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Attorneys for Plaintiff Kendrick G. Smith

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

KENDRICK G. SMITH,

Plaintiff,

vs.

ALTERNATIVE PROTECTIVE
SERVICES INC.; JOHN F. CHAVERRA;
CLAUDIA CHAVERRA; and DOES 1 to
25, inclusive,

Defendants.

) CASE NO.: **24STCV06190**

) **COMPLAINT FOR DAMAGES FOR:**

-) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**
) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**
) **3) FAILURE TO PAY OVERTIME;**
) **4) FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**
) **5) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**
) **6) FAILURE TO GIVE REST BREAKS;**
) **7) FAILURE TO GIVE MEAL**
) **BREAKS;**
) **8) FAILURE TO REIMBURSE FOR**
) **BUSINESS EXPENSES;**
) **9) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) **10) FAILURE TO PROVIDE**
) **PERSONNEL RECORDS;**
) **11) FAILURE TO PROVIDE PAY**
) **RECORDS;**
) **12) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200.**

) **DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff, KENDRICK G. SMITH (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants ALTERNATIVE PROTECTIVE SERVICES INC.; JOHN F. CHAVERRA; CLAUDIA CHAVERRA; and DOES 1 to 25, inclusive, do business in the County of Los Angeles and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant ALTERNATIVE PROTECTIVE SERVICES INC. is a California corporation doing business in Los Angeles County, California, and which employed Plaintiff. Individuals JOHN F. CHAVERRA and CLAUDIA CHAVERRA are included in this lawsuit pursuant to Labor Code Section 558.1 in that they were and are the owners, managing agents, and/or directors of ALTERNATIVE PROTECTIVE SERVICES INC, are involved in the day-to-day operations of the business and as such, control the wages, hours, and/or working conditions of Plaintiff and other hourly, non-exempt employees. ALTERNATIVE PROTECTIVE SERVICES INC.; JOHN F. CHAVERRA; CLAUDIA CHAVERRA and DOES 1 to 25, inclusive, are hereinafter collectively referred to as “Defendant(s)”, “or “ALTERNATIVE PROTECTIVE”.

4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants.

5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of

1 that information and belief, alleges that at all times herein mentioned, each of the remaining
2 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
3 under the authority of their agency, employment, or representative capacity, with the consent of
4 his/her codefendants.

5 **GENERAL ALLEGATIONS**

6 6. Plaintiff started working at ALTERNATIVE PROTECTIVE on or around April 2023
7 as a security guard. Plaintiff was classified as an hourly, non-exempt employee and his latest
8 rate of pay is \$16.90. Plaintiff is still employed at ALTERNATIVE PROTECTIVE.

9 7. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
10 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
11 Security Services USA, Inc., an onsite security provider. After about a year of employment,
12 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
13 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
14 termination of employment and weekly payment of wages to temporary employees. The trial
15 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
16 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
17 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
18 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
19 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
20 PAGA representative to sue for violations that the representative has personally suffered. The
21 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
22 and others. The statute also states that an “aggrieved employee” is “any person who was
23 employed by the alleged violator and against whom one or more of the alleged violations was
24 committed.” Because at least one of the violations that Huff had alleged had affected him
25 personally, the Court of Appeal denied Securitas’ motion.

26 8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
27 other employees, it allows for suits broader than the specific violations the named employee
28 experienced. Therefore, even if the employee did not personally experience the Labor Code

1 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff's
2 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
3 other employees, including ALL hourly, non-exempt employees, irrespective of job title or job
4 duties, as well as workers who were misclassified as independent contractors but should have
5 been classified as hourly, non-exempt W2 employees and who worked for ALTERNATIVE
6 PROTECTIVE at any of their locations in California during the relevant PAGA period.

7 9. It is Plaintiff's position that ALTERNATIVE PROTECTIVE has violated the following
8 Labor Code Sections against Plaintiff and other similarly situated aggrieved employees, who
9 include all non-exempt, hourly employees and those who were supposed to be classified as
10 hourly, non-exempt employees and who worked for ALTERNATIVE PROTECTIVE at their
11 various locations in the State of California during the relevant PAGA period.

