

DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
LAUREN R. DAVIS (SBN 294115)
lauren@spivaklaw.com
THE SPIVAK LAW FIRM
8605 Santa Monica Bl, PMB 42554
West Hollywood, CA 90069
Telephone: (213) 725-9094
Facsimile: (213) 634-2485

FILED
Superior Court of California
County of Los Angeles
11/22/2023

David W. Slayton, Executive Officer / Clerk of Court
By: R. Lozano Deputy

Attorneys for Plaintiff(s),
BRUCE KERRY, and all others similarly situated
(additional attorneys for Plaintiff(s) on following page)

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

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

Plaintiff(s),

vs.

METROPOLITAN SECURITY GROUP INC, a
California corporation; and DOES 1–50,
inclusive,

Defendants.

Case No. 23STCV21057

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
2. Vacation Pay Forfeiture (Lab.Code § 227.3);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
8. Civil Penalties (Lab. Code §§ 2698, et seq.)

JURY TRIAL DEMANDED



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
8605 Santa Monica Bl.
PMB 63354
West Hollywood, CA 90069
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),
BRUCE KERRY, and all others similarly situated



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

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

5 **I. INTRODUCTION**

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

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

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

16 (B) Pay all earned and unused vacation pay;

17 (C) Provide all meal periods;

18 (D) Authorize and permit all rest breaks;

19 (E) Pay premium wages for unprovided meal periods;

20 (F) Pay premium wages for unprovided rest breaks;

21 (G) Only deduct wages lawfully;

22 (H) Issue only accurate and complete itemized wage statements;

23 (I) Issue statements of sick leave available; and

24 (J) Timely pay wages upon termination of employment;

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

28 **II. THE PARTIES**

3 3. Plaintiff Bruce Kerry is a resident of California. At all relevant times, Plaintiff was
4 an “employee” within the meaning of Title 8 California Code of Regulations § 11050 and an
5 “aggrieved employee” within the meaning of Labor Code § 2699 (c).



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 4. Defendant Metropolitan Security Group Inc is a corporation organized and
2 existing under the laws of California and also a citizen of California based on Plaintiff's
3 information and belief.

4 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
5 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
6 is informed and believes and thereon alleges that said Defendants are legally responsible for the
7 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
8 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
9 when ascertained.

10 6. Plaintiff is informed and believes and thereon alleges that, at all relevant times
11 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
12 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
13 within the course and scope of such agency, employment, direction and control, and with the
14 approval and ratification of each of the other Defendants.

15 7. At all relevant times, in perpetrating the acts and omissions alleged herein,
16 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
17 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
18 Members or otherwise complying with their rights in accordance with applicable California labor
19 laws as alleged herein.

20 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
21 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
22 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
23 described class in accordance with applicable laws as alleged herein.

24 **III. CLASS ALLEGATIONS**

25 9. This action has been brought and may be maintained as a class action pursuant to
26 California Code of Civil Procedure section 382 because there is a well-defined community of
27 interest among the persons who comprise the readily ascertainable class defined below and
28 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
a class action.

 10. **Class Definition:** The Class is defined as follows: All persons Defendants
employed in California as non-exempt, hourly employees, including but not limited to security



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

guards, individuals performing work comparable to the aforementioned, compensated comparably to the aforementioned, and individuals in similar positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

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

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

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

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

B. Whether Defendants subjected wages to discount;

C. Whether Defendants unlawfully deducted wages from Class Members;

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

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

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

G. Whether Defendants willfully failed to provide the class with timely final wages;

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

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

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

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

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

23 **IV. STATEMENT OF FACTS**

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

28 professional, semiprofessional, managerial, supervisory, laboratory, research,
technical, clerical, office work, and mechanical occupations. Said occupations
shall include, but not be limited to, the following: accountants; agents; appraisers;



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters;
2 canvassers; carriers; cashiers; checkers; clerks; collectors; communications and
3 sound technicians; compilers; copy holders; copy readers; copy writers; computer
4 programmers and operators; demonstrators and display representatives;
5 dispatchers; distributors; door-keepers; drafters; elevator operators; estimators;
6 editors; graphic arts technicians; guards; guides; hosts; inspectors; installers;
7 instructors; interviewers; investigators; librarians; laboratory workers; machine
8 operators; mechanics; mailers; messengers; medical and dental technicians and
9 technologists; models; nurses; packagers; photographers; porters and cleaners;
10 process servers; printers; proof readers; salespersons and sales agents; secretaries;
11 sign erectors; sign painters; social workers; solicitors; statisticians; stenographers;
12 teachers; telephone, radiotelephone, telegraph and call-out operators; tellers;
13 ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants
14 and other related occupations listed as professional, semiprofessional, technical,
15 clerical, mechanical, and kindred occupations

16 Wage Order, § 2(O). At all relevant times during the applicable limitations period, the
17 Defendants, Kerry, and all of the Class Members were covered by the Wage Order because Kerry
18 and all of the Class Members worked for the Defendants as guards, their assistants and other
19 related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and
20 kindred occupations. Accordingly, Kerry and all of the other Class Members are entitled to the
21 protections the Wage Order provides.

22 19. In or about December of 2020, the Defendants began to employ Kerry in Los
23 Angeles in the position of hourly, non-exempt security guard. The Defendants continuously
24 employed him in that capacity until on or about February 28, 2023, when his employment ended.

