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Attorney for Defendant BRAAVOS, INC.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

GARY HOUSTON on behalf of himself and all others similarly situated,

Plaintiffs,

vs.

BRAAVOS, INC. d/b/a BANNERMAN, and DOES 1-50, inclusive,

Defendants.

Case No. CGC-17-562019

STIPULATION AND ~~[PROPOSED]~~ ORDER FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Complaint Filed: October 19, 2017

Judge: Honorable Mary E. Wiss

Plaintiff Gary Houston, on behalf of himself and all others similarly situated ("Plaintiff"), and Defendant Braavos, Inc. ("Defendant," collectively referred to as the "Parties"), by and through their attorneys of records, hereby stipulate and agree as follows:

1. On October 19, 2017, Plaintiff filed his Class Action Complaint before the Court, asserting wage and hour claims against Defendant under the California Labor Code on behalf of himself and all others similarly situated.

2. On October 31, 2017, Kayla Gordon and James Mollo filed a Class Action Complaint in the U.S. District Court Northern District of California, *Gordon v. Braavos, Inc.*, Case No. 3:17-cv-06310, in which they assert wage and hour claims under the California Labor Code, the Fair Labor Standards Act ("FLSA"), and Washington state law against Defendant and Jonathan Chin, CEO of Defendant.

3. Defendant's counsel represents Defendant in the matter before the Court and Defendant and Mr. Chin in *Gordon v. Braavos, Inc.*

4. On April 5, 2018, pursuant to the Court's order, Plaintiff filed a First Amended Class Action Complaint ("First Amended Complaint") adding two claims under the California Labor Code's Private Attorneys General Act ("PAGA").

5. On July 31, 2018, plaintiffs in *Gordon v. Braavos, Inc.* filed a Motion to File a First Amended Complaint, which was initially set for a hearing on September 6, 2018 before the U.S. District Court Northern District of California. The defendants in *Gordon* filed a Motion to Stay the Case, Or in the Alternative, Stay the California Claims, which was also set for hearing on September 6, 2018. Both parties in *Gordon v. Braavos, Inc.* stipulated to continue the September 6, 2018 hearings in order to ask this Court to permit Plaintiff to file a Second Amended Complaint in this action adding all claims, plaintiffs and defendants identified in *Gordon* to *Houston.* The Honorable William Alsup of the U.S. District Court Northern District of California granted the parties' stipulation, and has set the hearing on the Motion to File a First Amended Complaint for November 1, 2018, in order to give this Court the opportunity to consider Plaintiff's Second Amended Class and Collective Action Complaint ("Second Amended Complaint"). *See* attached **Exhibit A**.

6. On October 5, 2018, counsel for the plaintiffs in *Gordon v. Braavos, Inc.* entered appearances as co-counsel for Plaintiff in this matter.

7. After meeting and conferring, and in the interest of judicial and litigation efficiency, the Parties, through their respective counsel and co-counsel, now wish to consolidate herein Plaintiff's claims (and the parties) with those included in *Gordon v. Braavos, Inc.* and herein stipulate to permit file Plaintiff's Second Amended Complaint.

8. A true and correct copy of Plaintiff's proposed Second Amended Complaint is attached hereto as **Exhibit B**. A true and correct "redline" version of Plaintiff's proposed Second Amended Complaint, which tracks the changes from Plaintiff's First Amended Complaint, is attached hereto as **Exhibit C**.

9. The Second Amended Complaint makes the following changes to the First Amended Complaint:

a. Modifies the caption to add Plaintiffs Gordon and Mollo and individual Defendants Jonathan Chin, Matthew Voska, and Antoine de Chevigne, change the document title, and list the additional causes of action;

b. Updates the document title in the footer;

c. Changes the terms "Plaintiff" and "Defendant" throughout to "Plaintiffs" and "Defendants," respectively, and makes related grammatical changes;

d. Modifies the Introduction to state that Plaintiffs Houston and Gordon assert a California class and that Plaintiff Mollo asserts a Washington class, and updates the descriptions of the causes of action to reflect the nature and scope of the claims alleged;

e. Modifies the Parties section to add information regarding Plaintiffs and Defendants, provide additional information regarding the geographic scope of Defendant's operations, and state that Plaintiff Houston is now a former employee;

f. Adds Relation Back allegations (¶¶ 25-27);

g. Modifies the Factual Allegations section to provide additional detail regarding the Parties, the work, Defendants' alleged control over Plaintiffs and the proposed Class members and their work, and the alleged misclassification and wage and hour violations;

h. Adds Collective Action Allegations (¶¶ 52-56);

i. Modifies the Class Action Allegations to add a putative Washington class (¶¶ 60-67) and add common questions of law and fact relative to the additional claims asserted;

j. Modifies the substantive causes of action to allege the involvement of the individual defendants;

k. Adds additional substantive causes of action for reporting time pay under the California Labor Code (¶¶ 188-192); failure to provide paid sick leave and workers' compensation insurance (via Plaintiffs' PAGA cause of action at ¶¶ 175-176); failure to pay overtime, meal and rest period violations, and failure to reimburse for employee work apparel under Washington law (¶¶ 193-211), and unpaid overtime under the FLSA (¶¶ 212-219);

l. Modifies the Prayer for Relief to specifically request certification of the state law claims as class actions, designation of the Plaintiffs as class representatives, and to pray for applicable relief under the FLSA;

m. Adds attorneys Scott L. Gordon (Schneider Wallace Cottrell Konecky Wotkyns LLP), Rebecca Peterson-Fisher and Jennifer L. Liu (The Liu Law Firm, P.C.), and Emily Thiagaraj and Alison Kosinski (Kosinski & Thiagaraj, LLP) as counsel of record for Plaintiffs.

10. The Court may, in its discretion, allow amendment to any pleading upon any terms as may be just, after notice to the adverse party. The Court's discretion to allow amendments is to be exercised liberally by permitting amendments that will facilitate the interests of justice and resolve all disputed issues in the lawsuit. (Cal. Code Civ. Pro., § 473(a)(1); *Edwards v. Superior Court* (2001) 93 Cal.App.4th 172, 180.)

11. This case is still in the early stages of litigation because the Parties have not completed discovery, and no trial date has been set.

12. Plaintiff submits that there is good cause to grant Plaintiff leave to file the Second Amended Complaint. Granting leave to amend will allow the Parties to efficiently litigate all claims against Defendant by consolidating Plaintiff's claims and those in *Gordon v. Braavos, Inc.* in one forum, thereby eliminating redundant discovery, motion practice, and trial preparations on two parallel tracks. The early posture of this case and that of *Gordon v. Braavos, Inc.* supports the proposed amendment.

13. If the Court grants leave to Plaintiff to file his Second Amended Complaint, Plaintiffs Gordon and Mollo will voluntary dismiss *Gordon v. Braavos, Inc.* without prejudice.

14. Defendant maintains all substantive and procedural defenses as to the Second Amended Complaint, with the exception that Defendant will not contest the San Francisco Superior Court's subject matter jurisdiction over any of the claims asserted in the Second Amended Complaint and will not seek removal of the matter to federal court.

15. Plaintiffs assert that the Second Amended Complaint relates back to Plaintiff's original Class Action Complaint with regards to all claims and as to all Plaintiffs and Defendants.

16. Defendant, by this Stipulation, does not agree to or object to the recitations in the above paragraphs, except as otherwise stated, but nonetheless consents to Plaintiff filing the attached Second Amended Complaint.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

17. Plaintiff should be granted leave to amend to file his Second Amended Complaint, a true and correct copy attached hereto as Exhibit B.

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18. Responsive pleadings shall be due thirty (30) days after the Second Amended Complaint is filed and served.

Dated: 10/9/18

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Dated: 10/9/18

By: ~~JEROME~~ SCHREIBSTEIN
LAW OFFICE OF JEROME SCHREIBSTEIN

Attorneys for Defendant

~~[PROPOSED]~~ ORDER

Plaintiff Gary Houston, on behalf of himself and all others similarly situated ("Plaintiff"), and Defendant Braavos, Inc. ("Defendant," collectively referred to as the "Parties"), have stipulated that Plaintiff may file his Second Amended Class and Collective Action Complaint.

Having considered the Parties' stipulation, and for good cause shown, the Parties' Stipulation for Leave to File Second Amended Complaint is **GRANTED.** Plaintiff shall file the Second Amended Class and Collective Action Complaint within seven (7) days of this order, and all responsive pleadings shall be filed within thirty (30) days after filing and service.

IT IS SO ORDERED.

Dated: OCT 15 2018

HONORABLE MARY E. WISS

Exhibit A

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

KAYLA GORDON and JAMES MOLLO,

Plaintiffs,

v.

BRAAVOS, INC., d/b/a BANNERMAN SECURITY; JONATHAN CHIN; and DOES 1 through 10, Inclusive,

Defendants.
/

No. C 17-06310 WHA

ORDER GRANTING STIPULATION TO CONTINUE SEPTEMBER 6 HEARINGS

This is a wage-and-hour putative class action. At the initial case management conference, the Court reminded counsel that they should not discuss class-wide settlement until after the class is certified. While settlements can always be discounted for risks of litigation on the merits of a claim, class settlements should not be *further* discounted for the risk of denial of class certification. Accordingly, it is important to learn whether plaintiffs will be adequately represented and if other requirements can be met before claims of absent class members are compromised.

After the initial case management conference, both sides stipulated to continue the September 6 hearings to allow plaintiffs and plaintiffs' counsel to intervene in a concurrent action in the Superior Court of California, County and City of San Francisco before Judge Mary Wiss (Dkt. No. 52). That action is against the same defendants and is also for wage-and-hour violations.

Because of the sequence of events stated above, the Court is concerned that the parties may wish to reach a compromise that not only discounts the settlement based on the merits of the claims but also based on the risks of class certification. Nevertheless, the Court **GRANTS** the continuance of the hearings to give Judge Wiss an opportunity to hear the motions before her. The parties are **ORDERED** to provide Judge Wiss a copy of this order. The September 6 hearings on defendants' motion to stay the action and plaintiffs' motion to file an amended complaint are **VACATED** and **CONTINUED TO NOVEMBER 1, 2018, AT 8:00 AM.**

IT IS SO ORDERED.

Dated: September 5, 2018.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

Exhibit B

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Additional Counsel for Plaintiffs on Signature Page

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

GARY HOUSTON, KAYLA GORDON, and JAMES MOLLO, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

BRAAVOS, INC. d/b/a BANNERMAN; JONATHAN CHIN; MATTHEW VOSKA, ANTOINE DE CHEVIGNE; and DOES 1-50, inclusive,

Defendants.

Case No. CGC-17-562019

SECOND AMENDED CLASS AND COLLECTIVE ACTION COMPLAINT

1. **Willful Misclassification of Employee as Independent Contractor (Cal. Labor Code § 226.8);**
2. **Failure to Authorize and Permit and/or Make Available Meal and Rest Periods (Cal. Labor Code §§ 203, 223, 226.7, 512, 1198);**
3. **Failure to Pay Minimum Wage (Cal. Labor Code §§ 1182.11, 1182.12, 1197);**
4. **Failure to Pay Minimum Wage (San Francisco Administrative Code §12R.1 *et seq.*);**
5. **Failure to Pay Overtime and Double Time Wage (Cal. Labor Code §§ 200, 510, 1194);**
6. **Failure to Provide Accurate, Itemized Wage Statements (Cal. Labor Code § 226(a));**
7. **Waiting Time Penalties (Cal. Labor Code §§ 201-203);**
8. **Failure to Reimburse for Necessary Business Expenses (Cal. Labor Code § 2802);**
9. **Unlawful Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*);**
10. **Penalties Pursuant to § 2699(a) of the California Private Attorneys General Act; and**
11. **Penalties Pursuant to § 2699(f) of the California Private Attorneys General Act**
12. **Reporting Time Pay (Cal. Labor Code § 1198)**

(13) Failure to Pay Overtime (RCW §§ 49.46.130, 49.12.020, WAC 296-128-550)
(14) Meal and Rest Period Violations (RCW §§ 49.12.020, 49.12.170; WAC § 296-126-092)
(15) Failure to Reimburse for Employee Work Apparel (RWC 49.12.450)
(16) Unpaid Overtime Wages (FLSA; 29 U.S.C. §§ 201 et seq.)

DEMAND FOR A JURY TRIAL

Date Action Filed: October 19, 2017
Trial Date: Not Set

Plaintiffs Gary Houston, Kayla Gordon, and James Mollo, on behalf of themselves and all others similarly situated, ("Plaintiffs") complain and allege as follows:

INTRODUCTION

1. Plaintiffs bring this class and collective action on behalf of themselves and other similarly situated individuals who work or worked for Braavos, Inc. d/b/a Bannerman; Jonathan Chin; Matthew Voska; and Antoine de Chevigne (collectively "Bannerman" or "Defendants"), as non-exempt employees, who were misclassified, to challenge Defendants' violations of the Fair Labor Standards Act ("FLSA").

2. Plaintiffs Houston and Gordon also bring this action on behalf of themselves and all similarly-situated current and former Bannerman guards who worked in the State of California to challenge Defendants' violations of the California Labor Code.

3. Plaintiff Mollo also brings this action on behalf of himself and all similarly-situated current and former Bannerman guards who worked in the State of Washington to challenge Defendants' violations of the Revised Code of Washington sections 49.12.020, 49.12.170, 49.12.450, and 49.46.130, and Washington Administrative Code sections 296-128-550 and 296-126-092, and supporting regulations, interpretations, and case law (collectively, the "Washington Wage

Laws").

4. This is a class action against Defendants and DOES 1-50 to challenge their policies and practices of: (1) misclassifying Plaintiffs and proposed Class members as independent contractors instead of employees; (2) failing to authorize and permit Plaintiffs and proposed Class members to take meal and rest breaks to which they are entitled by law; (3) failing to compensate Plaintiffs and proposed Class members for all hours worked; (4) failing to pay Plaintiffs and proposed Class members minimum wage; (5) failing to pay Plaintiffs and proposed Class members overtime and double time wages; (6) failing to provide Plaintiffs and proposed Class members accurate, itemized wage statements; (7) failing to timely pay Plaintiffs and proposed Class members full wages upon termination or resignation; (8) failing to reimburse Plaintiffs and proposed Class members for necessary business expenses; (9) failing to provide Plaintiffs and proposed Class members with paid sick time; and (10) failing to provide Plaintiffs and proposed Class members with workers' compensation insurance.

5. Plaintiffs and proposed Class members work or have worked for Defendants providing security to buildings in California, Washington, and other various states. Defendants willfully misclassified Plaintiffs and proposed Class members as independent contractors, even though they have been and continue to be hourly non-exempt employees, to avoid state and federal wage and hour laws. In particular, Plaintiffs and proposed Class members were, and are, routinely denied meal and rest periods. In addition, Plaintiffs and proposed Class members often worked, and continue to work, over eight hours in a shift and/or over forty hours in a week, but were, and are, not paid for all of the hours they work, and did not and do not receive adequate compensation in the form of minimum wage as well as overtime or double time wages. Plaintiffs and proposed Class members also did not and do not receive accurate, itemized wage statements reflecting the hours

they actually worked and the amount of wages and overtime compensation to which they were entitled. Plaintiffs and proposed Class members were, and are, not paid all amounts owed following their voluntary or involuntary termination. Finally, Plaintiffs and proposed Class members were, and are, not reimbursed for necessary business expenses.

6. As a result of these violations, Plaintiffs seek compensation, damages, penalties, and interest to the full extent permitted by state and federal law.

7. Defendants are also liable for various other penalties under the California Labor Code and for the violation of the Unfair Competition Law, California Business and Professions Code §§ 17200, *et seq.* ("UCL").

8. Plaintiffs also seek declaratory and injunctive relief, including restitution.

9. Finally, Plaintiffs seeks reasonable attorneys' fees and costs under California state, Washington state, and federal laws.

PARTIES

10. Plaintiffs and proposed Class members are current and former employees of Defendants who are or were misclassified as "independent contractors" but worked as hourly, non-exempt employees during the time period four years before the filing of the initial complaint in this matter to its resolution.

11. Plaintiff Houston is an individual over the age of eighteen, and at all times relevant to this Complaint was a resident of the State of California. Plaintiff Houston was employed by Bannerman from approximately November 2015 to February 2018.

12. Plaintiff Gordon is an individual over the age of eighteen, and at all times relevant to this Complaint was a resident of the State of California. Plaintiff resides in San Pablo, in Contra Costa County. Plaintiff Gordon was employed by Bannerman from approximately April 2016 to

April 2017. A written consent to join form for Plaintiff Gordon is filed herewith as Exhibit A.

13. Plaintiff Mollo is an individual over the age of eighteen, and a resident of Port Townsend, Washington. Plaintiff Mollo worked for Bannerman in the State of Washington from approximately May 2015 to April 2016, and in the State of California from approximately May 2016 to June 2016. A written consent to join form for Plaintiff Mollo is filed herewith as Exhibit B.

