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December 8, 2023

VIA CERTIFIED MAIL

Labor & Workforce Development Agency
By online submission

Good Guard Security, Inc.
21622 Plummer St., Suite 200
Chatsworth, CA 91311 Defendant mailed certified # 9589071052700506685661

Halmand Tabibzada
21622 Plummer St., Suite 200
Chatsworth, CA 91311 Defendant mailed certified # 9589071052700506685678

Shawn Helmandi
21622 Plummer St., Suite 200
Chatsworth, CA 91311 Defendant mailed certified # 9589071052700506685685

Agent for Service of Process for Good Guard Security, Inc.
Halmand Tabibzada
21622 Plummer St., Suite 200
Chatsworth, CA 91311 Agent mailed certified # 9589071052700506685739

Re: ***Labor Code Violations Good Guard Security, Inc., et al. – Compliance Letter of California Labor Code § 2698 - Private Attorneys General Act LWDA Case No.: LWDA-CM-950479-23***

Dear LWDA:

This letter supplements and clarifies our letters dated April 24, 2023 and October 30, 2023 and removes claims against Dependable Private Security Service, Inc. and asserts additional claims on behalf of Darlene Villea and Rodrigo Balderas.

This office represents Michelle Watley, Darlene Villea, and Rodrigo Balderas, former employees classified as independent contractors, of Good Guard Security, Inc. and any of their members, officers, directors, owners, including Halmand Tabibzada and Shawn Helmandi, and related individuals responsible for causing the violations of the Labor Code as set forth in this letter (collectively referred hereafter as "Defendants"). Our clients submit this letter pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Labor Code § 2699 *et seq.*

Pursuant to Labor Code Sections 2699 *et seq*, a copy of this letter is being sent to the California Labor and Workforce Development Agency, along with a PAGA Claim Notice, and shall serve as a formal PAGA Notice to Defendants and any of their members, officers, directors, owners, including Halmand Tabibzada and Shawn Helmandi, and related individuals responsible for causing the violations of the Labor Code as set forth in this letter.

Our clients, on behalf of themselves and all other aggrieved employees, contends that Defendants have violated, among others, the following specific provisions of the California Labor Code, namely: §§ 201, 203, 226(a), 226.3, 226.7, 226.8, 246, 248.1, 248.2, 510, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1198.5, 1199, 2698, 2750 and 2750.3. Certain of these violations provide for "statutory penalties" for which a private right of action existed before passage of PAGA and for which no PAGA notice is required in order to maintain a civil action.

Unlawful Independent Contractor Misclassification

Under PAGA, for each misclassified employee, employers are liable for penalties up to $25,000 for each violation, pursuant to Labor Code § 226.8. Defendants controlled our clients' and other misclassified employees' wages, hours and working conditions. Defendants controlled their rate of pay. Defendants provided them with a set hourly schedule in which to perform their jobs, thereby controlling our clients' and misclassified employees' working hours—including, among other things, the number of hours they were permitted to work and their work schedules. Defendants also controlled their working conditions—including, among other things, requiring our clients and misclassified employees to work from Defendants' locations during specific work hours. As Defendants had control over our clients' and other misclassified employees' wages, hours and working conditions, they were improperly classified as independent contractors and instead should have been classified as non-exempt employees.

Further, employees are entitled to minimum wage, overtime pay, and attorneys' fees. Labor Code § 281.5. Given Defendants' pattern or practice of misclassification, evidenced by the misclassification of our clients and other aggrieved employees, Defendants are subject to PAGA penalties up to hundreds of thousands of dollars.

Unlawful Failure to Pay Overtime

Defendants have failed to maintain a policy that compensates our clients and other employees for all hours worked, including overtime. Specifically, Defendants failed to pay employees that were misclassified as independent contractors any overtime hours. Many employees, including our clients, routinely worked for over eight (8) hours per day and/or forty (40) hours per week but were not paid one and one-half their regular rate of pay for overtime work.

As a result of violations of California Labor Code §§ 510, 1194, and applicable Industrial Commission Wage Orders for failure to pay overtime, Defendants are liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods

Defendants have failed to maintain a policy that provides our clients and other employees with off-duty meal periods as required by California law. Our clients and similarly situated employees regularly worked in excess of five (5) hours a day without being provided at least half-hour meal periods during which they were relieved of all duties, as required by Labor Code §§ 226.7, 512, and applicable Industrial Welfare Commission Wage Orders. Defendants have failed to pay our clients and other employees the premium compensation mandated by Labor Code§ 226.7(b) for these missed meal periods. Many employees, including our clients, were forced to skip or take untimely breaks without appropriate compensation. In fact, Defendants' company policy was to prohibit employees from taking off-duty meal breaks until other more senior employees returned from their breaks. As a result of violations of California Labor Code§§ 226.7 and 512 and applicable Industrial Welfare Commission Wage Orders, Defendants are liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Defendants' wage and hour policies required employees like our clients to work during their meal periods, resulting in a severe underpayment of wages earned by our clients and other aggrieved employees throughout their and their employment.