12 10. ALTERNATIVE PROTECTIVE violated Labor Code § 1194, 1194.2, 1197, and 1197.1
13 because it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours
14 worked, including the statutory minimum wage for all hours worked and for "off the clock"
15 work. This is so because ALTERNATIVE PROTECTIVE had a company policy wherein they
16 would disproportionately round down the number of hours worked, resulting in "time shaving"
17 and further resulting in aggrieved employees not being paid for all hours worked. Moreover, and
18 to the extent Plaintiff and others worked through their meal periods or their meal periods were
19 actually interrupted due to work obligations, Plaintiff and others were not paid for all hours
20 worked, which would be akin to a minimum wage violation.

21 11. Due to the above "off the clock" violations, ALTERNATIVE PROTECTIVE also
22 violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees
23 overtime compensation, even though they worked more than 8 hours per day, 12 hours per day,
24 and/or 40 hours per week throughout their employment. Plaintiff's and other aggrieved
25 employees' actual work hours entitled them to overtime compensation, however,
26 ALTERNATIVE PROTECTIVE did not compensate its hourly, non-exempt employees with
27 overtime or the correct amount of overtime due to the "off the clock" work and time shaving as
28

described above. Furthermore, ALTERNATIVE PROTECTIVE failed to include bonuses/incentive payments in calculating employees' regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

12. ALTERNATIVE PROTECTIVE also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4 because it failed to provide Plaintiff and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. ALTERNATIVE PROTECTIVE did not completely relieve Plaintiff and others of all duty during said rest periods. ALTERNATIVE PROTECTIVE did not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods was not provided. It was not part of the company policy for employees such as Plaintiff to take at least two timely, uninterrupted rest breaks per shift. The concept of rest breaks was not consistently implemented. Moreover, it would not have been possible for employees such as Plaintiff and others to take such rest breaks due to having consistent security guard duties and no one to relieve him or allow for a full and complete statutory break. As such, the culture as well as the policies and procedures of ALTERNATIVE PROTECTIVE did not lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved of all work duties. The environment at ALTERNATIVE PROTECTIVE was not conducive to receiving multiple statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

13. ALTERNATIVE PROTECTIVE violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4 because it failed to provide hourly, non-exempt employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. ALTERNATIVE PROTECTIVE did not completely relieve Plaintiff and other employees of all duty during said meal periods. ALTERNATIVE PROTECTIVE did not pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each

workday that one or more statutory meal periods was not provided. Plaintiff and others did not always receive timely, uninterrupted meal breaks before the 5th hour worked. Moreover, even if aggrieved employees were able to take meal breaks, the meal breaks would be late and after the 5th hour worked or they would be interrupted. The latter was due to the workload and due to having consistent security guard duties without any relief and without anyone to relieve Plaintiff and others of their job duties. Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break was not part of the company culture and was not enforced by ALTERNATIVE PROTECTIVE. Consequently, it was the normal practice and custom of ALTERNATIVE PROTECTIVE not to authorize, permit, and enforce timely statutory meal periods. If ALTERNATIVE PROTECTIVE had Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and others generally worked more than a 6-hour shift. If ALTERNATIVE PROTECTIVE had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job does not and did not prevent him from taking a meal period and the company could have hired "breakers" to relieve Plaintiff of his job duties so that he can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff and others did not always receive statutory, timely meal periods during their employment. To the extent that ALTERNATIVE PROTECTIVE argues that Plaintiff and others were paid to work through their meal period, this argument is not compelling due to the position that there was no valid meal period waiver in place and even if there was, it is still a violation to prevent an employee from taking a meal break in order to rest and recover. To the extent that ALTERNATIVE PROTECTIVE argues that employees receive meal break premium pay for missed, late or short meal and rest periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in

original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at ALTERNATIVE PROTECTIVE was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

14. Furthermore, during the relevant time period, and due to the above labor code violations, ALTERNATIVE PROTECTIVE failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. ALTERNATIVE PROTECTIVE was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period, all employee identifying information, the correct and complete name and address of the legal employer, and reimbursement for business expenses, among others. As such, ALTERNATIVE PROTECTIVE did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

15. During the relevant time period, ALTERNATIVE PROTECTIVE also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff and others pursuant to California Labor Code sections 1174(d).

16. ALTERNATIVE PROTECTIVE also violated Labor Code § 203 because it willfully failed to pay other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked, including minimum wages, overtime compensation, and premium pay for missed meal and rest breaks.

1 17. During the relevant time period, Plaintiff and other aggrieved employees incurred
2 necessary, business-related expenses and costs that were not reimbursed by ALTERNATIVE
3 PROTECTIVE. These costs include, but are not limited to, uniforms, work equipment/tools, and
4 use of personal cell phones and use of personal vehicles for work purposes to effectuate their job
5 duties as security guards. Accordingly, ALTERNATIVE PROTECTIVE was in violation of
6 California Labor Code sections 2800 and 2802.