14. Plaintiffs are informed, believe, and thereon allege that Defendant Braavos, Inc. d/b/a Bannerman is a Delaware corporation and maintains its headquarters and principal place of business in the City and County of San Francisco, California.

15. Plaintiffs are informed, believe, and thereon allege that Defendant Jonathan Chin is the founder and Chief Executive Officer of Braavos, Inc.

16. Plaintiffs are informed, believe, and thereon allege that Defendant Matthew Voska is the Chief Operating Officer and Chief Financial Officer of Braavos, Inc.

17. Plaintiffs are informed, believe, and thereon allege that Defendant Antoine de Chevigne is the Chief Technology Officer and Secretary of Braavos, Inc.

18. Plaintiffs are informed and believe, and on that basis allege, that each of the Defendants acted in concert with each and every other Defendant, intended to and did participate in the events, acts, practices and courses of conduct alleged herein, and proximately caused damage and injury thereby to Plaintiffs as alleged herein.

19. Plaintiffs are informed, believe, and thereon allege that Bannerman is a security company that secures office and commercial properties, among other facilities, in California, and other various states. Bannerman has done business in California, Washington, Texas, New Jersey, New York, Oregon, and Nevada during the relevant time period. Plaintiffs are informed, believe, and thereon allege that Bannerman continues to employ security officers, among other hourly

employees, throughout the country, including in San Francisco County, California. On information and belief, Bannerman maintains its principal place of business in San Francisco, California.

20. The true names and capacities, whether individual, corporate, associate, or otherwise, of Does 1-50, inclusive, are unknown to Plaintiffs, who therefore sue the Doe Defendants by fictitious names. Plaintiffs are informed, believe, and thereon allege that each of these fictitiously-named Defendants is responsible in some manner for the occurrences and Plaintiffs' and the proposed Class members' damages as herein alleged. Defendants are jointly and severally liable for Plaintiffs' and Class members' damages. Plaintiffs will amend this Complaint to show their true names and capacities when they have been ascertained.

21. At all relevant times, Defendants have done business under the laws of California, have had places of business in California, including in this judicial district, and have employed Class members in this judicial district. Defendants are "persons" as defined in Labor Code § 18 and Business and Professions Code § 17201. Defendants are also "employers" as that term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions.

JURISDICTION

22. This Court has personal jurisdiction over Defendants because Defendants do business in California, and Plaintiffs Houston and Gordon are residents of California.

23. This Court has general jurisdiction over Plaintiffs' and proposed Class members' claims.

VENUE

24. Venue is proper in this County pursuant to Code of Civil Procedure § 395(a). Defendants conduct business, employ Class members, and have locations in this County. The events giving rise to these causes of action occurred in this County.

RELATION BACK

25. This Second Amended Class and Collective Action Complaint relates back to Plaintiff Houston's original Class Action Complaint filed on October 19, 2017, with regards to all claims herein, as to all Plaintiffs and Defendants.

26. The amendments rest on the same general set of facts—Defendants' misclassification of the employees and whether Defendants properly paid wages and provided meal and rest breaks. The amendments also involve the same injuries, as they seek recovery for the same wage and hour violations alleged in the original Class Action Complaint. Finally, the amendments all refer to Bannerman and its officers and their employment of the members of the classes and collective, and thus refer to the same instrumentality alleged in the original Class Action Complaint.

27. An amended complaint relates back to an earlier complaint even if the plaintiff alleges a different legal theory or new cause of action. *See, e.g., Smeltzley v. Nicholson Mfg. Co.*, 18 Cal.3d 932, 934, 936 (1977); *Pointe San Diego Residential Cmty., L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP*, 195 Cal.App.4th 265, 276–77 (2011); *Idding v. North Bay Construction Co.*, 39 Cal.App.4th 1111, 1113 (1995).

FACTUAL ALLEGATIONS

28. Bannerman is a security company based in San Francisco, California. Bannerman was established in San Francisco in 2013 by CEO and Founder Jonathan Chin, and Co-Founder Antoine de Chevigne. Bannerman provides security for office and commercial properties, among other facilities throughout the country, including California. Bannerman is based out of California and conducts business within the State.

29. Bannerman operates its business using a proprietary app, which it requires its guards

to use to request shifts, record time worked, and report incidents. Upon information and belief, Defendant de Chevigne played a key role in developing Bannerman's proprietary app, including its timekeeping system.

30. Plaintiff Houston was employed by Bannerman as a security guard from approximately November 2015 to February 2018. Plaintiff Houston worked at locations secured by Defendants in San Francisco. As a security guard, Plaintiff Houston was responsible for ensuring that locations were secure. His tasks included, but were not limited to, patrolling the premises, sending hourly reports, and responding to any situations that arose. Plaintiff Gordon was employed by Bannerman in the San Francisco Bay Area from approximately April 2016 to April 2017. Plaintiff Mollo was employed by Bannerman in the state of Washington from May 2015 to April 2016, and in San Francisco Bay Area from approximately May 2016 to June 2016.

31. Bannerman labels Plaintiffs and other similarly-situated guards as an "independent contractors" but treats them like hourly, non-exempt employees. Upon information and belief, Defendants Chin and de Chevigne established Bannerman's policy of misclassifying Plaintiffs and other similarly-situated guards as independent contractors. Defendants voluntarily and knowingly misclassified Plaintiffs and other similarly-situated guards as independent contractors for the purpose of evading their legal obligations as employers.

32. Bannerman has had and continues to have a policy and practice of controlling the details of guards' work performance. Defendant Voska, as Chief Operations Officer, exercises control over the conduct of both guards and supervisors, and oversees the daily operations of the business. Upon information and belief, Defendant Voska establishes and implements policies governing guards' work performance and compensation.

33. Bannerman's direction and control of the way guards perform their work has

included, and continues to include, approving or denying shift requests, controlling their movements at the security site, and tracking their movements via GPS while they are on shift, and even when they are not on shift. Bannerman guards did not and do not have discretion regarding how to perform their duties, but were and are required to follow specific instructions disseminated by Bannerman regarding all aspects of their work performance, including but not limited to what to wear and how to conduct themselves during their shifts.

34. Bannerman required and continues to require guards to report their arrival at the site via the proprietary app. Guards are then required to respond to calls and situations at the locations, even if they are on a break. Plaintiffs were unable to take breaks at all during some shifts. Bannerman has not provided and does not provide premium pay for non-compliant meal and rest breaks.

35. Plaintiff Houston was paid $20.00 per hour, and Plaintiffs Gordon and Mollo were paid similar hourly rates. However, although Plaintiffs worked significant overtime, Plaintiffs and similarly situated guards have not been paid overtime compensation for hours worked in excess of eight (8) hours per day or forty (40) hours per week. Plaintiff Mollo regularly worked shifts of twelve hours per day, seven days per week, in the State of Washington, but was never paid overtime premium pay for hours worked in excess of forty in a workweek. Additionally, Plaintiffs Houston and Gordon were not paid double time compensation for hours worked over twelve (12) in a day.

36. Bannerman had and continues to have a policy of requiring guards to perform uncompensated, off-the-clock work. Bannerman required and continues to require guards to clock in and out of their shifts using Bannerman's app, and pays guards only for time recorded on the app. However, Bannerman's app does not permit guards to clock in or out unless GPS confirms they are physically present at the site of their scheduled shift. Nevertheless, Bannerman requires

guards to perform work outside of the locations of their scheduled shifts, such as retrieving keys from other locations and returning equipment to Bannerman's headquarters. The time guards spend performing such work is unrecorded and uncompensated. Bannerman has also required guards to attend staff meetings without pay.

37. Bannerman required and continues to require guards to continue working until relieved by the next scheduled guard. Plaintiffs and other guards continued to work past the scheduled end of their shifts when the next scheduled guards were late. However, although Bannerman records time worked to the minute through its app, Bannerman had and continues to have a policy and practice of rounding down to the nearest quarter-hour when compensating guards for time worked past the scheduled end of their shift. Therefore, Plaintiffs and other guards were frequently not compensated for all time worked.

38. Bannerman had and continues to have a policy and practice of assigning guards to worksites with no bathroom facilities or chairs. Bannerman assigned both Plaintiff Gordon and Plaintiff Mollo to work sites with no bathroom facilities or chairs.

39. Bannerman exercised and continues to exercise disciplinary authority over guards. Bannerman guards are subjected to a point system, in which each disciplinary infraction earns a point, and accruing three points in a given time period results in termination via removal of the guard from Bannerman's platform. If a guard has no disciplinary points, a green icon is displayed on their app. After one point, the icon turns yellow, and after two points, the icon turns red, indicating that the guard is in danger of termination.

40. Bannerman has also utilized a star system, in which guards' star ratings were lowered if they did not arrive to work on time or did not take enough shifts. Guards who did not maintain a high rating were terminated via removal from Bannerman's platform.

41. Bannerman retains the authority to terminate guards from its platform at any time for what it deems poor performance, and has in fact terminated Plaintiff Gordon and other guards from its platform for poor performance.

42. Bannerman had and continues to have a policy and practice of deducting $5.00 from guards' pay each time they check in late to a shift, and has deducted such funds from guards, without their authorization, as discipline for checking in late to a shift.

43. Bannerman had and continues to have a policy and practice of failing to pay reporting time pay in violation of California law. On multiple occasions, Plaintiff Gordon reported to her scheduled shift only to be told that she was not needed and sent home. Plaintiff and other guards were not compensated at all for days on which they were scheduled to work and reported to work, but were not put to work.

44. Bannerman does not provide its guards with workers' compensation insurance, despite the obvious risk of injury inherent in guard work, nor does it withhold any of guards' wages for state disability insurance or unemployment insurance. Plaintiffs and proposed Class members were not provided with workers' compensation insurance during their employment with Bannerman, and Bannerman took no deductions for state disability insurance or unemployment insurance from their compensation.

45. Although California requires all employers to provide paid sick time to employees who work more than thirty days within a year from the commencement of their employment, Bannerman does not provide paid sick time to its California guards. Plaintiffs and proposed Class members worked more than thirty days within a year from the commencement of their employment, but were never provided with any paid sick time.

46. Bannerman required and continues to require Plaintiffs and proposed Class members

to wear uniforms while on the job. Plaintiffs and proposed Class members are required to purchase their own uniform shirts. Bannerman also required and continues to require Plaintiffs and proposed Class members to use their personal mobile devices to clock in and track their locations and make hourly reports, and to use their personal vehicles to travel between worksites, but does not pay any reimbursement for these expenses.

47. Bannerman classifies security officers and other non-exempt employees as "independent contractors" so as to conceal the true nature of the relationship between Bannerman and Plaintiff and proposed Class members: that of employer and employee.

48. In fact, Bannerman is and has been Plaintiffs' and proposed Class members' employer. At all times, Bannerman controlled and directed the manner and means by which Plaintiffs and proposed Class members accomplished their work, as described herein, including but not limited to by setting Plaintiffs' and proposed Class members' work schedules, requiring them to follow detailed instructions regarding the performance of their duties and disciplining them for poor performance, monitoring and controlling their movements via GPS, and terminating guards from the Bannerman platform for on-the-job performance issues or failure to adhere to Bannerman's attendance standards.

49. By performing security guard work for Bannerman, Plaintiffs and proposed Class members performed and continue to perform work that is within the usual course of Bannerman's business. Bannerman is a security company that secures office and commercial properties. Through their work as guards, Plaintiffs and proposed Class members furnish Bannerman's core security guard business to Bannerman's customers.

50. Plaintiffs did not maintain security guard businesses that provide security services independently of Bannerman.

51. Similar to Plaintiffs, proposed Class and collective members are current and former non-exempt employees who worked and/or work for Bannerman. Plaintiffs are informed, believe, and thereon allege that the policies and practices of Bannerman have at all relevant times been similar for Plaintiffs and proposed Class and collective members, regardless of the location within the country.

COLLECTIVE ACTION ALLEGATIONS

52. Plaintiffs bring the Sixteenth Cause of Action, pursuant to the FLSA, 29 U.S.C. § 216(b), on behalf of themselves and all similarly situated persons who elect to opt into this action who work or have worked for Bannerman as security guards nationwide on or after three years from filing of the original complaint in this action (the "FLSA Collective").

53. Plaintiffs are similarly situated to other members of the FLSA Collective. Defendants misclassified Plaintiffs and other members of the FLSA Collective as independent contractors, and failed to pay them overtime premium pay for hours worked in excess of forty in a week.

54. Plaintiffs and other members of the FLSA Collective had the same or similar primary job duties and were subject to the same company policies and practices.

55. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs and other members of the FLSA Collective. There are many similarly situated current and former Bannerman guards who have been underpaid in violation of the FLSA who would benefit from the issuance of a court-supervised notice regarding the present lawsuit and the opportunity to join it. Those similarly situated individuals are known to Defendants, are readily identifiable, and can be located through Defendants' records, such that notice should be sent to them pursuant to 29 U.S.C. § 216(b).

56. Consent to Join Forms memorializing Plaintiffs' desire to be party plaintiffs, opt-in to

the FLSA Collective, and designate Plaintiffs' counsel as their are attorneys are attached hereto. The Consent to Joint Forms for Gary Houston, Kayla Gordon, and James Mollo are attached as Exhibits A, B, and C, respectively.

CLASS ACTION ALLEGATIONS

The California Class

57. Plaintiffs Houston and Gordon ("California Plaintiffs") bring this case as a class action on behalf of themselves and all others similarly situated pursuant to Code of Civil Procedure § 382. The Class that Plaintiffs seek to represent is defined as follows:

> All current and former non-exempt employees, employed by Defendants in California during the time period four years prior to the filing of the original complaint until the resolution of this action. (Hereinafter referred to as the "California Class").

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

i. **Numerosity**: The potential members of the California Class as defined are so numerous that joinder of all the members of the California Class is impracticable.

ii. **Commonality**: There are questions of law and fact common to the California Plaintiffs and the California Class that predominate over any questions affecting only individual members of the California Class. These common questions of law and fact include, but are not limited to:

i. Whether proposed California Class members are or were employed by Defendants;

ii. Whether Defendants maintained or maintain a common policy and practice of unlawfully misclassifying proposed California Class members as

independent contractors who are exempt from the Labor Code and Wage Orders;

iii. Whether Defendants, through its policy and practice of unlawfully misclassifying proposed California Class members as independent contractors who are exempt from the Labor Code and Wage Order, failed and continue to fail to properly pay proposed California Class members all of the wages owed to them in violation of California law;

iv. Whether Defendants failed and continue to fail to properly pay minimum wage to proposed California Class members in violation of the Labor Code and Wage Orders;

v. Whether Defendants failed and continue to fail to properly pay overtime compensation, at either one and one-half times or double the regular rate of pay, to proposed California Class members in violation of the Labor Code and Wage Orders;

vi. Whether Defendants failed and continue to fail to reimburse proposed California Class members for business related expenses, in violation of the Labor Code and Wage Orders;

vii. Whether Defendants failed and continue to fail to compensate proposed California Class members for all hours worked in violation of Business and Professions Code §§17200 *et seq.*;

viii. Whether Defendants failed and continue to fail to authorize, permit, make available, and/or provide proposed California Class members with compliant meal periods to which they are entitled in violation of the Labor

Code;

ix. Whether Defendants failed and continue to fail to authorize, permit, make available, and/or provide proposed California Class members with compliant meal periods to which they are entitled in violation of Business and Professions Code §§ 17200 *et seq.*;

x. Whether Defendants failed and continue to fail to authorize, permit, make available, and/or provide proposed California Class members rest periods to which they are entitled in violation of the Labor Code;

xi. Whether Defendants failed and continue to fail to authorize, permit, make available, and/or provide proposed California Class members rest periods to which they are entitled in violation of Business and Professions Code §§ 17200 *et seq.*;

xii. Whether Defendants fail to provide proposed California Class members with timely, accurate itemized wage statements in violation of the Labor Code;

xiii. Whether Defendants' policy and practice of failing to pay proposed California Class members all wages due upon the end of their employment violates the Labor Code;

xiv. Whether Defendants violated and continue to violate Labor Code § 221 and 226.8(a)(3) by taking unauthorized deductions from the wages of the California Plaintiffs and the California Class, and are therefore subject to penalties;

xv. Whether Defendants violated and continue to violate Labor Code §

246 by failing to provide the California Plaintiffs and the California Class paid sick days and are therefore subject to penalties under Labor Code § 248.5;

xvi. Whether Defendants failed and continue to fail to pay reporting pay and are therefore subject to penalties under the Labor Code;

xvii. Whether Defendants violated and continue to violate Labor Code § 1198 by employing the California Plaintiffs and the California Class under conditions of labor prohibited by IWC Wage Order 4-2001, and are therefore liable for penalties under Labor Code §§ 558, 558.1, and 1199, in that Defendants failed and continue to fail to ensure that worksites to which the California Plaintiff and the California Class were assigned met minimum working conditions standards;

xviii. Whether Defendants violated and continue to violate Labor Code § 3700 by failing to provide the California Plaintiffs and the California Class workers' compensation insurance, and are therefore liable for penalties under Labor Code § 3700.5;

xix. Whether Defendants' policy and practice of failing to pay proposed California Class members all wages due upon the end of their employment has been and continues to be an unlawful, unfair or fraudulent business act or practice in violation of Business and Professions Code §§ 17200 *et seq.*;

xx. The proper formula for calculating restitution, damages and penalties owed to the California Plaintiffs and the California Class alleged herein.

iii. **Typicality**: Plaintiffs' claims are typical of the claims of the California Class. Defendants' common course of conduct in violation of law as alleged herein has

caused the California Plaintiffs and proposed California Class members to sustain the same or similar injuries and damages. The California Plaintiffs' claims are thereby representative of and co-extensive with the claims of the California Class.

iv. **Adequacy of Representation**: The California Plaintiffs are members of the California Class, they do not have any conflicts of interest with other proposed California Class members, and will prosecute the case vigorously on behalf of the California Class. Counsel representing the California Plaintiffs are competent and experienced in litigating large employment class actions, including misclassification and wage and hour class actions. The California Plaintiffs will fairly and adequately represent and protect the interests of the California Class members.

v. **Superiority of Class Action**: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed California Class members is not practicable, and questions of law and fact common to the California Class predominate over any questions affecting only individual members of the California Class. Each proposed California Class member has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. The injury suffered by each California Class member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Defendants economically feasible. Individualized litigation increases the delay and expense to all Parties and the Court. By contrast, class action treatment will allow those similarly situated persons to

litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

59. In the alternative, the California Class may be certified because the prosecution of separate actions by the individual members of the California Class would create a risk of inconsistent or varying adjudication with respect to individual members of the California Class, and, in turn, would establish incompatible standards of conduct for Defendants.

