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13 and the Plaintiff Class

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF ALAMEDA

14 NICK TORRES and BRENDA JONES
15 JOSEPH, individually, and on behalf of
16 all others similarly situated,
17
18 Plaintiffs,
19
20 vs.
21 ABC SECURITY SERVICE, INC., and
22 DOES 1 through 100, inclusive,
23
24 Defendants.

CASE NO.: RG04158744

CLASS ACTION

FOURTH AMENDED COMPLAINT FOR
DAMAGES, INJUNCTIVE RELIEF,
RESTITUTION, AND CIVIL PENALTIES

JURY TRIAL DEMANDED

25 Representative Plaintiffs allege as follows:

26 **INTRODUCTION**

27 1. The class claims in this action are brought pursuant to Code of Civil Procedure
28 (“CCP”) § 382, seeking unpaid regular and overtime wages, unreimbursed expenses, waiting time
penalties, statutory penalties, civil penalties, punitive damages, injunctive and other equitable
relief, interest, and reasonable attorneys’ fees and costs, under, among others, California Labor

ENDORSED
FILED
ALAMEDA COUNTY

AUG 08 2006

CLERK OF THE SUPERIOR COURT
By Mukul Bagant, Deputy

1 Code §§200, 201-204, 218.5, 221, 226, 226.7, 300, 400-410, 510, 512, 1174, 1194, 1198, 2699,
2 and 2802, Industrial Welfare Commission Wage Order Nos. 4-2000 and 4-2001, Business and
3 Professions Code § 17200 *et seq.*, Civil Code Section 3294, and CCP §1021.5, on behalf of the
4 following class:

5 Plaintiffs and all other persons who are or have been employed by
6 ABC Security Service, Inc. as security guards in the State of
7 California at any time since February 18, 2000.

8 2. The Representative Plaintiffs are informed and believe, and based thereon allege,
9 that within the Class Period, Defendant ABC has contracted with numerous third-party entities
10 for the placement of ABC's non-exempt security guards at said third-party entities' facilities, all
11 within the State of California. In so doing, ABC has employed hundreds of individuals in non-
12 exempt positions in recent years alone to work at facilities/locations within the State of California

13 3. During the Class Period, ABC has had a consistent policy of (1) failing to pay
14 Class Members for all regular hours reportedly worked; (2) permitting, encouraging, and/or
15 requiring Class Members to work in excess of eight hours per day and in excess of forty hours per
16 week without paying them all overtime compensation due pursuant to California state wage and
17 hour laws; (3) unlawfully requiring Class Members to pay a uniform deposit of \$200 and
18 deducting that amount from earned wages; (4) unlawfully deducting from uniform deposits costs
19 related to the maintenance and dry cleaning of uniforms; (5) unlawfully requiring Class Members
20 to pay uniform maintenance and cleaning expenses out-of-pocket; (6) unlawfully denying Class
21 Members meal and rest breaks required by California law; (7) willfully failing to pay
22 compensation owing in a prompt and timely manner to Class Members whose employment with
23 ABC terminated; (8) willfully failing to provide Class Members with accurate semimonthly
24 itemized statements; and (9) unlawfully requiring Class Members to pay for their ABC ID
25 cards/badges.
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2 **PARTIES**

3 4. Plaintiffs Nick Torres and Brenda Jones Joseph (the "Representative Plaintiffs")
4 were employed by Defendant ABC as non-exempt security guards during the class period.

5 5. Defendant ABC is a corporation with its principal place of business in Alameda
6 County, California. Defendant ABC employed the Representative Plaintiffs and Class Members
7 and exercised control over their wages, hours and working conditions.

8 6. Defendants identified as Does 1 through 100, inclusive, are and were, at all
9 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of
10 some/each of the remaining defendants. The Representative Plaintiffs are informed and believe
11 and, on that basis allege that, at all relevant times herein mentioned, each of the defendants
12 identified as Does 1 through 100, inclusive, employed and/or exercised control over the wages,
13 hours and/or working conditions of the Representative Plaintiffs and Class Members at various
14 California locations. The Representative Plaintiffs are informed and believe and, on that basis,
15 allege that each of the fictitiously-named defendants is responsible in some manner for, gave
16 consent to, ratified and/or authorized the conduct herein alleged and that the Representative
17 Plaintiffs' and Class Members' damages, as herein alleged, were proximately caused thereby.
18 The Representative Plaintiffs are informed and believe and, on that basis, allege that, at all
19 relevant times herein mentioned, each of the defendants was the agent and/or employee of each of
20 the remaining defendants and, in doing the acts herein alleged, was acting within the course and
21 scope of such agency and/or employment. The Representative Plaintiffs are unaware of the true
22 names and capacities of those defendants sued herein as Does 1 through 100, inclusive and,
23 therefore, sue these defendants by such fictitious names. The Representative Plaintiffs will seek
24 leave of Court to amend this Complaint when same are ascertained.