7 18. Each of the aforementioned violations, except the violations for inaccurate pay
8 statements under Labor Code section 226(a), is among the enumerated serious violations set
9 forth in Labor Code § 2699.5, for which there is no statutory right to cure.

10
11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

13 **(California Industrial Welfare Commission Order 4-2001, California Code of
14 Regulations Title 8 Section 11040, and California Labor Code Section 1198)**

15 **(Plaintiff against all named defendants and all DOE defendants)**

16 19. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 18, inclusive, of this Complaint as though fully set forth herein.

18 20. At all times relevant herein, Defendants were required to compensate their employees
19 for all hours worked upon reporting for work at the appointed time stated by the employer
20 pursuant to Industrial Welfare Commission Order 4-2001, California Code of Regulations,
21 Title 8, Section 11040.

22 21. For the three (3) years preceding filing of this action, Defendants failed to compensate
23 Plaintiff for all hours worked.

24 22. Under the aforementioned wage order and regulations, Plaintiff is to recover
25 compensation for all hours worked but not paid by Defendants for the three (3) years preceding
26 the filing of this Complaint.

27 23. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
28 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
this Court.

1 24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
2 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
3 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
4 reasonable attorney's fees and costs of suit.

5 25. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
6 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
7 amount known to Plaintiff once he has obtained all of his payroll records from
8 Defendants.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

11 **(California Labor Code Sections 1194, 1194.2, 1197)**

12 **(Plaintiff against all named defendants and all DOE defendants)**

13 26. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 25, inclusive, of this Complaint as though fully set forth herein.

15 27. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
16 to suffer or permit a California employee to work without paying wages at the minimum wage
17 rate for all hours worked as required by the applicable Industrial Welfare Commission
18 (hereinafter "IWC") Wage Order No. 4-2001, codified at California Code of Regulations, Title
19 8, Section 11040, subdivision 4.

20 28. Pursuant to IWC Wage Order no. 4-2001, subdivision 2(K), at all relevant times, "hours
21 worked" included "the time during which an employee is subject to the control of an employer,
22 and includes all the time the employee is suffered or permitted to work, whether or not required
23 to do so..."

24 29. During his employment, Plaintiff was regularly required as a matter of uniform
25 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
26 was paid less than the minimum wage rate by Defendants for hours worked in violation of
27 California Labor Code Section 1197 and the applicable California Industrial Wage Commission
28 wage order(s).

30. Plaintiff was, at all relevant times, under the control of Defendants and suffered or

1 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
2 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
3 to believe that their acts or omissions were not contrary to California law.

4 31. For all hours worked by Plaintiff for which he was paid less than the minimum wage
5 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
6 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
7 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
8 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

9 32. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
10 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
11 trial.

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO PAY OVERTIME**

14 **(California Industrial Welfare Commission Order 4-2001, California Code of**
15 **Regulations Title 8 Section 11040; California Labor Code Section 510)**
16 **(Plaintiff against all named defendants and all DOE defendants)**

17 33. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 32, inclusive, of this Complaint as though fully set forth herein.

19 34. Pursuant to Industrial Welfare Commission Order No. 4-2001, Cal. Code of Regs., Title
20 8, Section 11040, for the period of Plaintiff's employment, Defendants were required to
21 compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the
22 regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week,
23 and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a
24 day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

25 35. Plaintiff was a non-exempt employee entitled to the protections of the California
26 Industrial Welfare Commission Order No. 4-2001, California Code of Regulations, Title 8,
27 Section 11040.

28 36. Plaintiff worked more than eight (8) hours in a single workday, twelve (12) hours in a
single workday or forty (40) hours in a single workweek on numerous occasions.

1 37. Plaintiff was entitled to the above overtime premiums.

2 38. Defendants did not pay Plaintiff premium wages of at least one and one-half times
3 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
4 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
5 twelve (12) in a day.

6 39. Defendants did not pay Plaintiff premium wages of at least one and one-half times
7 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

8 40. Plaintiff worked at least one pay period in which he was not properly paid overtime
9 within the three (3) years prior to the initiation of this lawsuit.

10 41. Defendants know or should know the actual dates of overtime worked, the amount of
11 overtime worked, and the amount of unpaid overtime due.