The Washington Class

60. Plaintiff Mollo ("Washington Plaintiff") brings this case as a class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure § 382. The Class that Plaintiff Mollo seeks to represent is defined as follows:

> All current and former non-exempt employees, employed by Defendants in Washington State during the time period four years prior to the filing of the original complaint until the resolution of this action. (Hereinafter referred to as the "Washington Class").

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

62. **Numerosity**: The potential members of the Washington Class as defined are so numerous that joinder of all the members of the Washington Class is impracticable.

63. **Commonality**: There are questions of law and fact common to the Washington Plaintiff and the Washington Class that predominate over any questions affecting only individual members of the Washington Class. These common questions of law and fact include, but are not limited to:

i. Whether Defendants misclassified the Washington Plaintiff and the Washington Class as independent contractors;

ii. Whether Defendants failed and/or refused to pay the Washington Plaintiff and the Washington Class for all hours worked in violation of the Washington Wage Laws;

iii. Whether Defendants failed and/or refused to pay the Washington Plaintiff and the Washington Class overtime pay for hours worked in excess of forty (40) per workweek in violation of the Washington Wage Laws;

iv. Whether Defendants policy of failing to pay the Washington Plaintiff and the Washington Class was instituted willfully or with reckless disregard of the law;

v. Whether Defendants required the Washington Plaintiff and the Washington Class to work more than five consecutive hours without a meal period;

vi. Whether Defendants failed to provide the Washington Plaintiff and the Washington Class who worked three or more hours longer than a normal work day with a thirty-minute meal period prior to or during the overtime period;

vii. Whether Defendants failed to provide the Washington Plaintiff and the Washington Class with rest periods of not less than ten minutes for each four hours of working time;

viii. Whether Defendants required the Washington Plaintiff and the Washington Class to work more than three hours consecutively without a rest period;

ix. Whether Defendants unlawfully failed to reimburse the Washington Plaintiff and the Washington Class for the expense of purchasing formal work apparel; and

x. The nature and extent of the Washington Class-wide injury and the appropriate measure of damages for the Washington Class.

64. **Typicality**: Plaintiff's claims are typical of the claims of the Washington Class.

Defendants' common course of conduct in violation of law as alleged herein has caused the Washington Plaintiff and proposed Washington Class members to sustain the same or similar injuries and damages. The Washington Plaintiff's claims are thereby representative of and co-extensive with the claims of the Washington Class.

65. **Adequacy of Representation**: The Washington Plaintiff is a member of the Washington Class, he does not have any conflicts of interest with other proposed Washington Class members, and will prosecute the case vigorously on behalf of the Washington Class. Counsel representing the Washington Plaintiff are competent and experienced in litigating large employment class actions, including misclassification and wage and hour class actions. The Washington Plaintiff will fairly and adequately represent and protect the interests of the Washington Class members.

66. **Superiority of Class Action**: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed Washington Class members is not practicable, and questions of law and fact common to the Washington Class predominate over any questions affecting only individual members of the Washington Class. Each proposed Washington Class member has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. The injury suffered by each Washington Class member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Defendants economically feasible. Individualized litigation increases the delay and expense to all Parties and the Court. By contrast, class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

67. In the alternative, the Washington Class may be certified because the prosecution of separate actions by the individual members of the Washington Class would create a risk of inconsistent or varying adjudication with respect to individual members of the Washington Class, and, in turn, would establish incompatible standards of conduct for Defendants.

FIRST CAUSE OF ACTION
Willful Misclassification of Employee as Independent Contractor (Against All Defendants – on Behalf of the California Class)

68. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

69. Plaintiffs are informed and believe and thereon allege that, through common policies and practices, Defendants systematically engages in an unlawful, unfair, and fraudulent scheme designed to make the California Plaintiffs and proposed California Class members appear to be running independent businesses, when in reality they are employees of Defendants.

70. Defendants intentionally and willfully mischaracterize the California Plaintiffs and proposed California Class members as independent contractors rather than employees.

71. The IWC Wage Order 10-2001(2)(F) provides: "'Employee' means any person employed by an employer."

72. At all relevant times, the California Plaintiffs and proposed California Class members have been and are "employees" of Defendants within the meaning of California law.

73. The IWC Wage Order 10-2001(2)(F) provides: "'Employer' means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person."

74. At all relevant times, Defendants have been and continue to be an "employer" within the meaning of the Labor Code and applicable Wage Orders.

75. Labor Code § 226.8 and applicable Wage Orders prohibit Defendants from misclassifying employees as independent contractors. Specifically, § 226.8 states:

> (a) It is unlawful for any person or employer to engage in any of the following activities:
> (1) Willful misclassification of an individual as an independent contractor.
> (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.
> (b) If the . . . court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars ($5,000) and not more than fifteen thousand dollars ($15,000) for each violation, in addition to any other penalties or fines permitted by law.
> (c) If the . . . court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars ($10,000) and not more than twenty-five thousand dollars ($25,000) for each violation, in addition to any other penalties or fines permitted by law...
> (e) If the...court issues a determination that a person or employer has violated subdivision (a), the agency or court, in addition to any other remedy that has been ordered, shall order the person or employer to display prominently on its Internet Web site, in an area which is accessible to all employees and the general public, or, if the person or employer does not have an Internet Web site, to display prominently in an area that is accessible to all employees and the general public at each location where a violation of subdivision (a) occurred, a notice that sets forth all of the following:
> (1) That the Labor and Workforce Development Agency or a court, as applicable, has found that the person or employer has committed a serious violation of the law by engaging in the willful misclassification of employees.
> (2) That the person or employer has changed its business practices in order to avoid committing further violations of this section.
> (3) That any employee who believes that he or she is being misclassified as an independent contractor may contact the Labor and Workforce Development Agency. The notice shall include the mailing address, email address, and telephone number of the agency.

(4) That the notice is being posted pursuant to a state order.

76. Despite these requirements, Defendants intentionally and willfully characterize the California Plaintiffs and proposed California Class members as independent contractors rather than employees in violation of Labor Code § 226.8.

77. Defendants engage in a pattern and practice of misclassifying employees as independent contractors for their own financial benefit.

78. As a direct and proximate result of the unlawful acts and/or omissions of Defendants, the California Plaintiffs and proposed California Class members are entitled to recover damages in an amount to be determined at trial and civil penalties, plus interest thereon, and attorneys' fees and costs pursuant to Labor Code § 226.8.

79. The California Plaintiffs seek recovery of civil penalties of not less than ten thousand ($10,000) and not more than twenty-five thousand ($25,000) dollars for each violation, in addition to any other penalties or fines permitted by law.

80. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

SECOND CAUSE OF ACTION
Failure to Authorize and Permit, Provide and/or Make Available Meal and Rest Periods (Against All Defendants – on Behalf of the California Class)

81. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

82. Defendants require the California Plaintiffs and proposed California Class members to respond to calls at the security locations in a timely manner, even if this means cutting breaks short or not being relieved for breaks at all.

83. The California Plaintiffs and proposed California Class members' workload is such that there is no time for them to take breaks. In the event that they do get breaks, they are required to be on duty and have to carry their phones so that they can respond to calls. The California Plaintiffs and proposed California Class members are expected to immediately respond in the event of a security-related incident. As a result of this policy, the California Plaintiffs and putative California Class members are required to abandon breaks to respond to security-related incidents.

84. Defendants do not pay the California Plaintiffs and proposed California Class members one hour of premium pay for the missed meal and rest breaks.

85. Plaintiffs and proposed California Class members often work shifts in excess of ten (10) hours. During those shifts, they are legally entitled to two 30-minute meal periods per shift. The California Plaintiffs and proposed California Class members are often unable to taking a second meal period.

86. Labor Code §§ 226.7 and 512 and the applicable Wage Order require Defendants to authorize and permit meal and rest periods to its employees. Labor Code §§ 226.7 and 512 and the Wage Order prohibit employers from employing an employee for more than five hours without a meal period of not less than thirty minutes, and from employing an employee more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes. Section 226.7 and the applicable Wage Order also require employers to authorize and permit employees to take ten minutes of net rest time per four hours or major fraction thereof of work, and to pay employees their full wages during those rest periods. Unless the employee is relieved of all duty during the thirty-minute meal period and ten-minute rest period, the employee is considered "on duty" and the meal or rest period is counted as time worked under the applicable wage orders.

87. Under § 226.7(b) and the applicable Wage Order, an employer who fails to authorize,

permit, and/or make available a required meal period must, as compensation, pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period was not authorized and permitted. Similarly, an employer must pay an employee denied a required rest period one hour of pay at the employee's regular rate of compensation for each workday that the rest period was not authorized and permitted and/or not made available

88. Despite these requirements, Defendants knowingly and willfully refuse to perform its obligations to authorize and permit and/or make available to the California Plaintiffs and the proposed California Class the ability to take the off-duty meal and rest periods to which they are entitled. Defendants also fail to pay the California Plaintiffs and the California Class one hour of pay for each off-duty meal and/or rest periods that they are denied. Defendants' conduct described herein violates Labor Code §§ 226.7 and 512. Therefore, pursuant to Labor Code § 226.7(b), the California Plaintiffs and the California Class are entitled to compensation for the failure to authorize and permit and/or make available meal and rest periods, plus interest, attorneys' fees, expenses and costs of suit.

89. Defendants Jonathan Chin, Antoine de Chevigne, and Matthew Voska, acting on behalf of Bannerman, caused the violations of IWC 4-2001 and Labor Code §§ 226.7 and 512 described herein by establishing and implementing Bannerman's unlawful policies with respect to meal and rest periods. Defendants Chin, de Chevigne, and Voska are therefore personally liable to the California Plaintiff and members of the California Class for one hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not provided, and one hour of additional pay at the regular rate of compensation for each workday that the proper meal periods were not provided, at the regular rate of compensation, pursuant to California Labor Code § 558.1.

90. As a proximate result of the aforementioned violations, the California Plaintiffs and the California Class have been damaged in an amount according to proof at time of trial.

91. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

THIRD CAUSE OF ACTION
Failure to Pay Minimum Wages
(Against All Defendants – on Behalf of the California Class)

92. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

93. As a result of hourly rates implemented by Defendants and the requirement that the California Plaintiffs and proposed California Class members pay for their own uniforms and mobile device bills, Defendants fail to compensate the California Plaintiffs and proposed California Class members with at least minimum wage for all hours worked or spent in control of Defendants.

94. Defendants have maintained policies and procedures which created a working environment where the California Plaintiffs and proposed California Class members are routinely compensated at a rate that is less than the statutory minimum wage.

95. During the applicable statutory period, Labor Code §§1182.11, 1182.12 and 1197, and the Minimum Wage Order were in full force and effect and required that Defendants' employees receive the minimum wage for all hours worked irrespective of whether nominally paid on a piece rate, or any other bases, at the rate of ten dollars ($10.00) per hour commencing January 1, 2016.

96. IWC Wage Order 10-2001(2)(H) 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."

97. Labor Code § 1194(a) provides as follows:

> 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 attorneys' fees, and costs of suit.

98. The California Plaintiffs and proposed California Class members regularly work over eight hours per day, and sometimes even more.

99. The California Plaintiffs and proposed California Class members work tirelessly to respond to calls and patrol locations for Defendants.

100. In spite of this, the California Plaintiffs and proposed California Class members are paid an hourly wage that ends up being at or near the minimum wage for the hours spent working, when expenses are taken into consideration. The California Plaintiffs and proposed California Class members are required to pay out of pocket for work uniforms and mobile devices and bills, including data required for the application to run. The California Plaintiffs and proposed California Class members are not reimbursed for these expenses, which lower the resulting hourly rate below the minimum wage.

101. Because of Defendants' policies and practices with regard to compensating their employees, Defendants have failed to pay minimum wages as required by law.

102. Labor Code §1194.2 provides that, in any action under § 1194 to recover wages because of the payment of a wage less than minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

103. By failing to maintain adequate time records as required by Labor Code §1174(d) and IWC Wage Order 10-2001(4), Defendants have made it difficult to calculate the minimum wage compensation due to the California Plaintiffs and proposed California Class members.

104. Defendants Jonathan Chin, Antoine de Chevigne, and Matthew Voska, acting on behalf of Bannerman, caused the violations of the California Labor Code § 1194 and the applicable Wage Order described herein by establishing and implementing Bannerman's unlawful policies with respect to guards' classification and compensation. Defendants Chin, de Chevigne, and Voska are therefore personally liable to the California Plaintiff and members of the California Class for unpaid wages, liquidated damages, and interest pursuant to California Labor Code § 558.1.

105. As a direct and proximate result of the unlawful acts and/or omissions of Defendants, the California Plaintiffs and proposed California Class members have been deprived of minimum wages in an amount to be determined at trial, and are entitled to a recovery of such amount, plus liquidated damages, plus interest thereon, attorneys' fees, and costs of suit pursuant to Labor Code §§ 1194, 1194.2 and 1197.1.

106. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

FOURTH CAUSE OF ACTION
Failure to Pay Minimum Wage (San Francisco Administrative Code §§ 12R.1, *et seq.*)
(Against All Defendants – on Behalf of the California Class)

107. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

108. Defendants have failed, and continue to fail, to compensate the California Plaintiffs and proposed California Class members with at least the minimum wage for all hours worked or spent in Defendants' control because the California Plaintiffs and proposed California Class members are required to pay out of pocket for work uniforms and mobile devices and bills, including data required for the Defendants' application to run. The California Plaintiffs and proposed

California Class members were not and are not reimbursed for these expenses, which lower the resulting hourly rate below the minimum wage.

109. During the applicable statutory period, San Francisco Administrative Code §§ 12R.4 *et seq.*, also known as the Minimum Wage Ordinance, was in full force and effect and required that the California Plaintiffs and proposed California Class members receive the minimum wage for all hours worked at the rate of eight dollars ($12.25) per hour commencing May 1, 2015, at the rate of nine dollars ($13.00) per hour commencing July 1, 2016, and at the rate of ten dollars ($14.00) per hour commencing July 1, 2017.

110. San Francisco Administrative Code § 12R.7(d) provides as follows:

> The Agency, the City Attorney, any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as penalties in the amount of $50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief, and shall be awarded reasonable attorneys' fees and costs. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs. Nothing in this Chapter shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the Municipal Code or state law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this Chapter.

111. Because of Defendants' policies and practices with regard to compensating the California Plaintiffs and putative California Class members, Defendants have failed to pay minimum wages as required by law. The California Plaintiffs and proposed California Class members have performed work for which they were compensated below the statutory minimum.

112. San Francisco Administrative Code Labor Code § 12R.7(e) states:

> In any administrative or civil action brought for the nonpayment of wages under this Section, the Agency or court, as the case may be, shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.

113. California Civil Code § 3289(b) provides, in relevant part:

> (b) If a contract entered into after January 1, 1986, does not stipulate a legal rate of interest, the obligation shall bear interest at a rate of 10 percent per annum after the breach.