25 **VENUE**

26 7. Venue as to Defendants is proper in this judicial district, pursuant to Code of Civil
27 Procedure § 395(a). Defendant ABC maintains facilities and offices in the County of Alameda,
28

1 transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of
2 service of process. The unlawful acts alleged herein have a direct effect on the Representative
3 Plaintiffs and those similarly situated within the State of California and within Alameda County.
4 Defendant ABC operates said facilities and has employed numerous Class Members in Alameda
5 County, as well as in other counties within the State of California.
6

7 COMMON FACTUAL ALLEGATIONS

8 **A. ABC's Practice Regarding Nonpayment of Regular and Overtime Wages**

9
10 8. ABC has a uniform policy and practice of denying payment of regular hourly
11 wages for all hours the Class Members work and of denying overtime wages to Class Members
12 who work overtime hours while covering the shifts of other security guards (also known as
13 "swapped shifts"). In those instances where Class Members have exceeded 40 hours of work in a
14 week while working a swapped shift, they have been paid at a straight time rate for those
15 overtime hours. Moreover, Defendant does not pay Class Members for the time spent in
16 connection with maintaining and/or cleaning their uniforms.

17 **B. ABC's Practice Regarding Uniform Maintenance, Deposits and Deductions**

18 9. Defendant ABC issues security guard uniforms to all newly hired security guards.
19 In connection with the issuance of those uniforms, ABC requires its security guards to pay \$200
20 to ABC in the form of a "uniform deposit." This deposit is deducted from the Class Members'
21 initial paychecks, and held by ABC during the entire period of each Class Member's
22 employment.

23 10. Defendant ABC does not reimburse Class Members for the expenses they incur in
24 cleaning and maintaining their uniforms. Rather, Class Members are expected to dry-clean or
25 otherwise care for the uniforms at their own expense.

26 11. Upon the conclusion of each Class Member's employment, ABC charges the Class
27 Member for his or her uniform's normal wear and tear, as well as the expense of dry cleaning the
28 uniform, and deducts these costs from the Class Member's final paycheck.

1 persons held both positions during some portion(s) of the class period, they shall be included in
2 this action only to the extent and during the time period(s) that they worked as security officers.

3 17. This action has been brought and may properly be maintained as a class action
4 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
5 litigation and the proposed Class is easily ascertainable.

- 6 a. Commonality: The Representative Plaintiffs and the Class Members share a
7 community of interests in that there are numerous common questions and issues of
8 fact and law which predominate over any questions and issues solely affecting
9 individual members, including, but not necessarily limited to:
- 10 i. whether defendant ABC violated Wage Order Nos. 4-2000, 4-2001 and Labor
11 Code §§ 200 and 204 by failing to pay compensation to its non-exempt security
12 guards for all regular hours they worked.
 - 13 ii. whether defendant ABC violated Wage Order Nos. 4-2000, 4-2001 and Labor
14 Code § 510 by failing to pay overtime compensation to non-exempt security
15 guards who worked in excess of 40 hours per week and/or eight (8) hours a day.
 - 16 iii. whether defendant ABC violated Labor Code §§ 221, 300, 400-410, and 2802 by
17 deducting uniform deposits from the Representative Plaintiffs' and Class
18 Members' pay.
 - 19 iv. whether defendant ABC violated Labor Code §§ 221, 300, 400-410, 2802, and
20 Wage Order 4-2001 Section 9 by deducting the costs of normal wear and tear and
21 uniform maintenance from the Representative Plaintiffs' and Class Members'
22 pay.
 - 23 v. whether defendant ABC violated Labor Code §§ 221, 300, 400-410, 2802, and
24 Wage Order 4-2001 Section 9 by unlawfully deducting other business expenses
25 (including but not limited to badge and ID card costs) from the Representative
26 Plaintiffs' and the Class Members' wages.
 - 27 vi. whether defendant ABC violated Labor Code §2802 by failing to indemnify the
28 Representative Plaintiffs and the Class Members for expenses and losses incurred
in discharging their duties.
 - vii. whether defendant ABC violated Labor Code § 1174 by failing to keep accurate
records of employees' hours of work.
 - viii. whether defendant ABC violated Labor Code §§ 226.7 and/or 512 by failing to
consistently provide meal and rest periods to its employees.
 - ix. whether defendant ABC violated Labor Code §§ 201-203 by failing to pay all
overtime wages due and owing at the time that Class Members' employment
with Defendant terminated.
 - x. whether defendant ABC violated Labor Code § 226 by failing to provide
accurate semimonthly itemized statements to Class Members of total hours
worked by each and all applicable hourly rates in effect during the pay period.

