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8 BILLY WILBURN, and all others similarly situated

9 (additional attorneys for Plaintiff(s) on following page)

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN BERNARDINO**

12 **(UNLIMITED JURISDICTION)**

13 BILLY WILBURN, on behalf of himself and all
14 others similarly situated, and the general public,
15 and as an “aggrieved employee” on behalf of
16 other “aggrieved employees” and the State of
California under the Labor Code Private
Attorneys General Act of 2004,

17 *Plaintiff,*

18 vs.

19 A-ONE ELITE STAFFING INC, a California
20 corporation; and DOES 1–50, inclusive,

21 *Defendants.*

Case No. CIVSB2438418

CLASS ACTION

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 §§ 510, 1194, 1197, and 1198);
2. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
3. Wage Statement Penalties (Lab. Code § 226);
4. Waiting Time Penalties (Lab. Code § 203);
5. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
6. Civil Penalties (Lab. Code §§ 2698, et seq.)

JURY TRIAL DEMANDED



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1 Plaintiff, Billy Wilburn (hereafter “Plaintiff” or “Wilburn”), on behalf of himself and all
2 others 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 A-One Elite
9 Staffing 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) Indemnify for necessary work-related expenditures;

17 (C) Issue only accurate and complete itemized wage statements;

18 (D) Issue statements of sick leave available;

19 (E) Timely pay wages upon termination of employment;

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

22 **II. THE PARTIES**

23 3. Plaintiff Billy Wilburn is a resident of California. At all relevant times, Plaintiff
24 was an “employee” within the meaning of Title 8 California Code of Regulations § 11050 and an
25 “aggrieved employee” within the meaning of Labor Code § 2699 (c).

26 4. Defendant A-One Elite Staffing Inc is a corporation organized and existing under
27 the laws of California and also a citizen of California based on Plaintiff’s information and belief.

28 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but



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1 is informed and believes and thereon alleges that said Defendants are legally responsible for the
2 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
3 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
4 when ascertained.

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

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

15 8. 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 and/or practice, or
17 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
18 described class in accordance with applicable laws as alleged herein.

19 **III. CLASS ALLEGATIONS**

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

25 10. **Class Definition:** The Class is defined as follows: All persons Defendants
26 employed in California as hourly, non-exempt, including security guards, individuals performing
27 work comparable to the aforementioned, compensated comparably to the aforementioned, and
28 individuals in similar positions, at any time during the period beginning four years prior to the



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1 filing of this action and ending on the date that final judgment is entered in this action (“Class”
2 or “Class Members”).

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

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

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

13 A. Whether Defendants failed to pay all wages earned to Class Members for
14 all hours worked at the correct rates of pay, including minimum, regular, overtime, and
15 doubletime wages;

16 B. Whether Defendants failed to indemnify the Class Members for the
17 reasonable expenses they incurred during the course of performing their duties;

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

20 D. Whether Defendants willfully failed to provide the class with timely final
21 wages;

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

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

26 14. **Typicality:** Plaintiff’s claims are typical of the other Class Members’ claims.
27 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
28 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor



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Code, the Wage Order, and the Business and Professions Code.

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

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

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

IV. STATEMENT OF FACTS

18. 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;



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1 canvassers; carriers; cashiers; checkers; clerks; collectors; communications and
2 sound technicians; compilers; copy holders; copy readers; copy writers; computer
3 programmers and operators; demonstrators and display representatives;
4 dispatchers; distributors; door-keepers; drafters; elevator operators; estimators;
5 editors; graphic arts technicians; guards; guides; hosts; inspectors; installers;
6 instructors; interviewers; investigators; librarians; laboratory workers; machine
7 operators; mechanics; mailers; messengers; medical and dental technicians and
8 technologists; models; nurses; packagers; photographers; porters and cleaners;
9 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

10 Wage Order, § 2(O). At all relevant times during the applicable limitations period, the
11 Defendants, Wilburn, and all of the Class Members were covered by the Wage Order because
12 Wilburn and all of the Class Members worked for the Defendants as guards, their assistants and
13 other related occupations listed as professional, semiprofessional, technical, clerical, mechanical,
14 and kindred occupations. Accordingly, Wilburn and all of the other Class Members are entitled
15 to the protections the Wage Order provides.

