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By /s/ Maria Coronel
Deputy Clerk

Attorneys for Plaintiff MARCEL MCGEE and the Putative Class

CALIFORNIA SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

MARCEL MCGEE, an individual,

Plaintiff,

vs.

**EXECUSHIELD, INC.; and DOES 1-100,
inclusive,**

Defendants.

Case No.: 23-CIV-01064

**FIRST AMENDED INDIVIDUAL, CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR**

- 1. FAILURE TO PAY OVERTIME**
- 2. FAILURE TO PAY MINIMUM WAGE**
- 3. FAILURE TO PROVIDE MEAL BREAKS**
- 4. FAILURE TO PROVIDE REST BREAKS**
- 5. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS**
- 6. VIOLATION OF BUSINESS AND
PROFESSIONS CODE SECTION 17200**
- 7. FAILURE TO TIMELY PAY WAGES AT
END OF EMPLOYMENT**
- 8. VIOLATION OF PRIVATE ATTORNEYS
GENERAL ACT**
- 9. RETALIATION (Lab. Code §§ 98.6 & 1102.5)**
- 10. RETALIATION (Lab. Code § 6310)**

JURY TRIAL DEMANDED

Plaintiff Marcel McGee brings this individual, class and representative action against Execushield, Inc., and Does 1 through 100, for violations of the California Labor Code, the California Business and Professions Code, and the IWC Wage Orders.

1 **PARTIES**

2 1. Marcel McGee (“McGee” or “Plaintiff”) was, at all times relevant herein, employed in
3 San Mateo County, California, and was an “employee” as defined by the California Labor Code, and
4 the applicable California Industrial Wage Commission (“IWC”) Order(s).

5 2. Execushield, Inc. (“Execushield”) is a California corporation with its principal place of
6 business in Illinois and, at all times relevant herein, was an “employer” as defined by the the
7 California Labor Code and the applicable IWC Order(s).

8 3. Execushield and Does 1-100 are collectively referred to as Defendants.

9 4. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as
10 Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such
11 Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names
12 and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that
13 each of the fictitiously named Defendants is responsible in some manner for the occurrences herein
14 alleged and that Plaintiff’s injuries and damages herein alleged were legally caused by such
15 Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of
16 said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

17 5. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
18 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
19 employee, partner and/or joint venturer of and was acting in concert with each of the remaining
20 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting
21 within the course and scope of such agency, service, employment partnership, joint venture and/or
22 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
23 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
24 the remaining Defendants.

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GENERAL ALLEGATIONS

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1 16. At times, McGee and Execushield's other non-exempt California employees were
2 unable to take meal and rest breaks at all because their posts were too busy or understaffed.

3 17. Further, Execushield frequently failed to relieve McGee and its other non-exempt
4 California of employer control during their meal and rest breaks.

5 18. When McGee and Execushield's other non-exempt California employees were able to
6 take their meal breaks, they routinely occurred after 5 hours of work.

7 19. Frequently, roving security offers failed to timely relief McGee and Execushield's other
8 non-exempt California employees for their meal and rest breaks, or failed to show up to relieve them
9 entirely.

10 20. McGee raised this issue to his supervisors on a number of occasions, but was ignored or
11 offered excuses.

12 21. Similarly, McGee and Execushield's other non-exempt California employees were
13 regularly prevented by Execushield from taking rest breaks as required by California law. Although
14 McGee always worked shifts in excess of 3.5 hours, which is reflected in the time records kept by
15 Execushield, during those shifts he was almost never permitted a reasonable opportunity to take a rest
16 break.

17 22. Rest breaks were not scheduled, and McGee was often required to work through rest
18 breaks to attend to needs at his posts. McGee would either not be released to take a rest break or
19 pulled back in the middle of a rest break to attend to work duties.

20 23. McGee and Execushield's other non-exempt California employees had company issues
21 cell phones and/or radios which they were required to carry at all times and which made uninterrupted
22 meal and rest breaks difficult, if not impossible.

23 24. When McGee and Execushield's other non-exempt California were not provided
24 compliant meal and rest breaks, Execushield did not pay premium wages for all of McGee and their
25 other non-exempt employees' missed meal and rest periods. Indeed, Execushield did not pay premium
26 wages for any of McGee's missed meal or rest periods.

1 25. Because of the violations set forth above, the wage statements furnished by Execushield
2 to McGee and its non-exempt California employees violated California Labor Code section 226(a)
3 insofar as they failed to accurately show:

- 4 a. The gross wages earned, in violation of section 226(a)(1);
- 5 b. The total hours worked by the employee in violation of section 226(a)(2);
- 6 c. The net wages earned, in violation of section 226(a)(5); and
- 7 d. All applicable hourly rates in effect during the pay period and the corresponding
8 number of hours worked at each hourly rate in violation of section 226(a)(9).

9 26. Execushield was, at all times relevant herein, aware of the requirements of California
10 Labor Code section 226.

11 27. Because McGee and Execushield's other non-exempt California employees are not paid
12 for all hours work, provided compliant meal and rest breaks, or paid the premiums associated with
13 missing the same, they are not timely paid all wages due and owing to them during each pay period
14 and at the end of their employment.

15 28. From at least four years prior to the filing of this action, Execushield has adopted and
16 employed unfair business practices. These unfair business practices include, but are not limited to,
17 failing pay minimum wage and overtime, failing to provide compliant meal and rest breaks, and failing
18 to pay premiums associated with the same.

INDIVIDUAL ALLEGATIONS

19 29. Throughout his employment, McGee complained to his supervisors on a number of
20 occasions regarding his inability to take compliant meal and rest breaks.

21 30. Without satisfactory resolution, McGee retained attorneys to help him.

22 31. On March 8, 2023, McGee's counsel sent a letter to Execushield seeking McGee's
23 personnel file, time, and payroll records. That letter was received on March 10, 2023, at 8:05 a.m.
24 See **Exhibit 1**.

25 32. On March 9, 2023, McGee filed this lawsuit.

26 33. On March 14, 2023, McGee received a text from one of his supervisors, Xavier Lopez
27 ("Lopez"), asking if he would be reporting to work that night. McGee found the text strange because
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1 he had a set schedule and had never before received such an inquiry. McGee confirmed he would be
2 at work and report as scheduled.

3 34. When McGee arrived he found the message below on the bulletin board:

4 “Everyone needs to be clocking out for breaks (on Track Tik) notifying your partner
5 when you’re off and when you’re back.”

6 35. McGee was taken aback by the message and immediately felt targeted because of his
7 complaints.

8 36. That night there was a massive storm. Lopez called McGee and asked him to set out
9 glow sticks. McGee informed Lopez that he did not think it was safe to go outside during the storm,
10 but Lopez insisted. Ultimately, McGee refused to go outside in the dangerous conditions. As soon as
11 the storm subsided, McGee distributed glow sticks as ordered.

12 37. On the morning of March 15, 2023, Ronnie Rosen, General Manager for the Shelter
13 Creek Condominium Owners’ Association where McGee was assigned, expressed concerns regarding
14 McGee and asked that his assignment be reevaluated. Tellingly, amongst the concerns listed by Rosen,
15 was an apparent inability by McGee to “communicate necessary lunchbreaks to his partner for
16 coverage.” See **Exhibit 2**.