114. The California Plaintiffs and proposed California Class members have been deprived of minimum wages in an amount to be proven at trial, and are entitled to a recovery of such amount, plus interest thereon, attorneys' fees, and costs of suit pursuant to San Francisco Code § 12R.7(d) and (e), and California Civil Code § 3289(b).

115. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

FIFTH CAUSE OF ACTION
Failure to Pay Overtime and Double Time Wages
(Against All Defendants – on Behalf of the California Class)

116. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

117. Defendants did not and do not compensate the California Plaintiffs and proposed California Class members with appropriate overtime, including time and half and double time, as required by California law.

118. Labor Code § 510(a) provides as follows:

> 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.

119. The IWC Wage Order 10-2001(3)(A)(1) 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 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: . . . 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; and ... 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[.] ...

120. Labor Code § 1194(a) provides as follows:

> 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.

121. Labor Code § 200 defines wages as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,

commission basis or other method of calculation." All such wages are subject to California's overtime requirements, including those set forth above.

122. Defendants often required the California Plaintiffs and proposed California Class members to work in excess of eight hours per day. Defendants did not, and do not, compensate the California Plaintiffs and proposed California Class members at an overtime rate for hours in excess of eight hours each day or in excess of forty in each week, or at a double time rate for hours in excess of twelve each day or in excess of eight on the seventh consecutive day.

123. The California Plaintiff and proposed California Class members have worked overtime hours for Defendants without being paid overtime premiums in violation of the Labor Code, the applicable IWC Wage Order, and other applicable law.

124. Defendants Jonathan Chin, Antoine de Chevigne, and Matthew Voska, acting on behalf of Bannerman, caused the violations of the California Labor Code and Wage Order 4-2001 described herein by establishing and implementing Bannerman's policy of unlawfully misclassifying guards as independent contractors and failing to pay them overtime premium pay, and are therefore liable for damages in an amount to be proven at trial pursuant to Cal. Lab. Code § 558.1.

125. Defendants have knowingly and willfully refused to properly compensate the California Plaintiffs and the proposed California Class for overtime work. As a proximate result of the aforementioned violations, Defendants have damaged the California Plaintiffs and the proposed California Class in amounts to be determined according to proof at time of trial, but in an amount in excess of the jurisdictional requirements of this Court.

126. Defendants are liable to the California Plaintiffs and the California Class alleged herein for the unpaid overtime and civil penalties, with interest thereon. Furthermore, the California Plaintiffs are entitled to an award of attorneys' fees and costs as set forth below.

127. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

SIXTH CAUSE OF ACTION
Violations of Labor Code § 226 – Itemized Wage Statements
(Against All Defendants – on Behalf of the California Class)

128. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

129. Defendants have not provided and continue not to provide the California Plaintiffs and proposed California Class members with accurate itemized wage statements as required by California law.

130. Labor Code § 226(a) provides:

> An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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 only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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 and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the

> employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

131. The IWC Wage Order also establishes this requirement. (See IWC Wage Order 10-2001(7)).

132. Labor Code § 226(e)(1) provides:

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

The California Plaintiffs seek to recover actual damages, costs and attorneys' fees under this section.

133. Defendants have failed to provide timely, accurate itemized wage statements to the California Plaintiffs and proposed California Class members in accordance with Labor Code § 226(a) and the IWC Wage Order. The wage statements Defendants provided their employees, including the California Plaintiffs and proposed California Class members, do not reflect the actual hours worked, actual gross wages earned, or actual net wages earned. The wage statements are simply a record of shifts worked, and the amount earned per shift.

134. Defendants are liable to the California Plaintiffs and the California Class alleged herein for the amounts described above in addition to the civil penalties set forth below, with interest thereon. Furthermore, the California Plaintiffs are entitled to an award of attorneys' fees and costs as set forth below.

135. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

SEVENTH CAUSE OF ACTION
Waiting Time Penalties Pursuant to Labor Code §§ 201-203
(Against All Defendants – on Behalf of the California Class)

136. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

137. Defendants do not provide former proposed California Class members with their wages when due under California law after their employment with Defendants ends.

138. Labor Code § 201 provides:

> If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

139. Labor Code § 201.3 provides:

> If an employee of a temporary services employer is assigned to work for a client, that employee's wages are due and payable no less frequently than weekly[.]

140. Labor Code § 202 provides:

> 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.

141. Labor Code § 203 provides, in relevant part:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any 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.

142. Proposed California Class members have left their employment with Defendants during the statutory period, at which time Defendants owed them unpaid wages, including overtime and double time wages.

143. Defendants willfully refuse and continue to refuse to pay former proposed California

Class members all the wages that are due and owing them, in the form of, *inter alia*, overtime and double time pay and meal and rest period premium pay, upon the end of their employment. As a result of Defendants' actions, the California Plaintiffs and proposed California Class members have suffered and continue to suffer substantial losses, including lost earnings, and interest.

144. Defendants' willful failure to pay proposed California Class members the wages due and owing them constitutes a violation of Labor Code §§ 201-202. As a result, Defendants are liable to proposed California Class members for all penalties owing pursuant to Labor Code §§ 201-203.

145. In addition, § 203 provides that an employee's wages will continue as a penalty up to thirty days from the time the wages were due. Therefore, proposed California Class members are entitled to penalties pursuant to Labor Code § 203, plus interest.

146. Defendants Jonathan Chin, Antoine de Chevigne, and Matthew Voska, acting on behalf of Bannerman, caused the violations of Labor Code § 203 described herein, and are therefore personally liable for wages owed to the California Plaintiff and members of the California Class whose employment ended during the relevant time period, together with interest thereon and attorneys' fees and costs, pursuant to Cal. Lab. Code § 558.1.

147. Wherefore, the California Plaintiffs and the California Class request relief as hereinafter provided.

EIGHTH CAUSE OF ACTION
Failure to Reimburse for Necessary Business Expenses Pursuant to Labor Code § 2802
(Against All Defendants – on Behalf of the California Class)

148. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

149. Defendants have not reimbursed and continue not to reimburse California Plaintiffs and proposed California Class members for necessary business expenses.

150. Defendants required the California Plaintiffs and proposed California Class members to purchase Bannerman branded shirts for use while on the job without reimbursement. Defendants also required the California Plaintiffs and proposed Class members to use their personal mobile devices, including data to run the application, and their personal vehicles without reimbursement.

151. Labor Code § 2802(a) provides as follows:

> An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the direction, believed them to be lawful.

152. Labor Code § 2802(c) defines "necessary expenditures" to include "all reasonable costs."

153. As a direct and proximate result of the aforementioned violations, the California Plaintiffs and proposed California Class members have been damaged in an amount according to proof at time of trial.

154. Defendants Jonathan Chin, Antoine de Chevigne, and Matthew Voska, acting on behalf of Bannerman, caused the violations of Cal. Lab. Code § 2802 described herein, by establishing and implementing Bannerman's policy of unlawfully misclassifying guards as independent contractors and failing to indemnify them for work-related expenses. Defendants Chin, de Chevigne, and Voska are therefore liable for reimbursement of all necessary expenditures, with interest, in addition to reasonable attorneys' fees incurred to enforce the rights of California Plaintiff and the California Class under Cal. Lab. Code § 2802 pursuant to Cal. Lab. Code § 558.1.

155. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

NINTH CAUSE OF ACTION
Violation of Business and Professions Code §§ 17200, *et seq.*
(Against All Defendants – on Behalf of the California Class)

156. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

157. Business and Professions Code §§17200 *et seq.* prohibits unfair competition in the form of any unlawful, unfair or fraudulent business acts or practices.

158. Business and Professions Code § 17204 allows a person injured by the unfair business acts or practices to prosecute a civil action for violation of the UCL.

159. Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

160. Beginning at an exact date unknown to the California Plaintiffs, but at least since the date four years prior to the filing of this suit, Defendants have committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business acts and practices described in this Complaint, including, but not limited to:

a. violations of Labor Code § 221, 226.8,1198-199 and IWC Wage Orders pertaining to willful misclassification of its employees as independent contractors;

b. violations of Labor Code § 1194, 1198-1199 and IWC Wage Order pertaining to the payment of wages;

c. violations of Labor Code § 510, 1198-1199 and applicable IWC Wage Orders pertaining to overtime;

d. violations of Labor Code §§ 1182.11, 1182.12, and 1197 and IWC wage orders pertaining to minimum wage;

e. violations of Labor Code §§226.7, 512, 1198-1199 and IWC wage orders pertaining to meal and rest breaks;

f. violations of Labor Code § 226, 226.3, 226.6 regarding accurate, timely itemized wage statements; and of Labor Code § 1174 regarding record-keeping;

g. violations of Labor Code §§ 201-203;

h. violations of Labor Code § 2802;

i. violations of Labor Code § 246;

j. violations of Labor Code § 3700; and

161. The violations of these laws and regulations, as well as of the fundamental California public policies protecting wages and discouraging overtime labor underlying them, serve as unlawful predicate acts and practices for purposes of Business and Professions Code §§17200 *et seq.*

162. The acts and practices described above constitute unfair, unlawful and fraudulent business practices, and unfair competition, within the meaning of Business and Professions Code §§17200, *et seq.* Among other things, the acts and practices have taken from Plaintiff and the proposed Class wages rightfully earned by them, while enabling Defendants to gain an unfair competitive advantage over law-abiding employers and competitors.

163. Business and Professions Code § 17203 provides that a court may make such orders or judgments as may be necessary to prevent the use or employment by any person of any practice

which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent Defendants from repeating its unlawful, unfair and fraudulent business acts and practices alleged above.

164. As a direct and proximate result of the aforementioned acts and practices, the California Plaintiffs and the proposed California Class members have suffered a loss of money and property, in the form of unpaid wages which are due and payable to them.

165. Business and Professions Code § 17203 provides that the Court may restore to any person in interest any money or property which may have been acquired by means of such unfair competition. The California Plaintiffs and the proposed California Class are entitled to restitution pursuant to Business and Professions Code § 17203 for all wages and payments unlawfully withheld from employees during the four-year period prior to the filing of this Complaint. The California Plaintiffs' success in this action will enforce important rights affecting the public interest and in that regard the California Plaintiffs sue on behalf of themselves as well as others similarly situated. The California Plaintiffs and proposed California Class members seek and are entitled to unpaid wages, declaratory and injunctive relief, and all other equitable remedies owing to them.

166. The California Plaintiffs herein take upon themselves enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action, the action is seeking to vindicate a public right, and it would be against the interests of justice to penalize the California Plaintiffs by forcing them to pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil Procedure § 1021.5, and otherwise.

167. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

TENTH CAUSE OF ACTION
Penalties Pursuant to § 2699(a) of the Private Attorneys General Act
(Against All Defendants – on Behalf of All Aggrieved California Employees)

168. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

169. Labor Code § 2699(a) provides:

> Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

170. Labor Code § 203 provides, in relevant part:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any 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 therefore is commenced; but the wages shall not continue for more than 30 days.

171. Labor Code § 226(a) provides:

> Every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (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, (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. The deductions made from payments of wages shall be recorded in ink or other indelible form,

properly dates, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least four years at the place of employment or at a central location within the State of California.

172. Labor Code § 558(a) provides:

> (a) Any employer or other person acting on behalf of an employer who violates or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
> (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
> (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
> (3) Wages recovered pursuant to this section shall be paid to the affected employee.

173. The California Plaintiffs seek civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, as alleged above, to timely pay all wages owed to the California Plaintiffs and each putative California Class member in compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203. The California Plaintiffs seeks such penalties as an alternative to the penalties available under Labor Code § 203, as prayed for herein.

174. The California Plaintiffs seek civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, alleged above, to provide the California Plaintiffs and each proposed California Class member compliant meal and rest periods in compliance with Labor Code § 512.

175. Under Labor Code § 246, employers are required to provide paid sick time to employees who work 30 or more days within a year at the rate of one hour of paid sick time for every thirty hours worked. Defendants failed to provide the California Plaintiffs and members of the proposed California Class with any sick time, despite the fact that the California Plaintiffs and members of the proposed California Class worked more than thirty days within one year.

Furthermore, Defendants failed to post the notice required by Cal. Lab. Code § 247 of employees' right to paid sick time. Accordingly, Defendants are liable under PAGA and Labor Code § 248.5(e) for restitutionary relief in the amount of the dollar amount of paid sick days unlawfully withheld, as well as reasonable attorneys' fees and costs.

176. Under Labor Code § 3700, every employer must secure the payment of workers' compensation. Defendants failed to provide the California Plaintiff and members of the putative class with workers' compensation insurance. Defendants knew, or because of their knowledge and experience reasonably should be expected to have known, of the obligation to secure workers' compensation. Accordingly, Defendants are liable under PAGA and Labor Code § 3700.5 for fines.

177. Pursuant to Labor Code § 2699.3(a)(1) and (2), the California Plaintiffs provided the Labor and Workforce Development Agency ("LWDA") with notice of their intention to file this claim. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

178. The California Plaintiffs seek the aforementioned penalties on behalf of the State, other aggrieved employees, and themselves as set forth in Labor Code § 2699(g), (i).

179. Defendants are liable to the California Plaintiffs, the putative California Class, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. The California Plaintiffs are also entitled to an award of attorneys' fees and costs as set forth below.

180. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

ELEVENTH CAUSE OF ACTION
Penalties Pursuant to § 2699(f) of the Private Attorneys General Act
(Against all Defendants – on Behalf of All Aggrieved California Employees)

181. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

182. Labor Code § 2699(f) provides:

> For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

183. To the extent that any violation alleged herein does not carry penalties under Labor Code § 2699(a), the California Plaintiffs seek civil penalties pursuant to Labor Code § 2699(f) for the California Plaintiffs and proposed California Class members each pay period in which he or she was aggrieved, in the amounts established by Labor Code § 2699(f).

184. Pursuant to Labor Code § 2699.3(a)(1) and (2), the California Plaintiffs have provided the LWDA with notice of their intention to file this claim. Sixty-five calendar days have passed without notice from the LWDA. The California Plaintiffs satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

185. The California Plaintiffs seek the aforementioned penalties on behalf of the State, other aggrieved employees, and themselves as set forth in Labor Code § 2699(g), (i).

186. Defendants are liable to the California Plaintiffs, the putative California Class, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. The California Plaintiffs are also entitled to an award of attorneys' fees and costs as set forth below.

187. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

TWELFTH CAUSE OF ACTION
Reporting Time Pay (Cal. Lab. Code § 1198, IWC Wage Order 4-2001)

(Against All Defendants – on Behalf of the California Class)

188. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

189. The California Plaintiffs and members of the putative California Class were scheduled for work reported for work, and were not put to work.

190. The California Plaintiffs and members of the putative California Class were not paid for the dates on which they were scheduled for work, reported for work, and were not put to work, in violation of IWC Wage Order 4-2001 § 5(A) and Cal. Lab. Code § 1198.

191. As a direct and proximate result of the above violations of their rights, the California Plaintiffs and the putative California Class are entitled to damages in an amount to be proven at trial.

192. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

THIRTEENTH CAUSE OF ACTION
Failure to Pay Overtime (RCW 49.46.130, 49.12.020, WAC 296-128-550)
(Against All Defendants – on Behalf of the Washington Class)

193. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

194. At all times relevant, the Washington Plaintiff and members of the proposed Washington Class have been employees, and Defendants have been employers, within the meaning of the Washington Wage Laws.

195. Defendants failed to pay the Washington Plaintiff and members of the proposed Washington Class wages to which they are entitled under the Washington Wage Laws. Defendants failed to pay the Washington Plaintiff and members of the proposed Washington Class for overtime

at a wage rate of one and one-half times their regular rate of pay for all hours worked over forty in a workweek.

196. Defendants failed to pay the Washington Plaintiff and members of the proposed Washington Class all overtime wage owed to them on the regular pay day for the pay period in which the overtime wages were earned.

197. As a direct and proximate result of the above violations of their rights, the Washington Plaintiff and the putative Washington Class are entitled to damages in an amount to be proven at trial.

198. Wherefore, the Washington Plaintiff and the putative Washington Class request relief as hereinafter provided.

FOURTEENTH CAUSE OF ACTION
Meal and Rest Period Violations (RCW §§ 49.12.020, 49.12.170; WAC § 296-126-092)
(Against All Defendants – on Behalf of the Washington Class)

199. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

200. Defendants failed to provide the Washington Plaintiff and members of the proposed Washington Class with meal periods of at least thirty minutes no more than five hours from the beginning of their shifts.

201. Defendants required the Washington Plaintiff and members of the proposed Washington Class to work more than five consecutive hours without a meal period.

202. Defendants failed to provide the Washington Plaintiff and members of the proposed Washington Class who worked three or more hours longer than a normal work day with a thirty-minute meal period prior to or during the overtime period.

203. Defendants failed to provide the Washington Plaintiff and members of the proposed Washington Class with rest periods of not less than ten minutes for each four hours of working time.