16 19. On approximately October 15, 2021, the Defendants began to employ Wilburn in
17 San Bernardino in the position of security guard. The Defendants continuously employed him in
18 that capacity until on or about July 15, 2024 when his employment ended.

19 20. At all relevant times, the Defendants issued wages to Wilburn and all of the other
20 Class Members on a weekly basis and paid them by the hour. At all relevant times, the Defendants
21 classified Wilburn and all of the other Class Members as non-exempt employees entitled to the
22 protections of the Labor Code and the Wage Order.

23 21. At all relevant times, the Defendants failed to compensate Wilburn and all of the
24 other Class Members for all hours worked at the applicable minimum or regular rates of pay. The
25 Defendants required Wilburn and the other Class Members to begin working 30 minutes before
26 the start time they would be paid from, denying them 30 minutes of pay.

27 22. At all relevant times, the Defendants failed to compensate Wilburn and all of the
28 other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40



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1 in a week, and for the first eight hours of the seventh day of the workweek. The Defendants
2 required Wilburn and the other Class Members to work over eight hours per day, over 40 hours
3 per week, and on the seventh day of the same workweek. During days and weeks such as these,
4 the Defendants required Wilburn and the other Class Members to begin working 30 minutes
5 before the start time they would be paid from, denying them 30 minutes of overtime pay.
6 Additionally, the Defendants paid Wilburn and the other Class Members for overtime hours at
7 their regular rates of pay.

8 23. At all relevant times, the Defendants failed to compensate Wilburn and all of the
9 other Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over
10 the first eight of the seventh day of the workweek. The Defendants required Wilburn and the other
11 Class Members to work over 12 hours per day and over eight hours on the seventh day of the
12 same workweek. During days and weeks such as these, the Defendants required Wilburn and the
13 other Class Members to begin working 30 minutes before the start time they would be paid from,
14 denying them 30 minutes of double-time pay. Additionally, the Defendants paid Wilburn and the
15 other Class Members for double-time hours at their regular rates of pay.

16 24. At all relevant times, the Defendants failed to provide paid sick leave to Wilburn
17 and all of the other Class Members.

18 25. At all relevant times, the Defendants required Wilburn and all of the other Class
19 Members to incur certain business expenses in the course of performing their duties. The
20 Defendants required Wilburn and all of the other Class Members to supply mobile phones to
21 perform their job duties. However, the Defendants did not provide these items and did not
22 reimburse Wilburn and the other Class Members for these items. The Defendants required
23 Wilburn and the other Class Members to use their personal mobile phones to determine their work
24 schedules.

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



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1 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
2 earned, all overtime wages earned, all doubletime wages earned, the employer's name and
3 address, all earned vacation pay, all earned sick pay, start date of pay period, end date of pay
4 period, gross wages earned, net wages earned, all deductions, name of employee, SSN (last 4
5 digits) or EEID#, name of employer, address of employer, all hourly rates, all hours work at each
6 rate of pay, and related information.

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

9 28. At all relevant times, the Defendants also failed to timely pay Wilburn and all of
10 the other Class Members all earned wages as described above during and at the conclusion of
11 employment.

12 29. At all relevant times, the Defendants failed to maintain accurate employee records
13 of Wilburn and all of the other Class Members.

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

16 A. Not paid all wages earned, including, but not limited to, minimum, regular,
17 overtime, and doubletime wages for work performed while clocked out;

18 B. Not indemnified for all necessary business expenditures incurred during
19 the discharge of their duties;

20 C. Not provided with accurate and complete wage statements; and

21 D. Not timely paid all earned and unpaid wages at the time their employment
22 ended.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PAY ALL WAGES AT THE CORRECT RATES**

25 **Lab. Code §§ 510, 1194, 1197, and 1198**

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

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

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



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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

33. 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.”

34. 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



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employee's weekly salary.

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

36. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. 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. 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.

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

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

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

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

41. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Class Members for all hours worked, including, but not limited to minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and



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doubletime hours, respectively, that they worked at the correct rates of pay.

42. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiff and the other Class Members for all hours worked at the correct rates of pay as required by California law.

B. FAILURE TO PROVIDE SICK LEAVE

43. Labor Code section 233 states

Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5.