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

29 21. At all relevant times, the Defendants failed to compensate Kerry and all of the
30 other Class Members for all hours worked at the applicable minimum or regular rates of pay.
31 Defendants required Kerry and the other Class Members to work through their meal periods off
32 the clock and without pay.

33 22. At all relevant times, the Defendants failed to compensate Kerry and all of the
34 other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
35 in a week, and for the first eight hours of the seventh day of the workweek. Defendants required



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 Kerry and the other Class Members to work in excess of eight hours in a day and 40 hours in a
2 week. Defendants required Kerry and the other Class Members to work through their meal periods
3 off the clock and without pay.

4 23. At all relevant times, the Defendants failed to compensate Kerry and all of the
5 other Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over
6 the first eight of the seventh day of the workweek. Defendants required Kerry and the other Class
7 Members to work in excess of 12 hours in a day. Defendants required Kerry and the other Class
8 Members to work through their meal periods off the clock and without pay.

9 24. At all relevant times, the Defendants failed to provide Kerry and all of the other
10 Class Members with all timely 30-minute, off-duty meal periods. Defendants required Kerry and
11 the other Class Members to work through their meal periods off the clock and without pay. The
12 Defendants also failed to pay premium wages for days on which they failed to provide Kerry and
13 all of the other Class Members with meal periods as required by law.

14 25. At all relevant times, the Defendants failed to authorize and permit Kerry and all
15 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
16 or major portion thereof. Defendants required Kerry and the other Class Members to work through
17 their rest periods. The Defendants also failed to pay premium wages for days on which they failed
18 to authorize and permit Kerry and all of the other Class Members to take rest breaks as required
19 by law.

20 26. At all relevant times, the Defendants failed to pay all earned but unused vacation
21 pay to Kerry and all of the other Class Members at their final rates of pay. Under the policies and
22 practices of the Defendants, Kerry and all of the other Class Members earned vacation pay during
23 employment. Under such policies, these accrued but unused forms of vacation pay were subject
24 to forfeit at the conclusion of the employment relationship. Defendants did not pay out all accrued
25 but unused vacation pay at the conclusion of employment.

26 27. At all relevant times, the Defendants unlawfully deducted wages belonging to
27 Kerry and all of the other Class Members.

28 28. At all relevant times, the Defendants failed to issue to Kerry and all of the other
Class Members complete and accurate wage statements that state all hours worked at the correct
rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
the wage statements they issued to Kerry and all of the other Class Members the unpaid wages



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all hourly rates, all hours work at each rate of pay, and related information.

29. At all relevant times, the Defendants failed to provide Kerry and all of the other Class Members with statements of sick leave available, or paid time off in lieu of sick leave.

30. At all relevant times, the Defendants also failed to timely pay Kerry and all of the other Class Members all earned wages as described above during and at the conclusion of employment.

31. At all relevant times, the Defendants failed to maintain accurate employee records of Kerry and all of the other Class Members.

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

- A. Not provided with all off duty meal periods;
- B. Not authorized and permitted to take all rest break periods;
- C. Not paid one hour's pay for each workday in which Defendants failed to authorize and permit them to take one or more timely rest periods;
- D. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely meal periods;
- E. Not paid all wages earned, including, but not limited to, minimum, regular, overtime, and doubletime wages for work performed while clocked out;
- F. Not provided with accurate and complete wage statements; and
- G. Not timely paid all earned and unpaid wages at the time their employment ended.

FIRST CAUSE OF ACTION

FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE CORRECT RATES

Lab. Code §§ 221, 510, 1194, 1197, and 1198

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

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

34. At all relevant times, Plaintiff and the Class Members have been non-exempt



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

employees entitled to the protections of both the Labor Code and the Wage Order.

A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

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

36. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee’s regular hourly salary as one-fortieth (1/40) of the employee’s weekly salary.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

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

4 38. Labor Code section 510 states:

5 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
6 in one workday and any work in excess of 40 hours in any one workweek and the
7 first eight hours worked on the seventh day of work in any one workweek shall be
8 compensated at the rate of no less than one and one-half times the regular rate of
9 pay for an employee. Any work in excess of 12 hours in one day shall be
10 compensated at the rate of no less than twice the regular rate of pay for an
11 employee. In addition, any work in excess of eight hours on any seventh day of a
workweek shall be compensated at the rate of no less than twice the regular rate of
pay of an employee. Nothing in this section requires an employer to combine more
than one rate of overtime compensation in order to calculate the amount to be paid
to an employee for any hour of overtime work.

12 39. Labor Code section 1194 invalidates any agreement between an employer and an
13 employee to work for less than the minimum wage required under the applicable Wage Order.

14 40. Labor Code section 1197 makes it unlawful for an employer to pay an employee
15 less than the minimum wage required under the applicable Wage Order for all hours worked
16 during a payroll period.

17 41. Labor Code section 1198 makes it unlawful for an employer to employ an
18 employee under conditions that violate the Wage Order.

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

23 43. At all relevant times during the applicable limitations period, Defendants failed to
24 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
25 minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and
26 doubletime hours, respectively, that they worked at the correct rates of pay.

27 44. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
28 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
2 rates of pay as required by California law.

3 **B. UNLAWFUL WAGE DEDUCTIONS**

4 45. Under Labor Code § 221, “It shall be unlawful for any employer to collect or
5 receive from an employee any part of wages theretofore paid by said employer to said employee.”
6 The Defendants deducted wages from the wages earned by Kerry and all of the other Class
7 Members for hours spent working during meal periods in violation of Labor Code § 221.