- 1 xi. whether Representative Plaintiffs and the Class Members are entitled to "waiting
2 time" penalties/wages pursuant to Labor Code § 203.
- 3 xii. whether defendant ABC violated Business and Professions Code §§17200 et seq.
4 by engaging in unfair, unlawful and/or fraudulent business practices.
- 5 b. Typicality: The Representative Plaintiffs' claims are typical of the claims of the
6 Plaintiff Class. The Representative Plaintiffs and all members of the Plaintiff Class
7 sustained damages arising out of and caused by defendant ABC's common course of
8 conduct in violation of law, as alleged herein.
- 9 c. Numerosity: A class action is the only available method for the fair and efficient
10 adjudication of this controversy. The members of the Plaintiff Class are so numerous
11 that joinder of all members is impractical, if not impossible, insofar as the
12 Representative Plaintiffs are informed and believe and, on that basis, allege that the
13 total number of Class Members is, at least, in the hundreds of individuals.
14 Membership in the Class will be determined upon analysis of employee and payroll,
15 among other, records maintained by ABC.
- 16 d. Superiority of Class Action: Since the damages suffered by individual Class
17 Members, while not inconsequential, may be relatively small, the expense and burden
18 of individual litigation by each member makes or may make it impractical for
19 members of the Plaintiff Class to seek redress individually for the wrongful conduct
20 alleged herein. Should separate actions be brought or be required to be brought by
21 each individual member of the Plaintiff Class, the resulting multiplicity of lawsuits
22 would cause undue hardship and expense for the Court and the litigants. The
23 prosecution of separate actions would also create a risk of inconsistent rulings, which
24 might be dispositive of the interests of other Class Members who are not parties to the
25 adjudications and/or may substantially impede their ability to adequately protect their
26 interests.
- 27 e. Adequacy of Representation: The Representative Plaintiffs in this class action are
28 adequate representatives of the Plaintiff Class, in that the Representative Plaintiffs'
claims are typical of those of the Plaintiff Class and the Representative Plaintiffs have
the same interests in the litigation of this case as the Class Members. The
Representative Plaintiffs are committed to vigorous prosecution of this case and have
retained competent counsel, experienced in conducting litigation of this nature. The
Representative Plaintiffs are not subject to any individual defenses unique from those
conceivably applicable to the Plaintiff Class as a whole. The Representative Plaintiffs
anticipate no management difficulties in this litigation.

FIRST CAUSE OF ACTION
UNLAWFUL FAILURE TO PAY REGULAR WAGES
(California Labor Code §§ 200 and 204)

18. Representative Plaintiffs incorporate in this cause of action each and every
allegation of the preceding paragraphs, with the same force and effect as though fully set forth
herein.

1 19. During the time period beginning as of the commencement of the Class Period and
2 continuing through the present, when Representative Plaintiffs and Class Members reported the
3 hours they worked to Defendant, they were not compensated for all of those hours at their regular
4 rate of pay, in violation of applicable Wage Order(s) and the California Labor Code. The precise
5 number of unpaid regular hours will be proven at trial.

6 20. During said time period, Representative Plaintiff Brenda Jones Joseph and some
7 Class Members herein were employed by and were thereafter terminated or resigned from their
8 positions with ABC, yet were not paid all regular wages due upon said termination or within
9 seventy-two (72) hours of said resignation of employment therefrom. Said non-payment was the
10 direct and proximate result of a willful refusal to do so by Defendant.

11 21. Defendant's conduct violated Industrial Welfare Commission Wage Order Nos. 4-
12 2000 and 4-2001 and Labor Code §§ 200-204.