44. Labor Code section 246(a)(1) states

An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

45. Labor Code section 246.5 states

(a) Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:

(1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.

...

(c) (1) An employer shall not deny an employee the right to use accrued sick days ...

46. The Defendants failed to provide Wilburn and all of the other Class Members with paid sick leave.

47. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to pay Plaintiff and the other Class Members sick leave as required by California law.



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SECOND CAUSE OF ACTION

FAILURE TO INDEMNIFY

Lab. Code § 2802

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

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

49. In pertinent part, California Labor Code § 2802(a) states: “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

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

51. At all relevant times, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties.

52. As described above, the Defendants required Wilburn and all of the other Class Members to incur certain business expenses in the course of performing their duties. The Defendants required Wilburn and all of the other Class members to supply mobile phones, telecom to perform their job duties. However, the Defendants did not provide these items and did not reimburse Wilburn and the other Class members for these items. The A One Elite Staffing Employers required Wilburn and the other Aggrieved Employees to use their personal mobile phones to determine their work schedules.

53. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’ failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

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1
2 **THIRD CAUSE OF ACTION**

3 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

4 **Lab. Code §§ 226 and 246**

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

6 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
7 **STATEMENTS**

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

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

12 A. Gross wages earned;

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

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

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

20 E. Net wages earned;

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

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

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

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



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1 56. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
2 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
3 the employer fails to provide accurate and complete information as required by California Labor
4 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
5 alone one or more of the following:

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

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

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

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

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

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

20 58. As alleged herein, at all relevant times during the applicable limitations period,
21 Defendants violated California Labor Code section 226 because they did not properly and
22 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
23 the corresponding number of hours worked at each rate by the employee and other requirements
24 of California Labor Code section 226. Defendants failed to state in the wage statements they
25 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
26 including, but not limited to, regular and overtime wages for work they performed off-the-clock
27 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
28 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or



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1 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
2 Members that state all minimum wages earned, all regular wages earned, all overtime wages
3 earned, all doubletime wages earned, the employer's name and address, all earned vacation pay,
4 all earned sick pay, start date of pay period, end date of pay period, gross wages earned, net wages
5 earned, all deductions, name of employee, SSN (last 4 digits) or EEID#, name of employer,
6 address of employer, all hourly rates, all hours work at each rate of pay, and related information.

7 59. Defendants' failure to provide Plaintiff and the other Class Members with accurate
8 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
9 the other Class Members with accurate wage statements but intentionally provided wage
10 statements that Defendants knew were not accurate.

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

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

22 61. Labor Code § 246 states

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

28 Lab.Code § 246(h) (effective July 1, 2015). As a matter of policy and practice, the Defendants
failed to provide Wilburn and all of the other Class Members with an itemized wage statement or



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1 separate writing that set forth the amount of paid sick leave available.

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

8 **FOURTH CAUSE OF ACTION**

9 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

10 **(Lab. Code §§ 201, 202, and 203)**

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

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

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

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

18 66. Labor Code § 202 provides that all earned and unpaid wages of an employee who
19 quits after providing at least 72-hours notice before quitting are due and payable at the time of
20 quitting and that all earned and unpaid wages of an employee who quits without providing at least
21 72-hours notice before quitting are due and payable within 72 hours.

22 67. The Defendants failed to pay Wilburn and all of the other Class Members whose
23 employment ended all of the earned but unpaid wages described above by the conclusion of their
24 employment with Wilburn, including minimum wages, regular wages, overtime wages,
25 doubletime wages, and related compensation.

26 68. By failing to pay such earned wages to Plaintiff and the Class Members,
27 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
28 § 201 or § 202.



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1 practices.

2 76. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
3 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
4 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

5 **SIXTH CAUSE OF ACTION**

6 **CIVIL PENALTIES**

7 **Lab.Code §§ 2698, *et seq.***

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

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

11 78. The "Aggrieved Employees" are all members of the Class defined above who
12 Defendants employed during the period beginning September 27, 2023, and ending on the date
13 that final judgment is entered in this action.

14 79. Labor Code § 204 states

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

23 (b) (1) Notwithstanding any other provision of this section, all wages
24 earned for labor in excess of the normal work period shall be paid no later than the
25 payday for the next regular payroll period.

