

Rick A. Waltman (State Bar No. 306463)
Matthew B. Shields (State Bar No. 308553)
WALTMAN EMPLOYMENT LAW
501 W. Broadway, Ste. 800
San Diego, California 92101
(619) 320-5666
rick@waltmanemploymentlaw.com

Attorneys for Plaintiffs Chad O'Neill and Bianca O'Neill

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County of San Diego

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Clerk of the Superior Court
By J. Walters ,Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

CHAD O'NEILL, and BIANCA O'NEILL, as
individuals and on behalf of all others similarly
situated,

Plaintiffs,

vs.

STRONG TOWER SECURITY
CORPORATION, a California Corporation;
JONATHAN BARETTO, an individual,

Defendants.

Case No. 25CU009666C

REPRESENTATIVE ACTION COMPLAINT

1. Failure to Pay All Minimum Wages
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Untimely Payment of Wages
6. Wage Statement Violations
7. Waiting Time Penalties
8. Failure to Provide Sick Pay
9. Failure to Reimburse for Business Expenses
10. Retaliation
11. Wrongful Termination
12. Civil Penalties under the Private Attorneys General Act

1 Plaintiffs Chad O'Neill, and Bianca O'Neill ("Plaintiffs"), as individuals and on behalf of all
2 other similarly situated current and former California employees and the State of California, bring
3 this representative action against Defendants Strong Tower Security Corporation ("Strong Tower"),
4 Jonathan Baretto ("Mr. Baretto"), and DOES 1 through 20 (collectively, "Defendants"), and on
5 information and belief allege as follows:

6 **INTRODUCTION**

7 1. Plaintiffs bring this individual and representative action filed for numerous egregious
8 violations of the California Labor Code. Defendants misclassified Plaintiffs and other aggrieved
9 employees as "independent contractors," and failed to abide by the California Labor Code with
10 respect to all employees.

11 2. Defendants failed to provide pay for all hours worked, failed to provide for meal and
12 rest periods, failed to provide sick leave, failed to issue pay statements, and failed to maintain
13 records, among other Labor Code violations discussed herein. As a result of these violations,
14 Defendant failed to timely pay Plaintiffs and aggrieved employees each pay period on paydays and
15 upon separation of employment, and thus are liable for waiting time and other statutory penalties.

16 3. Plaintiffs were terminated in retaliation for discussing their work conditions and pay,
17 opposing unlawful conduct, and/or asserting their rights as California employees.

18 4. Defendant's employment policies, practices and systems enabled and facilitated these
19 violations on a company-wide basis with respect to Plaintiffs and the aggrieved employees.

20 **JURISDICTION & VENUE**

21 5. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
22 California Constitution.

23 6. Venue as to each defendant is proper in this judicial district under Code of Civil
24 Procedure §§ 395(a) and 395.5 because Defendant conduct business in this county, and committed
25 the alleged violations in this county.

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PARTIES

A. Plaintiffs

7. Plaintiffs Chad O'Neill ("Mr. O'Neill") and Bianca O'Neill ("Ms. O'Neill") are individuals over 18 years of age who worked for Defendants in San Diego, California as hourly, non-exempt employees in the year preceding the filing of this action. Plaintiffs both worked as security guards for Defendants.

B. Defendants

8. Defendant Strong Tower Security Corporation ("Strong Tower") is a California company registered to do business in the State of California. Defendant Strong Tower operates a security services company, providing security to other business in San Diego.

9. Defendant Jonathan Baretto ("Baretto") is the owner, chief financial officer, secretary, and main operations manager for Defendant Strong Tower. Defendant Baretto is responsible for the unlawful acts described herein. He manages and directs employees, and is responsible for setting and enforcing the policies and practices discussed herein.

10. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 20, are presently unknown to Plaintiffs, who sue them by such fictitious names under Code of Civil Procedure section 474. Plaintiffs are informed, believes and alleges that each of the fictious Defendant is responsible in some manner for the acts and omissions alleged herein. Plaintiffs will seek leave to amend this Complaint to reflect their true names and capacities when they become known.

11. Plaintiffs are informed, believe, and allege that each defendant acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant are legally attributable to all others.

12. Plaintiffs are informed, believe, and allege that the above-mentioned defendants violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or regulating minimum wages and days of work and other provisions of the Labor Code with respect to the group

of aggrieved employees. As a result, they may be held personally liable under Labor Code sections 558, 558.1, and 1197.1. (*See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.

