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FILED  
ALAMEDA COUNTY

SEP 18 2017

CLERK OF THE SUPERIOR COURT  
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12 and the Plaintiff Class

13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **IN AND FOR THE COUNTY OF ALAMEDA**

15 FERNAN PABUALAN, individually,  
16 and on behalf of all others similarly  
17 situated,

18 Plaintiff,

19 vs.

20 ALLIED UNIVERSAL SECURITY  
21 SYSTEMS, and DOES 1 through 100,  
22 inclusive,

23 Defendants.

Case No. *Rf-17875713*

CLASS ACTION

**COMPLAINT FOR DAMAGES,  
INJUNCTIVE RELIEF AND RESTITUTION**

[Jury Trial Demanded]

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24 Representative Plaintiff alleges as follows:

25 PRELIMINARY STATEMENT

26 1. This is a class action seeking unpaid compensation for meal and/or rest period  
27 violations, interest thereon, reimbursement of business expenses, liquidated damages and other  
28 penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs under,  
*inter alia*, California Labor Code §§ 200-204, inclusive, 226, 226.7, 226.8, 510, 512, 558, 1174,  
1174.5, 1194, 1194.2, 1197, 1198, California Business and Professions Code §§ 17200, *et seq.*

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1 and California Code of Civil Procedure § 1021.5. Plaintiff Fernan Pabualan (“Representative  
2 Plaintiff” or “Plaintiff”) brings this action on behalf of himself and all other persons similarly  
3 situated (“Class Members” and/or the “Plaintiff Class”) who are or have been employed by  
4 defendants Allied Universal Security Systems and/or Does 1 through 100, inclusive (collectively  
5 “Defendant”) as Patrol Officers and/or Security Guards/Officers within the State of California  
6 within the applicable class period.

7 2. The class period is designated as the time from September 18, 2013 through trial,  
8 based upon the allegation that the violations of California’s wage and hour laws, as described  
9 more fully below, have been ongoing throughout that time.

10 3. During the class period, Defendant has had a consistent policy of (1) unlawfully  
11 denying Plaintiff and Class Members statutorily-mandated meal and rest periods, (2) willfully  
12 failing to provide Plaintiff and Class Members with accurate semimonthly itemized wage  
13 statements reflecting the total number of hours each worked, the applicable deductions, and the  
14 applicable hourly rates in effect during the pay period, and (3) willfully failing to pay  
15 compensation in a prompt and timely manner to Plaintiff and those Class Members whose  
16 employment with Defendant has terminated.

17 **INTRODUCTION**

18 4. Defendant operates a security service within California for which Representative  
19 Plaintiff worked as a Patrol Officer. The Representative Plaintiff is informed and believes and,  
20 on that basis, alleges that, within the Class Period, Defendant employed hundreds of individuals  
21 in California in recent years to perform security services, employment positions which did not,  
22 and currently do not, meet any known test for exemption from the payment of overtime wages  
23 and/or the entitlement to meal or rest periods.

24 5. Despite actual knowledge of these facts and legal mandates, Defendant has and  
25 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers  
26 by electing not to pay all wages due (missed meal and rest period compensation) and/or all  
27 penalties dues (including “waiting time” penalties) to its California based patrol officers and/or  
28 security guards/officers.



1 11. Representative Plaintiff Fernan Pabualan is a natural person who was employed  
2 by Defendant as a security guard during the Class Period.

3 12. In these capacities, Representative Plaintiff is and was entitled to full,  
4 uninterrupted and statutorily-mandated meal and rest periods, as well as other benefits of  
5 employment as set forth herein.

6 **DEFENDANT**

7 13. Representative Plaintiff is informed and believes and, based thereon, alleges that,  
8 at all times herein relevant, defendants Allied Universal Security Systems, and Does 1 through  
9 100, did business within the State of California providing security services.

10 14. Those defendants identified as Does 1 through 100, inclusive, are and were, at all  
11 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or  
12 each of the remaining defendants. Representative Plaintiff is informed and believes and, on that  
13 basis, alleges that at all relevant times herein mentioned, defendants Allied Universal Security  
14 Systems, and those identified as Does 1 through 100, inclusive, employed, and/or exercised  
15 control over the wages, hours, and/or working conditions of the Representative Plaintiff and  
16 Class Members within the State of California.

17 15. The Representative Plaintiff is unaware of the true names and capacities of those  
18 defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by  
19 such fictitious names. The Representative Plaintiff will seek leave of court to amend this  
20 Complaint when such names are ascertained. The Representative Plaintiff is informed and  
21 believes and, on that basis, alleges that each of the fictitiously-named defendants was responsible  
22 in some manner for, gave consent to, ratified, and/or authorized the conduct herein alleged and  
23 that the Representative Plaintiff's and Class Members' damages, as herein alleged, were  
24 proximately caused thereby.

25 16. Representative Plaintiff is informed and believes and, on that basis, alleges that, at  
26 all relevant times herein mentioned, each of the defendants was the agent and/or employee of  
27 each of the remaining defendants and, in doing the acts herein alleged, was acting within the  
28 course and scope of such agency and/or employment.

CLASS ACTION ALLEGATIONS

17. The Representative Plaintiff brings this action on behalf of herself and as a class action on behalf of all persons similarly situated and proximately damaged by Defendant's conduct including, but not necessarily limited to, the following Plaintiff Class:

"All persons employed by Defendant as patrol officers and/or security guards/officers in California at any time on or after September 18, 2013."