13 22. As a direct and proximate result of Defendant's unlawful conduct, as set forth
14 herein, Representative Plaintiffs and the Class Members have sustained damages, including loss
15 of earnings for regular hours worked on behalf of Defendant, in an amount to be established at
16 trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth
17 herein, Representative Plaintiff Brenda Jones Joseph and/or some Class Members are entitled to
18 recover "waiting time" penalties/wages, in an amount to be established at trial, costs and
19 attorneys' fees, pursuant to statute.

20 23. The actions alleged above were done with malice, fraud and oppression, and in
21 reckless and conscious disregard of Plaintiffs' rights.

22
23 **SECOND CAUSE OF ACTION**
24 **UNLAWFUL FAILURE TO PAY REQUIRED OVERTIME**
 (California Labor Code §§ 201-203, 226, 510, 1174, 1194 and 1198)

25 24. Representative Plaintiffs incorporate in this cause of action each and every
26 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
27 herein.

1 31. California Labor Code § 221 provides:

2 It shall be unlawful for any employer to collect or receive from an
3 employee any part of wages theretofore paid by said employer to
4 said employee.

5 32. Wage Order 4, Section 9(A) provides that where a uniform must be worn by an
6 employee, it must be provided and maintained by the employer. Wage Order 4, Section 9(B)
7 provides that no deduction from a uniform deposit shall be made at any time for normal wear and
8 tear, and that any uniform deposit must be made pursuant to Labor Code §§ 400 *et seq.*

9 33. Wage Order 4, Section 8, provides that no employer shall make any deduction
10 from the wages of an employee or require an employee to reimburse the employer for any
11 breakage unless it can be shown that the breakage is caused by the dishonest or willful act, or the
12 gross negligence, of the employee.

13 34. California Labor Code §§ 400-410 make it unlawful for an employer to demand or
14 accept a cash bond from an employee or applicant, except under limited circumstances. In
15 relevant part, Labor Code § 402 provides that no employer shall demand or accept a cash bond
16 unless the employee or applicant is entrusted with property of an equivalent value. Labor Code §
17 403 requires an employer to place any lawful cash bond into a savings account and withdraw such
18 monies only upon the joint signature of the employer and employee or applicant. Labor Code §
19 404 requires an employer to return the cash bond to the employee or applicant with accrued
20 interest, subject only to deductions necessary to balance accounts between the employer and
21 employee or applicant.

22 35. Labor Code § 300 makes an assignment of wages unlawful unless, among other
23 things: (a) where the assignment is made by a married person, the written consent of the spouse is
24 attached to the assignment; (b) a written statement that no other assignment exists is attached to
25 or included in the assignment; (c) a copy of the assignment authenticated by a notary public is
26 filed; and (d) the wages to be assigned have already been earned by the employee.

27 36. Defendant's policy and practice of deducting \$200 from Class Members'
28 paychecks and allocating that money to a "uniform deposit" violates Labor Code §§ 221, 300,

1 400-410, and Wage Order 4, Section 9 because the deposit exceeds the value of the uniform,
2 because Defendant does not deposit the monies withheld into interest bearing savings accounts,
3 because Defendant does not return the deposit to Class Members with accrued interest, and
4 because Defendant has otherwise failed to comply with the provisions of Labor Code §§ 300,
5 400-410 and Section 9 of Wage Order 4.

6 37. Defendant's policy and practice of deducting from Class Members' wages and
7 requiring Class Members to bear the expenses for the care, maintenance and dry cleaning of
8 uniforms violates Labor Code §§ 221, 400-410, and Sections 8 and 9 of Wage Order 4.

9 38. Defendant's policy and practice of deducting from Class Members' wages and
10 charging Class Members the purported cost of ABC ID cards/badges violates Labor Code §§ 221,
11 300 and 400-410, and the above-referenced Wage Order provisions.

12 39. The unlawful wage deductions made by ABC directly benefited ABC, not the
13 Representative Plaintiffs or the Class Members, and were made at the demand of the employer.

14 40. As a direct and proximate result of Defendant's unlawful conduct, as set forth
15 herein, the Representative Plaintiffs and the Class Members are entitled to recover damages and
16 penalties in amounts to be established at trial (including all wages withheld, all amounts
17 unlawfully deducted from wages, and the accrued but unpaid interest on such withheld funds)
18 plus costs and attorneys' fees.

19 41. The actions alleged above were done with malice, fraud and oppression, and in
20 reckless and conscious disregard of Plaintiff's rights.