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GENERAL ALLEGATIONS

Labor Code Violations

13. During their employment, Plaintiffs and other aggrieved employees were misclassified as independent contractors against California law.

14. Defendants directed the work and time of work for Plaintiffs and all employees, used all workers as a core part of its business function (providing security services to other businesses), and there is no evidence that Plaintiffs or other aggrieved employees customarily engaged in an independent trade or business. Plaintiffs and other employees were denied material rights as California employees under the Labor Code, including payment for all hours worked, overtime, rest breaks, provision of accurate pay statements, sick time, and reimbursement for necessary business expenses such as for use of their personal cell phones for work purposes and uniforms.

15. Plaintiffs and other misclassified employees were not paid based on the hours they actually worked, but instead only for the time they were scheduled. Plaintiffs and others were directed to begin working before their scheduled shifts, and often to stay later than their scheduled shifts, but they were not paid for this pre-shift and post-shift work. However, when shifts were shorter than expected, Defendants did not pay employees for their full scheduled time.

16. Defendants did not keep records regarding the time Plaintiffs' and other employees worked, and failed to pay them based on the actual hours they worked. Defendant did not provide sick leave to Plaintiffs and other aggrieved employees.

17. While employees sometimes got breaks during their shifts, Defendants also often required Plaintiffs and others to work through part or all of their meal and rest breaks. When Plaintiffs and others did receive meal breaks, they were often late (after the fifth hour of work), interrupted, and/or short. Plaintiffs' inability to take their timely breaks in compliance with California law resulted from the continuous stream of workflow directed by Defendants. When

1 Plaintiffs and other employees did not receive compliant meal and rest breaks, Defendants did not
2 pay one hour of premium pay as required by California law.

3 18. With respect to the unpaid minimum and regular wages, overtime wages, and meal
4 and rest period premiums owed to Plaintiffs and other employees, Defendants failed to pay those
5 wages on time each pay period or upon separation of employment. (*See Naranjo v. Spectrum*
6 *Security Services, Inc.* (2022) 13 Cal. 5th 93.) Defendants similarly failed to timely pay all wages
7 owed each pay day or upon separation of employment (or within 72 hours thereof), in violation of
8 Labor Code sections 201 through 203 (waiting time) and 204 and 204b (paydays).

9 19. Defendants equally failed in their affirmative obligation to provide accurate itemized
10 wage statements each pay period to Plaintiffs and other employees.

11 20. Plaintiffs and other employees suffered injury in the form of confusion regarding
12 amounts paid for hours worked, and in the form of concealment of the common payroll practices
13 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
14 this Complaint.

15 21. Defendants' wage statement violations were knowing and intentional as a matter of
16 law with respect to Plaintiffs and California employees given that the legal obligation was not
17 disputed, the wage statement and wage laws are clear and unambiguous as written, and because
18 Defendant nevertheless failed to comply despite the means and ability to do so.

19 22. Plaintiffs are informed, believe, and allege that Defendants' acts and omissions have
20 knowingly and intentionally caused harm to Plaintiffs and other employees. Plaintiffs are informed,
21 believe, and allege that Defendants have engaged in systemic violations of the Labor Code and IWC
22 Wage Orders by maintaining practices, policies, and customs that are inconsistent with their
23 obligations under California law.

24 ***Retaliation***

25 23. Defendant Barretto did not tolerate employee complaints about working conditions or
26 unfair pay. He repeatedly threatened employees via WhatsApp that they would be fired if they
27 discussed pay with him or one another. He was clear that "NO ONE is to talk about their pay.
28 Period."