17 38. On March 15, 2023, at 2:58 p.m., Execushield’s Director of Human Resources, Danita
18 Martinez (“Martinez”), was served with McGee’s complaint. See **Exhibit 3**.

19 39. Later that day McGee received a telephone call from Execushield from a woman he did
20 not know. McGee was informed that the site managers didn’t want him there anymore. When McGee
21 inquired as to why, he was told that it was because he hadn’t timely distributed the glow sticks. When
22 McGee expressed shock and confusion about the explanation, the woman said that she couldn’t
23 believe it either, but that that was what she was being told.

24 40. On March 16, 2023, McGee spoke with Martinez who offered him two positions she
25 knew full well he would be unable to accept.

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1 41. On March 17, 2023, Martinez emailed McGee to confirm that she had offered the two
2 unworkable positions and that Execushield had nothing else available to offer McGee. When McGee
3 asked to be paid out for his PTO because he was not able to work and earn money, Martinez asked
4 McGee if he wanted to resign. McGee confirmed that he was not resigning, that the positions offered
5 had been previously offered and declined, that the Execushield's conduct was causing him financial
6 and mental stress, and that he believed he was being targeted. See **Exhibit 4**.

7 42. On March 19, 2023, McGee received an email from Execushield's Director of Field
8 Operations, Evan Kubota ("Kubota"). According to Kubota's email, which is attached as **Exhibit 5**
9 and set forth in full below, "[d]ue to the actions of a few bad apples, we have had to revise our policies
10 and make both the timekeeping documentation and missed break reporting mandatory for all sites and
11 staff members."

12 *Good morning everyone,*

13 *The company is having to take steps to clarify and enforce lunch and break*
14 *policies. We make every effort to ensure a compliant, safe, healthy and rewarding*
15 *work environment. Historically, we have given our staff leeway in break and*
16 *lunch documentation because we recognize that staff exercise discretion in breaks*
 and we didn't want to create burden on staff.

17 *Due to the actions of a few bad apples, we have had to revise our policies and*
18 *make both the*
19 *timekeeping documentation and missed break reporting mandatory for all sites*
20 *and all staff members.*

21 *All staff members are included in this email, it is not intended to single out any*
22 *one member who has not been clocking breaks.*

23 *Please review the attached policy revision, and begin complying with the*
24 *requirement immediately.*

25 *I thank you for taking the time to take on these changes with a professional and*
26 *positive attitude.*

27 *Feel free to reach out to me or your management teams with any questions.*

28 *Evan Kubota*

1 43. Kubota’s email also included a document entitled “OPERATIONS POLICY: On Shift
2 Break and Lunch – Security Staff”, as well as step-by-step instructions about how to take breaks and
3 use Execushield’s Trak-Tik time clocking application. The document was dated March 15, 2023, the
4 same date that Martinez received McGee’s lawsuit. See **Exhibits 3 and 5**.

5 44. On March 20, 2023, McGee received an email from Execushield’s Payroll and HR
6 Admin, Miranda Farrell (“Farrell”). Farrell confirmed that she had spoken with Martinez and could
7 not pay McGee early unless he resigned, but offered to allow him to use his PTO. See **Exhibit 6**.

8 45. Execushield never offered McGee any suitable employment.

9 46. Ultimately, McGee was retaliated against and terminated in violation of Labor Code
10 sections 98.6 and 1102.5 for his complaints about Execushield’s inability to provide compliant meal
11 and rest breaks and/or in violation of Labor Code 6310 for complaining about unsafe working
12 conditions.

13 **PRIVATE ATTORNEYS GENERAL ACT ALLEGATIONS**

14 47. The Private Attorney General Act (“PAGA”), as set forth at California Labor Code §
15 2698 et seq., is and at all times relevant herein was applicable to McGee’s employment.

16 48. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for
17 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
18 (“LWDA”) for violations of the Labor Code may, as an alternative, be recovered through a civil action
19 brought by an aggrieved employee on behalf of himself or herself and other current or former
20 employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor Code §
21 2699(a).

22 49. Pursuant to PAGA, an “Aggrieved Employee” is “any person who was employed by
23 the alleged violator and against whom one or more of the alleged violations was committed.” Labor
24 Code § 2699(c).

25 50. McGee was employed by Execushield and several of the violations alleged herein were
26 committed against him during his time of employment. McGee is therefore an Aggrieved Employee
27 as defined by Labor Code § 2699(c).

1 51. Execushield's other current and former non-exempt employees are also Aggrieved
2 Employee in that one or more of the alleged violations were also committed against them during their
3 time of employment with Execushield.

4 52. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for
5 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
6 ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil action
7 brought by an aggrieved employee on behalf of himself or herself and other current or former
8 employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor Code §
9 2699(a).

10 53. McGee hereby realleges and incorporates by reference each and every allegation set
11 forth above as though fully set forth herein.

12 54. As is outlined herein, Execushield violated the Labor Code as to Ms. Kabasele and
13 other Aggrieved Employees it employed and/or employs within California. Specifically, ULTA
14 violated Labor Code sections 201-204, 210, 226, 226.7, 510, 512, 1185.12, and 1198, as well as the
15 applicable IWC Wage Orders.

16 55. Pursuant to Labor Code § 2699(f), the civil penalty recoverable in a PAGA action is
17 that which is provided for by the by the Labor Code. When the Labor Code does not provide a civil
18 penalty, the penalty recoverable shall be \$100 for the initial violation per employee per pay period and
19 \$200 for each subsequent violation per employee per pay period.

20 56. Pursuant to Pursuant to California Labor Code § 2699(g), an aggrieved employee may
21 recover the civil penalty on behalf of himself or herself and other current or former employees against
22 whom one or more of the alleged violations was committed. Furthermore, any employee who prevails
23 in any action shall be entitled to an award of reasonable attorney's fees and costs.

24 57. Pursuant to Labor Code § 2699.3, an aggrieved employee, including Ms. Kabasele, may
25 pursue a civil action arising under PAGA after the following requirements have been met:

26 a. The aggrieved employee shall give written notice by certified mail to the
27 LWDA and the employer (hereinafter "Employee's Notice") of the specific provisions of
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1 California Labor Code alleged to have been violated, including the facts and theories to support
2 the alleged violations;

3 b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the
4 employer and the aggrieved employee by certified mail that it does not intend to investigate the
5 alleged violation within 60 days of the postmark date of the Employee’s Notice. Upon receipt
6 of the LWDA’s Notice, or if the LWDA does not provide notice with 65 calendar days of the
7 postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action
8 pursuant to California Labor Code § 2699 to recover civil penalties in addition to any other
9 penalties to which the employee may be entitled.

10 58. For all alleged violations not enumerated in Labor Code § 2699.5, the employer is
11 given thirty-three (33) days to cure and notify the aggrieved employee by certified mail that the
12 violation has been cured. If the violation is not cured, the aggrieved employee may commence a civil
13 action pursuant to California Labor Code § 2699 to recover civil penalties in addition to any other
14 penalties to which the employee may be entitled.

15 59. On March 8, 2023, McGee provided written notice by certified mail to Execushield and
16 by online filing to the LWDA of the specific provisions of the Labor Code alleged to have been
17 violated, including the facts and theories to support the alleged violations.

18 60. As of the filing of this First Amended Class and Representative Action Complaint,
19 which is more 65 days after McGee provided written notice, the LWDA has not responded to his
20 notification or otherwise indicated an intention to investigate her claims.

