

VIA ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: Vigilant Eye Private Security

Dear PAGA Administrator:

We have been retained to represent Hajar Mustafa against Vigilant Eye Private Security (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "VEPS").

Mr. Mustafa is pursuing his California Labor Code section 2698, *et seq.*, Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Mustafa may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

VEPS is a California corporation with a principal address of 5353 N Topanga Canyon Blvd, Woodland Hills, CA 91364.

VEPS employed Mr. Mustafa as an hourly-paid non-exempt Armed Security Guard within one year of the date of this letter (until in or around January of 2023) in the State of California. The overwhelming majority of VEPS security guards are misclassified as independent contractors. Mr. Mustafa knew his rights and insisted on being classified as a W-2 employee, but by and large VEPS personnel are misclassified.

VEPS directly controlled the wages, hours and/or working conditions of Mr. Mustafa and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Mr. Mustafa may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of VEPS within the State of California, including all security guards misclassified as independent contractors, which for the purposes of this notice, includes all independent contractor security guards working for VEPS.

VEPS failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

¹ Mr. Mustafa does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Mustafa will amend this notice when the true names and capacities are known. Mr. Mustafa is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Mustafa and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Mustafa has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at VEPS, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

VEPS has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Mustafa and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. VEPS failed to compensate Mr. Mustafa and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, and during meal breaks. VEPS also failed to include non-discretionary bonuses and incentives in Mr. Mustafa and other aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Mr. Mustafa and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(1) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, VEPS failed to pay Mr. Mustafa and other aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, VEPS routinely required Mr. Mustafa and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with VEPS's policies and expectations. VEPS also failed to provide adequate coverage to Mr. Mustafa and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Moreover, VEPS also failed to authorize and permit Mr. Mustafa and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, VEPS failed to compensate Mr. Mustafa and other aggrieved employees all the premium wages they were owed, including failing to pay premium wages at Mr. Mustafa and other aggrieved employees' regular rate of pay.

California Labor Code section 551 states "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Section 552 further states "No employer of labor shall cause

his employees to work more than six days in seven." VEPS required Mr. Mustafa and other aggrieved employees to work seven days in a row or more without one day's rest.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that 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. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any 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. During the relevant time period, VEPS failed to pay Mr. Mustafa and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, VEPS failed to pay Mr. Mustafa and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204,

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, VEPS did not provide Mr. Mustafa and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from VEPS were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Mustafa and other aggrieved employees, (2) total hours worked by Mr. Mustafa and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Mustafa and other aggrieved employees (4) all deductions for Mr. Mustafa and other aggrieved employees, (5) net wages earned by Mr. Mustafa and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Mustafa and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her 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 (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Mustafa and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes 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 shall be

subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Mustafa and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to 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 with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, VEPS failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Mustafa and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, VEPS did not provide Mr. Mustafa and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Mustafa and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by VEPS, including for purchasing equipment and tools they were required to use/wear while working, and using their personal cellular phones for work related purposes.

We believe that Mr. Mustafa and other current and former California-based hourly-paid or non-exempt and/or misclassified employees are entitled to penalties as allowed under California Labor Code section 2698, et seq. for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Mustafa will seek these penalties on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of VEPS within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us.

Respectfully,

A handwritten signature in black ink, appearing to read "John E. Solis", written over a horizontal line.

John E. Solis, Esq.

CC: (By Certified US Mail Only)

BASIR NOMAIR
7461 FARRALONE AVE
CANOGA PARK, CA 91303
Agent for Service of Process for Vigilant Eye Private Security