26 (2) An employer is in compliance with the requirements of subdivision (a) of
27 Section 226 relating to total hours worked by the employee, if hours worked in
28 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.



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(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.

80. 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.

81. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 510, 1174, 1194, 1197, 1198, and 2802.

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

83. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 510, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

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

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

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



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1 D. For violations of California Labor Code § 1174, five hundred dollars
2 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
3 amounts established by Labor Code § 1174.5).

4 E. For violations of California Labor Code § 1197, one hundred dollars
5 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
6 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
7 (regardless of whether the initial violations were intentionally committed) (penalty amounts
8 established by California Labor Code § 1197.1).

9 F. For violations of California Labor Code §§ 201, 202, 203, 1194, 1198, and
10 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial
11 violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for
12 each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

13 84. Plaintiff has complied with the procedures for bringing suit specified in California
14 Labor Code § 2699.3. By letter dated September 27, 2024, Plaintiff filed written notice online
15 with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by
16 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
17 have been violated, including the facts and theories to support the alleged violations. A true and
18 correct copy of the notice to the LWDA dated September 27, 2024 is attached as Exhibit A.
19 Plaintiff submitted his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed
20 to take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff
21 anticipates that the LWDA will provide written notice to Plaintiff informing him that it does not
22 intend to investigate these allegations.

23 85. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
24 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
25 connection with their claims for civil penalties.

26
27 ///



28
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V. PRAYER FOR RELIEF

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

A. An order that the action be certified as a class action with respect to Plaintiff's claims for violations of California law;

B. An order that Plaintiff be appointed class representative;

C. An order that counsel for Plaintiff be appointed class counsel;

D. Unpaid wages, including minimum, regular, overtime, double-time, and sick leave wages;

E. Liquidated damages;

F. Statutory penalties, including waiting time penalties;

G. Civil penalties;

H. Restitution;

I. Declaratory relief;

J. Actual damages;

K. Pre-judgment interest;

L. Costs of suit;

M. Reasonable attorneys' fees; and

N. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: December 3, 2024

By:



DAVID G. SPIVAK,
LAUREN R. DAVIS, Attorneys for
Plaintiff(s), BILLY WILBURN, and all
others similarly situated



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EXHIBIT A



THE SPIVAK LAW FIRM

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

September 27, 2024

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

Re: Billy Wilburn / A-One Elite Staffing Inc

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Billy Wilburn (hereafter “Wilburn” or “Complainant”) provides notice that A-One Elite Staffing Inc, a California corporation, and related entities (collectively “the A-One Elite Staffing Employers” or “the Employers”) violated his rights and those of all other individuals the A-One Elite Staffing Employers have employed or otherwise contracted with in California as hourly, non-exempt, including 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, 226, 233, 246, 246.5, 510, 1174, 1194, 1197, 1198, 2802, and other Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Wilburn hereby provides this notice to the Labor & Workforce Development Agency and the A-One Elite Staffing Employers and their agents and representatives.

At all relevant times, the A-One Elite Staffing Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Wilburn 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

On approximately October 15, 2021, the A-One Elite Staffing Employers began to employ Wilburn in San Bernardino in the position of security guard. The A-One Elite Staffing Employers continuously employed him in that capacity until on or about July 15, 2024 when his employment ended.

At all relevant times, the A-One Elite Staffing Employers issued wages to Wilburn and all of the other Aggrieved Employees on a weekly basis and paid them by the hour. At all relevant times, the A-One Elite Staffing Employers classified Wilburn and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The A-One Elite Staffing Employers failed to compensate Wilburn and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The A-One Elite Staffing Employers required Wilburn and the other Aggrieved Employees to begin working 30 minutes before the start time they would be paid from, denying them 30 minutes of pay.

The A-One Elite Staffing Employers failed to compensate Wilburn 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 A-One Elite Staffing Employers required Wilburn and the other Aggrieved Employees to work over eight hours per day, over 40 hours per week, and on the seventh day of the same workweek. During days and weeks such as these, the A-One Elite Staffing Employers required Wilburn and the other Aggrieved Employees to begin working 30 minutes before the start time they would be paid from, denying them 30 minutes of overtime pay. Additionally, the A-One Elite Staffing Employers paid Wilburn and the other Aggrieved Employees for overtime hours at their regular rates of pay.