204. Defendants required the Washington Plaintiff and members of the proposed Washington Class to work more than three hours consecutively without a rest period.

205. As a direct proximate result of the above violations of their rights, the Washington Plaintiff and the putative Washington Class are entitled to damages in an amount to be proven at trial.

206. Wherefore, the Washington Plaintiff and the putative Washington Class request relief as hereinafter provided.

FIFTEENTH CAUSE OF ACTION
Failure to Reimburse for Employee Work Apparel (RWC 49.12.450)
(Against All Defendants – on Behalf of the Washington Class)

207. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

208. Defendants required the Washington Plaintiff and members of the proposed Washington Class to wear a uniform within the meaning of RCW 49.12.450, specifically, formal apparel.

209. Defendants failed to reimburse the Washington Plaintiff and members of the proposed Washington Class for the expense of formal apparel they purchased in order to fulfill Defendants' uniform requirement.

210. As a direct proximate result of the above violations of their rights, the Washington Plaintiff and the putative Washington Class are entitled to damages in an amount to be proven at trial.

211. Wherefore, the Washington Plaintiff and the putative Washington Class request relief as hereinafter provided.

SIXTEENTH CAUSE OF ACTION
Unpaid Overtime Wages (FLSA; 29 U.S.C. §§ 201 et seq.)
(Against All Defendants – on Behalf of the Collective)

212. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

213. Defendants were and are employers of Plaintiffs and other similarly situated current and former guards and are engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a), in that they were and are assigned to guard manufacturing, shipping and fulfillment facilities.

214. The overtime wage provisions set forth in §§ 201 *et seq.* of the FLSA apply to Defendants.

215. At all relevant times, Plaintiffs and other similarly situated current and former guards were and are employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

216. Defendants have failed to pay Plaintiffs and other similarly situated current and former guards the wages to which they were entitled under the FLSA.

217. Defendants' violations of the FLSA, as described in this Complaint, have been willful and intentional.

218. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255, as it may be tolled or extended agreement, equity or operation of law.

219. As a result of Defendants' willful violations of the FLSA, Plaintiffs and other similarly situated current and former guards have suffered damages by being denied wages in

accordance with 29 U.S.C. §§ 201 *et seq.*, in amounts to be determined at trial or through undisputed record evidence, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. § 216(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the members of the respective Class each represents, pray for relief as follows:

1. Certification of the state law claims in this action as class actions;

2. Designation of each such plaintiff as a Class Representative;

3. Damages and restitution according to proof at trial for all unpaid wages, premium pay, and other injuries, as provided by the appropriate state laws;

4. For a declaratory judgment that Defendants have violated the appropriate state laws as alleged herein;

5. For a declaratory judgment that Defendants have violated California Business and Professions Code §§17200 *et seq.*, as a result of the aforementioned violations of the California Labor Code and of California public policy protecting wages;

6. For preliminary, permanent, and mandatory injunctive relief prohibiting Defendants, its officers, agents, and all those acting in concert with them from committing in the future those violations of law herein alleged;

7. For an equitable accounting to identify, locate, and restore to all current and former employees the wages they are due, with interest thereon;

8. For an order awarding Plaintiffs and the proposed Class members compensatory damages, including lost wages, earnings, and other employee benefits, restitution, and all other sums

of money owed to Plaintiffs and proposed Class members, together with interest on these amounts, according to proof;

9. For an order awarding Plaintiffs and the proposed Class members civil penalties pursuant to the California Labor Code provisions cited herein, with interest thereon.

10. For an award of reasonable attorneys' fees as provided by the California Labor Code; California Code of Civil Procedure § 1021.5; and/or other applicable law;

11. For all costs of suit, including expert fees;

12. Pre-Judgment and Post-Judgment interest, as provided by applicable law; and

13. For such other and further relief as this Court deems just and proper.

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated persons in the FLSA Collective, pray for relief as follows:

1. At the earliest possible time, Plaintiffs should be allowed to give notice of this collective action, or the Court should issue such notice, to all persons who are members of the FLSA Collective. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

2. Unpaid wages and an additional equal amount as liquidated damages pursuant to 29 U.S.C.§§ 201 *et seq.* and the supporting United States Department of Labor regulations;

3. An injunction enjoining Defendants from violating the foregoing laws and regulations in the future;

4. Pre-judgment interest;

5. Attorneys' fees and costs of the action; and

6. Such other relief as this Court deems just and proper.

//

Respectfully submitted,

Date: September 17, 2018

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Attorneys for Plaintiffs and the Putative Class and Collective

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all claims and issues for which Plaintiffs are entitled to a jury.

Respectfully submitted,

Date:

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Exhibit C

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Additional Counsel for Plaintiffs on Signature Page

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

GARY HOUSTON, KAYLA GORDON, and JAMES MOLLO, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

BRAAVOS, INC. d/b/a BANNERMAN; JONATHAN CHIN; MATTHEW VOSKA, ANTOINE DE CHEVIGNE; and DOES 1-50, inclusive,

Defendants.

Case No. CGC-17-562019

SECOND AMENDED CLASS AND COLLECTIVE ACTION COMPLAINT

(1) Willful Misclassification of Employee as Independent Contractor (Cal. Labor Code § 226.8);
(2) Failure to Authorize and Permit and/or Make Available Meal and Rest Periods (Cal. Labor Code §§ 203, 223, 226.7, 512, 1198);
(3) Failure to Pay Minimum Wage (Cal. Labor Code §§ 1182.11, 1182.12, 1197);
(4) Failure to Pay Minimum Wage (San Francisco Administrative Code §12R.1 *et seq.*);
(5) Failure to Pay Overtime and Double Time Wage (Cal. Labor Code §§ 200, 510, 1194);
(6) Failure to Provide Accurate, Itemized Wage Statements (Cal. Labor Code § 226(a));
(7) Waiting Time Penalties (Cal. Labor Code §§ 201-203);
(8) Failure to Reimburse for Necessary Business Expenses (Cal. Labor Code § 2802);
(9) Unlawful Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*);
(10) Penalties Pursuant to § 2699(a) of the California Private Attorneys General Act; and
(11) Penalties Pursuant to § 2699(f) of the California Private Attorneys General Act
(12) Reporting Time Pay (Cal. Labor Code § 1198)

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(13) Failure to Pay Overtime (RCW §§ 49.46.130, 49.12.020, WAC 296-128-550)
(14) Meal and Rest Period Violations (RCW §§ 49.12.020, 49.12.170; WAC § 296-126-092)
(15) Failure to Reimburse for Employee Work Apparel (RWC 49.12.450)
(16) Unpaid Overtime Wages (FLSA; 29 U.S.C. §§ 201 et seq.)

DEMAND FOR A JURY TRIAL

Date Action Filed: October 19, 2017
Trial Date: Not Set

Plaintiffs Gary Houston, Kayla Gordon, and James Mollo, on behalf of themselves and all others similarly situated, ("Plaintiffs") complain and allege as follows:

INTRODUCTION

1. Plaintiffs bring this class and collective action on behalf of themselves and other similarly situated individuals who work or worked for Braavos, Inc. d/b/a Bannerman; Jonathan Chin; Matthew Voska; and Antoine de Chevigne (collectively "Bannerman" or "Defendants"), as non-exempt employees, who were misclassified, to challenge Defendants' violations of the Fair Labor Standards Act ("FLSA").

2. Plaintiffs Houston and Gordon also bring this action on behalf of themselves and all similarly-situated current and former Bannerman guards who worked in the State of California to challenge Defendants' violations of the California Labor Code.

3. Plaintiff Mollo also brings this action on behalf of himself and all similarly-situated current and former Bannerman guards who worked in the State of Washington to challenge Defendants' violations of the Revised Code of Washington sections 49.12.020, 49.12.170, 49.12.450, and 49.46.130, and Washington Administrative Code sections 296-128-550 and 296-126-092, and supporting regulations, interpretations, and case law (collectively, the "Washington Wage

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Laws").

4. This is a class action against Defendants and DOES 1-50 to challenge their policies and practices of: (1) misclassifying Plaintiffs and proposed Class members as independent contractors instead of employees; (2) failing to authorize and permit Plaintiffs and proposed Class members to take meal and rest breaks to which they are entitled by law; (3) failing to compensate Plaintiffs and proposed Class members for all hours worked; (4) failing to pay Plaintiffs and proposed Class members minimum wage; (5) failing to pay Plaintiffs and proposed Class members overtime and double time wages; (6) failing to provide Plaintiffs and proposed Class members accurate, itemized wage statements; (7) failing to timely pay Plaintiffs and proposed Class members full wages upon termination or resignation; (8) failing to reimburse Plaintiffs and proposed Class members for necessary business expenses; (9) failing to provide Plaintiffs and proposed Class members with paid sick time; and (10) failing to provide Plaintiffs and proposed Class members with workers' compensation insurance.

5. Plaintiffs and proposed Class members work or have worked for Defendants providing security to buildings in California, Washington, and other various states. Defendants willfully misclassified Plaintiffs and proposed Class members as independent contractors, even though they have been and continue to be hourly non-exempt employees, to avoid state and federal wage and hour laws. In particular, Plaintiffs and proposed Class members were, and are, routinely denied meal and rest periods. In addition, Plaintiffs and proposed Class members often worked, and continue to work, over eight hours in a shift and/or over forty hours in a week, but were, and are, not paid for all of the hours they work, and did not and do not receive adequate compensation in the form of minimum wage as well as overtime or double time wages. Plaintiffs and proposed Class members also did not and do not receive accurate, itemized wage statements reflecting the hours

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they actually worked and the amount of wages and overtime compensation to which they were entitled. Plaintiffs and proposed Class members were, and are, not paid all amounts owed following their voluntary or involuntary termination. Finally, Plaintiffs and proposed Class members were, and are, not reimbursed for necessary business expenses.

6. As a result of these violations, Plaintiffs seek compensation, damages, penalties, and interest to the full extent permitted by state and federal law.

7. Defendants are also liable for various other penalties under the California Labor Code and for the violation of the Unfair Competition Law, California Business and Professions Code §§ 17200, *et seq.* ("UCL").

8. Plaintiffs also seek declaratory and injunctive relief, including restitution.

9. Finally, Plaintiffs seeks reasonable attorneys' fees and costs under California state, Washington state, and federal laws.

PARTIES

10. Plaintiffs and proposed Class members are current and former employees of Defendants who are or were misclassified as "independent contractors" but worked as hourly, non-exempt employees during the time period four years before the filing of the initial complaint in this matter to its resolution.

11. Plaintiff Houston is an individual over the age of eighteen, and at all times relevant to this Complaint was a resident of the State of California. Plaintiff Houston was employed by Bannerman from approximately November 2015 to February 2018.

12. Plaintiff Gordon is an individual over the age of eighteen, and at all times relevant to this Complaint was a resident of the State of California. Plaintiff resides in San Pablo, in Contra Costa County. Plaintiff Gordon was employed by Bannerman from approximately April 2016 to

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Deleted: <#>Plaintiff seeks full compensation on behalf of himself and all others similarly situated for all denied meal and rest periods, unpaid wages, including minimum wage and unpaid overtime and double time, waiting time penalties, reimbursements, and penalties under the Private Attorneys General Act of 2004 ("PAGA").
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April 2017. A written consent to join form for Plaintiff Gordon is filed herewith as Exhibit A.

13. Plaintiff Mollo is an individual over the age of eighteen, and a resident of Port Townsend, Washington. Plaintiff Mollo worked for Bannerman in the State of Washington from approximately May 2015 to April 2016, and in the State of California from approximately May 2016 to June 2016. A written consent to join form for Plaintiff Mollo is filed herewith as Exhibit B.

14. Plaintiffs are informed, believe, and thereon allege that Defendant Braavos, Inc. d/b/a Bannerman is a Delaware corporation and maintains its headquarters and principal place of business in the City and County of San Francisco, California.

15. Plaintiffs are informed, believe, and thereon allege that Defendant Jonathan Chin is the founder and Chief Executive Officer of Braavos, Inc.

16. Plaintiffs are informed, believe, and thereon allege that Defendant Matthew Voska is the Chief Operating Officer and Chief Financial Officer of Braavos, Inc.

17. Plaintiffs are informed, believe, and thereon allege that Defendant Antoine de Chevigne is the Chief Technology Officer and Secretary of Braavos, Inc.

18. Plaintiffs are informed and believe, and on that basis allege, that each of the Defendants acted in concert with each and every other Defendant, intended to and did participate in the events, acts, practices and courses of conduct alleged herein, and proximately caused damage and injury thereby to Plaintiffs as alleged herein.

19. Plaintiffs are informed, believe, and thereon allege that Bannerman is a security company that secures office and commercial properties, among other facilities, in California, and other various states. Bannerman has done business in California, Washington, Texas, New Jersey, New York, Oregon, and Nevada during the relevant time period. Plaintiffs are informed, believe, and thereon allege that Bannerman continues to employ security officers, among other hourly

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employees, throughout the country, including in San Francisco County, California. On information and belief, Bannerman maintains its principal place of business in San Francisco, California.

20. The true names and capacities, whether individual, corporate, associate, or otherwise, of Does 1-50, inclusive, are unknown to Plaintiffs, who therefore sue the Doe Defendants by fictitious names. Plaintiffs are informed, believe, and thereon allege that each of these fictitiously-named Defendants is responsible in some manner for the occurrences and Plaintiffs' and the proposed Class members' damages as herein alleged. Defendants are jointly and severally liable for Plaintiffs' and Class members' damages. Plaintiffs will amend this Complaint to show their true names and capacities when they have been ascertained.

21. At all relevant times, Defendants have done business under the laws of California, have had places of business in California, including in this judicial district, and have employed Class members in this judicial district. Defendants are "persons" as defined in Labor Code § 18 and Business and Professions Code § 17201. Defendants are also "employers" as that term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions.

JURISDICTION

22. This Court has personal jurisdiction over Defendants because Defendants do business in California, and Plaintiffs Houston and Gordon are residents of California.

23. This Court has general jurisdiction over Plaintiffs' and proposed Class members' claims.

VENUE

24. Venue is proper in this County pursuant to Code of Civil Procedure § 395(a). Defendants conduct business, employ Class members, and have locations in this County. The events giving rise to these causes of action occurred in this County.

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RELATION BACK

25. This Second Amended Class and Collective Action Complaint relates back to Plaintiff Houston's original Class Action Complaint filed on October 19, 2017, with regards to all claims herein, as to all Plaintiffs and Defendants.

26. The amendments rest on the same general set of facts—Defendants' misclassification of the employees and whether Defendants properly paid wages and provided meal and rest breaks. The amendments also involve the same injuries, as they seek recovery for the same wage and hour violations alleged in the original Class Action Complaint. Finally, the amendments all refer to Bannerman and its officers and their employment of the members of the classes and collective, and thus refer to the same instrumentality alleged in the original Class Action Complaint.

27. An amended complaint relates back to an earlier complaint even if the plaintiff alleges a different legal theory or new cause of action. *See, e.g., Smeltzley v. Nicholson Mfg. Co.*, 18 Cal.3d 932, 934, 936 (1977); *Pointe San Diego Residential Cmty., L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP*, 195 Cal.App.4th 265, 276–77 (2011); *Idding v. North Bay Construction Co.*, 39 Cal.App.4th 1111, 1113 (1995).

FACTUAL ALLEGATIONS

28. Bannerman is a security company based in San Francisco, California. Bannerman was established in San Francisco in 2013 by CEO and Founder Jonathan Chin, and Co-Founder Antoine de Chevigne. Bannerman provides security for office and commercial properties, among other facilities throughout the country, including California. Bannerman is based out of California and conducts business within the State.

29. Bannerman operates its business using a proprietary app, which it requires its guards

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to use to request shifts, record time worked, and report incidents. Upon information and belief, Defendant de Chevigne played a key role in developing Bannerman's proprietary app, including its timekeeping system.

30. Plaintiff Houston was employed by Bannerman as a security guard from approximately November 2015 to February 2018. Plaintiff Houston worked at locations secured by Defendants in San Francisco. As a security guard, Plaintiff Houston was responsible for ensuring that locations were secure. His tasks included, but were not limited to, patrolling the premises, sending hourly reports, and responding to any situations that arose. Plaintiff Gordon was employed by Bannerman in the San Francisco Bay Area from approximately April 2016 to April 2017. Plaintiff Mollo was employed by Bannerman in the state of Washington from May 2015 to April 2016, and in San Francisco Bay Area from approximately May 2016 to June 2016.

31. Bannerman labels Plaintiffs and other similarly-situated guards as an "independent contractors" but treats them like hourly, non-exempt employees. Upon information and belief, Defendants Chin and de Chevigne established Bannerman's policy of misclassifying Plaintiffs and other similarly-situated guards as independent contractors. Defendants voluntarily and knowingly misclassified Plaintiffs and other similarly-situated guards as independent contractors for the purpose of evading their legal obligations as employers.