21
22 **FOURTH CAUSE OF ACTION**
23 **FAILURE TO INDEMNIFY/REIMBURSE CLASS MEMBERS**
24 **(California Labor Code § 2802)**

25 42. Representative Plaintiffs incorporate in this cause of action each and every
26 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
27 herein.

28 43. California Labor Code § 2802 provides, in pertinent part, that:

1 (a) An employer shall indemnify his or her employee for all
2 necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties, or of his or her
4 obedience to the directives of the employer (c) ... the term
5 'necessary expenditures and losses' shall include all reasonable
6 costs, including, but not limited to, attorney's fees incurred by the
7 employee in enforcing the rights granted by this section.

6 44. Defendant ABC violated Labor Code § 2802 by willfully failing to indemnify and
7 reimburse the Representative Plaintiffs and the Class Members for reimbursable business
8 expenses, including but not limited to, uniform maintenance and dry cleaning expenses, travel
9 time and expenses, ID card/badge expenses, and other necessary work-related expenses and
10 losses.

11 45. As a direct and proximate result of Defendant's unlawful conduct, as set forth
12 herein, the Representative Plaintiffs and the Class Members are entitled to recover damages and
13 penalties, in an amount to be established at trial, as well as interest, costs and attorneys' fees,
14 pursuant to statute.

15 46. The actions alleged above were done with malice, fraud and oppression, and in
16 reckless and conscious disregard of Plaintiff's rights.

17
18 **FIFTH CAUSE OF ACTION**
19 **FAILURE TO PROVIDE MEAL AND/OR REST PERIODS**
20 **(California Labor Code §§ 226.7 and 512)**

21 47. The Representative Plaintiffs incorporate in this cause of action each and every
22 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
23 herein.

24 48. At all relevant times, Defendant was aware of and was under a duty to comply
25 with California Labor Code §§ 226.7 and 512.

26 49. California Labor Code § 226.7 provides:

27 (a) No employer shall require any employee to work during any meal or rest
28 period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in
accordance with an applicable order of the Industrial Welfare Commission, the

1 employer shall pay the employee one additional hour of pay at the employee's
2 regular rate of compensation for each work day that the meal or rest period is not
3 provided.

4 50. Moreover, California Labor Code § 512 provides:

5 An employer may not employ an employee for a work period of
6 more than five hours per day without providing the employee with a
7 meal period of not less than 30 minutes, except that if the total work
8 period per day of the employee is no more than six hours, the meal
9 period may be waived by mutual consent of both the employer and
10 employee. An employer may not employ an employee for a work
11 period of more than 10 hours per day without providing the
12 employee with a second meal period of not less than 30 minutes,
13 except that if the total hours worked is no more than 12 hours, the
14 second meal period may be waived by mutual consent of the
15 employer and the employee only if the first meal period was not
16 waived.

17 51. By failing to consistently provide uninterrupted and unrestricted thirty minute
18 meal periods and to authorize and permit uninterrupted ten minute rest periods to its non-exempt
19 security guards, Defendant violated California Labor Code §§ 226.7 and/or 512.

20 52. As a direct and proximate result of Defendant's unlawful conduct, as set forth
21 herein, the Representative Plaintiffs and the Class Members have sustained damages, including
22 loss of compensation/wages, in an amount to be established at trial. As a further direct and
23 proximate result of Defendant's unlawful conduct, as set forth herein, the Representative
24 Plaintiffs and the Class Members are entitled to recover various penalties, in an amount to be
25 established at trial, as well as costs and attorneys' fees, pursuant to statute.

26 53. The actions alleged above were done with malice, fraud and oppression, and in
27 reckless and conscious disregard of Plaintiff's rights.

28
SIXTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(California Labor Code §§ 226, 1174)

54. Representative Plaintiffs incorporate in this cause of action each and every
allegation of the preceding paragraphs, with the same force and effect as though fully set forth
herein

1 55. California Labor Code § 226(a) provides:

2 Each employer shall semimonthly, or at the time of each payment
3 of wages, furnish each of his or her employees either as a
4 detachable part of the check, draft or voucher paying the
5 employee's wages, or separately when wages are paid by personal
6 check or cash, an itemized wage statement in writing showing: (1)
7 gross wages earned; (2) total number of hours worked by each
8 employee whose compensation is based on an hourly wage; (3) all
9 deductions; provided, that all deductions made on written orders of
10 the employee may be aggregated and shown as one item; (4) net
11 wages earned; (5) the inclusive date of the period for which the
12 employee is paid; (6) the name of the employee and his or her
13 social security number; and (7) the name and address of the legal
14 entity which is the employer.