12 42. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
13 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
14 Court.

15 43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
16 Regulations, Title 8, Sections 11040, Plaintiff is entitled to recover damages for the
17 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
18 reasonable attorney's fees and costs of suit.

19 44. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
20 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
21 trial.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

24 **(California Labor Code Section 226)**

25 **(Plaintiff against all named defendants and all DOE defendants)**

26 45. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

28 46. Pursuant to California Labor Code Section 226, every employer must furnish each
employee an itemized statement of wages and deductions at the time of payment of wages.

1 47. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
2 accurately reflected all information required by Labor Code Section 226, including but not
3 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
4 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
5 employee, all deductions, all hourly rates, and business expense reimbursement. Therefore,
6 Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in
7 accordance with California Labor Code Section 226(a).

8 48. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
9 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
10 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
11 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
12 reasonable attorney's fees.

13 49. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
14 sustained damages, including loss of earnings, in an amount to be established at trial. As a
15 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
16 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
17 and attorney's fees pursuant to statute.

18 50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
19 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
20 trial.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

23 **(California Labor Code Section 204)**

24 **(Plaintiff against all named defendants and all DOE defendants)**

25 51. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

27 52. California Labor Code Section 204 establishes the fundamental right of all employees
28 in the State of California to be paid wages in a timely fashion for their work.

53. At all times relevant during the liability period, Defendants failed to pay Plaintiff the

1 full amount of all owed wages when due as required by California Labor Code Section 204.

2 54. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is informed,
3 believes, and thereon alleges, that all times relevant during the liability period, Defendants
4 maintained a policy or practice of not paying Plaintiff wages for all hours worked, including
5 overtime hours, the minimum wage, and premium pay for missed meal and rest breaks.

6 55. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
7 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
8 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
9 from Defendants' records or indirectly based on information from Defendants' records.

10 56. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
11 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
12 trial.

13 **SIXTH CAUSE OF ACTION**

14 **FAILURE TO GIVE REST BREAKS**

15 **(Plaintiff against all named defendants and all DOE defendants)**

16 57. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.

18 58. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 19 a. Title 8 of the California Code of Regulations Sections 11040(12)(A), which provides
20 that every employer shall authorize and permit all employees to take rest periods,
21 which insofar as practicable shall be in the middle of each work period. The
22 authorized rest period time shall be based on the total hours worked daily at the rate
23 of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- 24 b. Title 8 of the California Code of Regulations Sections 11040(12)(B), which provides
25 that if an employer fails to provide an employee a rest period in accordance with the
26 applicable provisions of this order, the employer shall pay the employee one (1) hour
27 of pay at employee's regular rate of compensation for each workday that the rest
28 period is not provided;
- c. Title 8 of the California Code of Regulations sections 11040(20)(A), which penalizes

1 the employer \$50.00 for each initial violation, per employee, of any provision of the
2 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
3 d. California Labor Code section 226.7, which states that (a) no employer shall require
4 any employee to work during any rest period mandated by an applicable order of the
5 Industrial Welfare Commission, and (b) if an employer fails to provide an employee
6 a rest period in accordance with an applicable order of the Industrial Welfare
7 Commission, the employer shall pay the employee one (1) additional hour of pay at
8 employee's regular rate of compensation for each work day that the rest period is not
9 provided.

10 59. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest
11 break after every four (4) hours of work or major fraction thereof, as required by California law.

12 60. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
13 regulations, and wage orders alleged in this cause of action along with any allowable interest,
14 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
15 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

16 61. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
17 fees as well as interest under Labor Code section 218.6.

18 62. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
19 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
20 trial.

21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO GIVE MEAL BREAKS**

23 **(Plaintiff against all named defendants and all DOE defendants)**

24 63. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 62, inclusive, of this Complaint as though fully set forth herein.

26 64. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 27 a. California Labor Code section 512(a), which requires that employees be given a 30-
28 minute uninterrupted meal break after five (5) hours of work, and a second
uninterrupted meal break after ten (10) hours of work;

- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- c. California Industrial Welfare Commission Order No. 4 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11040, which states that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage 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;
- d. California Industrial Welfare Commission Wage Order No. 4 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11040, which requires an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order No. 4 Section 20(A), as codified under California Code of Regulations Section 11040 , which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4) as enforceable law.

65. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 4, as codified under California Code of Regulations Sections 11040 et. seq. requires that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that

1 the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty.
2 California Labor Code section 226.7 provides that employers may not require their employees
3 to work through their meal periods. California Labor Code section 226.7 and California Code of
4 Regulations section 11040 requires that if the employer fails to provide the employee with an
5 uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each
6 work day that the meal period is not given.

7 66. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
8 regulations, and wage orders alleged in this cause of action along with any allowable interest,
9 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
10 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

11 67. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
12 fees as well as interest under Labor Code section 218.6.

13 68. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
14 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
15 trial.

16 **EIGHTH CAUSE OF ACTION**

17 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

18 **(Plaintiff against all Named Defendants and DOE Defendants, and each of them)**

19 69. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 68, inclusive, of this Complaint as though fully set forth herein.

21 70. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
22 employee for all necessary expenditures or losses incurred by the employee in direct
23 consequence of the discharge of his or her duties."

24 71. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
25 his duties for Defendants, Plaintiff incurred reasonable and necessary expenses in the course
26 of completing his job duties, which were not reimbursed by Defendants. These expenses include,
27 but are not limited to, uniforms, work equipment/tools, and use of personal cell phones and use
28 of personal vehicles for work purposes to effectuate their job duties as security guards.

72. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest

and attorney's fees and costs, under Labor Code section 2802.

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802 and IWC Wage Order Nos. 4)

(Against all Named Defendants and all DOE Defendants)

73. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 72, inclusive, of this Complaint as though fully set forth herein.

74. Pursuant to law, Plaintiff provided the required written notice to the LWDA and Defendants of the specific violations of the California Labor Code that Defendants and DOE defendants have violated and continue to violate.

75. Pursuant to California Labor code section 2699.3, no response was received from the LWDA within 65 days of the postmark date of the above-alleged letter.

76. Plaintiff therefore has exhausted all administrative remedies required of him under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

77. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an Aggrieved Employee on behalf of himself or herself and other current or formal employees pursuant to the procedures specified in California Labor Code section 2699.3.

78. Plaintiff is an "Aggrieved Employee" because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of other current and former employees, including all hourly, non-exempt employees, who worked for ALTERNATIVE PROTECTIVE at any of their California locations during the applicable PAGA period.

1 79. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks penalties
2 under California Labor Code sections 2698 and 2699 because of Defendants' violations of
3 numerous provisions of the California Labor Code as alleged in this Complaint.

4 80. Plaintiff therefore has exhausted all administrative remedies required of him under
5 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
6 cause of action and pursue penalties in a representative action for Defendants' violations of the
7 Labor Code.

8 81. California Labor Code section 2699 et seq. imposes penalties upon culpable
9 Defendants for violating the Labor Code.

10 82. California Labor Code section 558 establishes a civil penalty as follows: Any
11 employer or other person action on behalf of an employer who violates, or causes to be violated,
12 a section of this chapter or any provision regulating hours and days of work in any order of the
13 Industrial Welfare Commission (including the "Hours and Days of Work" section of the Wage
14 Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for
15 each underpaid employee for each pay period for which the employee was underpaid ...; (2) for
16 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
period for which the employee was underpaid ...;

17 83. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
18 by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
19 seeking individual/victim specific relief or underpaid wages under this particular cause of action.

20 84. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
21 by law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
22 the following:

23 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
24 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802 via 2698 and 2699, and
25 any other Labor Codes and Industrial Welfare Commission Wage Order (Order
26 Nos. 4) violated based on the facts alleged in this Complaint.

27 85. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
28

1 costs, and civil penalties on behalf of Plaintiff and other current and former Aggrieved
2 Employees as alleged herein in an amount to be shown according to proof at trial and within the
3 jurisdictional limits of this Court.

4 **TENTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE PERSONNEL RECORDS**

6 **(Plaintiff against all named Defendants and all DOE Defendants)**

7 86. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 85, inclusive, of this Complaint as though fully set forth herein.

9 87. Labor Code section 1198.5 dictates “every current and former employee, or his
10 or her representative, has the right to inspect and receive a copy of the personnel records that
11 the employer maintains relating to the employee’s performance or to any grievance concerning
12 the employee.”

13 88. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the
14 employer shall make the contents of those personnel records available for inspection to the
15 current or former employee, or his or her representative, at reasonable intervals and at reasonable
16 times...” On information and belief, Defendants failed to provide Plaintiff with personnel
17 records when requested by Plaintiff via certified letters on December 20, 2023, as required by
18 law. Plaintiff requested his personnel records in accordance with California Labor Code section
19 1198.5(k) on December 20, 2023, via U.S. certified mail.