32. Bannerman has had and continues to have a policy and practice of controlling the details of guards' work performance. Defendant Voska, as Chief Operations Officer, exercises control over the conduct of both guards and supervisors, and oversees the daily operations of the business. Upon information and belief, Defendant Voska establishes and implements policies governing guards' work performance and compensation.

33. Bannerman's direction and control of the way guards perform their work has

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included, and continues to include, approving or denying shift requests, controlling their movements at the security site, and tracking their movements via GPS while they are on shift, and even when they are not on shift. Bannerman guards did not and do not have discretion regarding how to perform their duties, but were and are required to follow specific instructions disseminated by Bannerman regarding all aspects of their work performance, including but not limited to what to wear and how to conduct themselves during their shifts.

34. Bannerman required and continues to require guards to report their arrival at the site via the proprietary app. Guards are then required to respond to calls and situations at the locations, even if they are on a break. Plaintiffs were unable to take breaks at all during some shifts. Bannerman has not provided and does not provide premium pay for non-compliant meal and rest breaks.

35. Plaintiff Houston was paid $20.00 per hour, and Plaintiffs Gordon and Mollo were paid similar hourly rates. However, although Plaintiffs worked significant overtime, Plaintiffs and similarly situated guards have not been paid overtime compensation for hours worked in excess of eight (8) hours per day or forty (40) hours per week. Plaintiff Mollo regularly worked shifts of twelve hours per day, seven days per week, in the State of Washington, but was never paid overtime premium pay for hours worked in excess of forty in a workweek. Additionally, Plaintiffs Houston and Gordon were not paid double time compensation for hours worked over twelve (12) in a day.

36. Bannerman had and continues to have a policy of requiring guards to perform uncompensated, off-the-clock work. Bannerman required and continues to require guards to clock in and out of their shifts using Bannerman's app, and pays guards only for time recorded on the app. However, Bannerman's app does not permit guards to clock in or out unless GPS confirms they are physically present at the site of their scheduled shift. Nevertheless, Bannerman requires

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guards to perform work outside of the locations of their scheduled shifts, such as retrieving keys from other locations and returning equipment to Bannerman's headquarters. The time guards spend performing such work is unrecorded and uncompensated. Bannerman has also required guards to attend staff meetings without pay.

37. Bannerman required and continues to require guards to continue working until relieved by the next scheduled guard. Plaintiffs and other guards continued to work past the scheduled end of their shifts when the next scheduled guards were late. However, although Bannerman records time worked to the minute through its app, Bannerman had and continues to have a policy and practice of rounding down to the nearest quarter-hour when compensating guards for time worked past the scheduled end of their shift. Therefore, Plaintiffs and other guards were frequently not compensated for all time worked.

38. Bannerman had and continues to have a policy and practice of assigning guards to worksites with no bathroom facilities or chairs. Bannerman assigned both Plaintiff Gordon and Plaintiff Mollo to work sites with no bathroom facilities or chairs.

39. Bannerman exercised and continues to exercise disciplinary authority over guards. Bannerman guards are subjected to a point system, in which each disciplinary infraction earns a point, and accruing three points in a given time period results in termination via removal of the guard from Bannerman's platform. If a guard has no disciplinary points, a green icon is displayed on their app. After one point, the icon turns yellow, and after two points, the icon turns red, indicating that the guard is in danger of termination.

40. Bannerman has also utilized a star system, in which guards' star ratings were lowered if they did not arrive to work on time or did not take enough shifts. Guards who did not maintain a high rating were terminated via removal from Bannerman's platform.

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41. Bannerman retains the authority to terminate guards from its platform at any time for what it deems poor performance, and has in fact terminated Plaintiff Gordon and other guards from its platform for poor performance.

42. Bannerman had and continues to have a policy and practice of deducting $5.00 from guards' pay each time they check in late to a shift, and has deducted such funds from guards, without their authorization, as discipline for checking in late to a shift.

43. Bannerman had and continues to have a policy and practice of failing to pay reporting time pay in violation of California law. On multiple occasions, Plaintiff Gordon reported to her scheduled shift only to be told that she was not needed and sent home. Plaintiff and other guards were not compensated at all for days on which they were scheduled to work and reported to work, but were not put to work.

44. Bannerman does not provide its guards with workers' compensation insurance, despite the obvious risk of injury inherent in guard work, nor does it withhold any of guards' wages for state disability insurance or unemployment insurance. Plaintiffs and proposed Class members were not provided with workers' compensation insurance during their employment with Bannerman, and Bannerman took no deductions for state disability insurance or unemployment insurance from their compensation.

45. Although California requires all employers to provide paid sick time to employees who work more than thirty days within a year from the commencement of their employment, Bannerman does not provide paid sick time to its California guards. Plaintiffs and proposed Class members worked more than thirty days within a year from the commencement of their employment, but were never provided with any paid sick time.

46. Bannerman required and continues to require Plaintiffs and proposed Class members

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to wear uniforms while on the job. Plaintiffs and proposed Class members are required to purchase their own uniform shirts. Bannerman also required and continues to require Plaintiffs and proposed Class members to use their personal mobile devices to clock in and track their locations and make hourly reports, and to use their personal vehicles to travel between worksites, but does not pay any reimbursement for these expenses.

47. Bannerman classifies security officers and other non-exempt employees as "independent contractors" so as to conceal the true nature of the relationship between Bannerman and Plaintiff and proposed Class members: that of employer and employee.

48. In fact, Bannerman is and has been Plaintiffs' and proposed Class members' employer. At all times, Bannerman controlled and directed the manner and means by which

48. Plaintiffs and proposed Class members accomplished their work, as described herein, including but not limited to by setting Plaintiffs' and proposed Class members' work schedules, requiring them to follow detailed instructions regarding the performance of their duties and disciplining them for poor performance, monitoring and controlling their movements via GPS, and terminating guards from the Bannerman platform for on-the-job performance issues or failure to adhere to Bannerman's attendance standards.

49. By performing security guard work for Bannerman, Plaintiffs and proposed Class members performed and continue to perform work that is within the usual course of Bannerman's business. Bannerman is a security company that secures office and commercial properties. Through their work as guards, Plaintiffs and proposed Class members furnish Bannerman's core security guard business to Bannerman's customers.

50. Plaintiffs did not maintain security guard businesses that provide security services independently of Bannerman.

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51. Similar to Plaintiffs, proposed Class and collective members are current and former non-exempt employees who worked and/or work for Bannerman. Plaintiffs are informed, believe, and thereon allege that the policies and practices of Bannerman have at all relevant times been similar for Plaintiffs and proposed Class and collective members, regardless of the location within the country.

COLLECTIVE ACTION ALLEGATIONS

52. Plaintiffs bring the Sixteenth Cause of Action, pursuant to the FLSA, 29 U.S.C. § 216(b), on behalf of themselves and all similarly situated persons who elect to opt into this action who work or have worked for Bannerman as security guards nationwide on or after three years from filing of the original complaint in this action (the "FLSA Collective").

53. Plaintiffs are similarly situated to other members of the FLSA Collective. Defendants misclassified Plaintiffs and other members of the FLSA Collective as independent contractors, and failed to pay them overtime premium pay for hours worked in excess of forty in a week.

54. Plaintiffs and other members of the FLSA Collective had the same or similar primary job duties and were subject to the same company policies and practices.

55. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs and other members of the FLSA Collective. There are many similarly situated current and former Bannerman guards who have been underpaid in violation of the FLSA who would benefit from the issuance of a court-supervised notice regarding the present lawsuit and the opportunity to join it. Those similarly situated individuals are known to Defendants, are readily identifiable, and can be located through Defendants' records, such that notice should be sent to them pursuant to 29 U.S.C. § 216(b).

56. Consent to Join Forms memorializing Plaintiffs' desire to be party plaintiffs, opt-in to

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the FLSA Collective, and designate Plaintiffs' counsel as their are attorneys are attached hereto. The Consent to Joint Forms for Gary Houston, Kayla Gordon, and James Mollo are attached as Exhibits A, B, and C, respectively.

CLASS ACTION ALLEGATIONS

The California Class

57. Plaintiffs Houston and Gordon ("California Plaintiffs") bring this case as a class action on behalf of themselves and all others similarly situated pursuant to Code of Civil Procedure § 382. The Class that Plaintiffs seek to represent is defined as follows:

> All current and former non-exempt employees, employed by Defendants in California during the time period four years prior to the filing of the original complaint until the resolution of this action. (Hereinafter referred to as the "California Class").

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

i. **Numerosity**: The potential members of the California Class as defined are so numerous that joinder of all the members of the California Class is impracticable.

ii. **Commonality**: There are questions of law and fact common to the California Plaintiffs and the California Class that predominate over any questions affecting only individual members of the California Class. These common questions of law and fact include, but are not limited to:

i. Whether proposed California Class members are or were employed by Defendants;

ii. Whether Defendants maintained or maintain a common policy and practice of unlawfully misclassifying proposed California Class members as

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independent contractors who are exempt from the Labor Code and Wage Orders;

iii. Whether Defendants, through its policy and practice of unlawfully misclassifying proposed California Class members as independent contractors who are exempt from the Labor Code and Wage Order, failed and continue to fail to properly pay proposed California Class members all of the wages owed to them in violation of California law;

iv. Whether Defendants failed and continue to fail to properly pay minimum wage to proposed California Class members in violation of the Labor Code and Wage Orders;

v. Whether Defendants failed and continue to fail to properly pay overtime compensation, at either one and one-half times or double the regular rate of pay, to proposed California Class members in violation of the Labor Code and Wage Orders;

vi. Whether Defendants failed and continue to fail to reimburse proposed California Class members for business related expenses, in violation of the Labor Code and Wage Orders;

vii. Whether Defendants failed and continue to fail to compensate proposed California Class members for all hours worked in violation of Business and Professions Code §§17200 *et seq.*;

viii. Whether Defendants failed and continue to fail to authorize, permit, make available, and/or provide proposed California Class members with compliant meal periods to which they are entitled in violation of the Labor

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ix. Whether Defendants failed and continue to fail to authorize, permit, make available, and/or provide proposed California Class members with compliant meal periods to which they are entitled in violation of Business and Professions Code §§ 17200 *et seq.*;

x. Whether Defendants failed and continue to fail to authorize, permit, make available, and/or provide proposed California Class members rest periods to which they are entitled in violation of the Labor Code;

xi. Whether Defendants failed and continue to fail to authorize, permit, make available, and/or provide proposed California Class members rest periods to which they are entitled in violation of Business and Professions Code §§ 17200 *et seq.*;

xii. Whether Defendants fail to provide proposed California Class members with timely, accurate itemized wage statements in violation of the Labor Code;

xiii. Whether Defendants' policy and practice of failing to pay proposed California Class members all wages due upon the end of their employment violates the Labor Code;

xiv. Whether Defendants violated and continue to violate Labor Code § 221 and 226.8(a)(3) by taking unauthorized deductions from the wages of the California Plaintiffs and the California Class, and are therefore subject to penalties;

xv. Whether Defendants violated and continue to violate Labor Code §

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246 by failing to provide the California Plaintiffs and the California Class paid sick days and are therefore subject to penalties under Labor Code § 248.5;

xvi. Whether Defendants failed and continue to fail to pay reporting pay and are therefore subject to penalties under the Labor Code;

xvii. Whether Defendants violated and continue to violate Labor Code § 1198 by employing the California Plaintiffs and the California Class under conditions of labor prohibited by IWC Wage Order 4-2001, and are therefore liable for penalties under Labor Code §§ 558, 558.1, and 1199, in that Defendants failed and continue to fail to ensure that worksites to which the California Plaintiff and the California Class were assigned met minimum working conditions standards;

xviii. Whether Defendants violated and continue to violate Labor Code § 3700 by failing to provide the California Plaintiffs and the California Class workers' compensation insurance, and are therefore liable for penalties under Labor Code § 3700.5;

xix. Whether Defendants' policy and practice of failing to pay proposed California Class members all wages due upon the end of their employment has been and continues to be an unlawful, unfair or fraudulent business act or practice in violation of Business and Professions Code §§ 17200 *et seq.*;

xx. The proper formula for calculating restitution, damages and penalties owed to the California Plaintiffs and the California Class alleged herein.

iii. **Typicality**: Plaintiffs' claims are typical of the claims of the California Class. Defendants' common course of conduct in violation of law as alleged herein has

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caused the California Plaintiffs and proposed California Class members to sustain the same or similar injuries and damages. The California Plaintiffs' claims are thereby representative of and co-extensive with the claims of the California Class.

iv. **Adequacy of Representation**: The California Plaintiffs are members of the California Class, they do not have any conflicts of interest with other proposed California Class members, and will prosecute the case vigorously on behalf of the California Class. Counsel representing the California Plaintiffs are competent and experienced in litigating large employment class actions, including misclassification and wage and hour class actions. The California Plaintiffs will fairly and adequately represent and protect the interests of the California Class members.

v. **Superiority of Class Action**: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed California Class members is not practicable, and questions of law and fact common to the California Class predominate over any questions affecting only individual members of the California Class. Each proposed California Class member has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. The injury suffered by each California Class member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Defendants economically feasible. Individualized litigation increases the delay and expense to all Parties and the Court. By contrast, class action treatment will allow those similarly situated persons to

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litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

59. In the alternative, the California Class may be certified because the prosecution of separate actions by the individual members of the California Class would create a risk of inconsistent or varying adjudication with respect to individual members of the California Class, and, in turn, would establish incompatible standards of conduct for Defendants.

The Washington Class

60. Plaintiff Mollo ("Washington Plaintiff") brings this case as a class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure § 382. The Class that Plaintiff Mollo seeks to represent is defined as follows:

> All current and former non-exempt employees, employed by Defendants in Washington State during the time period four years prior to the filing of the original complaint until the resolution of this action. (Hereinafter referred to as the "Washington Class").

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

62. **Numerosity**: The potential members of the Washington Class as defined are so numerous that joinder of all the members of the Washington Class is impracticable.

63. **Commonality**: There are questions of law and fact common to the Washington Plaintiff and the Washington Class that predominate over any questions affecting only individual members of the Washington Class. These common questions of law and fact include, but are not limited to:

i. Whether Defendants misclassified the Washington Plaintiff and the Washington Class as independent contractors;

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ii. Whether Defendants failed and/or refused to pay the Washington Plaintiff and the Washington Class for all hours worked in violation of the Washington Wage Laws;

iii. Whether Defendants failed and/or refused to pay the Washington Plaintiff and the Washington Class overtime pay for hours worked in excess of forty (40) per workweek in violation of the Washington Wage Laws;

iv. Whether Defendants policy of failing to pay the Washington Plaintiff and the Washington Class was instituted willfully or with reckless disregard of the law;

v. Whether Defendants required the Washington Plaintiff and the Washington Class to work more than five consecutive hours without a meal period;

vi. Whether Defendants failed to provide the Washington Plaintiff and the Washington Class who worked three or more hours longer than a normal work day with a thirty-minute meal period prior to or during the overtime period;

vii. Whether Defendants failed to provide the Washington Plaintiff and the Washington Class with rest periods of not less than ten minutes for each four hours of working time;

viii. Whether Defendants required the Washington Plaintiff and the Washington Class to work more than three hours consecutively without a rest period;

ix. Whether Defendants unlawfully failed to reimburse the Washington Plaintiff and the Washington Class for the expense of purchasing formal work apparel; and

x. The nature and extent of the Washington Class-wide injury and the appropriate measure of damages for the Washington Class.

64. **Typicality**: Plaintiff's claims are typical of the claims of the Washington Class.

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Defendants' common course of conduct in violation of law as alleged herein has caused the Washington Plaintiff and proposed Washington Class members to sustain the same or similar injuries and damages. The Washington Plaintiff's claims are thereby representative of and co-extensive with the claims of the Washington Class.

65. **Adequacy of Representation**: The Washington Plaintiff is a member of the Washington Class, he does not have any conflicts of interest with other proposed Washington Class members, and will prosecute the case vigorously on behalf of the Washington Class. Counsel representing the Washington Plaintiff are competent and experienced in litigating large employment class actions, including misclassification and wage and hour class actions. The Washington Plaintiff will fairly and adequately represent and protect the interests of the Washington Class members.

66. **Superiority of Class Action**: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed Washington Class members is not practicable, and questions of law and fact common to the Washington Class predominate over any questions affecting only individual members of the Washington Class. Each proposed Washington Class member has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. The injury suffered by each Washington Class member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Defendants economically feasible. Individualized litigation increases the delay and expense to all Parties and the Court. By contrast, class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

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67. In the alternative, the Washington Class may be certified because the prosecution of separate actions by the individual members of the Washington Class would create a risk of inconsistent or varying adjudication with respect to individual members of the Washington Class, and, in turn, would establish incompatible standards of conduct for Defendants.