21 61. Accordingly, McGee has satisfied the administrative prerequisites under Labor Code §
22 2699.3 to bring a civil action to recover penalties against Execushield, in addition to other remedies,
23 for violations of California Labor Code sections Execushield, as well as the applicable IWC Wage
24 Orders.

25 **CLASS ACTION ALLEGATIONS**

26 62. McGee seeks to maintain this action as a class action as to the First through Sixth
27 Causes of Action. McGee brings this action, on behalf of herself and all others similarly situated, as a

1 class action pursuant to California Code of Civil Procedures § 3382. The putative class which McGee
2 seeks to represent consists of the following:

- 3 a. All current and former non-exempt California employees of Execushield from
4 March 8, 2019 through the date of trial (the “Non-Exempt Employee Class”);
- 5 b. All current and former non-exempt California employees of Execushield who
6 worked one or more shift of longer than five hours from March 8, 2019 through
7 the date of final judgment (the “Meal Break Class”);
- 8 c. All current and former non-exempt California employees of Execushield who
9 worked one or more shift of longer than three and one-half hours from March 8,
10 2019 through the date of final judgment (the “Rest Break Class”);
- 11 d. All members of the Non-Exempt Employee Class, the Meal Break Class and the
12 Rest Break Class who were issued one or more wage statements from March 8,
13 2022 to the date of final judgment (the “Wage Statement Class”); and
- 14 e. All members of the Non-Exempt Employee Class, the Meal Break Class and the
15 Rest Break Class whose employment ended from March 8, 2020 through the
16 date of final judgment (the “Waiting Time Penalty Class”).

17 The Non-Exempt Employee Class, the Meal Break Class, the Rest Break Class, Wage Statement
18 Class, and the Waiting Time Penalty Class are collectively referred to as the Class.

19 63. The class of persons is so numerous that joinder of all members is impracticable, and
20 the disposition of their claims in a class action is a benefit to the parties and to the Court. McGee is
21 informed and believes, and based thereon alleges, that Defendants employ more than 100 employees
22 who satisfy the class definition. Although the exact number and identity of class members is not
23 presently known, they can be identified in Defendants’ records through coordinated discovery
24 pursuant to this class action.

25 64. This action may be maintained as a class pursuant to California Code of Civil
26 Procedure § 382 because the questions of law and fact which are common to class members clearly
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1 predominate over any questions affecting only individual members and because a class action is
2 superior to other available methods for adjudicating the controversy.

3 65. There are numerous common questions of law and fact arising out of Defendants'
4 conduct. This class action focuses on Defendants' uniform: (a) failure to pay all wages, (b) failure to
5 provide compliant meal and rest breaks, (c) failure to provide accurate itemized wage statements, and
6 (d) failure to timely pay all wages due and owing.

7 66. Furthermore, common questions of fact and law predominate over any questions
8 affecting only individual members of the class. The predominating common or class-wide questions
9 of law and fact include the following:

- 10 a. Whether Defendants paid their non-exempt California employees all the wages
11 they were owed;
- 12 b. Whether Defendants provided compliant meal and rest breaks to the non-
13 exempt California employees;
- 14 c. Whether Defendants paid all premiums owed to their non-exempt California
15 employees for noncompliant meal and rest periods;
- 16 d. Whether Defendants furnished accurate itemized wage statements to their non-
17 exempt California employees;
- 18 e. Whether Defendants timely paid all wages due and owing to their non-exempt
19 California employees when their employment ended;
- 20 f. Whether the alleged violations constitute unfair business practices;
- 21 g. Whether the Class is entitled to injunctive relief; and
- 22 h. Whether the Class is entitled to unpaid wages, statutory penalties, civil
23 penalties, and/or restitutionary relief, and the amount of the same.

24 67. McGee's claims are typical of the claims of the members of the Class as a whole, all of
25 whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the
26 alleged violations of Defendants, because Defendants subjected McGee and each member of the Class
27 to the same violations alleged herein.

1 68. The defenses of Defendants, to the extent that such defenses apply, are applicable
2 generally to the whole Class and are not distinguishable as to the proposed class members.

3 69. McGee will fairly and adequately protect the interests of all members of the Class, and
4 has retained attorneys with extensive experience in litigation, including class and representative
5 actions. McGee has no interests that conflict with those of the Class. McGee is able to fairly and
6 adequately protect the interests of all members of the class because it is in her best interest to
7 prosecute the claims alleged herein in order to obtain the full compensation due himself and the other
8 class members.

9 70. A class action is superior to any other method available for fairly and efficiently
10 adjudicating the controversy because 1) joinder of individual class members is not practicable, 2)
11 litigating the claims of individual class members would be unnecessarily costly and burdensome and
12 would deter individual claims, 3) litigating the claims of individual class members would create a risk
13 of inconsistent or varying adjudications that would establish incompatible standards of conduct for
14 Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to
15 bring individual claims, 5) class members would be discouraged from pursuing individual claims
16 because the damages available to them are relatively small, and 6) public policy encourages the use of
17 the class actions to enforce employment laws and protect individuals who, by virtue of their
18 subordinate position, are particularly vulnerable.

19 71. Judicial economy will be served by maintenance of this lawsuit as a class action. To
20 process numerous virtually identical individual cases will significantly increase the expense on the
21 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this
22 matter. There are no obstacles to effective and efficient management of this lawsuit as a class action
23 by this Court and doing so will provide multiple benefits to the litigating parties including, but not
24 limited to, efficiency, economy, and uniform adjudication with consistent results.

25 72. Notice of a certified class action and any result or resolution of the litigation can be
26 provided to class members by mail, email, publication, or such other methods of notice as deemed
27 appropriate by the Court.

FIRST CAUSE OF ACTION
Failure to Pay Overtime
[Cal. Lab. Code § 510 and the IWC Wage Orders]
Against Defendants

73. McGee hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

74. Pursuant to California Labor Code section 510, 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.

75. Pursuant to California Labor Code section 1198, the maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees and the employment of any employee for longer hours than those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

76. During the relevant time period, McGee and Defendants' other non-exempt California employees regularly worked overtime.

77. During the relevant time period, Defendants intentionally and willfully failed to pay all overtime wages due to McGee and the other members of the Non-Exempt Employee Class.

78. Wherefore, McGee and the other members of the Non-Exempt Employee Class have been injured as set forth above and request relief as hereafter provided.

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SECOND CAUSE OF ACTION
Failure to Pay Minimum Wage
[Cal. Lab. Code § 1182 et seq.]
Against Defendants

79. McGee hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

80. California Labor Code section 1182.12 establishes the minimum wage for California employees from July 1, 2014, to present.

81. Labor Code Section 1194 provides, in relevant part:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ... applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage ... including interest thereon, reasonable attorney's fees, and costs of suit.

82. Labor Code section 1194.2 provides, in relevant part:

In any action under ... Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

83. Labor Code section 1197 provides that the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lesser wage is unlawful.

84. Labor Code section 1197.1 further provides that any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order shall be subject to restitution of wages and liquidated damages payable to the employee.

85. Pursuant to California Labor Code section 1198, the maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees and the employment of any employee for longer hours than those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

1 86. During the relevant time period, Defendants intentionally and willfully failed to pay
2 McGee and the other members of the Non-Exempt Employee Class for every hour worked.