15 56. The IWC Wage Orders also establish this requirement in § 7(B) thereof (8 Cal.
16 Code Regs. § 11010 et. seq.).

17 57. Moreover, California Labor Code § 226(e) provides:

18 An employee suffering injury as a result of a knowing and
19 intentional failure by an employer to comply with subdivision (a) is
20 entitled to recover the greater of all actual damages or fifty dollars
21 (\$50) for the initial pay period in which a violation occurs and one
22 hundred dollars (\$100) per employee for each violation in a
23 subsequent pay period, not exceeding an aggregate penalty of four
24 thousand dollars (\$4,000), and is entitled to an award of costs and
25 reasonable attorney's fees.

26 58. Finally, California Labor Code § 1174 provides:

27 Every person employing labor in this state shall: (d) Keep, at a
28 central location in the state... payroll records showing the hours
worked daily by and the wages paid to ... employees 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 two years.

59. Representative Plaintiffs seek to recover actual damages, costs and attorneys' fees
under this section on behalf of themselves and the Class Members.

60. Defendant ABC failed to provide timely, accurate itemized wage statements to
Representative Plaintiffs and the Class Members in accordance with Labor Code § 226(a) and the
IWC Wage Orders. None of the statements provided by Defendant has accurately reflected actual

1 number of hours worked, gross wages earned, net wages earned, and/or the appropriate
2 deductions of such Class Members.

3 61. As a direct and proximate result of Defendant's unlawful conduct, as set forth
4 herein, the Representative Plaintiffs and the Class Members are entitled to recover penalties, in an
5 amount to be established at trial, as well as costs and attorneys' fees, pursuant to statute.

6 62. The actions alleged above were done with malice, fraud and oppression, and in
7 reckless and conscious disregard of Plaintiff's rights.

8
9 **SEVENTH CAUSE OF ACTION**
10 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
11 **(California Business & Professions Code §§ 17200-17208)**

12 63. The Representative Plaintiffs incorporate in this cause of action each and every
13 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
14 herein.

15 64. The Representative Plaintiffs further bring this cause of action on behalf of the
16 general public, seeking equitable and statutory relief to stop the misconduct of Defendant, as
17 complained of herein, and to compel the payment of restitution by Defendant as a result of the
18 unfair, unlawful and/or fraudulent business practices described herein.

19 65. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful
20 and/or fraudulent business practice, as set forth in California Business & Professions Code §§
21 17200-17208. Specifically, Defendant conducted business activities while failing to comply with
22 the legal mandates cited herein.

23 66. Defendant's knowing failure to adopt policies in accordance with and/or adhere to
24 these laws, all of which are binding upon and burdensome to Defendant's competitors, engenders
25 an unfair competitive advantage for Defendant, thereby constituting an unfair business practice,
26 as set forth in California Business & Professions Code §§ 17200-17208.

27 67. Defendant ABC has clearly established a policy of accepting a certain amount of
28 collateral damage, as represented by the sums wrongfully withheld from the Representative

1 Plaintiffs and the Plaintiff Class herein alleged, as incidental to its business operations, rather than
2 accept the alternative costs of full compliance with fair, lawful and honest business practices
3 ordinarily borne by responsible competitors of Defendant and as set forth in legislation and the
4 judicial record.

5 68. As a direct and proximate result of Defendant's unlawful conduct, as set forth
6 herein, Defendant has been unjustly enriched in an amount equaling or exceeding the amount of
7 damages, penalties, interest, fees and costs unlawfully withheld from and payable to the
8 Representative Plaintiffs and the Plaintiff Class herein. Representative Plaintiffs and Class
9 Members are entitled to restitution of all of Defendant's ill-gotten gains, according to proof, and
10 to injunctive relief to halt Defendant's unfair, unlawful and/or fraudulent business practices.
11

12 **EIGHTH CAUSE OF ACTION**
13 **CIVIL PENALTIES FOR OVERTIME VIOLATIONS**
14 **(California Labor Code §§ 558 and 2699(a))**

15 69. The Representative Plaintiffs incorporate in this cause of action each and every
16 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
17 herein.

18 70. Labor Code Section 558 provides for civil penalties against any employer or other
19 person acting on behalf of an employer who violates, or causes to be violated, the Labor Code's
20 provisions regarding payment of overtime wages. For an initial violation, the civil penalty is \$50
21 for each underpaid employee per pay period. For each subsequent violation, the civil penalty is
22 \$100 for each underpaid employee per pay period.