1 24. Defendants in fact retaliated against each Plaintiff, and likely many others, in
2 violation of the Labor Code. Plaintiff Chad O'Neill was terminated in retaliation for reporting
3 egregious harassing statements made by manager Da'Veed Lewis. Mr. Lewis notoriously used foul
4 and offensive language often, and his statements often crossed the line into outright harassment. On
5 or around Saturday April 27, 2024, Mr. O'Neill overheard Mr. Lewi's comment about two
6 passersby: "look at these tranny boys pissing in the street like n*****s." Mr. O'Neill complained to
7 Defendants about Mr. Lewi's racist and homophobic slur, and that he did not feel comfortable with
8 them being made, and that he expected others would find such comments harassing. Mr. O'Neill was
9 removed from the WhatsApp group and schedule the next day, and ultimately terminated. The
10 Company claimed to base its termination on pretextual allegations from Mr. Lewis about vague
11 complaints about Mr. O'Neill. Mr. O'Neill had never been accused of having complaints against him
12 until that day, and manager Anthony Garcia had never heard of any such allegations either. Mr.
13 O'Neill alleges that Mr. Lewis and Defendants made up claims about Mr. O'Neill in retaliation for
14 complaining about him. After his wrongful termination, Mr. O'Neill heard that Mr. Lewis called him
15 "gay" to another employee behind his back for opposing Mr. Lewis' heinous comments.

16 25. Plaintiff Bianca O'Neill was terminated on June 8, 2024, the same day she requested
17 sick leave to care for her daughter. Almost immediately after Ms. O'Neill notified her supervisor via
18 text message that she needed sick time to care for her sick daughter, she was removed from the
19 schedule and company WhatsApp group, and forced out of her job.

20 26. Plaintiffs believe and thereon allege that other employees were retaliated against for
21 raising their concerns of unlawful pay and job conditions, and, for Ms. O'Neill, requesting sick pay.

22 **PAGA ALLEGATIONS**

23 27. Plaintiffs seek to recover civil penalties as individual aggrieved employees and on
24 behalf of the State of California and all current and former non-exempt hourly employees who
25 worked for Defendant in the State of California during the one-year period preceding the date of the
26 PAGA Notice through the current date and the date of final judgment in any pending action (the
27 "aggrieved employees" and the "PAGA Period").

1 28. The State of California, via the Labor and Workforce Development Agency
2 (“LWDA”), is the real party in interest in this action with respect to the PAGA claims. (*Kim v. Reins*
3 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the Plaintiffs
4 files suit is always the real party in interest.”])

5 29. Plaintiffs are “aggrieved employees” because Plaintiffs were employed by Defendant
6 and personally experienced one or more of the alleged violations. Therefore, Plaintiffs are properly
7 suited to act on behalf of the State of California and collect civil penalties for all violations
8 committed against all other current and former aggrieved employees of Defendant. (*See, e.g., Huff*
9 *v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an
10 “aggrieved employee”—a person affected by one Labor Code violation committed by an
11 employer—to pursue penalties for all the Labor Code violations committed by that employer.”])

12 30. “Notwithstanding any other provision of law, any provision of this code that provides
13 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or
14 any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of
15 this code, may, as an alternative, be recovered through a civil action brought by an aggrieved
16 employee on behalf of himself or herself and other current or former employees pursuant to the
17 procedures specified in Section 2699.3.” (Labor Code § 2699(a)).

18 31. Now that at least 65 days have passed from Plaintiffs first notifying Defendant and
19 the LWDA on **September 30, 2024** of the specific provisions of the Labor Code alleged to have
20 been violated (including the supporting facts and theories) without LWDA intervention—and
21 without Defendant giving written notice by certified mail to Plaintiffs providing a description of any
22 actions taken to cure the alleged violations within 33 days—Plaintiffs exhausted all prerequisites and
23 commences this civil action under Labor Code § 2699 with respect to the PAGA notice and any
24 amendments or supplements thereto.

25 32. All allegations regarding violations of the IWC Wage Orders are enforceable as
26 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
27 hours than those fixed by the order or under conditions of labor prohibited by the order is
28 unlawful.”)

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL MINIMUM WAGES**

3 **By Plaintiffs against All Defendants**

4 33. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

5 34. Defendants willfully failed in their affirmative obligation to pay Plaintiffs and
6 aggrieved employees at least the lawful minimum wage for each hour worked in violation of Labor
7 Code sections 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and
8 Days of Work” and “Minimum Wages” sections of the applicable orders), including payment at the
9 lawful local and county minimum wage ordinances in effect.

10 35. Defendants’ unlawful acts and omissions deprived Plaintiffs and aggrieved
11 employees of minimum, regular and overtime wages in amounts to be determined at trial. Plaintiffs
12 are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an amount
13 equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’ fees,
14 and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY ALL OVERTIME WAGES**

17 **By Plaintiffs against All Defendants**

18 36. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

19 37. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
20 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
21 wages all overtime hours worked, and which further provide a private right of action for an
22 employer’s failure to pay all overtime compensation for overtime hours worked.