FIRST CAUSE OF ACTION
Willful Misclassification of Employee as Independent Contractor
(Against All Defendants – on Behalf of the California Class)

68. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

69. Plaintiffs are informed and believe and thereon allege that, through common policies and practices, Defendants systematically engages in an unlawful, unfair, and fraudulent scheme designed to make the California Plaintiffs and proposed California Class members appear to be running independent businesses, when in reality they are employees of Defendants.

70. Defendants intentionally and willfully mischaracterize the California Plaintiffs and proposed California Class members as independent contractors rather than employees.

71. The IWC Wage Order 10-2001(2)(F) provides: "'Employee' means any person employed by an employer."

72. At all relevant times, the California Plaintiffs and proposed California Class members have been and are "employees" of Defendants within the meaning of California law.

73. The IWC Wage Order 10-2001(2)(F) provides: "'Employer' means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person."

74. At all relevant times, Defendants have been and continue to be an "employer" within the meaning of the Labor Code and applicable Wage Orders.

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75. Labor Code § 226.8 and applicable Wage Orders prohibit Defendants from misclassifying employees as independent contractors. Specifically, § 226.8 states:

> (a) It is unlawful for any person or employer to engage in any of the following activities:
> (1) Willful misclassification of an individual as an independent contractor.
> (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.
> (b) If the . . . court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars ($5,000) and not more than fifteen thousand dollars ($15,000) for each violation, in addition to any other penalties or fines permitted by law.
> (c) If the . . . court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars ($10,000) and not more than twenty-five thousand dollars ($25,000) for each violation, in addition to any other penalties or fines permitted by law...
> (e) If the...court issues a determination that a person or employer has violated subdivision (a), the agency or court, in addition to any other remedy that has been ordered, shall order the person or employer to display prominently on its Internet Web site, in an area which is accessible to all employees and the general public, or, if the person or employer does not have an Internet Web site, to display prominently in an area that is accessible to all employees and the general public at each location where a violation of subdivision (a) occurred, a notice that sets forth all of the following:
> (1) That the Labor and Workforce Development Agency or a court, as applicable, has found that the person or employer has committed a serious violation of the law by engaging in the willful misclassification of employees.
> (2) That the person or employer has changed its business practices in order to avoid committing further violations of this section.
> (3) That any employee who believes that he or she is being misclassified as an independent contractor may contact the Labor and Workforce Development Agency. The notice shall include the mailing address, email address, and telephone number of the agency.

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(4) That the notice is being posted pursuant to a state order.

76. Despite these requirements, Defendants intentionally and willfully characterize the California Plaintiffs and proposed California Class members as independent contractors rather than employees in violation of Labor Code § 226.8.

77. Defendants engage in a pattern and practice of misclassifying employees as independent contractors for their own financial benefit.

78. As a direct and proximate result of the unlawful acts and/or omissions of Defendants, the California Plaintiffs and proposed California Class members are entitled to recover damages in an amount to be determined at trial and civil penalties, plus interest thereon, and attorneys' fees and costs pursuant to Labor Code § 226.8.

79. The California Plaintiffs seek recovery of civil penalties of not less than ten thousand ($10,000) and not more than twenty-five thousand ($25,000) dollars for each violation, in addition to any other penalties or fines permitted by law.

80. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

SECOND CAUSE OF ACTION
Failure to Authorize and Permit, Provide and/or Make Available Meal and Rest Periods
(Against All Defendants – on Behalf of the California Class)

81. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

82. Defendants require the California Plaintiffs and proposed California Class members to respond to calls at the security locations in a timely manner, even if this means cutting breaks short or not being relieved for breaks at all.

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83. The California Plaintiffs and proposed California Class members' workload is such that there is no time for them to take breaks. In the event that they do get breaks, they are required to be on duty and have to carry their phones so that they can respond to calls. The California Plaintiffs and proposed California Class members are expected to immediately respond in the event of a security-related incident. As a result of this policy, the California Plaintiffs and putative California Class members are required to abandon breaks to respond to security-related incidents.

84. Defendants do not pay the California Plaintiffs and proposed California Class members one hour of premium pay for the missed meal and rest breaks.

85. Plaintiffs and proposed California Class members often work shifts in excess of ten (10) hours. During those shifts, they are legally entitled to two 30-minute meal periods per shift. The California Plaintiffs and proposed California Class members are often unable to taking a second meal period.

86. Labor Code §§ 226.7 and 512 and the applicable Wage Order require Defendants to authorize and permit meal and rest periods to its employees. Labor Code §§ 226.7 and 512 and the Wage Order prohibit employers from employing an employee for more than five hours without a meal period of not less than thirty minutes, and from employing an employee more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes. Section 226.7 and the applicable Wage Order also require employers to authorize and permit employees to take ten minutes of net rest time per four hours or major fraction thereof of work, and to pay employees their full wages during those rest periods. Unless the employee is relieved of all duty during the thirty-minute meal period and ten-minute rest period, the employee is considered "on duty" and the meal or rest period is counted as time worked under the applicable wage orders.

87. Under § 226.7(b) and the applicable Wage Order, an employer who fails to authorize,

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permit, and/or make available a required meal period must, as compensation, pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period was not authorized and permitted. Similarly, an employer must pay an employee denied a required rest period one hour of pay at the employee's regular rate of compensation for each workday that the rest period was not authorized and permitted and/or not made available

88. Despite these requirements, Defendants knowingly and willfully refuse to perform its obligations to authorize and permit and/or make available to the California Plaintiffs and the proposed California Class the ability to take the off-duty meal and rest periods to which they are entitled. Defendants also fail to pay the California Plaintiffs and the California Class one hour of pay for each off-duty meal and/or rest periods that they are denied. Defendants' conduct described herein violates Labor Code §§ 226.7 and 512. Therefore, pursuant to Labor Code § 226.7(b), the California Plaintiffs and the California Class are entitled to compensation for the failure to authorize and permit and/or make available meal and rest periods, plus interest, attorneys' fees, expenses and costs of suit.

89. Defendants Jonathan Chin, Antoine de Chevigne, and Matthew Voska, acting on behalf of Bannerman, caused the violations of IWC 4-2001 and Labor Code §§ 226.7 and 512 described herein by establishing and implementing Bannerman's unlawful policies with respect to meal and rest periods. Defendants Chin, de Chevigne, and Voska are therefore personally liable to the California Plaintiff and members of the California Class for one hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not provided, and one hour of additional pay at the regular rate of compensation for each workday that the proper meal periods were not provided, at the regular rate of compensation, pursuant to California Labor Code § 558.1.

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90. As a proximate result of the aforementioned violations, the California Plaintiffs and the California Class have been damaged in an amount according to proof at time of trial.

91. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

THIRD CAUSE OF ACTION
Failure to Pay Minimum Wages
(Against All Defendants – on Behalf of the California Class)

92. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

93. As a result of hourly rates implemented by Defendants and the requirement that the California Plaintiffs and proposed California Class members pay for their own uniforms and mobile device bills, Defendants fail to compensate the California Plaintiffs and proposed California Class members with at least minimum wage for all hours worked or spent in control of Defendants.

94. Defendants have maintained policies and procedures which created a working environment where the California Plaintiffs and proposed California Class members are routinely compensated at a rate that is less than the statutory minimum wage.

95. During the applicable statutory period, Labor Code §§1182.11, 1182.12 and 1197, and the Minimum Wage Order were in full force and effect and required that Defendants' employees receive the minimum wage for all hours worked irrespective of whether nominally paid on a piece rate, or any other bases, at the rate of ten dollars ($10.00) per hour commencing January 1, 2016.

96. IWC Wage Order 10-2001(2)(H) 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."

97. Labor Code § 1194(a) provides as follows:

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> 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 attorneys' fees, and costs of suit.

98. The California Plaintiffs and proposed California Class members regularly work over eight hours per day, and sometimes even more.

99. The California Plaintiffs and proposed California Class members work tirelessly to respond to calls and patrol locations for Defendants.

100. In spite of this, the California Plaintiffs and proposed California Class members are paid an hourly wage that ends up being at or near the minimum wage for the hours spent working, when expenses are taken into consideration. The California Plaintiffs and proposed California Class members are required to pay out of pocket for work uniforms and mobile devices and bills, including data required for the application to run. The California Plaintiffs and proposed California Class members are not reimbursed for these expenses, which lower the resulting hourly rate below the minimum wage.

101. Because of Defendants' policies and practices with regard to compensating their employees, Defendants have failed to pay minimum wages as required by law.

102. Labor Code §1194.2 provides that, in any action under § 1194 to recover wages because of the payment of a wage less than minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

103. By failing to maintain adequate time records as required by Labor Code §1174(d) and IWC Wage Order 10-2001(4), Defendants have made it difficult to calculate the minimum wage compensation due to the California Plaintiffs and proposed California Class members.

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104. Defendants Jonathan Chin, Antoine de Chevigne, and Matthew Voska, acting on behalf of Bannerman, caused the violations of the California Labor Code § 1194 and the applicable Wage Order described herein by establishing and implementing Bannerman's unlawful policies with respect to guards' classification and compensation. Defendants Chin, de Chevigne, and Voska are therefore personally liable to the California Plaintiff and members of the California Class for unpaid wages, liquidated damages, and interest pursuant to California Labor Code § 558.1.

105. As a direct and proximate result of the unlawful acts and/or omissions of Defendants, the California Plaintiffs and proposed California Class members have been deprived of minimum wages in an amount to be determined at trial, and are entitled to a recovery of such amount, plus liquidated damages, plus interest thereon, attorneys' fees, and costs of suit pursuant to Labor Code §§ 1194, 1194.2 and 1197.1.

106. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

FOURTH CAUSE OF ACTION
Failure to Pay Minimum Wage (San Francisco Administrative Code §§ 12R.1, *et seq.*)
(Against All Defendants – on Behalf of the California Class)

107. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

108. Defendants have failed, and continue to fail, to compensate the California Plaintiffs and proposed California Class members with at least the minimum wage for all hours worked or spent in Defendants' control because the California Plaintiffs and proposed California Class members are required to pay out of pocket for work uniforms and mobile devices and bills, including data required for the Defendants' application to run. The California Plaintiffs and proposed

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California Class members were not and are not reimbursed for these expenses, which lower the resulting hourly rate below the minimum wage.

109. During the applicable statutory period, San Francisco Administrative Code §§ 12R.4 *et seq.*, also known as the Minimum Wage Ordinance, was in full force and effect and required that the California Plaintiffs and proposed California Class members receive the minimum wage for all hours worked at the rate of eight dollars ($12.25) per hour commencing May 1, 2015, at the rate of nine dollars ($13.00) per hour commencing July 1, 2016, and at the rate of ten dollars ($14.00) per hour commencing July 1, 2017.

110. San Francisco Administrative Code § 12R.7(d) provides as follows:

> The Agency, the City Attorney, any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as penalties in the amount of $50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief, and shall be awarded reasonable attorneys' fees and costs. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs. Nothing in this Chapter shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the Municipal Code or state law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this Chapter.

111. Because of Defendants' policies and practices with regard to compensating the California Plaintiffs and putative California Class members, Defendants have failed to pay minimum wages as required by law. The California Plaintiffs and proposed California Class members have performed work for which they were compensated below the statutory minimum.

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112. San Francisco Administrative Code Labor Code § 12R.7(e) states:

> In any administrative or civil action brought for the nonpayment of wages under this Section, the Agency or court, as the case may be, shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.

113. California Civil Code § 3289(b) provides, in relevant part:

> (b) If a contract entered into after January 1, 1986, does not stipulate a legal rate of interest, the obligation shall bear interest at a rate of 10 percent per annum after the breach.

114. The California Plaintiffs and proposed California Class members have been deprived of minimum wages in an amount to be proven at trial, and are entitled to a recovery of such amount, plus interest thereon, attorneys' fees, and costs of suit pursuant to San Francisco Code § 12R.7(d) and (e), and California Civil Code § 3289(b).

115. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

FIFTH CAUSE OF ACTION
Failure to Pay Overtime and Double Time Wages
(Against All Defendants – on Behalf of the California Class)

116. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

117. Defendants did not and do not compensate the California Plaintiffs and proposed California Class members with appropriate overtime, including time and half and double time, as required by California law.

118. Labor Code § 510(a) provides as follows:

> 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

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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.

119. The IWC Wage Order 10-2001(3)(A)(1) 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 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: . . . 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; and ... 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[.] ...

120. Labor Code § 1194(a) provides as follows:

> 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.

121. Labor Code § 200 defines wages as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,

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commission basis or other method of calculation." All such wages are subject to California's overtime requirements, including those set forth above.

122. Defendants often required the California Plaintiffs and proposed California Class members to work in excess of eight hours per day. Defendants did not, and do not, compensate the California Plaintiffs and proposed California Class members at an overtime rate for hours in excess of eight hours each day or in excess of forty in each week, or at a double time rate for hours in excess of twelve each day or in excess of eight on the seventh consecutive day.

123. The California Plaintiff and proposed California Class members have worked overtime hours for Defendants without being paid overtime premiums in violation of the Labor Code, the applicable IWC Wage Order, and other applicable law.

124. Defendants Jonathan Chin, Antoine de Chevigne, and Matthew Voska, acting on behalf of Bannerman, caused the violations of the California Labor Code and Wage Order 4-2001 described herein by establishing and implementing Bannerman's policy of unlawfully misclassifying guards as independent contractors and failing to pay them overtime premium pay, and are therefore liable for damages in an amount to be proven at trial pursuant to Cal. Lab. Code § 558.1.

125. Defendants have knowingly and willfully refused to properly compensate the California Plaintiffs and the proposed California Class for overtime work. As a proximate result of the aforementioned violations, Defendants have damaged the California Plaintiffs and the proposed California Class in amounts to be determined according to proof at time of trial, but in an amount in excess of the jurisdictional requirements of this Court.

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126. Defendants are liable to the California Plaintiffs and the California Class alleged herein for the unpaid overtime and civil penalties, with interest thereon. Furthermore, the California Plaintiffs are entitled to an award of attorneys' fees and costs as set forth below.

127. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

SIXTH CAUSE OF ACTION
Violations of Labor Code § 226 – Itemized Wage Statements
(Against All Defendants – on Behalf of the California Class)

128. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

129. Defendants have not provided and continue not to provide the California Plaintiffs and proposed California Class members with accurate itemized wage statements as required by California law.

130. Labor Code § 226(a) provides:

> An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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 only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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 and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the

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> employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

131. The IWC Wage Order also establishes this requirement. (See IWC Wage Order 10-2001(7)).

132. Labor Code § 226(e)(1) provides:

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

The California Plaintiffs seek to recover actual damages, costs and attorneys' fees under this section.

133. Defendants have failed to provide timely, accurate itemized wage statements to the California Plaintiffs and proposed California Class members in accordance with Labor Code § 226(a) and the IWC Wage Order. The wage statements Defendants provided their employees, including the California Plaintiffs and proposed California Class members, do not reflect the actual hours worked, actual gross wages earned, or actual net wages earned. The wage statements are simply a record of shifts worked, and the amount earned per shift.

134. Defendants are liable to the California Plaintiffs and the California Class alleged herein for the amounts described above in addition to the civil penalties set forth below, with interest thereon. Furthermore, the California Plaintiffs are entitled to an award of attorneys' fees and costs as set forth below.

135. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

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SEVENTH CAUSE OF ACTION
Waiting Time Penalties Pursuant to Labor Code §§ 201-203
(Against All Defendants – on Behalf of the California Class)

136. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

137. Defendants do not provide former proposed California Class members with their wages when due under California law after their employment with Defendants ends.

138. Labor Code § 201 provides:

> If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

139. Labor Code § 201.3 provides:

> If an employee of a temporary services employer is assigned to work for a client, that employee's wages are due and payable no less frequently than weekly[.]

140. Labor Code § 202 provides:

> 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.

141. Labor Code § 203 provides, in relevant part:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any 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.

142. Proposed California Class members have left their employment with Defendants during the statutory period, at which time Defendants owed them unpaid wages, including overtime and double time wages.

143. Defendants willfully refuse and continue to refuse to pay former proposed California

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Class members all the wages that are due and owing them, in the form of, *inter alia*, overtime and double time pay and meal and rest period premium pay, upon the end of their employment. As a result of Defendants' actions, the California Plaintiffs and proposed California Class members have suffered and continue to suffer substantial losses, including lost earnings, and interest.

144. Defendants' willful failure to pay proposed California Class members the wages due and owing them constitutes a violation of Labor Code §§ 201-202. As a result, Defendants are liable to proposed California Class members for all penalties owing pursuant to Labor Code §§ 201-203.

145. In addition, § 203 provides that an employee's wages will continue as a penalty up to thirty days from the time the wages were due. Therefore, proposed California Class members are entitled to penalties pursuant to Labor Code § 203, plus interest.

