of all other individuals the A-One Security Services Employers have employed or otherwise contracted with in California as 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, 226.7, 510, 512, 1194, 1197, 1198, 2802, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Lamonte hereby provides this notice to the Labor & Workforce Development Agency and the A-One Security Services Employers and their agents and representatives.

At all relevant times, the A-One Security Services Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Lamonte and all 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 June 30, 2020, the A-One Security Services Employers began to employ Lamonte in Long Beach in the position of hourly, non-exempt security guard. The A-One Security Services Employers continuously employed him in that capacity until on or about May 28, 2022, when his employment ended.

At all relevant times, the A-One Security Services Employers issued wages to Lamonte and all other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the A-One Security Services Employers classified Lamonte and all other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The A-One Security Services Employers failed to compensate Lamonte and all other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The A-One Security Services Employers required Lamonte and all other Aggrieved Employees to be on-call or on standby at all times when not scheduled to work. The A-One Security Services Employers required Lamonte and all other Aggrieved Employees to immediately show up for work on off-days, days the A-One Security Services Employers had not scheduled them to work. Additionally, the A-One Security Services Employers required Lamonte and all other Aggrieved Employees to report to their assigned posts at least 30 minutes before their scheduled start times to receive briefings from the security guards they were scheduled to replace. However, the A-One Security Services Employers only paid Lamonte and the other Aggrieved Employees for their scheduled work time. The A-One Security Services Employers prohibited Lamonte and all other Aggrieved Employees from recording the work time spent in these pre-shift briefings and did not pay Lamonte and the Aggrieved Employees for this work time. Due to the A-One Security Services Employers' informal time keeping system (a handwritten schedule), Lamonte and all other Aggrieved Employees regularly worked hours for which the A-One Security Services Employers did not compensate them.

At all relevant times, the A-One Security Services Employers failed to provide Lamonte and all other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The A-One Security Services Employers also failed to provide Lamonte and all other Aggrieved Employees all daily second, timely 30-minute, off-duty meal periods when they worked over 10 hours. The A-One Security Services Employers required Lamonte

and all other Aggrieved Employees to remain on-duty and at their posts at all times. The A-One Security Services Employers did not allow Lamonte and all other Aggrieved Employees to take 30-minute, off-duty meal periods. Additionally, the A-One Security Services Employers required Lamonte and all other Aggrieved Employees to monitor work-related communications and respond to other security issues any time they were scheduled for work including their meal periods. Furthermore, the A-One Security Services Employers forced Lamonte and all other Aggrieved Employees to remain on-duty their entire shift. Consequently, the A-One Security Services Employers prevented Lamonte and all other Aggrieved Employees from taking their 30-minute, duty-free meal breaks. The A-One Security Services Employers also failed to pay premium wages for days on which they failed to provide Lamonte and all other Aggrieved Employees with meal periods as required by law.

At all relevant times, the A-One Security Services Employers failed to authorize and permit Lamonte and all other Aggrieved Employees to take ten-minute, off-duty, rest breaks every four hours worked or major portion thereof. The A-One Security Services Employers required Lamonte and all other Aggrieved Employees to remain on-duty and at their posts at all times. Additionally, the A-One Security Services Employers required Lamonte and all other Aggrieved Employees to monitor work-related communications and respond to other security issues any time they were on-duty and at their assigned posts and did not permit them to take duty-free 10-minute breaks. The A-One Security Services Employers also failed to pay premium wages for days on which they failed to authorize and permit Lamonte and all other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the A-One Security Services Employers required Lamonte and all other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The A-One Security Services Employers required Lamonte and all other Aggrieved Employees to supply mobile phones to perform their job duties. The A-One Security Services Employers mandated Lamonte and all other Aggrieved Employees use their personal cell phones to check in with a manager at the beginning of their shift, alerting the manager they were at their post. In addition, the A-One Security Services Employers required Lamonte and all other Aggrieved Employees to use their personal cell phones to check in with a manager at the end of their shift, alerting the manager they were leaving their post for the day. Further, the A-One Security Employers relied on Lamonte and all other Aggrieved Employees personal cell phone usage and telecom to perform company security business, however, the A-One

Security Services Employers did not provide mobile phones (or an alternative device to perform their duties with) and did not reimburse Lamonte and the other Aggrieved Employees for their cell phone use.

At all relevant times, the A-One Security Services Employers failed to issue to Lamonte and all other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay and all wages earned. The A-One Security Services Employers knowingly and intentionally failed to state on the wage statements they issued to Lamonte and all other Aggrieved Employees the unpaid work time and wages earned for it discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

The A-One Security Services Employers also failed to timely pay Lamonte and all other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The A-One Security Services Employers failed to maintain accurate employee records of Lamonte and all other Aggrieved Employees.