23 38. Defendants failed in their affirmative obligation to pay Plaintiffs and aggrieved
24 employees no less than one and one-half times their respective “regular rate of pay” for all hours
25 worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on
26 the seventh day of work in any one workweek, and no less than twice their respective “regular rate
27 of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
28

1 day of a workweek in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
2 Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

3 39. Plaintiffs are entitled to recover to the full amount of the unpaid overtime, in addition
4 to interest, statutory and civil penalties, and attorneys’ fees, and costs to the extent permitted by law.

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6 **THIRD CAUSE OF ACTION**

7 **MEAL PERIOD VIOLATIONS**

8 **By Plaintiffs against All Defendants**

9 40. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

10 41. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
11 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods
12 (or meal period premiums in lieu thereof), and which further provide a private right of action for an
13 employer’s failure to lawfully provide all meal periods and/or pay meal period premiums at the
14 lawful regular rate of compensation.

15 42. Defendants willfully failed in their affirmative obligation to consistently provide
16 Plaintiffs and aggrieved employees compliant, duty-free meal periods of not less than 30 minutes
17 beginning before the fifth hour of hour for each work period of more than five hours per day and a
18 second duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour of
19 work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the
20 “Meal Periods” sections of the applicable orders).

21 43. Further, Defendants willfully failed in their affirmative obligation to consistently pay
22 Plaintiffs and the aggrieved employees one additional hour of pay at the respective regular rate of
23 compensation for each workday that a fully compliant meal period was not provided, in violation of
24 Labor Code sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the “Meal Periods”
25 sections of the applicable orders).

26 44. Plaintiffs are entitled to recover the full amount of the meal period premiums owed,
27 in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the extent
28 permitted by law.

1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **By Plaintiffs against All Defendants**

4 45. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

5 46. This cause of action is brought by the aggrieved employees pursuant to the IWC
6 Wage Orders and Labor Code §§ 226.7 and 516, which require non-exempt employees be authorized
7 to take complaint rest periods (or rest period premiums in lieu thereof), and which further provide a
8 private right of action for an employer's failure to lawfully provide all rest periods and/or pay rest
9 period premiums at the lawful regular rate of compensation.

10 47. Defendants willfully failed in their affirmative obligation to consistently authorize
11 and permit Plaintiffs and aggrieved employees to receive compliant, duty-free rest periods of not less
12 than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor
13 Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods" sections of
14 the applicable orders).

15 48. Further, Defendants willfully failed in their affirmative obligation to consistently pay
16 Plaintiffs and the aggrieved employees one additional hour of pay at the respective regular rate of
17 compensation for each workday that a fully compliant rest period was not provided, in violation of
18 Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

19 49. Plaintiffs are entitled to recover to the full amount of the rest period premiums owed,
20 in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent
21 permitted by law.

22 **FIFTH CAUSE OF ACTION**

23 **UNTIMELY PAYMENT OF WAGES**

24 **By Plaintiffs against All Defendants**

25 50. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

26 51. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
27 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
28

1 period, and which further provide a private right of action for an employer's failure to comply with
2 this obligation.

3 52. Defendants willfully failed in their affirmative obligation to timely pay all wages,
4 including paid sick leave and meal and rest premiums, earned by Plaintiffs and aggrieved employees
5 twice during each calendar month on days designated in advance by the employer as regular paydays
6 (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday weekly
7 employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the
8 "Minimum Wages" sections of the applicable orders).

9 53. Plaintiffs are entitled to recover the full amount of the unpaid wages, in addition to a
10 statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee
11 and \$200 for all subsequent violations and for all willful or intentional violations for each failure to
12 pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor
13 Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

14 **SIXTH CAUSE OF ACTION**

15 **WAGE STATEMENT VIOLATIONS**

16 **By Plaintiffs against All Defendants**

17 54. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

18 55. This cause of action is brought pursuant to Labor Code § 226(a) which requires non-
19 exempt employees be provided accurate itemized wage statements each pay period, and which
20 further provide a private right of action for an employer's failure to comply with this obligation.