8 46. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
9 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
10 deduction of wages belonging to Plaintiff and the other Class Members in violation of California
11 law.

12 **SECOND CAUSE OF ACTION**

13 **VACATION PAY FORFEITURE**

14 **Lab. Code § 227.3**

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

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

17 48. Section 227.3 of the Labor Code states that, unless otherwise stipulated by a
18 collective bargaining agreement, whenever a contract of employment or employer policy provides
19 for paid vacations and an employee is terminated without having fully utilized his vested vacation
20 time, all vested vacation must be paid to the employee at his final rate in accordance with such
21 contract of employment or employer policy respecting vacation eligibility or time served. In
22 addition, the statute prohibits an employment contract or employer policy from providing for
23 forfeiture of such vested vacation time upon an employee’s termination of employment,
24 regardless of the reason for termination. (See *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d
25 774, [183 Cal.Rptr. 846, 646 P.2d 122 (1982)].)

26 49. The California Supreme Court has examined the terms under which an employee
27 acquires a vested right to vacation benefits that is protected against forfeiture. The Supreme Court
28 concluded that a “proportionate right to a paid vacation ‘vests’ as the labor is rendered.” Thus, an
employee is entitled to a pro rata share of vacation pay upon termination of employment even
though he has not completed all of the service requirements specified in the employer’s policy or
plan.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 50. An employer should never, by reason of the employee's termination, attempt to
2 divest or forfeit any portion of the vacation benefits in which the employee has acquired a vested
3 interest pursuant to the terms of the employer's policy or agreement.

4 51. A vacation policy that provides for the forfeiture of vacation pay that is not used
5 by a specified date, such as an employee's anniversary date, is impermissible under California
6 law. Courts have held that such "use-it-or-lose-it policies" result in forfeitures of vested vacation
7 pay and thus transgress the requirements of Labor Code Section 227.3. Such policies do not permit
8 employees to carry over vacation time from one year to the next and do not allow employees to
receive vacation pay in lieu of taking vacation time off.

9 52. The DLSE's enforcement policy permits employers to exclude employees from a
10 vacation policy during a specified period of time at the beginning of employment. This could
11 apply to a probationary or introductory period or even the first year of employment. If the policy
12 is properly drafted, employees will not be entitled to prorated vacation benefits if they separate
13 from the employer for any reason during the probationary period or "initial employment."
14 (D.L.S.E. Operations and Procedures Manual § 7(a).) However, such an exclusion will be
15 recognized only if it is not found to be a "subterfuge." The Division will deem a subterfuge to
16 exist if vacation benefits are implicitly earned or accrued during the waiting period. For example,
17 if a policy provides that employees do not earn any vacation during their first year of employment,
18 but earn four weeks' vacation during the second year and are reduced to two weeks' vacation the
19 third year, the Division will contend that the policy involves a subterfuge. This is based on the
20 Division's position that the policy, when viewed as a whole, makes it clear that two of the four
21 weeks' vacation attributed to the second year are actually earned in the first years. In a case where
22 such a subterfuge is found, employees who separate during the so-called "waiting period" (i.e.,
the first year of employment in the example) will be entitled to prorated vacation pay.

23 53. The Division takes the position that vacation pay for a terminating employee must
24 be prorated on a daily basis and must be paid at the final rate of pay in effect as of the date of the
25 separation. (See D.L.S.E. Operations and Procedures Manual § 8; D.L.S.E. Enforcement Policies
26 and Interpretations Manual § 13.3 (1998); Letter of Chief Deputy Labor Commissioner Albert J.
Reyff (Oct. 28, 1986).)

27 54. The Defendants maintained vacation pay policies and practices with accrual
28 components that violate Labor Code § 227.3 based on the California Supreme Court's decision



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 in *Suastez v. Plastic Dress-Up Co.*, supra. The Defendants’ vacation policy fails to provide for
2 proportionate vacation pay accruals as employees render labor and causes employees to forfeit
3 their vested rights to vacation pay. Under the policies and practices of the Defendants, Kerry and
4 all of the other Class Members earned vacation pay during employment. Under such policies,
5 these accrued but unused forms of vacation pay were subject to forfeit at the conclusion of the
6 employment relationship. Defendants did not pay Kerry and the other Class Members for all
7 accrued by unused vacation pay at the conclusion of employment. Consequently, the Class
8 Members are entitled to recover vacation pay.

9 55. In *Suastez*, the defendant-employer “refused to pay vacation benefits to anyone
10 whose employment was terminated before . . . [his or her employment] anniversary date” and
11 refused to pay the plaintiff-employee a pro rata share of his vacation pay for the time period
12 between his last employment anniversary date and his termination date. (*Id.* at 776–77.) In finding
13 for the plaintiff-employee, the Court held that “a proportionate right to a paid vacation ‘vests’ as
14 the labor is rendered” and that Labor Code § 227.3 protects that right from forfeiture. (*Id.* at 784.)

15 56. It is especially worth noting that, in rejecting the contention that the plaintiff-
16 employee had no vested right to vacation pay until his anniversary date, the Court specifically
17 stated: “The right to some share of vacation pay vests, like pension rights, on acceptance of
18 employment. Nonperformance of a condition subsequent, such as [defendant-employer’s]
19 requirement that employees remain until their anniversary, can, at most, result in a forfeiture of
20 the right to a vacation; *it cannot prevent that right from vesting.*” (*Id.* at 780–81, (*italics added*).)

21 57. Like the vacation pay policy the Court rejected in *Suastez*, the Defendants’
22 vacation pay policies also fail to provide for proportionate accruals.