23 71. Labor Code Sections 2699(a) and 2699.3 provide a mechanism for an aggrieved
24 employee to recover the above civil penalties.

25 72. Pursuant to Labor Code Section 2699.3, on June 22, 2006, Plaintiffs sent the
26 attached Notice as Exhibit A via certified mail to the Labor and Workforce Development Agency
27 and Defendant.
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TWELFTH CAUSE OF ACTION
CIVIL PENALTIES FOR DENIED MEAL AND REST PERIODS
(California Labor Code §§ 558 and 2699(a))

98. The Representative Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

99. Defendant's failure to provide its employees with meal and rest periods subjects Defendant to civil penalties pursuant to Labor Code Sections 558 and 2699(a).

100. Plaintiffs have complied with the notice requirements of Labor Code Section 2699.3.

101. Plaintiffs hereby request recovery of civil penalties for the above-alleged violations pursuant to Labor Code Sections 558 and 2699(a).

RELIEF SOUGHT

WHEREFORE, the Representative Plaintiffs, on behalf of themselves and the proposed Plaintiff Class, pray for judgment and the following specific relief against Defendants, and each of them, jointly and separately, as follows:

- a. For an Order certifying the proposed Plaintiff Class and/or any other appropriate subclass(es) under Code of Civil Procedure § 382;
- b. For a finding that defendants violated the wage payment provisions of the IWC Wage Orders and the Labor Code as to the Representative Plaintiffs and the Class;
- c. For a finding that defendants violated the overtime provisions of the IWC Wage Orders and the Labor Code as to the Representative Plaintiffs and the Class;
- d. For a finding that defendants violated California Labor Code §§ 201 and 202 for willful failure to pay all compensation owed at the time of termination or within 72 hours of resignation of employment to particular Class Members;
- e. For a finding that defendants violated Labor Code §§ 221, 300, 400-410 and IWC Wage Order 4 for unlawfully deducting amounts from the Representative Plaintiffs' and the Class Members' wages for impermissible purposes;
- f. For a finding that defendants violated Labor Code § 2802 for failing to indemnify/reimburse the Representative Plaintiffs and the Class Members for expenses and losses necessarily incurred in performing their work duties;

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- g. For a finding that defendants violated Labor Code §§ 226.7 and 512 for willful failure to provide meal periods;
- h. For a finding that defendants violated Labor Code § 226.7 for willful failure to provide rest periods;
- i. For a finding that defendants violated the record keeping provisions of Labor Code §§ 226(a) and 1174(d) and section 7 of the Wage Orders as to Representative Plaintiffs and the Class and for willful failure to provide accurate semimonthly itemized statements thereto;
- j. For a finding that defendants violated Business & Professions Code § 17200 by failing to pay the Representative Plaintiffs and Class Members all regular and overtime wages and compensation for meal and/or rest periods denied, and by failing to pay "waiting time" penalties to particular Class Members;
- k. For an award to the Representative Plaintiffs and the Plaintiff Class of damages in the amount of unpaid compensation, unlawful deductions, unreimbursed expenses/losses, including interest thereon, and penalties, in an amount to be proven at trial;
- l. For an award of punitive damages;
- m. For an Order that Defendant pay restitution to the Representative Plaintiffs and the Plaintiff Class due to Defendants' unlawful activities, pursuant to Business & Professions Code §§ 17200-08, et seq.;
- n. For an Order that defendants further be enjoined to cease and desist from unlawful activities in violation of Business & Professions Code § 17200;
- o. For all other Orders, findings and determinations identified and sought in this Complaint;
- p. For interest on the amount of any and all economic losses, at the prevailing legal rate;
- q. For reasonable attorneys' fees, pursuant to California Labor Code §§ 218.5, 1194 and 2802, and/or California Civil Code § 1021.5;
- r. For civil penalties pursuant to Labor Code Sections 2699(a) and 2699(f); and
- s. For costs of suit and any and all such other relief as the Court deems just and proper.

Dated: August 8, 2006

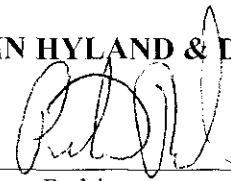
RUKIN HYLAND & DORIA LLP
By: 
Peter Rukin.
Attorneys for the Representative Plaintiffs
and the Plaintiff Class

EXHIBIT A

June 22, 2006

VIA CERTIFIED U.S. MAIL

California Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

Re: Violations of California Labor Code

Dear Sir/Madam:

Pursuant to California Labor Code §§ 2699, 2699.3, and 2699.5, we write to notify the agency of certain violations of the California Labor Code by ABC Security Service, Inc. ("ABC").