21 56. Defendants knowingly and intentionally failed in their affirmative obligation provide
22 accurate itemized wage statements to Plaintiffs and aggrieved employees resulting in injury to
23 Plaintiffs and aggrieved employees. Specifically, the wage statements issued to Plaintiffs and
24 aggrieved employees did not accurately state each pay period all of the information required by
25 Labor Code § 226(a)(1)-(9).

26 57. Defendants' unlawful acts and omissions deprived Plaintiffs and the aggrieved
27 employees of accurate itemized wage statements, causing confusion and concealing wage and
28 premium underpayments.

1 58. As a result, Plaintiffs are entitled to recover the statutory penalty of \$50 per employee
2 for the initial pay period in which a violation occurred and \$100 per employee for each violation in a
3 subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition to interest,
4 attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

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6 **SEVENTH CAUSE OF ACTION**

7 **WAITING TIME PENALTIES**

8 **By Plaintiffs against All Defendants**

9 59. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

10 60. This cause of action is brought pursuant to Labor Code §§ 201 through 203, which
11 require an employer to timely pay all wages earned upon termination of employment, and which
12 further provide a private right of action to recover statutory waiting time penalties each day an
13 employer fails to comply with this obligation, up to a maximum of 30 days wages.

14 61. Defendants willfully failed and continue to fail in their affirmative obligation to pay
15 all wages earned and unpaid to Plaintiffs and aggrieved employees immediately upon termination of
16 employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior
17 notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in
18 violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

19 62. Plaintiffs are entitled to recover to a waiting time penalty for a period of up to
20 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

21 **EIGHTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE SICK PAY**

23 **By Plaintiffs against All Defendants**

24 63. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

25 64. Under Labor Code section 246 et seq., employers are required to provide paid sick
26 leave to all employees. Employers have the option of providing 24 hours of paid sick leave to
27 employees or to allow employees to accrue paid sick leave each pay period. Cal. Lab. Code § 246.
28 If an employer chooses the accrual method, employees must accrue sick leave at a rate of one (1)

1 hour for every thirty (30) hours worked in a given pay period. Cal. Lab. Code § 246(b)(1). Under
2 the accrual method, employees must begin accruing paid sick leave at the commencement of
3 employment. Cal. Lab. Code § 246(b)(1).

4 65. California Labor Code 233, employers cannot retaliate against their employees who
5 use their sick leave for kin care purposes.

6 66. Defendants did not provide any sick time to aggrieved employees as required by
7 California and local law. Plaintiff Bianca O'Neill was in fact terminated in retaliation for seeking a
8 sick day to take care of her sick infant child. On information and belief, the failure to provide sick
9 pay was applied as a matter of common policy and practice to the aggrieved employees.

10 67. Plaintiffs are entitled to any damages or penalties permitted under law due to
11 Defendants' failure to provide sick pay, attorneys fees and costs for enforcement, and interest.
12 Plaintiff Bianca O'Neill is additionally entitled to back pay and front pay for the wages she lost due
13 to her retaliatory termination, and emotional distress damages according to proof.

14 **NINTH CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

16 **By Plaintiffs against All Defendants**

17 68. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

18 69. Defendants willfully failed in their affirmative obligation to reimburse Plaintiffs and
19 aggrieved employees for all necessary expenditures, losses, expenses, and costs incurred by them in
20 direct discharge of the duties of their employment, in violation of Labor Code section 2802.

21 70. At all relevant times, Defendants were required to comply with the reimbursement
22 mandate of Labor Code section 2802. Plaintiff and other employees were not compensated for their
23 use of their personal devices and uniforms, which employees were required to pay for out of their
24 own pockets. (*See, e.g., Cochran v. Schwan Home Service* (2014) 228 Cal. App. 4th 1137.)

25 71. Defendants' unlawful acts and omissions deprived Plaintiffs and aggrieved
26 employees of lawful reimbursements for business expenses in amounts to be determined at trial.
27 Plaintiffs are entitled to recover the amount of the unreimbursed expenses in addition to interest,
28 attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2802.

TENTH CAUSE OF ACTION

RETALIATION

By Plaintiffs against All Defendants

72. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

73. Labor Code Section 1102.5 provides in pertinent part:

(b) An employer, or any person acting on behalf of the employer, ***shall not retaliate against an employee for disclosing information***, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, ***to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct*** the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties. (emphasis added)

74. Labor Code section 232.5 protects employees from retaliation by their employers for discussing or disclosing information about working conditions.