3 87. Wherefore, McGee and the other members of the Non-Exempt Employee Class have
4 been injured as set forth above and request relief as hereafter provided.

5 **THIRD CAUSE OF ACTION**
6 **Failure to Provide Meal Breaks**
7 **[Cal. Lab. Code §§ 226.7, 512 and the IWC Wage Orders]**
8 **Against Defendants**

9 88. McGee hereby realleges and incorporates by reference each and every allegation set
10 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
11 allegations of this cause of action.

12 89. Labor Code § 226.7 requires employers to provide employees meal breaks as mandated
13 by Order of the Industrial Welfare Commission. It states:

- 14 a. No employer shall require any employee to work during any meal or rest period
15 mandated by an applicable order of the Industrial Welfare Commission.
16 b. If an employer fails to provide an employee a meal period or rest period in
17 accordance with an applicable order of the Industrial Welfare Commission, the
18 employer shall pay the employee 1 additional hour of pay at the employee's
19 regular rate of compensation for each work day that the meal or rest period is
20 not provided.

21 90. Labor Code § 512(a) and the applicable Wage Order(s) provide that an employer may
22 not employ a person for a work period of more than 5 hours per day without providing that employee a
23 meal period of not less than 30 minutes, except that if the total work period per day is no more than six
24 hours, the meal period may be waived by mutual consent of both the employer and employee. An
25 employer may not employ a person for a work period of more than 10 hours per day without providing
26 an employee with a second meal period of not less than 30 minutes, except that if the total work period
27 per day of the employee is no more than twelve 12 hours, the meal period may be waived by mutual
28 consent of both the employer and the employee, and if the first meal period was not waived

91. Per the California Labor Code and applicable Wage Order(s) of the Industrial Welfare Commission (“IWC”), if an employer fails to provide a meal or rest or recovery period in accordance with an order of the IWC, the employer shall pay the employee one additional hour of “premium” pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided. Labor Code § 226.7, Cal. Code Regs., tit. 8, § 11020, subds. 11(D), 12(B).

92. As set forth above, McGee and the other members of the Meal Break Class were not provided complaint meal breaks and did not receive all meal period premiums owed for said violations.

93. Wherefore, McGee and the other members of the Meal Break Class have been injured as set forth above and request relief as hereafter provided.

FOURTH CAUSE OF ACTION
Failure to Provide Rest Breaks
[Cal. Lab. Code §§ 226.7 and the IWC Orders]
Against Defendants

94. McGee hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

95. Labor Code § 226.7 requires employers to provide employees rest breaks as mandated by Order of the Industrial Welfare Commission. It states:

- a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 1 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.

/ / /

///

96. The applicable Wage Order(s) provides that 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...” The applicable Wage Order further provides that “[i]f an employer fails to provide an employee 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.”

97. Per the California Labor Code and applicable Wage Order(s) of the Industrial Welfare Commission (“IWC”), if an employer fails to provide a meal or rest or recovery period in accordance with an order of the IWC, the employer shall pay the employee one additional hour of “premium” pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided. Labor Code § 226.7, Cal. Code Regs., tit. 8, § 11020, subds. 11(D), 12(B).

98. As set forth above, McGee and the other members of the Rest Break Class were not provided complaint rest breaks.

99. When McGee and the other members of the Rest Break Class were not provided compliant rest breaks, Defendants did not pay premiums as required by California law.

100. Wherefore, McGee and the other members of the Rest Break Class have been injured as set forth above and request relief as hereafter provided.

FIFTH CAUSE OF ACTION
Failure to Furnish Accurate Itemized Wage Statements
[Cal. Lab. Code § 226]
Against Defendant

101. McGee hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

102. Pursuant to California Labor Code section 226(a) “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are

1 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
2 earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and
3 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages
4 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
5 employee and only the last four digits of his or her social security number or an employee
6 identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all
7 applicable hourly rates in effect during the pay period and corresponding number of hours worked at
8 each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate
9 of pay and the total hours worked for each temporary services assignment.”

10 103. As set forth above, Defendants intentionally and willfully failed to furnish accurate
11 itemized wage statements which complied with Labor Code section 226.

12 104. Wherefore, McGee and the other members of the Wage Statement Class have been
13 injured as set forth above and request relief as hereafter provided.

14 **SIXTH CAUSE OF ACTION**
15 **Unfair Business Practices**
16 **[Cal. Bus. & Prof. Code § 17200 *et seq.*]**
Against Defendants

17 105. McGee hereby realleges and incorporates by reference each and every allegation set
18 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
19 allegations of this cause of action.

20 106. The statutory violations, as alleged above, are unfair business practices within the
21 meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et. seq.*), and
22 include, but are not limited to, failing to pay minimum wage and overtime, failing to provide
23 compliant meal breaks and rest breaks and to pay all premiums owed for the same, and failing to
24 timely pay wages.

25 107. Wherefore, McGee and the other members of the Non-Exempt Employee Class, the
26 Meal Break Class and the Rest Break Class have been damaged as set forth above and request relief as
27 hereafter provided.

108. McGee hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

110. Labor Code section 202 requires an employer to pay the employee all wages due no later than 72 hours after the employee quits his or her employment.

112. During the relevant time period, Defendants failed to pay McGee and the other members of the Waiting Time Penalty Class all earned but unpaid wages at discharge.

113. Wherefore, McGee and the other members of the Waiting Time Penalty Class have been damaged as set forth above and request relief as hereafter provided.

114. McGee hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

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///

1 115. McGee is an “aggrieved employee” under the PAGA as he was employed by
2 Defendants during the applicable statutory period, and suffered one or more of the Labor Code
3 violations outlined herein. Other current and former employees are also aggrieved employees in that
4 one or more of the alleged violations were also committed against them during their time of
5 employment with Defendants.

6 116. McGee seeks to recover, on behalf of and as a proxy for the Labor and Workforce
7 Development Agency (the “LWDA”), the civil penalties provided by the PAGA through a
8 representative action permitted by the PAGA and *Arias v, Sup. Ct. (2009) 46 Cal.4th 969*. Class
9 certification of the PAGA claims is not required.

10 117. McGee seeks to enforce the California Labor Code and related regulations and
11 Industrial Wage Order(s) on behalf of the LWDA and pursuant to the PAGA for a number of
12 violations which include, but are not limited to, all of the following: Labor Code sections 201-204,
13 210, 226, 226.7, 510, 512, 1185.12, and 1198, as well as the applicable IWC Wage Orders

14 118. Pursuant to Labor Code section 2699(f), the civil penalty recoverable in a PAGA action
15 is that which is provided for by the Labor Code or, where no civil penalty is specifically provided, one
16 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
17 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

18 119. Pursuant to California Labor Code section 2699(g), an aggrieved employee may
19 recover the civil penalty on behalf of himself or herself and other current or former employees against
20 whom one or more of the alleged violations was committed. Furthermore, any employee who prevails
21 in any such action shall be entitled to an award of reasonable attorney's fees and costs

22 120. As a result of the myriad violations of the Labor Code and applicable IWC Order(s) set
23 forth above, McGee seeks recovery of civil penalties, attorneys’ fees and costs pursuant to the PAGA
24 as set forth below.

25 121. Wherefore, McGee and the other Aggrieved Employees have been damaged as set forth
26 above and request relief as hereafter provided.