Summary of Allegations

ABC is in violation of numerous Labor Code provisions.

First, ABC fails to pay overtime to its security guards and other employees when they work overtime in violation of Labor Code Sections 510 and 558. For example, ABC does not pay overtime to a security guard who incurs that overtime while covering the shift of another security guard. ABC's payroll records reveal numerous other instances of unpaid overtime.

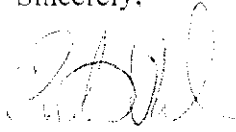
Second, at the start of employment, ABC deducts \$200 from each security guard's wages as a "uniform deposit." This amount is deducted regardless of the number of uniforms a guard is provided, and even where the actual cost of the uniforms provided to a guard does not equal \$200. This practice violates Labor Code Sections 221, 400-410 and 2802.

Third, ABC does not place the so-called "uniform deposits" into an interest bearing account or pay interest earned on the deposits when the guards return their uniforms to ABC, in violation of Labor Code Sections 403-404.

Fourth, ABC does not reimburse its security guards for the costs they incur in maintaining their uniforms—including dry cleaning costs—in violation of Labor Code Section 2802.

Fifth, ABC does not provide its security guards with meal and break periods or pay its security guards for missed meal and break periods as required by Labor Code Sections 226.7 and 512.

Sincerely,



Peter Rukin

cc: ABC Security Service, Inc.
c/o Geoffrey Spellberg, Esq.
Meyers Nave
50 California Street, Suite 3050
San Francisco CA 94111

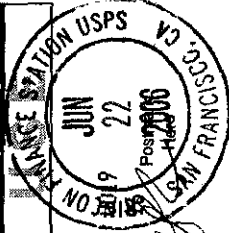


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Restricted Delivery Fee (Endorsement Required)	\$ 0.00
Total Postage & Fees	\$ 2.79



06/22/2006

Sent To ABC Security Service, Inc.
 Street, Apt. No., or PO Box No. CD Geoffrey Spelberg, Eg.
10019
 City, State, ZIP+4 San Francisco, CA 94111

PS Form 3800, June 2002 See Reverse for Instructions

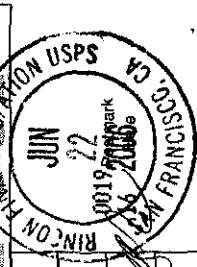
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Total Postage & Fees	\$ 2.79



06/22/2006

Sent To California Labor Agency
Development Agency
 Street, Apt. No., or PO Box No. 801 K Street, Suite 2101
 City, State, ZIP+4 Sacramento, CA 95814

PS Form 3800, June 2002 See Reverse for Instructions

2006 0810 0006 1359 5027

EXHIBIT B



C A L I F O R N I A Labor & Workforce Development Agency

July 14, 2006

Governor
Arnold
Schwarzenegger

Secretary
Victoria L. Bradshaw

Agricultural
Labor
Relations
Board

California
Unemployment
Insurance
Appeals
Board

California
Workforce
Investment
Board

Department of
Industrial
Relations

Economic
Strategy
Panel

Employment
Development
Department

Employment
Training
Panel

Peter Rukin
Law Offices of Rukin Hyland
& Doria, LLP
100 Pine Street, Suite 725
San Francisco, CA 94111

ABC Security Service, Inc.
C/o Geoffrey Spellberg, Esq.
Meyers Nave
50 California Street, Suite 3050
San Francisco, CA 94111

Re: LWDA No: 1448
Employer: ABC Security Service, Inc.
Employee: Un-named

Dear Employer and Representative of the Employee:

This is to inform you that the Labor and Workforce Development Agency (LWDA) received your notice of alleged Labor Code violations pursuant to Labor Code Section 2699, postmarked June 22, 2006 and after review, does not intend to investigate the allegations.

As a reminder to you, the provisions of Labor Code Section 2699(i) provides that "...civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the LWDA for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code". Labor Code Section 2699(l) specifies "[T]he superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part".

Consequently you must advise us of the results of the litigation, and forward a copy of the court judgment or the court-approved settlement agreement.

Sincerely,

Richard L. Rice

Richard L. Rice
Undersecretary