75. The California Fair Employment and Housing Act ("FEHA") prohibits retaliation against an employee who reports and/or opposes harassment in the workplace.

76. California Labor Code 233, employers cannot retaliate against their employees who use their sick leave for kin care purposes.

77. Labor Code section 232, an employer cannot retaliate against an employee for disclosing their wages or discussing the wages of others

78. Defendants employed Plaintiffs during all relevant times as stated herein.

79. As stated herein, Plaintiffs reported unlawful labor practices. Plaintiffs made these complaints in good faith and believed them to be legal violations. Defendants did not remedy these violations, ignored Plaintiffs' pleas, and all employees not to raise complaints or risk termination. Defendants ultimately terminated Plaintiffs for their opposition to legal violations discussed herein, and for seeking a sick day (Plaintiff Bianca O'Neill).

80. Plaintiffs further allege that Defendants retaliated against and wrongfully terminated Plaintiffs with malice and intent to cause Plaintiffs economic and psychological harm. Defendants knew Plaintiffs' complaints were of definitive unlawful practices. Rather than fixing the problems

1 identified by Plaintiffs, Defendants doubled down thereby depriving Plaintiffs and other employees
2 of their rights, allowing harassment by supervisors to continue, and terminating Plaintiffs with the
3 intent to cause them harm.

4 81. In addition to other penalties and damages, an employer is liable for a civil penalty
5 not exceeding ten thousand dollars (\$10,000) for each violation of Labor Code § 1102.5.

6 82. As a direct and proximate result of Defendants' wrongful actions, Plaintiffs have
7 suffered severe emotional distress, lost past and future wages, and other damages, in amounts to be
8 proven at trial.

9 83. Plaintiffs seek economic damages, non-economic damages, civil penalties, and
10 punitive damages, as well as attorneys' fees and costs.

11 **ELEVENTH CAUSE OF ACTION**

12 **WRONGFUL TERMINATION**

13 **By Plaintiffs against All Defendants**

14 84. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

15 85. California's public policies necessitate that employees must be allowed to disclose
16 and report unsafe and unlawful work conditions without being terminated in retaliation. (*See, e.g.*,
17 Labor Code Section 232.5 (making it unlawful for any employer to "[d]ischarge, formally discipline,
18 or otherwise discriminate against an employee who discloses information about the employer's
19 working conditions."); Labor Code Section 1102.5 (prohibiting retaliation for opposing or reporting
20 conduct reasonably believed to be unlawful); Gov. Code § 12940, et seq. (prohibiting discrimination,
21 harassment, and retaliation due to opposing harassment).

22 86. As alleged above, Plaintiffs' termination was done in violation of the public policies
23 established by the FEHA, and the California Labor Code and other state and federal laws and
24 regulations aimed at protecting California employee rights.

25 87. As a direct and proximate result of Defendant's wrongful actions, Plaintiffs have
26 suffered emotional distress, lost wages, and other damages, in amounts to be proven at trial.

27 88. Plaintiffs seeks economic damages, non-economic damages, civil penalties, and
28 punitive damages, as well as attorneys' fees and costs.

1 **TWELFTH CAUSE OF ACTION**

2 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

3 **(Labor Code § 2698 et seq.)**

4 **By Plaintiffs against All Defendants**

5 89. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth herein.

6 90. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,
7 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
8 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
9 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
10 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
11 former employees pursuant to the procedures specified in Section 2699.3.”

12 91. Labor Code section 2699(f) provides: “For all provisions of this code except those for
13 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
14 these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or
15 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
16 pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
17 pay period for each subsequent violation.”

18 92. Labor Code section 558(a) provides: “Any employer or other person acting on behalf
19 of an employer who violates, or causes to be violated, a section of this chapter or any provision
20 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
21 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
22 underpaid employee for each pay period for which the employee was underpaid in addition to an
23 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred
24 dollars (\$100) for each underpaid employee for each pay period for which the employee was
25 underpaid in addition to an amount sufficient to recover underpaid wages.”