23 58. Defendants did not pay Plaintiff or the Class Members at the time they were
24 terminated for any unused but accrued vacation days and the like. Defendants had the ability to
25 provide Plaintiff and the Class Members payment for their accrued but unused vacation days and
26 similar compensation but intentionally failed to pay Plaintiff and the Class Members.

27 59. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
28 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
failure to pay Plaintiff and the other Class Members vacation wages as required by California
law.

///



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7, 512, and 1198

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

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

61. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

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

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

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

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

64. In relevant part, Section 11 of the Wage Order states:

Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period,



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

the meal period shall be considered an “on duty” meal period and counted as time worked. . . .

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

65. In relevant part, California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.

66. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

67. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. Defendants required Kerry and the other Class Members to work through their meal periods off the clock and without pay.

68. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class
2 Members with timely meal periods.

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

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

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

13 **FOURTH CAUSE OF ACTION**

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

15 **Lab. Code §§ 226.7 and 1198**

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

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

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

21 74. In relevant part, California Labor Code § 1198 states:

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

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

28 **Rest Periods:**

(A) Every employer shall authorize and permit all employees to take
rest periods, which insofar as practicable shall be in the middle of
each work period. The authorized rest period time shall be based



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 on the total hours worked daily at the rate of ten (10) minutes net
2 rest time per four (4) hours or major fraction thereof. However, a
3 rest period need not be authorized for employees whose total daily
4 work time is less than three and one-half (3 ½) hours. Authorized
rest period time shall be counted as hours worked for which there
shall be no deduction from wages.

5 (B) If an employer fails to provide an employee a rest period in
6 accordance with the applicable provisions of this order, the
7 employer shall pay the employee one (1) hour of pay at the
8 employee's regular rate of compensation for each workday that the
rest period is not provided.

9 76. In relevant part, California Labor Code § 226.7 states:

10 (b) An employer shall not require an employee to work during
11 a meal or rest period mandated pursuant to an applicable
12 statute, or applicable regulation, standard, or order of the
13 Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of
Occupational Safety and Health.

14 (c) If an employer fails to provide an employee a meal period
15 or rest period in accordance with a state law, including, but
16 not limited to, an applicable statute or applicable
17 regulation, standard, or order of the Industrial Welfare
18 Commission, the Occupational Safety and Health
19 Standards Board, or the Division of Occupational Safety
20 and Health, the employer shall pay the employee one
additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest
period is not provided.

21 77. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
22 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
23 of work, or major fraction thereof.

24 78. Defendants intentionally failed to authorize and permit Plaintiff and the Class
25 Members to take all 10-minute rest periods free from any work duties in accordance with the
26 Wage Order.

27 79. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
28 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
wages to Plaintiff and the Class Members for days on which they failed to authorize and permit



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 Plaintiff and the other Class Members to take timely rest periods.

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

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

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

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

24 84. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
25 suffered damages in amounts subject to proof to the extent they were not paid additional wages
26 owed for all rest breaks not provided to them.

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

///

///



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

FIFTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code § 226

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

A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE STATEMENTS

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

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

A. Gross wages earned;

B. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

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

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

E. Net wages earned;

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

G. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;

H. The name and address of the legal entity that is the employer; and

I. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 alone one or more of the following:

2 A. The amount of the gross wages or net wages paid to the employee during
3 the pay period or any of the other information required to be provided on the itemized wage
4 statement pursuant to California Labor Code § 226(a);

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

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

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

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

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

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

91. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Blvd
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 the other Class Members with accurate wage statements but intentionally provided wage
2 statements that Defendants knew were not accurate.

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

13 **B. FAILURE TO PROVIDE NOTICE OF AVAILABLE SICK LEAVE**

14 93. Labor Code § 246 states

15 An employer shall provide an employee with written notice that sets forth the
16 amount of paid sick leave available, or paid time off leave an employer provides
17 in lieu of sick leave, for use on either the employee's itemized wage statement
18 described in Section 226 or in a separate writing provided on the designated pay
19 date with the employee's payment of wages.

20 Lab.Code § 246(h) (effective July 1, 2015). As a matter of policy and practice, the Defendants
21 failed to provide Kerry and all of the other Class Members with an itemized wage statement or
22 separate writing that set forth the amount of paid sick leave available.

23 94. Pursuant to California Labor Code § 226(e), Plaintiffs and the other Class
24 Members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)
25 for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one
26 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
27 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are
28 also entitled to an award of costs and reasonable attorneys' fees.

///

///

///



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

SIXTH CAUSE OF ACTION

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

Lab. Code §§ 201, 202, and 203

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

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

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

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

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

99. The Defendants failed to pay Kerry and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Kerry, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, and related compensation.

100. By failing to pay such earned wages to Plaintiff and the Class Members, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

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

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

///



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

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

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

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

106. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class Members were deprived of minimum wages, regular wages, overtime wages, doubletime wages, missed meal period premium wages, missed rest period premium wages, unlawfully deducted wages, and comparable money and property.

107. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

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

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

Lab. Code §§ 2698, *et seq.*

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

110. The “Aggrieved Employees” are all members of the Class defined above whom Defendants employed during the period beginning September 1, 2022, and ending on the date that final judgment is entered in this action.

111. Labor Code § 204 states

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

(b) (1) Notwithstanding any other provision of this section, 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.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

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

113. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 227.3, 510, 512, 1174, 1194, 1197, and 1198.

114. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 115. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the
3 Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants' violations
4 of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 227.3, 510, 512, 1174, 1194,
5 1197, and 1198 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code § 204, one hundred dollars
7 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
8 (\$200.00) for each Aggrieved Employee for each subsequent, willful, or intentional violation
9 (penalty amounts established by California Labor Code § 210).

10 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
11 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
12 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
13 California Labor Code § 226.3).

14 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
15 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
16 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
17 established by California Labor Code § 558).

18 D. For violations of California Labor Code § 1174, five hundred dollars
19 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
20 amounts established by Labor Code § 1174.5).

21 E. For violations of California Labor Code § 1197, one hundred dollars
22 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
23 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
24 (regardless of whether the initial violations were intentionally committed) (penalty amounts
25 established by California Labor Code § 1197.1).

26 F. For violations of California Labor Code §§ 201, 202, 203, 221, 226.7,
27 227.3, 1194, and 1198, one hundred dollars (\$100.00) for each Aggrieved Employee per pay
28 period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee
per pay period for each subsequent violation (penalty amounts established by California Labor
Code § 2699(f)(2)).

116. Plaintiff has complied with the procedures for bringing suit specified in California



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 Labor Code § 2699.3. By letter dated September 1, 2023, Plaintiff filed written notice online with
2 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
3 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
4 violated, including the facts and theories to support the alleged violations. A true and correct copy
5 of the notice to the LWDA dated September 1, 2023 is attached as **Exhibit A**. Plaintiff submitted
6 his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in
7 response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the
8 LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate
these allegations.

9 117. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
10 Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in
11 connection with their claims for civil penalties.

12 **V. PRAYER FOR RELIEF**

13 118. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for
14 relief and judgment against Defendants as follows:

- 15 A. An order that the action be certified as a class action with respect to
Plaintiff’s claims for violations of California law;
- 16 B. An order that Plaintiff be appointed class representative;
- 17 C. An order that counsel for Plaintiff be appointed class counsel;
- 18 D. Unpaid wages, including minimum, regular, overtime, double-time,
19 vacation, missed meal period, missed rest period, and deducted wages;
- 20 E. Liquidated damages;
- 21 F. Statutory penalties, including waiting time penalties;
- 22 G. Civil penalties;
- 23 H. Restitution;
- 24 I. Declaratory relief;
- 25 J. Actual damages;
- 26 K. Pre-judgment interest;
- 27 L. Costs of suit;
- 28 M. Reasonable attorneys’ fees; and
- N. Such other relief as the Court deems just and proper.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

EXHIBIT A



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

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

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

September 1, 2023

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

Re: Bruce Kerry / Metropolitan Security Group

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Bruce Kerry (hereafter “Kerry” or “Complainant”) provides notice that Metropolitan Security Group Inc, a California corporation, and related entities (collectively “the Metropolitan Security Group Employers” or “the Employers”) violated his rights and those of all other individuals the Metropolitan Security Group Employers have employed or otherwise contracted with in California as non-exempt, hourly employees including but not limited to security guards, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2350, 2802, and other Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Kerry hereby provides this notice to the Labor & Workforce Development Agency and the Metropolitan Security Group Employers and their agents and representatives.

At all relevant times, the Metropolitan Security Group Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Kerry and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

In or about December of 2020, the Metropolitan Security Group Employers began to employ Kerry in Los Angeles in the position of hourly, non-exempt security guard. The Metropolitan Security Group Employers continuously employed him in that capacity until on or about February 28, 2023 when his employment ended.

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

The Metropolitan Security Group Employers failed to compensate Kerry and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Metropolitan Security Group Employers required Kerry and the other Aggrieved Employees to work through their meal periods off the clock and without pay.

The Metropolitan Security Group Employers failed to compensate Kerry and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Metropolitan Security Group Employers employed Kerry and the other Aggrieved Employees in excess of eight hours in a day and 40 hours in a week. The Metropolitan Security Group Employers required Kerry and the other Aggrieved Employees to work through their meal periods off the clock and without pay.

The Metropolitan Security Group Employers failed to compensate Kerry and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Metropolitan Security Group Employers employed Kerry and the other Aggrieved Employees in excess of 12 hours in a day. The Metropolitan Security Group Employers required Kerry and the other Aggrieved Employees to work through their meal periods off the clock and without pay.

At all relevant times, the Metropolitan Security Group Employers failed to provide Kerry and all of the other Aggrieved Employees with all timely 30-minute, off-duty

meal periods. The Metropolitan Security Group Employers required Kerry and the other Aggrieved Employees to work through their meal periods off the clock and without pay. The Metropolitan Security Group Employers also failed to pay premium wages for days on which they failed to provide Kerry and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Metropolitan Security Group Employers failed to authorize and permit Kerry and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Metropolitan Security Group Employers required Kerry and the other Aggrieved Employees to work through their rest periods. The Metropolitan Security Group Employers also failed to pay premium wages for days on which they failed to authorize and permit Kerry and all of the other Aggrieved Employees to take rest breaks as required by law.

The Metropolitan Security Group Employers failed to pay all earned but unused vacation pay to Kerry and all of the other Aggrieved Employees at their final rates of pay. Under the policies and practices of the Metropolitan Security Group Employers, Kerry and all of the other Aggrieved Employees earned the following forms of vacation pay during employment. Under such policies, these accrued but unused forms of vacation pay were subject to forfeit at the conclusion of the employment relationship. The Metropolitan Security Group Employers failed to pay Kerry and all of the other Aggrieved Employees all earned but unused vacation pay at the conclusion of employment.