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

- (a) The A-One Security Services Employers failed to pay Lamonte and all other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The A-One Security Services Employers failed to provide Lamonte and all other Aggrieved Employees all meal periods in compliance with California law;
- (c) The A-One Security Services Employers failed to authorize and permit Lamonte and all other Aggrieved Employees to take rest breaks in compliance with California law;

- (d) The A-One Security Services Employers failed to compensate Lamonte and all other Aggrieved Employees at one hour's pay for each day in which the A-One Security Services Employers failed to provide them with one or more meal periods as required by law;
- (e) The A-One Security Services Employers failed to compensate Lamonte and all other Aggrieved Employees at one hour's pay for each day in which the A-One Security Services Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The A-One Security Services Employers failed to indemnify Lamonte and all other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The A-One Security Services Employers willfully failed to timely pay Lamonte and all other Aggrieved Employees all earned and unpaid wages during their employment with the A-One Security Services Employers and when their employment ended; and
- (h) The A-One Security Services Employers failed to maintain accurate employment records pertaining to Lamonte and all other Aggrieved Employees.

Accordingly, Lamonte now seeks civil penalties on behalf of himself and all other Aggrieved Employees based on the A-One Security Services 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; door-keepers; 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 A-One Security Services Employers, Lamonte, and all of the Aggrieved Employees were covered by the Wage Order because the A-One Security Services Employers operated, and Lamonte and all of the Aggrieved Employees worked for, the A-One Security Services Employers as security guards, their assistants, and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations. Accordingly, Lamonte and all 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[.]

In relevant part, Labor Code section 1194 states:

- (a) 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 (1½) 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 Cal.4th 575, 585.

The A-One Security Services Employers failed to compensate Lamonte and all other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The A-One Security Services Employers required Lamonte and all other Aggrieved Employees to be on-call or on standby at all times when not scheduled to work. The A-One Security Services Employers required Lamonte and all other Aggrieved Employees to immediately show up for work on off-days, days the A-One Security Services Employers had not scheduled them to work. Additionally, the A-One Security Services Employers required Lamonte and all other Aggrieved Employees to report to their assigned posts at least 30 minutes before their scheduled start times to receive briefings from the security guards they were scheduled to replace. However, the A-One Security Services Employers only paid Lamonte and the other Aggrieved Employees for their scheduled work time. The A-One Security Services Employers prohibited Lamonte and all other Aggrieved Employees from recording the work time spent in these pre-shift briefings

and did not pay Lamonte and the Aggrieved Employees for this work time. Due to the A-One Security Services Employers' informal time keeping system (a handwritten schedule), Lamonte and all other Aggrieved Employees regularly worked hours for which the A-One Security Services Employers did not compensate them.

At all relevant times during the applicable limitations period, the A-One Security Services Employers failed to compensate Lamonte and all other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Lamonte now seeks civil penalties on behalf of himself and all 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.
- (B) 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.

....

- (D) 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:

- (b) 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.
- (c) 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 A-One Security Services Employers failed to provide Lamonte and all other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The A-One Security Services Employers also failed to provide Lamonte and all other Aggrieved Employees all daily second, timely 30-minute, off-duty meal periods when they worked over 10 hours. The A-One Security Services Employers required Lamonte and all other Aggrieved Employees to remain on-duty and at their posts at all times. The A-One Security Services Employers did not allow Lamonte and all other Aggrieved Employees to take 30-minute, off-duty meal periods. Additionally, the A-One Security

Services Employers required Lamonte and all other Aggrieved Employees to monitor work-related communications and respond to other security issues any time they were scheduled for work including during their meal periods. Furthermore, the A-One Security Services Employers forced Lamonte and all other Aggrieved Employees to remain on-duty their entire shift. Consequently, the A-One Security Services Employers prevented Lamonte and all other Aggrieved Employees from taking their 30-minute, duty-free meal breaks. The A-One Security Services Employers also failed to pay premium wages for days on which they failed to provide Lamonte and all other Aggrieved Employees with meal periods as required by law. Accordingly, Lamonte now seeks civil penalties for these Labor Code violations that the A-One Security Services Employers have committed against him and all 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.