1 **NINTH CAUSE OF ACTION**

2 **Retaliation**

3 **[Cal. Lab. Code §§ 98.6 and 1102.5]**

4 **Against Defendants**

5 122. McGee hereby realleges and incorporates by reference each and every allegation set
6 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
7 allegations of this cause of action.

8 123. Labor Code § 98.6 makes it unlawful for an employer to discharge or in any manner
9 discriminate against an employee because of that employee's attempt to exercise their rights under
10 the Labor Code, including their whistleblower rights pursuant to Labor Code § 1102.5.

11 124. Labor Code § 1102.5(a) prohibits an employer, or any person acting on behalf of the
12 employer, from making, adopting, or enforcing any rule, regulation, or policy preventing an
13 employee from disclosing information to the employer or government or law enforcement agency
14 that the employee has reasonable cause to believe discloses a violation of law or for refusing to
15 participate in an activity that would result in a violation of law.

16 125. Labor Code § 1102.5(b) prohibits an employer, or any other person acting on behalf
17 of the employer, from retaliating against any employee because the employee disclosed
18 information to the employer or government or law enforcement agency that the employee has
19 reasonable cause to believe discloses a violation of law or for refusing to participate in an activity
20 that would result in a violation of law.

21 126. Labor Code § 1102.5(c) prohibits an employer, or any person acting on behalf of the
22 employer, from retaliating against any employee for refusing to participate in an activity that would
23 result in a violation of state or federal statute, or a violation of or noncompliance with a local, state,
24 or federal rule or regulation.

25 127. As evidenced above, Defendants retaliated against McGee because of his
26 complaints of and what he reasonably believed to be violations of the Labor Code in relation to
27 Defendants' failure to provide compliant meal and rest breaks in violation of Labor Code §§ 98.6
28 and 1102.5.

128. Defendants' actions towards McGee were oppressive, fraudulent, and/or malicious, thereby justifying an award of punitive damages against them.

129. Wherefore, McGee has been damaged as set forth above and requests relief as hereafter provided.

TENTH CAUSE OF ACTION

Retaliation

[Cal. Lab. Code § 6310]

Against Defendants

130. McGee hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

131. Labor Code section 6310, subdivision (a) provides that no person shall discharge or in any manner discriminate against any employee because the employee has made any oral or written complaint to, *inter alia*, his or her employer relating to workplace safety.

132. Nonetheless, as set forth above, Defendants retaliated against McGee for making a reasonable, good faith, and bona fide complaint about perceived unsafe work practices.

133. Defendants' actions towards McGee were oppressive, fraudulent, and/or malicious, thereby justifying an award of punitive damages against them.

134. Wherefore, McGee has been damaged as set forth above and requests relief as hereafter provided.

PRAYER FOR RELIEF

WHEREFORE, McGee prays judgment against Defendants as follows:

As to the First through Seventh Causes of Action:

1. That this Court certify the Class;
2. That this Court appoint Plaintiff as the representative of the Class;
3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;
4. That this Court award actual, compensatory, special, and general damages as well as restitutionary relief to Plaintiff and the members of the Class;

5. That this Court award injunctive relief, including that available under Business and Professions Code Section 17203;
6. That this Court award penalties and liquidated damages including, but not limited to, those available under Labor Code sections 201-204, 226, 226.7, 510, 1182.12 and 1194.2;
7. That this Court award statutory attorneys' fees and costs, including those available under Labor Code sections 218.5, 226(e)(1), 226(h), and 1194, as well as Code of Civil Procedure section 1021.5;
8. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law; and
9. That this Court award such other and further relief as the court deems just and proper.

As to the Eighth Cause of Action:

1. For civil penalties, including but not limited to those available under Labor Code §§, 210, 226.3, 256, 558 and 2699(f);
2. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code § 2699(g);
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b), and Labor Code § 218.6; and
4. For such other and further relief as the court deems just and proper

As to the Ninth Cause of Action:

1. For compensatory, special, and general damages;
2. For punitive and/or exemplary damages;
3. For a civil penalty pursuant to Labor Code §§ and 98.6(b)(3) and 1102.5(f);
4. For attorneys' fees and costs including but not limited to those available under Labor Code § 1021.5(j);

1 5. For prejudgment and post-judgment interest according to any applicable provision
2 of law or as otherwise permitted by law including but not limited to that available
3 under Civ. Code § 3287, according to proof; and

4 6. For such other and further relief as the court deems proper.

5 **As to the Tenth Cause of Action**

6 1. For compensatory, special, and general damages;

7 2. For punitive and/or exemplary damages;

8 3. For injunctive relief;

9 4. For costs of suit, including those available under Code of Civil Procedure section
10 1021.5;

11 For prejudgment and post-judgment interest according to any applicable provision
12 of law or as otherwise permitted by law including but not limited to that available
13 under Civ. Code § 3287, according to proof; and

14 5. For such other and further relief as the Court deems proper

16 **DATED:** May 17, 2023

MAYALL HURLEY P.C.

17
18 By _____



ROBERT J. WASSERMANN

JENNY D. BAYSINGER

Attorneys for Plaintiff and the Putative Class

EXHIBIT 1

118 WEST OAK STREET
LODI, CALIFORNIA 95240

STOCKTON OFFICE:
2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207

SOUTHERN CALIFORNIA OFFICE:
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91206
(818) 646-6440
[DOES NOT RECEIVE DELIVERIES]

LAW OFFICES OF

MAYALL HURLEY

A PROFESSIONAL CORPORATION

112 SOUTH CHURCH STREET
LODI, CALIFORNIA 95240

MAIN TELEPHONE: (209) 477-3833

MAIN FACSIMILE: (209) 473-4818

WWW.MAYALLLAW.COM

VLADIMIR F. KOZINA
STEVEN A. MALCOUN
MARK E. BERRY
WILLIAM J. GORHAM, III
NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMANN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA

March 8, 2023

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

EXECUSHIELD INC.
4104 24th Street #501
San Francisco, CA 94119

Re: Marcel L. McGee (SSN: XXX-XX-7081; DOB: 08/13/1983)

To Whom It May Concern:

This office has been retained by Marcel McGee in connection with claims arising out of his employment with Execushield, Inc. Through the enclosed authorization, we hereby request the following records regarding your employee:

1. Mr. McGee's itemized wage statements, pursuant to Labor Code § 226(b);
2. All documents signed by Mr. McGee relating to the obtaining or holding of his employment, pursuant to Labor Code § 432;
3. Mr. McGee's personnel records, pursuant to Labor Code § 1198.5(b);
4. All records documenting the hours worked and paid sick days accrued and used by Mr. McGee, pursuant to Labor Code § 247.5(a); and
5. Mr. McGee payroll records pursuant to Labor Code section 1174 and 29 C.F.R. §§ 516.2.

Please feel free to contact me if you wish to discuss any of the foregoing requests.

Regards,

MAYALL HURLEY P.C.

By: / s / Robert Wassermann
ROBERT J. WASSERMANN

Enclosure

Tracking Number:

9489009000276312465670

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Add to Informed Delivery (<https://informedelivery.usps.com/>)

Latest Update

Your item was delivered to an individual at the address at 8:05 am on March 10, 2023 in SAN FRANCISCO, CA 94114.