The Metropolitan Security Group Employers unlawfully deducted wages belonging to Kerry and all of the other Aggrieved Employees. The Metropolitan Security Group Employers deducted 30 minutes of daily pay from the wages of Kerry and all of the other Aggrieved Employees.

At all relevant times, the Metropolitan Security Group Employers failed to issue to Kerry and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Metropolitan Security Group Employers knowingly and intentionally failed to state on the wage statements they issued to Kerry and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned,

all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all vacation pay, all hourly rates, all hours work at each rate of pay, and other required information.

The Metropolitan Security Group Employers failed to provide Kerry and all of the other Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave.

The Metropolitan Security Group Employers also failed to timely pay Kerry and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Metropolitan Security Group Employers failed to provide Kerry and all of the other Aggrieved Employees with toilet and storage facilities, change rooms, and acceptable work temperatures.

The Metropolitan Security Group Employers failed to provide Kerry and all of the other Aggrieved Employees with an adequate number of suitable seats.

The Metropolitan Security Group Employers failed to maintain accurate employee records of Kerry and all of the other Aggrieved Employees.

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

- (a) The Metropolitan Security Group Employers failed to pay Kerry and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Metropolitan Security Group Employers failed to pay all earned but unused vacation pay to Kerry and all of the other Aggrieved Employees at their final rates of pay;
- (c) The Metropolitan Security Group Employers failed to provide Kerry and all of the other Aggrieved Employees all meal periods in compliance with California law;

- (d) The Metropolitan Security Group Employers failed to authorize and permit Kerry and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (e) The Metropolitan Security Group Employers failed to compensate Kerry and all of the other Aggrieved Employees at one hour's pay for each day in which the Metropolitan Security Group Employers failed to provide them with one or more meal periods as required by law;
- (f) The Metropolitan Security Group Employers failed to compensate Kerry and all of the other Aggrieved Employees at one hour's pay for each day in which the Metropolitan Security Group Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (g) The Metropolitan Security Group Employers unlawfully deducted wages belonging to Kerry and all of the other Aggrieved Employees;
- (h) The Metropolitan Security Group Employers knowingly and intentionally failed to provide Kerry and all of the other Aggrieved Employees with complete and accurate wage statements;
- (i) The Metropolitan Security Group Employers failed to provide Kerry and all of the other Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave;
- (j) The Metropolitan Security Group Employers willfully failed to timely pay Kerry and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Metropolitan Security Group Employers and when their employment ended;
- (k) The Metropolitan Security Group Employers failed to provide Kerry and all of the other Aggrieved Employees with toilet and storage facilities, change rooms, and acceptable work temperatures;
- (l) The Metropolitan Security Group Employers failed to provide Kerry and all of the other Aggrieved Employees with an adequate number of suitable seats; and

- (m) The Metropolitan Security Group Employers failed to maintain accurate employment records pertaining to Kerry and all of the other Aggrieved Employees.

Accordingly, Kerry now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Metropolitan Security Group Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

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

professional, semiprofessional, managerial, supervisory, laboratory, research, technical, clerical, office work, and mechanical occupations. Said occupations shall include, but not be limited to, the following: accountants; agents; appraisers; artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters; canvassers; carriers; cashiers; checkers; clerks; collectors; communications and sound technicians; compilers; copy holders; copy readers; copy writers; computer programmers and operators; demonstrators and display representatives; dispatchers; distributors; doorkeepers; drafters; elevator operators; estimators; editors; graphic arts technicians; guards; guides; hosts; inspectors; installers; instructors; interviewers; investigators; librarians; laboratory workers; machine operators; mechanics; mailers; messengers; medical and dental technicians and technologists; models; nurses; packagers; photographers; porters and cleaners; process servers; printers; proof readers; salespersons and sales agents; secretaries; sign erectors; sign painters; social workers; solicitors; statisticians; stenographers; teachers; telephone, radiotelephone, telegraph and call-out operators; tellers; ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations

Wage Order, § 2(O). At all relevant times during the applicable limitations period, the Metropolitan Security Group Employers, Kerry, and all of the Aggrieved Employees were covered by the Wage Order because the Metropolitan Security Group Employers operated security guard businesses, and Kerry, and all of the Aggrieved Employees, worked for the Metropolitan Security Group Employers as guards, their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations. Accordingly, Kerry and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than

one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

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

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching

out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Metropolitan Security Group Employers required Kerry and the other Aggrieved Employees to work through their meal periods off the clock and without pay.

At all relevant times during the applicable limitations period, the Metropolitan Security Group Employers failed to compensate Kerry and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Kerry now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1); and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Forfeiture of Vacation Pay
(Lab. Code § 227.3)

Section 227.3 of the Labor Code states that, unless otherwise stipulated by a collective bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations and an employee is terminated without having fully utilized his vested vacation time, all vested vacation must be paid to the employee at his final rate in accordance with such contract of employment or employer policy respecting vacation eligibility or time served. In addition, the statute prohibits an employment contract or employer policy from providing for forfeiture of such vested vacation time upon an employee's termination of employment, regardless of the reason for termination. (See *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, [183 Cal.Rptr. 846, 646 P.2d 122 (1982)].)

The California Supreme Court has examined the terms under which an employee acquires a vested right to vacation benefits that is protected against forfeiture. The Supreme Court concluded that a "proportionate right to a paid vacation 'vests' as the labor is rendered." Thus, an employee is entitled to a pro rata share of vacation pay upon termination of employment even though he has not completed all of the service requirements specified in the employer's policy or plan.