The A-One Elite Staffing Employers failed to compensate Wilburn 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 A One Elite Staffing Employers required Wilburn and the other Aggrieved Employees to work over 12 hours per day and over eight hours on the seventh day of the same workweek. During

days and weeks such as these, the A-One Elite Staffing Employers required Wilburn and the other Aggrieved Employees to begin working 30 minutes before the start time they would be paid from, denying them 30 minutes of double-time pay. Additionally, the A-One Elite Staffing Employers paid Wilburn and the other Aggrieved Employees for double-time hours at their regular rates of pay.

The A-One Elite Staffing Employers failed to provide paid sick leave to Wilburn and all of the other Aggrieved Employees.

At all relevant times, the A-One Elite Staffing Employers required Wilburn and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The A-One Elite Staffing Employers required Wilburn and all of the other Aggrieved Employees to supply mobile phones, and other telecom to perform their job duties. However, the A-One Elite Staffing Employers did not provide these items and did not reimburse Wilburn and the other Aggrieved Employees for these items. The A-One Elite Staffing Employers required Wilburn and the other Aggrieved Employees to use their personal mobile phones to determine their work schedules.

At all relevant times, the A-One Elite Staffing Employers failed to issue to Wilburn 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 A-One Elite Staffing Employers knowingly and intentionally failed to state on the wage statements they issued to Wilburn 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, the employer's name and address, all earned vacation pay, all earned sick pay, start date of pay period, end date of pay period, gross wages earned, net wages earned, all deductions, name of employee, SSN (last 4 digits) or EEID#, name of employer, address of employer, all hourly rates, all hours work at each rate of pay, and other required information.

The A-One Elite Staffing Employers failed to provide Wilburn and all of the other Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave.

The A-One Elite Staffing Employers also failed to timely pay Wilburn and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The A-One Elite Staffing Employers failed to maintain accurate employee records of Wilburn and all of the other Aggrieved Employees.

For the reasons stated herein, Wilburn 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 A-One Elite Staffing Employers failed to pay Wilburn 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 A-One Elite Staffing Employers failed to provide paid sick leave to Wilburn and all of the other Aggrieved Employees;
- (c) The A-One Elite Staffing Employers failed to indemnify Wilburn and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (d) The A-One Elite Staffing Employers knowingly and intentionally failed to provide Wilburn and all of the other Aggrieved Employees with complete and accurate wage statements;
- (e) The A-One Elite Staffing Employers failed to provide Wilburn and all of the other Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave;
- (f) The A-One Elite Staffing Employers willfully failed to timely pay Wilburn and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the A-One Elite Staffing Employers and when their employment ended; and

- (g) The A-One Elite Staffing Employers failed to maintain accurate employment records pertaining to Wilburn and all of the other Aggrieved Employees.

Accordingly, Wilburn now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the A-One Elite Staffing 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 A-One Elite Staffing Employers, Wilburn, and all of the Aggrieved Employees were covered by the Wage Order because the A-One Elite Staffing Employers operated, and Wilburn, and all of the Aggrieved Employees, worked for the A-One Elite Staffing Employers as guards, their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations. Accordingly, Wilburn 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 A-One Elite Staffing Employers required Wilburn and the other Aggrieved Employees to begin working 30 minutes before the start time they would be paid from, denying them 30 minutes of pay.

The A-One Elite Staffing Employers required Wilburn and the other Aggrieved Employees to work over eight hours per day, over 40 hours per week, and on the seventh day of the same workweek. During days and weeks such as these, the A-One Elite Staffing Employers required Wilburn and the other Aggrieved Employees to begin working 30 minutes before the start time they would be paid from, denying them 30 minutes of overtime pay. Additionally, the A-One Elite Staffing Employers paid Wilburn and the other Aggrieved Employees for overtime hours at their regular rates of pay.

The A One Elite Staffing Employers required Wilburn and the other Aggrieved Employees to work over 12 hours per day and over eight hours on the seventh day of the same workweek. During days and weeks such as these, the A-One Elite Staffing Employers required Wilburn and the other Aggrieved Employees to begin working 30 minutes before the start time they would be paid from, denying them 30 minutes of double-time pay. Additionally, the A-One Elite Staffing Employers paid Wilburn and the other Aggrieved Employees for double-time hours at their regular rates of pay.