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods

Defendants have failed to maintain a policy that provides our clients and other employees with off-duty rest periods as required by California law. our clients and other employees regularly worked in excess of four hours or a major fraction thereof during workdays without being provided at least a ten-minute rest period during which they were relieved of all duties, as required by Labor Code §§ 226.7, 512 and IWC Wage Order No. 5-2001. Defendants have failed to pay our clients and other employees the premium compensation mandated by Labor Code § 226.7(b) for these missed rest periods. Many employees, including our clients, were forced to skip or take untimely rest breaks without appropriate compensation. As a result of violations of California Labor Code §§ 226.7, 512 and applicable Industrial Welfare Commission Wage Orders, Defendants are liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 et seq.

Defendants' wage and hour policies required employees like our clients to work during their rest periods, resulting in a severe underpayment of wages earned by our clients and other aggrieved employees throughout their and their employment.

Unlawful Failure to Furnish Accurate Wage Statements

Defendants have violated California Labor Code § 226(a) by willfully failing to furnish our clients and other employees with required wage statement information. As a result of violations of California Labor Code § 226(a), Defendants are liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of their employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (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 the last four digits of their social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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 deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Our clients and others were deprived of wage statements altogether, or various necessary items of information such as total hours worked, applicable hourly rates, and the employers' address, Moreover, Defendants' employees' work hours, overtime time hours and pay, missed rest or meal break premiums, wages, without limitation, were misreported on their wage statements. As a result of violations of California Labor Code § 226(a), Defendants are liable for civil penalties pursuant to California Labor Code Labor Code §§ 226(a), 226.3, and 2698 *et seq.*

<u>Unlawful Failure to Keep Accurate Payroll Records of Daily Hours Worked</u>

Defendants have failed to keep payroll records showing total hours worked and wages paid to our clients and other employees. Under California Labor Code § 1174(d), employers must keep "payroll records showing the hours worked daily by and the wages paid to . . . employees."

Because Defendants did not keep accurate time records reflecting hours worked for our clients and other employees, including, but not limited to, beginning work prior to opening, and after closing, they are liable for civil penalties pursuant to California Labor Code §2698 *et seq.* To the extent that Defendants' failure to keep accurate payroll records was willful, they will be liable for civil penalties under California Labor Code § 1174.5.

<u>Unlawful Violation of California Labor Code § 203 (Waiting Time Penalties)</u>

Defendants have violated California Labor Code § 203 by willfully failing to pay, without abatement or reduction, any wages of our clients and other employees that were due on the date of discharge. As a result of violations of California Labor Code § 203, Defendants are liable for civil penalties pursuant to California Labor Code Labor Code § 2698 *et seq.*

Failure to Reimburse Workers for All Necessary Expenditures

Defendants have violated California Labor Code § 2802(a), which provides in pertinent part that an employer shall indemnify their employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties, or of their obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

Bounced Check Penalty Violation of Labor Code § 201.3

Defendants have violated Labor Code § 203.1 by issuing wages to our clients and other employees on checks with insufficient funds. Labor Code § 203.1 states that, "[i]f an employer pays an employee in the regular course of employment or in accordance with Section 201, 201.3, 201.5, 201.6, 201.7, 201.8, or 202 any wages or fringe benefits, or both, by check, draft or voucher, which check, draft or voucher is subsequently refused payment because the employer or maker has no account with the bank, institution, or person on which the instrument is drawn, or has insufficient funds in the account upon which the instrument is drawn at the time of its presentation, so long as the same is presented within 30 days of receipt by the employee of the check, draft or voucher, those wages or fringe benefits, or both, shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced."

Unlawful Violation of California Labor Code § 1199

Under California Labor Code §§ 1199(a) and (c) and 2699.5 *et seq*., an employer who "requires or causes any employee to work for longer hours than those fixed" or "violates or refuses or neglects to comply with any provision of' the Labor Code regarding employees' wages, hours, and working conditions, is subject to PAGA penalties. As described above, Defendants have required our clients and other employees to work hours in excess of eight (8) in a day and forty (40) in a week (thereby violating § 1199(a)), failed to provide adequate rest and meal breaks, failed to pay minimum wage, failed to appropriately account for and pay for commissions, and has violated numerous provisions of the Labor Code pertaining to employee wages and hours (thereby violating § 1199(b)).

Accordingly, Defendants are liable for civil penalties pursuant to California Labor Code § 2698 *et seq*.

REPRESENTATIVE ACTION

Please be advised that, upon expiration of the time periods set forth in California Labor Code Section 2699.3, our clients will initiate and/or amend an action against Defendants, on behalf of themselves and on a representative basis for all affected employees, to request relief afforded under the PAGA. Our clients will seek these penalties on behalf of themselves and other current and former employees of Defendants. *See Arias v. Superior Court* (2009) 46 Cal. 4th 969 (no class certification required for representative action for civil penalties).

In addition, our clients will seek such penalties against Defendants, their related entities and individuals, and all other individuals who have "violate[d], or cause[d] to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission." Labor Code § 558.

Our clients are informed and believe, and based thereon allege, that owners Halmand Tabibzada and Shawn Helmandi caused the violations of the Labor Code sections referenced herein and/or qualified as "person[s] acting on behalf of an employer" as set forth in Labor Code section 558.1, and is individually liable for at least a portion of the civil penalties referenced herein per Labor Code section 558.1, and as set forth in *Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.

Very truly yours,

GAINES & GAINES
A Professional Law Corporation

By: ______________________
DANIEL F. GAINES

Cc: Larry Clough, Esq.