An employer should never, by reason of the employee's termination, attempt to divest or forfeit any portion of the vacation benefits in which the employee has acquired a vested interest pursuant to the terms of the employer's policy or agreement.

A vacation policy that provides for the forfeiture of vacation pay that is not used by a specified date, such as an employee's anniversary date, is impermissible under California law. Courts have held that such "use-it-or-lose-it policies" result in forfeitures of vested vacation pay and thus transgress the requirements of Labor Code Section 227.3. Such policies do not permit employees to carry over vacation time from one year to the next and do not allow employees to receive vacation pay in lieu of taking vacation time off.

The DLSE's enforcement policy permits employers to exclude employees from a vacation policy during a specified period of time at the beginning of employment. This could apply to a probationary or introductory period or even the first year of employment. If the policy is properly drafted, employees will not be entitled to prorated vacation benefits if they separate from the employer for any reason during the

probationary period or “initial employment.” (D.L.S.E. Operations and Procedures Manual § 7(a).) However, such an exclusion will be recognized only if it is not found to be a “subterfuge.” The Division will deem a subterfuge to exist if vacation benefits are implicitly earned or accrued during the waiting period. For example, if a policy provides that employees do not earn any vacation during their first year of employment, but earn four weeks’ vacation during the second year and are reduced to two weeks’ vacation the third year, the Division will contend that the policy involves a subterfuge. This is based on the Division’s position that the policy, when viewed as a whole, makes it clear that two of the four weeks’ vacation attributed to the second year are actually earned in the first years. In a case where such a subterfuge is found, employees who separate during the so-called “waiting period” (i.e., the first year of employment in the example) will be entitled to prorated vacation pay.

The Division takes the position that vacation pay for a terminating employee must be prorated on a daily basis and must be paid at the final rate of pay in effect as of the date of the separation. (See D.L.S.E. Operations and Procedures Manual § 8; D.L.S.E. Enforcement Policies and Interpretations Manual § 13.3 (1998); Letter of Chief Deputy Labor Commissioner Albert J. Reyff (Oct. 28, 1986).)

The Metropolitan Security Group Employers maintained vacation pay policies and practices with accrual components that violate Labor Code § 227.3 based on the California Supreme Court’s decision in *Suastez v. Plastic Dress-Up Co.*, supra. The Metropolitan Security Group Employers’ vacation policy fails to provide for proportionate vacation pay accruals as employees render labor and causes employees to forfeit their vested rights to vacation pay. Under the policies and practices of the Metropolitan Security Group Employers, Kerry and all of the other Aggrieved Employees earned vacation pay during employment. Under such policies, these accrued but unused forms of vacation pay were subject to forfeit at the conclusion of the employment relationship. Consequently, the Aggrieved Employees are entitled to recover vacation pay.

In *Suastez*, the defendant-employer “refused to pay vacation benefits to anyone whose employment was terminated before . . . [his or her employment] anniversary date” and refused to pay the plaintiff-employee a pro rata share of his vacation pay for the time period between his last employment anniversary date and his termination date. (*Id.* at 776–77.) In finding for the plaintiff-employee, the Court held that “a proportionate

right to a paid vacation ‘vests’ as the labor is rendered” and that Labor Code § 227.3 protects that right from forfeiture. (*Id.* at 784.)

It is especially worth noting that, in rejecting the contention that the plaintiff-employee had no vested right to vacation pay until his anniversary date, the Court specifically stated: “The right to some share of vacation pay vests, like pension rights, on acceptance of employment. Nonperformance of a condition subsequent, such as [defendant-employer’s] requirement that employees remain until their anniversary, can, at most, result in a forfeiture of the right to a vacation; *it cannot prevent that right from vesting.*” (*Id.* at 780–81, (italics added).)

Like the vacation pay policy the Court rejected in *Suastez*, the Metropolitan Security Group Employers’ vacation pay policies also fail to provide for proportionate accruals. Accordingly, Kerry now seeks civil penalties for these Labor Code violations that the Metropolitan Security Group Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 227.3, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived

by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Metropolitan Security Group Employers failed to provide Kerry and all of the other Aggrieved Employees with all timely meal periods. The Metropolitan Security Group Employers denied Kerry and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Metropolitan Security Group Employers required Kerry and the other Aggrieved Employees to work through their meal periods off the clock and without pay. Furthermore, the Metropolitan Security Group Employers failed to pay premium wages for days on which they failed to provide Kerry and all of the other Aggrieved Employees with timely meal periods. Accordingly, Kerry now seeks civil penalties for these Labor Code violations that the Metropolitan Security Group Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

///

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Metropolitan Security Group Employers failed to authorize and permit Kerry and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Metropolitan Security Group Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Metropolitan Security Group Employers required Kerry and the other Aggrieved Employees to work through their rest periods. Moreover, the Metropolitan Security Group Employers failed to pay Kerry and all of the other Aggrieved Employees premium wages on workdays the Metropolitan Security Group Employers failed to provide Kerry and all of the other Aggrieved Employees with duty-free 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Kerry now seeks civil penalties for these Labor Code violations that the Metropolitan Security Group Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and

2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” The Metropolitan Security Group Employers deducted wages from the wages earned by Kerry and all of the other Aggrieved Employees for hours spent in on-duty meal periods in violation of Labor Code § 221. Accordingly, Kerry seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employer may be aggregated and shown as one item;

5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Metropolitan Security Group Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Metropolitan Security Group Employers failed to state in the wage statements they issued to Kerry and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Metropolitan Security Group Employers knowingly and intentionally failed to state on the wage statements they issued to Kerry and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all vacation pay earned but unused, all hourly rates, all hours work at each rate of pay, and other required information.