At all relevant times during the applicable limitations period, the A-One Elite Staffing Employers failed to compensate Wilburn 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, Wilburn 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)).

Failure To Provide Sick Leave
(Labor Code §§ 233, 246, and 246.5)

Labor Code section 233 states,

Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5.

Labor Code section 246(a)(1) states,

An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

Labor Code section 246.5 states,

- (a) Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:
 - (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.
- ...
- (c) (1) An employer shall not deny an employee the right to use accrued sick days ...

The A-One Elite Staffing Employers failed to provide Wilburn and all of the other Aggrieved Employees with paid sick leave.

Accordingly, Wilburn now seeks civil penalties for these Labor Code violations that the A-One Elite Staffing Employers have committed against him and all of the other Aggrieved Employees as follows:

1. For violations of Labor Code section 233, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 233 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 233 occurred (penalties set by Labor Code section 2699(f)(2));
2. For violations of Labor Code section 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246 occurred (penalties set by Labor Code section 2699(f)(2)); and
3. For violations of Labor Code section 246.5, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246.5 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246.5 occurred (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, § 9(B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the A-One Elite Staffing Employers required Wilburn and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The A-One Elite Staffing Employers required Wilburn and all of the other Aggrieved Employees to supply mobile phones, telecom to perform their job duties. However, the A-One Elite Staffing Employers did not provide these items and did not reimburse Wilburn and the other Aggrieved Employees for these items. The A-One Elite Staffing Employers required Wilburn and the other Aggrieved Employees to use their personal mobile phones to determine their work schedules. Additionally, the A-One Elite Staffing Employers did not provide tools to Wilburn and the other Aggrieved Employees it required them to use to perform their work, nor did they reimburse them for such tools, including , and related tools. Accordingly, Wilburn

seeks civil penalties for these Labor Code violations that the A-One Elite Staffing 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 2802, 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)).

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 Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;

7. The name of the employee and 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 A-One Elite Staffing 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 A-One Elite Staffing Employers failed to state in the wage statements they issued to Wilburn 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 A-One Elite Staffing Employers knowingly and intentionally failed to state on the wage statements they issued to Wilburn 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, the employer's name and address, all earned vacation pay, all earned sick pay, start date of pay period, end date of pay period, gross wages earned, net wages earned, all deductions, name of employee, social security number (last 4 digits) or employee identification number, name of employer, address of employer, all hourly rates, all hours work at each rate of pay, and other required information.

Accordingly, Wilburn seeks civil penalties for the Labor Code violations that the A-One Elite Staffing 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 A-One Elite Staffing Employers failed to provide Wilburn 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, Wilburn 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 A-One Elite Staffing Employers failed to compensate Wilburn and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, and other compensation, at the intervals stated above. As a result, the A-One Elite Staffing Employers failed to timely pay all earned

wages due during employment within the time periods set by Labor Code section 204. Accordingly, Wilburn now seeks civil penalties for the Labor Code violations that the A-One Elite Staffing 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 A-One Elite Staffing Employers failed to pay Wilburn 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 Wilburn, including minimum wages, regular wages, overtime wages, doubletime wages, and other compensation. Additionally, the A-One Elite Staffing Employers failed to issue to Wilburn and all of the other Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Wilburn and all of the other Aggrieved Employees as set forth above at the end of

employment, the A-One Elite Staffing Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Wilburn seeks civil penalties from the A-One Elite Staffing 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 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 A-One Elite Staffing Employers failed to compensate Wilburn 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, the employer's name and address, all earned vacation pay, all earned sick pay, start date of pay period, end date of pay period, gross wages earned, net wages earned, all deductions, name of employee, SSN (last 4 digits) or EEID#, name of employer, address of employer, all hourly rates, all hours work at each rate of pay, and related compensation. As a result, the A-One Elite Staffing Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Wilburn and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Wilburn 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)).

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LWDA / The A-One Elite Staffing Employers
Re: Billy Wilburn
September 27, 2024
Page 19 of 19

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Billy Wilburn 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: Mr. Billy Wilburn

Mr. Walter L. Haines, Esq.

A-One Elite Staffing Inc
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