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Delivered
Delivered, Left with Individual
SAN FRANCISCO, CA 94114
March 10, 2023, 8:05 am

Arrived at Post Office
SAN FRANCISCO, CA 94141
March 10, 2023, 7:57 am

Departed USPS Regional Facility
SAN FRANCISCO CA DISTRIBUTION CENTER
March 9, 2023, 3:49 pm

Arrived at USPS Regional Facility
SAN FRANCISCO CA DISTRIBUTION CENTER
March 9, 2023, 5:55 am

Arrived at USPS Regional Origin Facility
SACRAMENTO CA DISTRIBUTION CENTER
March 8, 2023, 8:21 pm

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FAQs

MAYALL HURLEY P.C.
118 W. Oak Street
Lodi, CA 95240



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9489 0090 0027 6312 4656 70

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EXECUSHIELD INC.
4104 24th Street #501
San Francisco, CA 94119

EXHIBIT 2

From: Ronnie Rosen <ronnie@sheltercreekcoa.com>

Sent: Wednesday, March 15, 2023 11:35:34 AM

To: lopezlxavier@gmail.com <lopezlxavier@gmail.com>; Danny Gonzalez <dgonzalez@execushield.com>

Subject: Grave Guard: Marcel McGee

Hi Xavier,

There have been issues with this guard: Marcel McGee not following passdowns on grave shift, which have serious safety repercussions if not followed. I have only outlined a few instances. This assignment for Marcel McGee should be re-evaluated. All Execushield guards assigned to this site should be able to truthfully follow orders or passdowns, be self-starters and able to communicate necessary lunchbreaks to his partner for coverage.

Below are a few issues I have followed up with during Marcel's shifts. One such incident happened this morning. Given That information, I would like to have Marcel removed from our site.

- Not checking the building 7 boiler for fire flare-ups as requested in February 3rd -25th 2023 passdowns. Several fire flare-ups occurred during grave with no report to General Manager.
- 3-15-2023 Safety Passdown not followed during power outage to place light sticks inside hallways of his buildings. He told Jose Sagun that he did place lite sticks, but did not. He later told Xavier he did not.
- General Pass downs from swing shift to Marcel have been unsuccessful.

Thank you,

Ronnie Rosen, CCAM-HR.LS,CMCA

General Manager

Shelter Creek Condominium

Owners' Association

701 Shelter Creek Lane

San Bruno, Ca 94066

650.873.4400 office

650.873.9399 fax

www.sheltercreekcoa.com

EXHIBIT 3

Attorney or Party without Attorney: Robert J. Wasserman, Esq., Bar #258538 Mayall Hurley, P.C. 2453 Grand Canal Blvd Stockton, CA 95207 Telephone No: 209-477-3833 FAX No: 209-473-4818				For Court Use Only	
Attorney for: Plaintiff					
Insert name of Court, and Judicial District and Branch Court: San Mateo Superior Court					
Plaintiff: Marcel Mcgee Defendant: Execushield, Inc., et al.					
PROOF OF SERVICE Summons & Complaint		Hearing Date:	Time:	Dept/Div:	Case Number: 23CIV01064

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the Summons & Complaint; Adr Information Package; Civil Case Cover Sheet; Notice Of Assignment For All Purposes, Designation As Complex Case, Setting Of A Case Management And Trial Setting Conference, And Complex Fees Due
3. a. Party served: Execushield, Inc.
 b. Person served: Wakin I Peng, Agent for Service
4. Address where the party was served: 1633 Bayshore Highway, Suite 321
 Burlingame, CA 94010
5. I served the party:
 b. by substituted service. On: Wed., Mar. 15, 2023 at: 2:58PM by leaving the copies with or in the presence of:
 Danita Martinez, Person in Charge, White, Female, 45 Years Old, 5 Feet 8 Inches, 175 Pounds
 (1) (Business) a Person in charge at least 18 years of age apparently in charge of the office or usual place of business of the party served. I informed him or her of the general nature of the papers.
 (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., 415.20). I mailed the document on: Thu., Mar. 16, 2023 from: Sacramento, CA
6. The "Notice to the Person Served" (on the Summons) was completed as follows:
 on behalf of: Execushield, Inc.
 Under CCP 416.10 (corporation)
7. Person Who Served Papers:

a. Don Schlipp

Recoverable Cost Per CCP 1033.5(a)(4)(B)

d. The Fee for Service was:

e. I am: (3) registered California process server

(i) Independent Contractor

(ii) Registration No.: 496

(iii) County: San Mateo
8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Thu, Mar. 16, 2023

EXHIBIT 4

----- Forwarded message -----

From: **Marcel McGee** <marcelmcgee01@gmail.com>

Date: Friday, March 17, 2023

Subject: Hello danita

To: Danita Martinez <Dmartinez@execushield.com>

I'm not resigning, there are no night positions available meaning there is no work for me the positions you offered were offered at the time I was hired, so there is no work for me to earn money causing a financial and mental stress and being targeted while attending working and performing properly is not good for my health or family.

On Fri, Mar 17, 2023, 1:09 PM Danita Martinez <Dmartinez@execushield.com> wrote:

Hi Marcel,

Sorry I missed your call I was out to lunch.

So, are you resigning and want your final check including your PTO?

Respectfully,

Danita Martinez

Human Resource Manager

Execushield, Inc

1633 Old Bayshore Highway -Suite #321

Burlingame, CA 94010

Direct: +1 650-395-2790

Cell: +1 669-300-2686

dmartinez@execushield.com

PPO License #14513 | TFF #1596 | TFB #1378 | PI License #28595

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From: Marcel McGee <marcelmcgee01@gmail.com>
Sent: Friday, March 17, 2023 12:46 PM
To: Danita Martinez <Dmartinez@execushield.com>
Subject: Re: Hello danita

Ok so can you send my check immediately since there is no positions available no need to hold my money I have bin off for 2 days and I need it.

On Fri, Mar 17, 2023, 11:05 AM Danita Martinez <Dmartinez@execushield.com> wrote:

Good morning Marcel,

Per our conversation on Wednesday March 16, 2023. Our client Shelter Creek wanted you removed from their site. I offered you the following positions below to which you declined:

San Mateo Medical Center | Wed - Sun | grave shift.

Palo Alto (Real Real) | Wed - Sun | day shift.

Unfortunately, at this time, we do not have any other positions to offer you. We will contact you once an available position is available.

Respectfully,

Danita Martinez
Human Resource Manager

Execushield, Inc
1633 Old Bayshore Highway -Suite #321
Burlingame, CA 94010
Direct: +1 650-395-2790
Cell: +1 669-300-2686
dmartinez@execushield.com
PPO License #14513 | TFF #1596 | TFB #1378 | PI License #28595

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From: Marcel McGee <marcelmcgee01@gmail.com>
Sent: Friday, March 17, 2023 5:42 AM
To: Danita Martinez <Dmartinez@execushield.com>
Subject: Hello danita

Wasn't sure if you called yesterday here is my contact 6506791144
Contact me when possible thank you.

--
BANKROLL RECORDZ

EXHIBIT 5

----- Forwarded message -----

From: **Evan Kubota** <ekubota@execushield.com>

Date: Sun, Mar 19, 2023, 10:56 AM

Subject: Lunch and Break Policy Update

To: Evan Kubota <ekubota@execushield.com>

Good morning everyone,

The company is having to take steps to clarify and enforce lunch and break policies. We make every effort to ensure a compliant, safe, healthy and rewarding work environment. Historically, we have given our staff leeway in break and lunch documentation because we recognize that staff exercise discretion in breaks and we didn't want to create burden on staff.