20 89. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his
21 records within 30 days. As a direct result of Defendants’ violations alleged herein, Plaintiff has
22 suffered and continues to suffer substantial losses related to Defendants’ failure to provide
23 personnel records.

24 90. Plaintiff seeks all available remedies for Defendants’ violations including, but not
25 limited penalties, and costs to the extent permitted by law and according to proof at trial.
26 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
27 amount of \$750.00, along with costs and attorney’s fees.

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1 **ELEVENTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE PAY RECORDS**

3 **(Plaintiff against all named Defendants and all DOE Defendants)**

4 91. Plaintiff re-alleges and incorporates by reference each and every allegation in
5 paragraphs 1 through 90, inclusive, of this Complaint as though fully set forth herein.

6 92. Labor Code section 226 sub-section (b) dictates “an employer...shall afford
7 current and former employees the right to inspect or copy records pertaining to their
8 employment, upon reasonable request to the employer...”

9 93. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer
10 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
11 pertaining to a current or former employee shall comply with the request as soon as practicable,
12 but no later than 21 calendar days from the date of the request.” On information and belief,
13 Defendants failed to provide Plaintiff with pay records when requested by Plaintiff via certified
14 letter, on December 20, 2023, and as required by law. Plaintiff requested his pay records in
15 accordance with California Labor Code section 226 on December 20, 2023, via certified mail.
16 Defendants failed to provide Plaintiff with an opportunity to inspect or copy his pay records
within 21 days.

17 94. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered
18 and continues to suffer substantial losses related to Defendants’ failure to provide pay records.
19 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
20 amount of \$750.00, along with costs and attorney’s fees.

21 95. Plaintiff seeks all available remedies for Defendants’ violations including, but
22 not limited penalties, and costs to the extent permitted by law and according to proof at trial.

23 **TWELFTH CAUSE OF ACTION**

24 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

25 **(California Business and Professions Code Section 17200)**

26 **(Plaintiff against All Named Defendants and all DOE defendants)**

1 96. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 95, inclusive, of this Complaint as though fully set forth herein.

3 97. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
4 constitutes unfair and unlawful business practices under California Business and Professions
5 Code Section 17200, et seq.

6 98. Defendant's violations of the California labor laws and the Labor Code
7 constitutes a business practice because it was done repeatedly over a significant period of time
8 in a systematic manner that was detrimental to Plaintiff and other employees.

9 99. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
10 reasonable attorneys' fees and costs of said suit as specifically provided in California Code of
11 Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et
12 seq.

13 100. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
14 multiple damages as specifically provided in California Business and Professions Code section
15 17200 et seq.

16 101. For the four years preceding the filing of this action, Plaintiff requests
17 restitution of all monies and profits to be disgorged from Defendants in an amount according to
18 proof at time of trial, but in excess of the jurisdiction of this Court.

19
20 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
21 follows:

- 22 1. For compensatory damages including lost past and future wages, regular wages,
23 overtime, and all other sums of money, together with interest on said amounts, and any
24 other economic injury to Plaintiff, according to proof;
- 25 2. For special and consequential damages to Plaintiff in an amount subject to proof at
26 trial;
- 27 3. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
28 at trial;

4. For damages and penalties under Labor Code Sections 204/210/226 for Plaintiff in an amount subject to proof at trial;
5. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount subject to proof at trial;
6. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
7. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
8. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
9. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendant as described more particularly in the Complaint and Representative PAGA claim/action;
10. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of attorney's fees, costs, interest, and penalties according to proof to the extent permitted by law;
11. For restitution and/or damages for all amounts unlawfully withheld from the wages of Plaintiff, as may be proven;
12. For the imposition of civil penalties and/or statutory penalties;
13. For all interest as allowed by law;
14. For all costs and disbursements incurred in this suit;
15. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, the California Labor Code, the Fair Employment and Housing Act; and/or other applicable laws; and

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1 16. For such other and further relief as this Court may deem proper.

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3 DATED: March 13, 2024

MESSRELIAN LAW INC.

4 By 
5 Harout Messrelian, Esq.
6 Attorneys for Plaintiff Kendrick G. Smith

7
8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

10
11 DATED: March 13, 2024

MESSRELIAN LAW INC.

12 By 
13 Harout Messrelian, Esq.
14 Attorneys for Plaintiff Kendrick G. Smith