26 93. Labor Code section 1197.1(a) provides: “Any employer or other person acting either
27 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
28 any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
of the commission, shall be subject to a civil penalty ... and any applicable penalties imposed

pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid ... and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

94. Defendants have committed violations of the California Labor Code against Plaintiffs and other aggrieved employees as discussed herein. Plaintiffs are “aggrieved employees” within the meaning of Labor Code section 2689 et seq. (*See Huff v. Securitas Security Services USA* (2018) 23 Cal. App. 5th 745.) Acting on behalf of other aggrieved employees, Plaintiffs brings this representative action against Defendant to recover the civil penalties due to Plaintiffs individually and other aggrieved employees and the State of California, according to proof, pursuant to Labor Code Sections 558 and 2699 (a) and (f), including but not limited to: (1) \$100 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code section 210 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld; (2) \$50 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code section 558 per employee per pay period, plus an amount sufficient to recover the unpaid wages owed to each aggrieved employee; (3) \$100 for each initial violation and \$250 for each subsequent violation pursuant to Labor Code section 1197.1 per employee per pay period; (4) \$250 for each initial violation and \$1,000 for each subsequent violation pursuant to Labor Code section 226.3 per employee per pay period; and/or (5) \$100 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no specific penalty is provided, based on the following Labor Code violations:

- a. Failing to provide all legally required meal periods, and failing to pay meal period premiums when owed to the aggrieved employees at the regular rate of compensation in violation of Labor Code sections 204, 210, 226.7, 512, and 558;

- b. Failing to pay all aggrieved employees all wages and overtime compensation earned in violation of Labor Code sections 204, 510, 558, 1194, and 1197;
- c. Failing to pay minimum wages for all ours worked to the aggrieved employees in violation of Labor Code sections 1182.12, 1194, 1194.2, and 1197;
- d. Failing to furnish the aggrieved employees with complete, accurate and itemized wages statements in violation of Labor Code section 226;
- e. Failing to timely pay all wages earned at least twice per calendar month in violation of Labor Code Section 204;
- f. Failing to provide paid sick leave in violation of Labor Code Section 246 and 248.5;
- g. Failing to maintain accurate payroll records in violation of Labor Code Sections 558 and 1174;
- h. Failing to timely pay all final wages and compensation earned by the aggrieved employees at the time of separation from employment in violation of Labor Code Sections 201, 202, and 203.
- i. Retaliation in violation of Labor Code Sections 1102.5 and 232.5.
- j. Failing to reimburse for necessary business expenses in violation of Labor Code Section 2802
- k. failing to provide a safe work environment in violation of Labor Code Sections 6400, 6401, and 6402 as described in Plaintiffs' PAGA Notice.

95. Plaintiffs were subjected to all of the above violations, and Plaintiffs alleges that Defendants maintain a policy and practice of similarly depriving other aggrieved employees of their rights.

96. Defendants committed the above violations as a result of their intentional policies, and therefore willfully failed in their affirmative obligation to pay Plaintiffs and aggrieved employees their lawful wages in violation of Labor Code sections 1182.12, 1194, 1197 and 1198 and the IWC Wage Orders (the "Hours and Days of Work" and "Minimum Wages" sections of the applicable orders), to provide meal and rest periods, to timely pay each employee their wages each

1 pay period, to maintain and provide accurate payroll records, and to timely pay each employee all
2 wages owed upon their termination or end of employment.

3 97. Plaintiffs were compelled to retain counsel to file this court action to protect the
4 interests of other aggrieved employees, and to assess and collect the civil penalties owed by
5 Defendants to such aggrieved employees and the State of California. Plaintiffs has thereby incurred
6 attorney's fees and costs, which Plaintiffs are entitled to recover under California Labor Code
7 Section 2699(g).

8 **PRAYER**

9 Plaintiffs pray for judgment as follows:

- 10 a. For recovery of general and special damages in amount according to proof;
11 b. For all recoverable pre- and post-judgment interest;
12 c. For recovery of all civil and statutory penalties and liquidated damages;
13 d. For disgorgement of all amounts wrongfully obtained;
14 e. For restitution and injunctive relief;
15 f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
16 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
17 1194, 2802, 2699(g) and Code of Civil Procedure section 1021.5;
18 g. For Plaintiffs and counsel to be provided with all enforcement capability as if the
19 action were brought by the State of California or the California Division of Labor
20 Enforcement;
21 h. For an award of all civil penalties under the Labor Code section 2698 et seq.;
22 i. For such other relief the Court deems just and proper.

23
24 Dated: February 21, 2025

WALTMAN EMPLOYMENT LAW

25 

26 Rick A. Waltman
27 Attorney for Plaintiffs
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