Due to the actions of a few bad apples, we have had to revise our policies and make both the timekeeping documentation and missed break reporting mandatory for all sites and all staff members.

All staff members are included in this email, it is not intended to single out any one member who has not been clocking breaks.

Please review the attached policy revision, and begin complying with the requirement immediately.

I thank you for taking the time to take on these changes with a professional and positive attitude.

Feel free to reach out to me or your management teams with any questions.

Evan Kubota

Director of Field Operations

San Mateo County Project Manager

Execushield, Inc

4104 24th St. #501 San Francisco, CA 94114

Cell: +1 415-840-5130

ekubota@execushield.com

PPO License #14513 | TFF #1596 | PI License #28595 | TFB #1378

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Execushield, Inc.
Operations Department
OPERATIONS POLICY:

On Shift Break and Lunch Policy – Security Staff

From: Director of Field Operations

To: All Execushield Staff

Date: March 15th, 2023

Subj: On Shift Break and Lunch – Security Staff

******ALL OFFICERS******

Execushield makes every effort to ensure that applicable labor codes regarding breaks are adhered to. All contracts are built to accommodate proper break policies whether paid or unpaid. Sites requiring mandatory staffing coverage will have designated relief personnel (whether client or company provided). Not all sites require coverage for officer breaks, please contact your supervisor if you need clarification as to specific site requirements for break relief.

Part of these requirements are that staff keep a record through the guard management app of their scheduled breaks.

If an officer is unable to take a break or is called back from a break (and is unable to take their break at a later time) due to a client or site need, they are required to note this in the Track-tik app, and must write a “Missed break or lunch” report prior to the end of their shift as well as notifying a supervisor in order to receive any potential payment for missed breaks. Officers failing to submit these reports will be assumed to have voluntarily skipped a designed break or lunch.

Supervisory and management staff will review, and research missed break reports to determine the cause of the missed break. Every effort is made to ensure that officers have the ability to take their breaks and are properly documenting their shift times.

Evan Kubota
Director of Field Operations

See:

How-To Breaks and Lunches

Hot-To Missed Break/Lunch Report

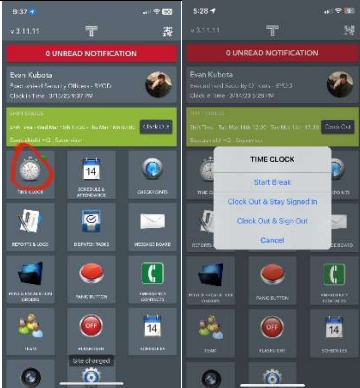


EXECUSHIELD

PROTECTING LIFE. ENFORCING PEACE.

Taking Breaks and Lunches in Trak-Tik + Clocking Out

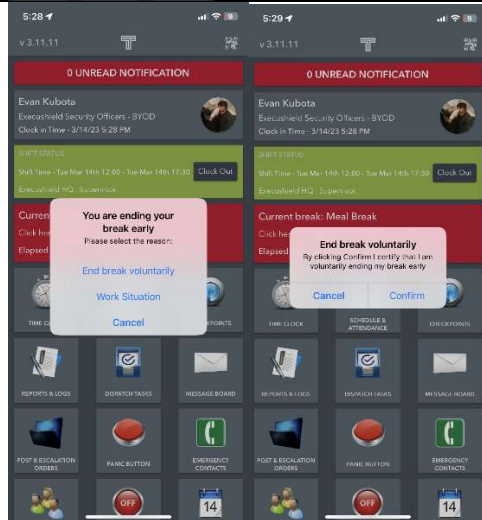
Purpose: All officers are required to document their breaks and lunches and are responsible for approval of their shift timekeeping.

You must be clocked in to take a break Select Time Clock Tile	
Select whether you are taking a lunch break or a 10 minute rest break.	
Once you being a break, a timer will begin on the app.	

End your break by selecting the Time Clock tile and selecting end break.

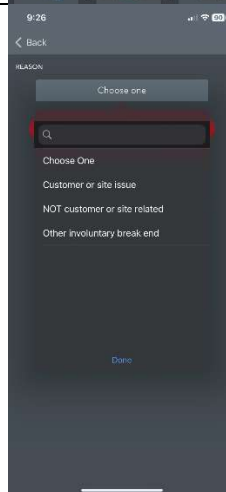


If your break time is shorter than the allotted time, the system will ask whether you are voluntarily ending your break, or if you had to end your break to deal with a site issue or respond to a call.



If ending your break is involuntary, you must select the reason from the options.

Officers who have to end a break early are allowed to take their break at a later time if they wish.



At the end of your shift (when clocking out utilize the Time Clock tile), you have the opportunity to review your time clock entries for the shift. If there is an issue with your clock in or out entries, you must note it at this time.

If you were unable to take a break during your shift, you **MUST** complete a missed break report prior to clocking out and identify the reason you were unable to take your break. Officers who do not complete this report will be assumed to have voluntarily skipped their break.

The image displays two screenshots of a mobile application interface. The left screenshot shows a 'Shift Summary' screen with the following information:

- Clock In: Schedule - 12:00 PM, Actual - 5:28 PM
- Rest Break: Schedule - 20 min, Actual - 18 sec
- Meal Break: Schedule - 1 hr, Actual - 18 sec
- Clock Out: Schedule - 5:30 PM, Actual - 5:29 PM

The right screenshot shows a 'Clock Out' screen with a notification that reads: 'Please explain why you do not agree with shift summary?'. Below the notification is a text input field containing 'I didnt get my break'. The screen also features a 'Cancel' button and a 'Send' button. At the bottom of the screen, there are three tiles: 'TIME CLOCK', 'SCHEDULE & ATTENDANCE', and 'CHECKPOINTS'. The bottom of the screen shows a keyboard with a 'space' button and a 'return' button.

This how-to serves as direction on utilizing the track-tik system to clock in and out of breaks, and how to record involuntary short breaks. As noted above, if you are unable to take a break, or are involuntarily required to come back to work and unable to take your break at a later time you must write a missed break/lunch report before the end of your shift explaining the circumstances of your missed break or lunch.

Contact your managers or the Operations Director with any questions or concerns.



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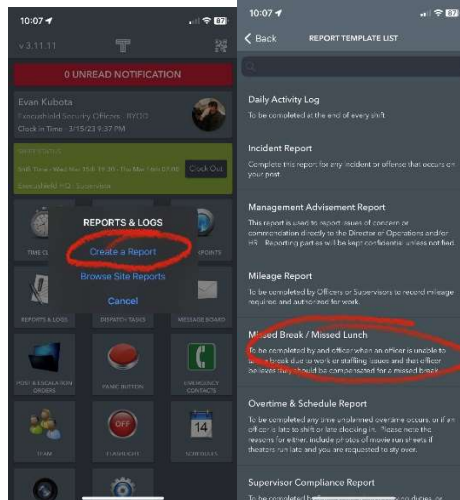
Missed Break/Lunch Report

Purpose: If an officer is unable to take a break or is called back from a break (and is unable to take their break at a later time) due to a client or site need, they are required to note this in the Track-tik app, and must write a “Missed break or lunch” report prior to the end of their shift as well as notifying a supervisor in order to receive any potential payment for missed breaks. Officers failing to submit these reports will be assumed to have voluntarily skipped a designed break or lunch.