146. Defendants Jonathan Chin, Antoine de Chevigne, and Matthew Voska, acting on behalf of Bannerman, caused the violations of Labor Code § 203 described herein, and are therefore personally liable for wages owed to the California Plaintiff and members of the California Class whose employment ended during the relevant time period, together with interest thereon and attorneys' fees and costs, pursuant to Cal. Lab. Code § 558.1.

147. Wherefore, the California Plaintiffs and the California Class request relief as hereinafter provided.

EIGHTH CAUSE OF ACTION
Failure to Reimburse for Necessary Business Expenses Pursuant to Labor Code § 2802
(Against All Defendants – on Behalf of the California Class)

148. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

149. Defendants have not reimbursed and continue not to reimburse California Plaintiffs and proposed California Class members for necessary business expenses.

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150. Defendants required the California Plaintiffs and proposed California Class members to purchase Bannerman branded shirts for use while on the job without reimbursement. Defendants also required the California Plaintiffs and proposed Class members to use their personal mobile devices, including data to run the application, and their personal vehicles without reimbursement.

151. Labor Code § 2802(a) provides as follows:

> An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the direction, believed them to be lawful.

152. Labor Code § 2802(c) defines "necessary expenditures" to include "all reasonable costs."

153. As a direct and proximate result of the aforementioned violations, the California Plaintiffs and proposed California Class members have been damaged in an amount according to proof at time of trial.

154. Defendants Jonathan Chin, Antoine de Chevigne, and Matthew Voska, acting on behalf of Bannerman, caused the violations of Cal. Lab. Code § 2802 described herein, by establishing and implementing Bannerman's policy of unlawfully misclassifying guards as independent contractors and failing to indemnify them for work-related expenses. Defendants Chin, de Chevigne, and Voska are therefore liable for reimbursement of all necessary expenditures, with interest, in addition to reasonable attorneys' fees incurred to enforce the rights of California Plaintiff and the California Class under Cal. Lab. Code § 2802 pursuant to Cal. Lab. Code § 558.1.

155. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

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NINTH CAUSE OF ACTION
Violation of Business and Professions Code §§ 17200, *et seq.*
(Against All Defendants – on Behalf of the California Class)

156. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

157. Business and Professions Code §§17200 *et seq.* prohibits unfair competition in the form of any unlawful, unfair or fraudulent business acts or practices.

158. Business and Professions Code § 17204 allows a person injured by the unfair business acts or practices to prosecute a civil action for violation of the UCL.

159. Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

160. Beginning at an exact date unknown to the California Plaintiffs, but at least since the date four years prior to the filing of this suit, Defendants have committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business acts and practices described in this Complaint, including, but not limited to:

a. violations of Labor Code § 221, 226.8,1198-199 and IWC Wage Orders pertaining to willful misclassification of its employees as independent contractors;

b. violations of Labor Code § 1194, 1198-1199 and IWC Wage Order pertaining to the payment of wages;

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c. violations of Labor Code § 510, 1198-1199 and applicable IWC Wage Orders pertaining to overtime;

d. violations of Labor Code §§ 1182.11, 1182.12, and 1197 and IWC wage orders pertaining to minimum wage;

e. violations of Labor Code §§226.7, 512, 1198-1199 and IWC wage orders pertaining to meal and rest breaks;

f. violations of Labor Code § 226, 226.3, 226.6 regarding accurate, timely itemized wage statements; and of Labor Code § 1174 regarding record-keeping;

g. violations of Labor Code §§ 201-203;

h. violations of Labor Code § 2802;

i. violations of Labor Code § 246;

j. violations of Labor Code § 3700; and

161. The violations of these laws and regulations, as well as of the fundamental California public policies protecting wages and discouraging overtime labor underlying them, serve as unlawful predicate acts and practices for purposes of Business and Professions Code §§17200 *et seq.*

162. The acts and practices described above constitute unfair, unlawful and fraudulent business practices, and unfair competition, within the meaning of Business and Professions Code §§17200, *et seq.* Among other things, the acts and practices have taken from Plaintiff and the proposed Class wages rightfully earned by them, while enabling Defendants to gain an unfair competitive advantage over law-abiding employers and competitors.

163. Business and Professions Code § 17203 provides that a court may make such orders or judgments as may be necessary to prevent the use or employment by any person of any practice

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which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent Defendants from repeating its unlawful, unfair and fraudulent business acts and practices alleged above.

164. As a direct and proximate result of the aforementioned acts and practices, the California Plaintiffs and the proposed California Class members have suffered a loss of money and property, in the form of unpaid wages which are due and payable to them.

165. Business and Professions Code § 17203 provides that the Court may restore to any person in interest any money or property which may have been acquired by means of such unfair competition. The California Plaintiffs and the proposed California Class are entitled to restitution pursuant to Business and Professions Code § 17203 for all wages and payments unlawfully withheld from employees during the four-year period prior to the filing of this Complaint. The California Plaintiffs' success in this action will enforce important rights affecting the public interest and in that regard the California Plaintiffs sue on behalf of themselves as well as others similarly situated. The California Plaintiffs and proposed California Class members seek and are entitled to unpaid wages, declaratory and injunctive relief, and all other equitable remedies owing to them.

166. The California Plaintiffs herein take upon themselves enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action, the action is seeking to vindicate a public right, and it would be against the interests of justice to penalize the California Plaintiffs by forcing them to pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil Procedure § 1021.5, and otherwise.

167. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

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TENTH CAUSE OF ACTION

Penalties Pursuant to § 2699(a) of the Private Attorneys General Act
(Against All Defendants – on Behalf of All Aggrieved California Employees)

168. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

169. Labor Code § 2699(a) provides:

> Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

170. Labor Code § 203 provides, in relevant part:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any 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 therefore is commenced; but the wages shall not continue for more than 30 days.

171. Labor Code § 226(a) provides:

> Every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (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, (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. The deductions made from payments of wages shall be recorded in ink or other indelible form,

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properly dates, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least four years at the place of employment or at a central location within the State of California.

172. Labor Code § 558(a) provides:

> (a) Any employer or other person acting on behalf of an employer who violates or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
> (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
> (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
> (3) Wages recovered pursuant to this section shall be paid to the affected employee.

173. The California Plaintiffs seek civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, as alleged above, to timely pay all wages owed to the California Plaintiffs and each putative California Class member in compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203. The California Plaintiffs seeks such penalties as an alternative to the penalties available under Labor Code § 203, as prayed for herein.

174. The California Plaintiffs seek civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, alleged above, to provide the California Plaintiffs and each proposed California Class member compliant meal and rest periods in compliance with Labor Code § 512.

175. Under Labor Code § 246, employers are required to provide paid sick time to employees who work 30 or more days within a year at the rate of one hour of paid sick time for every thirty hours worked. Defendants failed to provide the California Plaintiffs and members of the proposed California Class with any sick time, despite the fact that the California Plaintiffs and members of the proposed California Class worked more than thirty days within one year.

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Furthermore, Defendants failed to post the notice required by Cal. Lab. Code § 247 of employees' right to paid sick time. Accordingly, Defendants are liable under PAGA and Labor Code § 248.5(e) for restitutionary relief in the amount of the dollar amount of paid sick days unlawfully withheld, as well as reasonable attorneys' fees and costs.

176. Under Labor Code § 3700, every employer must secure the payment of workers' compensation. Defendants failed to provide the California Plaintiff and members of the putative class with workers' compensation insurance. Defendants knew, or because of their knowledge and experience reasonably should be expected to have known, of the obligation to secure workers' compensation. Accordingly, Defendants are liable under PAGA and Labor Code § 3700.5 for fines.

177. Pursuant to Labor Code § 2699.3(a)(1) and (2), the California Plaintiffs provided the Labor and Workforce Development Agency ("LWDA") with notice of their intention to file this claim. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

178. The California Plaintiffs seek the aforementioned penalties on behalf of the State, other aggrieved employees, and themselves as set forth in Labor Code § 2699(g), (i).

179. Defendants are liable to the California Plaintiffs, the putative California Class, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. The California Plaintiffs are also entitled to an award of attorneys' fees and costs as set forth below.

180. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

ELEVENTH CAUSE OF ACTION
Penalties Pursuant to § 2699(f) of the Private Attorneys General Act
(Against all Defendants – on Behalf of All Aggrieved California Employees)

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181. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

182. Labor Code § 2699(f) provides:

> For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

183. To the extent that any violation alleged herein does not carry penalties under Labor Code § 2699(a), the California Plaintiffs seek civil penalties pursuant to Labor Code § 2699(f) for the California Plaintiffs and proposed California Class members each pay period in which he or she was aggrieved, in the amounts established by Labor Code § 2699(f).

184. Pursuant to Labor Code § 2699.3(a)(1) and (2), the California Plaintiffs have provided the LWDA with notice of their intention to file this claim. Sixty-five calendar days have passed without notice from the LWDA. The California Plaintiffs satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

185. The California Plaintiffs seek the aforementioned penalties on behalf of the State, other aggrieved employees, and themselves as set forth in Labor Code § 2699(g), (i).

186. Defendants are liable to the California Plaintiffs, the putative California Class, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. The California Plaintiffs are also entitled to an award of attorneys' fees and costs as set forth below.

187. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

TWELFTH CAUSE OF ACTION
Reporting Time Pay (Cal. Lab. Code § 1198, IWC Wage Order 4-2001)

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(Against All Defendants – on Behalf of the California Class)

188. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

189. The California Plaintiffs and members of the putative California Class were scheduled for work reported for work, and were not put to work.

190. The California Plaintiffs and members of the putative California Class were not paid for the dates on which they were scheduled for work, reported for work, and were not put to work, in violation of IWC Wage Order 4-2001 § 5(A) and Cal. Lab. Code § 1198.

191. As a direct and proximate result of the above violations of their rights, the California Plaintiffs and the putative California Class are entitled to damages in an amount to be proven at trial.

192. Wherefore, the California Plaintiffs and the putative California Class request relief as hereinafter provided.

THIRTEENTH CAUSE OF ACTION
Failure to Pay Overtime (RCW 49.46.130, 49.12.020, WAC 296-128-550)
(Against All Defendants – on Behalf of the Washington Class)

193. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

194. At all times relevant, the Washington Plaintiff and members of the proposed Washington Class have been employees, and Defendants have been employers, within the meaning of the Washington Wage Laws.

195. Defendants failed to pay the Washington Plaintiff and members of the proposed Washington Class wages to which they are entitled under the Washington Wage Laws. Defendants failed to pay the Washington Plaintiff and members of the proposed Washington Class for overtime

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at a wage rate of one and one-half times their regular rate of pay for all hours worked over forty in a workweek.

196. Defendants failed to pay the Washington Plaintiff and members of the proposed Washington Class all overtime wage owed to them on the regular pay day for the pay period in which the overtime wages were earned.

197. As a direct and proximate result of the above violations of their rights, the Washington Plaintiff and the putative Washington Class are entitled to damages in an amount to be proven at trial.

198. Wherefore, the Washington Plaintiff and the putative Washington Class request relief as hereinafter provided.

FOURTEENTH CAUSE OF ACTION
Meal and Rest Period Violations (RCW §§ 49.12.020, 49.12.170; WAC § 296-126-092)
(Against All Defendants – on Behalf of the Washington Class)

199. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

200. Defendants failed to provide the Washington Plaintiff and members of the proposed Washington Class with meal periods of at least thirty minutes no more than five hours from the beginning of their shifts.

201. Defendants required the Washington Plaintiff and members of the proposed Washington Class to work more than five consecutive hours without a meal period.

202. Defendants failed to provide the Washington Plaintiff and members of the proposed Washington Class who worked three or more hours longer than a normal work day with a thirty-minute meal period prior to or during the overtime period.

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203. Defendants failed to provide the Washington Plaintiff and members of the proposed Washington Class with rest periods of not less than ten minutes for each four hours of working time.

204. Defendants required the Washington Plaintiff and members of the proposed Washington Class to work more than three hours consecutively without a rest period.

205. As a direct proximate result of the above violations of their rights, the Washington Plaintiff and the putative Washington Class are entitled to damages in an amount to be proven at trial.

206. Wherefore, the Washington Plaintiff and the putative Washington Class request relief as hereinafter provided.

FIFTEENTH CAUSE OF ACTION
Failure to Reimburse for Employee Work Apparel (RWC 49.12.450)
(Against All Defendants – on Behalf of the Washington Class)

207. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

208. Defendants required the Washington Plaintiff and members of the proposed Washington Class to wear a uniform within the meaning of RCW 49.12.450, specifically, formal apparel.

209. Defendants failed to reimburse the Washington Plaintiff and members of the proposed Washington Class for the expense of formal apparel they purchased in order to fulfill Defendants' uniform requirement.

210. As a direct proximate result of the above violations of their rights, the Washington Plaintiff and the putative Washington Class are entitled to damages in an amount to be proven at trial.

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211. Wherefore, the Washington Plaintiff and the putative Washington Class request relief as hereinafter provided.

SIXTEENTH CAUSE OF ACTION
Unpaid Overtime Wages (FLSA; 29 U.S.C. §§ 201 et seq.)
(Against All Defendants – on Behalf of the Collective)

212. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

213. Defendants were and are employers of Plaintiffs and other similarly situated current and former guards and are engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a), in that they were and are assigned to guard manufacturing, shipping and fulfillment facilities.

214. The overtime wage provisions set forth in §§ 201 *et seq.* of the FLSA apply to Defendants.

215. At all relevant times, Plaintiffs and other similarly situated current and former guards were and are employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

216. Defendants have failed to pay Plaintiffs and other similarly situated current and former guards the wages to which they were entitled under the FLSA.

217. Defendants' violations of the FLSA, as described in this Complaint, have been willful and intentional.

218. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255, as it may be tolled or extended agreement, equity or operation of law.

219. As a result of Defendants' willful violations of the FLSA, Plaintiffs and other similarly situated current and former guards have suffered damages by being denied wages in

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accordance with 29 U.S.C. §§ 201 *et seq.*, in amounts to be determined at trial or through undisputed record evidence, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. § 216(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the members of the respective Class each represents, pray for relief as follows:

1. Certification of the state law claims in this action as class actions;

2. Designation of each such plaintiff as a Class Representative;

3. Damages and restitution according to proof at trial for all unpaid wages, premium pay, and other injuries, as provided by the appropriate state laws;

4. For a declaratory judgment that Defendants have violated the appropriate state laws as alleged herein;

5. For a declaratory judgment that Defendants have violated California Business and Professions Code §§17200 *et seq.*, as a result of the aforementioned violations of the California Labor Code and of California public policy protecting wages;

6. For preliminary, permanent, and mandatory injunctive relief prohibiting Defendants, its officers, agents, and all those acting in concert with them from committing in the future those violations of law herein alleged;

7. For an equitable accounting to identify, locate, and restore to all current and former employees the wages they are due, with interest thereon;

8. For an order awarding Plaintiffs and the proposed Class members compensatory damages, including lost wages, earnings, and other employee benefits, restitution, and all other sums

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of money owed to Plaintiffs and proposed Class members, together with interest on these amounts, according to proof;

9. For an order awarding Plaintiffs and the proposed Class members civil penalties pursuant to the California Labor Code provisions cited herein, with interest thereon.

10. For an award of reasonable attorneys' fees as provided by the California Labor Code; California Code of Civil Procedure § 1021.5; and/or other applicable law;

11. For all costs of suit, including expert fees;

12. Pre-Judgment and Post-Judgment interest, as provided by applicable law; and

13. For such other and further relief as this Court deems just and proper.

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated persons in the FLSA Collective, pray for relief as follows:

1. At the earliest possible time, Plaintiffs should be allowed to give notice of this collective action, or the Court should issue such notice, to all persons who are members of the FLSA Collective. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

2. Unpaid wages and an additional equal amount as liquidated damages pursuant to 29 U.S.C.§§ 201 *et seq.* and the supporting United States Department of Labor regulations;

3. An injunction enjoining Defendants from violating the foregoing laws and regulations in the future;

4. Pre-judgment interest;

5. Attorneys' fees and costs of the action; and

6. Such other relief as this Court deems just and proper.

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Respectfully submitted,

Date: September 17, 2018

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all claims and issues for which Plaintiffs are entitled to a jury.

Respectfully submitted,

Date:

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Superior Court of California
County of San Francisco

GARY HOUSTON, on behalf of himself and all others similarly situated, Plaintiff, vs. BRAAVOS, INC. d/b/a BANNERMAN, and DOES 1-50, inclusive, Defendants.	Case Number: CGC-17-562019 **CERTIFICATE OF ELECTRONIC SERVICE** (CCP 1010.6(6) & CRC 2.260(g))

I, T. Michael Yuen, Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On October 15, 2018, I electronically served the STIPULATION AND ORDER FOR LEAVE TO FILE SECOND AMENDED COMPLAINT via File&ServeXpress® on the recipients designated on the Transaction Receipt located on the File&ServeXpress® website.

Dated: October 15, 2018

T. MICHAEL YUEN, Clerk

By: _____
Sean Kane, Deputy Clerk