In addition, Labor Code section 226.7 states:

- (b) 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.
- (c) 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 A-One Security Services Employers failed to authorize and permit Lamonte and all other Aggrieved Employees to take ten-minute, off-duty, rest breaks every four hours worked or major portion thereof. The A-One Security Services Employers required Lamonte and all other Aggrieved Employees to remain on-duty and at their posts at all times. Additionally, the A-One Security Services Employers required Lamonte and all other Aggrieved Employees to monitor work-related communications and respond to other security issues any time they were on-duty and at their assigned posts and did not permit them to take duty-free 10-minute breaks. Moreover, the A-One Security Services Employers failed to pay Lamonte and all other Aggrieved Employees premium wages on workdays the A-One Security Services Employers failed to provide Lamonte and all other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Lamonte now seeks civil penalties for these Labor Code violations that the A-One Security Services Employers have committed against him and all 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.

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

As described above, at all relevant times, the A-One Security Services Employers required Lamonte and all other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The A-One Security Services Employers required Lamonte and all other Aggrieved Employees to supply mobile phones to perform their job duties. The A-One Security Services Employers mandated Lamonte and all other Aggrieved Employees use their personal cell phones to check in with a manager at the beginning of their shift, alerting the manager they arrived at their post. In addition, the A-One Security Services Employers required Lamonte and all other Aggrieved Employees to use their personal cell phones to check in with a manager at the end of their shift, alerting the manager they were leaving their post for the day. Further, the A-One Security Employers relied on Lamonte and all other Aggrieved Employees personal cell phone usage to perform company security business, however, the A-One Security Services Employers did not provide mobile phones (or an alternative device to perform their duties with) and did not reimburse Lamonte and the other Aggrieved Employees for their cell phone use. Accordingly, Lamonte seeks civil penalties for these Labor Code violations that the A-One Security Services Employers have committed against him and all 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.

The A-One Security Services Employers failed to compensate Lamonte and all other Aggrieved Employees at the correct rates of pay. The A-One Security Services Employers required Lamonte and all other Aggrieved Employees to be on-call or on standby at all times when not scheduled to work. The A-One Security Services Employers required Lamonte and all other Aggrieved Employees to immediately show up for work on off-days, days the A-One Security Services Employers had not scheduled them to work. Additionally, the A-One Security Services Employers required Lamonte and all other Aggrieved Employees to report to their assigned posts at least 30 minutes before their scheduled start times to receive briefings from the security guards they were scheduled to replace.

At all relevant times during the applicable limitations period, the A-One Security Services 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 A-One Security Services Employers knowingly and intentionally failed to state on the wage statements they issued to Lamonte and all 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 doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

Accordingly, Lamonte seeks civil penalties for the Labor Code violations that the A-One Security Services Employers have committed against him and all 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 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 A-One Security Services Employers failed to compensate Lamonte and all other Aggrieved Employees for wages earned, including minimum, regular, overtime, and doubletime wages earned, as well as unprovided meal period premium wages, unprovided rest break premium wages, and other compensation at the intervals stated above. As a result, the A-One Security Services Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Lamonte now seeks civil penalties for the Labor Code violations that the A-One Security Services Employers have committed against him and all 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 A-One Security Services Employers failed to pay Lamonte and all other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Lamonte, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation. By failing to pay Lamonte and all other Aggrieved Employees as set forth above at the end of employment, the A-One Security Services Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all other Aggrieved Employees, Lamonte seeks civil penalties from the A-One Security Services Employers as follows:

1. 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));
2. 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
3. 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 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 A-One Security Services Employers failed to compensate Lamonte and all other Aggrieved Employees for all hours worked at the correct rates of pay, including all meal period premium wages earned, all rest break premium wages earned, all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, and related compensation. As a result, the A-One Security Services Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Lamonte and all other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Lamonte seeks civil penalties on behalf of himself and all other Aggrieved Employees as follows:

LWDA / A-One Security Services Inc.

Re: Albert John Lamonte

February 7, 2023

Page 22 of 22

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 Albert John Lamonte 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: Albert John Lamonte
Walter L. Haines, Esq.

A-One Security Services Inc.
c/o Agent for service of process
Alma D Juarez
1525 E. Ontario Avenue
101A
Corona, CA 92881

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 1801 Century Park East, 25th Fl, Los Angeles, CA 90067.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Friday, April 14, 2023, I served the foregoing document described as **FIRST AMENDED COMPLAINT** on interested parties by electronic mail, addressed as follows:

A-ONE SECURITY SERVICES INC.
c/o Douglas Wade, Esq.
Law Offices of Douglas M. Wade, PLC
500 N. State College Blvd., Ste 1100
Orange, CA 92868
doug@ca-businesslawyer.com
doug@dmwadelaw.com

____ (BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 1801 Century Park East, 25th Fl, Los Angeles, CA 90067.

XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address emily@spivaklaw.com.

EXECUTED on Friday, April 14, 2023, at Los Angeles, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


EMILY HOUNG LY



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 Fl
Los Angeles, CA 90069