Accordingly, Kerry seeks civil penalties for the Labor Code violations that the Metropolitan Security Group Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure To Provide Notice of Available Sick Leave
(Labor Code § 246)

Labor Code § 246 states,

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

Lab.Code § 246(h) (effective July 1, 2015). The Metropolitan Security Group Employers failed to provide Kerry and all of the other Aggrieved Employees with an itemized wage statement or separate writing that set forth the amount of paid sick leave available. Accordingly, Kerry seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: For violations of Labor Code § 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 246 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Metropolitan Security Group Employers failed to compensate Kerry and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, vacation pay, and other

compensation, at the intervals stated above. As a result, the Metropolitan Security Group Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Kerry now seeks civil penalties for the Labor Code violations that the Metropolitan Security Group Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Metropolitan Security Group Employers failed to pay Kerry and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Kerry, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, vacation pay, deducted wages, and other compensation. By failing to pay Kerry and all of the other Aggrieved

Employees as set forth above at the end of employment, the Metropolitan Security Group Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Kerry seeks civil penalties from the Metropolitan Security Group Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

**Failure to Provide Toilet and Storage Facilities, Lockers, Change Rooms, and
Acceptable Work Temperatures**
(Lab. Code §§ 1198 and 2350)

Labor Code § 2350 states,

Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.

Section 13 of Wage Order states,

- (A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

- (B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

Section 15 of Wage Order states,

...

- (C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

Throughout the relevant time period, the Metropolitan Security Group Employers failed to provide any toilet facilities for use by Kerry and all of the other Aggrieved Employees within reasonable access. Accordingly, on behalf of himself and aggrieved employees, Kerry demands that the Metropolitan Security Group Employers cure the violations of Labor Code § 2350 and provide sufficient toilets to all aggrieved employees. The Metropolitan Security Group Employers also failed to provide lockers, closets, storage facilities, and changing rooms for use by Kerry and all of the other Aggrieved Employees. Moreover, the Metropolitan Security Group Employers failed to provide acceptable temperatures for the work areas it expected Kerry and all of the other Aggrieved Employees to perform their job duties in. If within 33 days of this notice, the Metropolitan Security Group Employers fail to notify my office in writing by certified mail that they have cured the violations of Labor Code § 2350 and the Wage Order mentioned above, Kerry, on behalf of himself and all of the other Aggrieved

Employees, will commence a civil action and seek civil penalties from the Metropolitan Security Group Employers as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 2350, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Provide an Adequate Number of Suitable Seats
(Lab. Code § 1198)

Section 14 of the Wage Order states as follows:

Seats.

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

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

The nature of the work the Metropolitan Security Group Employers expected Kerry and all of the other Aggrieved Employees to perform reasonably permits the use of seats. However, the Metropolitan Security Group Employers, in violation of the Wage Order and Labor Code § 1198, did not provide Kerry and all of the other Aggrieved

Employees with an adequate number of suitable seats. Additionally, the Metropolitan Security Group Employers did not place an adequate number of suitable seats in reasonable proximity to their work area, nor did they permit Kerry and all of the other Aggrieved Employees to use such seats when it did not interfere with the performance of their duties.

Pursuant to Labor Code Sections 2699(a) and (f), Kerry, on behalf of himself and all of the other Aggrieved Employees, seeks \$100.00 for each employee per pay period for each initial violation of § 1198 and \$200.00 for each employee per pay period for each subsequent violation of § 1198 (penalty amounts established by Labor Code Section 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

- (a) Every employer shall keep accurate information with respect to each employee including the following:
 - (1) Full name, home address, occupation, and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
 - (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
 - (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Metropolitan Security Group Employers failed to compensate Kerry and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all hourly rates, all hours work at each rate of pay, and related compensation. As a result, the Metropolitan Security Group Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Kerry and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Kerry seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

// /

// /

// /

// /

// /

// /

// /

// /

LWDA / The Metropolitan Security Group Employers
Re: Bruce Kerry
September 1, 2023
Page 27 of 27

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Bruce Kerry will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.
David@spivaklaw.com

cc: Bruce Kerry
Walter L. Haines Esq.

Metropolitan Security Group Inc
c/o Judy Chiang Esq.
Kimball, Tirey & St. John LLP
2040 Main St
Ste 500
Irvine, CA 92614
Judy.Chiang@kts-law.com

1 **PROOF OF SERVICE**

2
3 State of California,
4 County of Los Angeles

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

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

9 On Wednesday, November 22, 2023, I served the foregoing document
10 described as **FIRST AMENDED COMPLAINT** on interested parties by electronic mail,
addressed as follows:

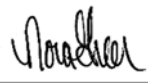
11 Kathleen M. Fellows, Esq.
12 LightGabler
13 760 Paseo Camarillo
Suite 300
14 Camarillo, CA 93010
kfellows@lightgablerlaw.com

15
16 XXXX (BY EMAIL) I caused the documents to be sent to the persons at the
electronic service addresses listed above from my electronic service address
17 nora@spivaklaw.com.

18 EXECUTED on Wednesday, November 22, 2023, at Burbank, California.

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

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

22 
23 _____
NORA GREER