Sites vary on duration of breaks and coverage requirements, please review your post orders or speak with a supervisor or the scheduling department to determine the practices of your site if you are unsure.

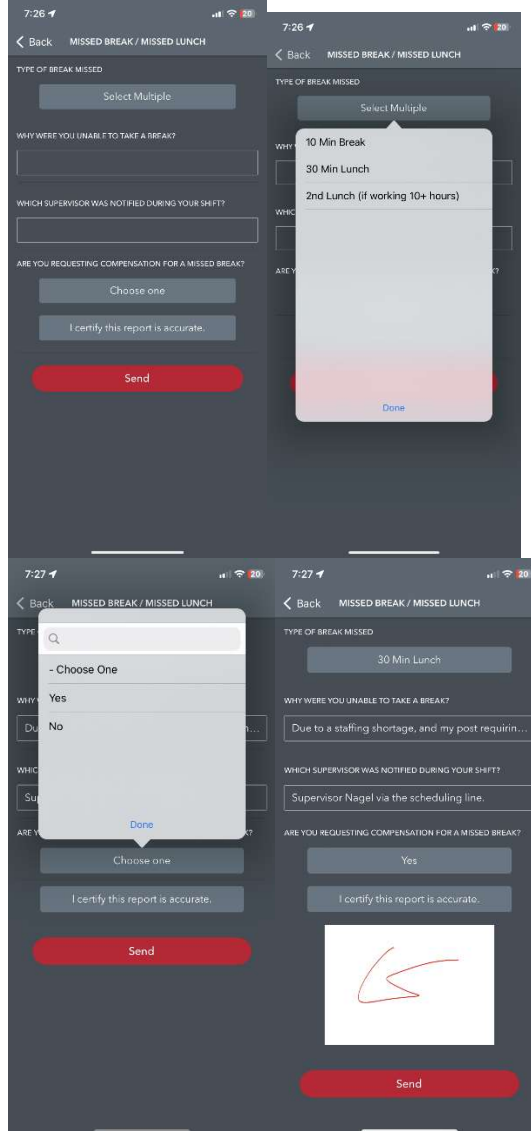
You must be clocked in to write the report	
Select the Reports and Logs Tile	

Select Create a Report – Missed Break/Missed Lunch



Fill out the required fields describing the reason you were unable to take your breaks and which supervisor was notified.

Sign and submit the report.



Reports will be reviewed and investigated by management staff to determine the cause of the missed break and address the cause for future shifts.

Execushield, Inc
1633 Old Bayshore Hwy Ste 321
Suite 321
Burlingame California 94010-1515
United States of America (the)



Execushield HQ

Missed Break / Missed Lunch	
Report #	39700
Report Date	05/15/2023
Report Time	19:27
Created By	Evan Kubota #000125
Position	BYOD
Client	Execushield HQ

Information	
Type of break missed	30 Min Lunch
Why were you unable to take a break?	Due to a staffing shortage, and my post requiring coverage I was unable to take a lunch during my shift.
Which Supervisor was notified during your shift?	Supervisor Nagel via the scheduling line.
Are you requesting compensation for a missed break?	Yes
I certify this report is accurate.	

This how-to serves as direction on utilizing the track-tik system to document and involuntary missed or shortened break. Supervisors must be notified that you are unable to take your break.

Contact your managers or the Operations Director with any questions or concerns.

EXHIBIT 6

----- Forwarded message -----

From: **Miranda Farrell** <mfarrell@execushield.com>

Date: Monday, March 20, 2023

Subject: Hello danita

To: Danita Martinez <Dmartinez@execushield.com>, Marcel McGee <marcelmcgee01@gmail.com>

Good Morning Marcel,

I went over your previous conversation with Danita, and unless you formally resign from the company, I am unable to pay you until pay day.

You do have a PTO balance of 29.48hrs. if you would like to request to use that for any days you did not work last week.

Please let me know as soon as possible if you would like me to put in the request for you in time for payroll this week.

Kind regards,

Miranda Farrell

Payroll | HR Admin

Execushield, Inc.

4104 24th St. #501

San Francisco, CA 94114

Direct: +1-650-395-2772

Cell: +1-415-915-4741

mfarrell@execushield.com

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From: Danita Martinez <Dmartinez@execushield.com>
Sent: Friday, March 17, 2023 3:19 PM
To: Marcel McGee <marcelmcgee01@gmail.com>; Miranda Farrell <mfarrell@execushield.com>
Subject: Re: Fw: Hello danita

Hi Marcel,
I have added Miranda Farrell in the payroll department to this email.
She will be more than happy to assist you.
Her contact number is 669-300-5193.
Respectfully,

Danita Martinez
Human Resource Manager

Execushield, Inc
[1633 Old Bayshore Highway -Suite #321](#)
[Burlingame, CA 94010](#)
Direct: +1 650-395-2790
Cell: +1 669-300-2686
dmartinez@execushield.com
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From: Marcel McGee <marcelmcgee01@gmail.com>
Sent: Friday, March 17, 2023 1:12 PM
To: Danita Martinez <Dmartinez@execushield.com>
Subject: Re: Fw: Hello danita

I'm not resigning, there are no night positions available meaning there is no work for me the positions you offered were offered at the time I was hired, so there is no work for me to earn money causing a financial and mental stress and being targeted while attending working and performing properly is not good for my health or family.
On Fri, Mar 17, 2023, 1:09 PM Danita Martinez <Dmartinez@execushield.com> wrote:

Hi Marcel,
Sorry I missed your call I was out to lunch.
So, are you resigning and want your final check including your PTO?
Respectfully,

Danita Martinez
Human Resource Manager

Execushield, Inc

[1633 Old Bayshore Highway -Suite #321](#)

[Burlingame, CA 94010](#)

Direct: +1 650-395-2790

Cell: +1 669-300-2686

dmartinez@execushield.com

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From: Marcel McGee <marcelmcgee01@gmail.com>

Sent: Friday, March 17, 2023 12:46 PM

To: Danita Martinez <Dmartinez@execushield.com>

Subject: Re: Hello danita

Ok so can you send my check immediately since there is no positions available no need to hold my money I have bin off for 2 days and I need it.

On Fri, Mar 17, 2023, 11:05 AM Danita Martinez <Dmartinez@execushield.com> wrote:

Good morning Marcel,

Per our conversation on Wednesday March 16, 2023. Our client Shelter Creek wanted you removed from their site.

I offered you the following positions below to which you declined:

San Mateo Medical Center | Wed - Sun | grave shift.

Palo Alto (Real Real) | Wed - Sun | day shift.

Unfortunately, at this time, we do not have any other positions to offer you. We will contact you once an available position is available.

Respectfully,

Danita Martinez

Human Resource Manager

Execushield, Inc

[1633 Old Bayshore Highway -Suite #321](#)

[Burlingame, CA 94010](#)

Direct: +1 650-395-2790

Cell: +1 669-300-2686

dmartinez@execushield.com

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From: Marcel McGee <marcelmcgee01@gmail.com>

Sent: Friday, March 17, 2023 5:42 AM

To: Danita Martinez <Dmartinez@execushield.com>

Subject: Hello danita

Wasn't sure if you called yesterday here is my contact 6506791144
Contact me when possible thank you.

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BANKROLL RECORDZ