18. Defendant's officers and directors are excluded from the Plaintiff Class.

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

a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Plaintiff Class are so numerous that joinder of all members is impractical, if not impossible, insofar as Representative Plaintiff is informed and believes and, on that basis, alleges that there are sufficient Class Members to meet the numerosity requirement. Membership in the Class will be determined upon analysis of employee and payroll, among other, records maintained by Defendant.

b. Commonality: The Representative Plaintiff and the Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, including, but not necessarily limited to:

- 1) Whether Defendant violated California Business and Professions Code § 17200, *et seq.* by failing to provide meal and/or rest breaks to Class Members working eligible shifts;
- 2) Whether Defendant violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work;
- 3) Whether Defendant violated California Labor Code §§ 201-204 by failing to pay wages due and owing at the time that certain Class Members' employment with Defendant terminated;
- 4) Whether Defendant violated California Labor Code § 226 by failing to provide semimonthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period; and

1 5) Whether Class Members are entitled to “waiting time”  
2 penalties, pursuant to California Labor Code § 203.

3 c. Typicality: The Representative Plaintiff’s claims are typical of the  
4 claims of Class Members. The Representative Plaintiff and Class  
5 Members sustained damages arising out of and caused by  
6 Defendant’s common course of conduct in violation of law, as  
7 alleged herein.

8 d. Adequacy of Representation: The Representative Plaintiff in this  
9 class action is an adequate representative of the Plaintiff Class in  
10 that the Representative Plaintiff’s claims are typical of those of the  
11 Plaintiff Class and the Representative Plaintiff has the same  
12 interest in the litigation of this case as the Class Members. The  
13 Representative Plaintiff is committed to vigorous prosecution of  
14 this case and has retained competent counsel who are experienced  
15 in conducting litigation of this nature. The Representative Plaintiff  
16 is not subject to any individual defenses unique from those  
17 conceivably applicable to Class Members as a whole. The  
18 Representative Plaintiff anticipates no management difficulties in  
19 this litigation.

20 e. Superiority of Class Action: Since the damages suffered by  
21 individual Class Members, while not inconsequential, may be  
22 relatively small, the expense and burden of individual litigation by  
23 each member makes or may make it impractical for Class  
24 Members to seek redress individually for the wrongful conduct  
25 alleged herein. Should separate actions be brought, or be required  
26 to be brought, by each individual Class Member, the resulting  
27 multiplicity of lawsuits would cause undue hardship and expense  
28 for the Court and the litigants. The prosecution of separate actions  
would also create a risk of inconsistent rulings which might be  
dispositive of the interests of other Class Members who are not  
parties to the adjudications and/or may substantially impede their  
ability to adequately protect their interests.

### COMMON FACTUAL ALLEGATIONS

20 20. As described herein, for years, Defendant has knowingly failed to adequately  
21 compensate those employees within the class definition identified above for all wages earned  
22 (including premium wages such as compensation for missed meal and/or rest periods) under the  
23 California Labor Code and the applicable IWC Wage Order, thereby enjoying a significant  
24 competitive edge over other service providers.

25 21. Defendant has declined to pay these wages, even upon a Class Member’s  
26 termination or resignation from employment, in blatant violation of California Labor Code § 201  
27 and/or § 202.  
28

1           22. California Labor Code §§ 201 and 202 require Defendant to pay severed  
2 employees all wages due and owed to the employee immediately upon discharge or within 72  
3 hours of resignation of their positions, in most circumstances. California Labor Code § 203  
4 provides that an employer who willfully fails to timely pay such wages must, as a penalty,  
5 continue to pay the subject employees' wages until the back wages are paid in full or an action is  
6 commenced, and the payment of such penalty shall continue for a period of time up to 30 days.

7           23. Moreover, according to Defendant's policies, Class Members were required to  
8 incur business expenses related to the operations of Defendant.

9           24. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class  
10 Members' entitlement to compensation for all hours worked, Defendant violated California  
11 Labor Code § 1174(d) by failing to provide or require the use, maintenance, or submission of  
12 time records by members of the Plaintiff Class. Defendant also failed to provide the  
13 Representative Plaintiff and Class Members with accurate semimonthly itemized statements of  
14 the total number of hours worked by each, and all applicable hourly rates in effect, during the  
15 pay period, in violation of California Labor Code § 226. In failing to provide the required  
16 documents, Defendant has not only failed to pay its workers the full amount of compensation due  
17 but the company has also, until now, effectively shielded itself from its employees' scrutiny by  
18 concealing the magnitude and financial impact of its wrongdoing that such documents might  
19 otherwise have led workers to discover.

20           25. Representative Plaintiff and all persons similarly situated are entitled to unpaid  
21 compensation, yet, to date, have not received such compensation despite many of the same  
22 having been terminated by and/or resigned from Defendant's employ. More than 30 days have  
23 passed since certain Class Members have left Defendant's employ.

24           26. As a consequence of Defendant's willful conduct in not paying former employees  
25 compensation for all hours worked in a prompt and timely manner, Representative Plaintiff and  
26 certain Class Members are entitled to up to 30 days wages as a penalty under California Labor  
27 Code § 203, together with attorneys' fees and costs.

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

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

32. Moreover, California Labor Code § 512(a) provides:

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

33. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that employers provide all applicable meal and/or rest periods to non-exempt (including exempt-misclassified) employees.

34. Section 11 of the applicable IWC Wage Order provides:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes...

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes...

(C) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

35. Moreover, Section 12 of the applicable IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)

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1 minutes net rest time per four (4) hours or major fraction thereof  
....

2 (B) If an employer fails to provide an employee a rest period in  
3 accordance with the applicable provisions of this order, the  
4 employer shall pay the employee one (1) hour of pay at the  
5 employee's regular rate of compensation for each workday that the  
6 rest period is not provided.

7 36. By failing to consistently provide uninterrupted thirty-minute meal periods within  
8 the first five hours of work each day and/or uninterrupted net ten-minute rest periods to  
9 Representative Plaintiff and Class Members, Defendant violated the California Labor Code and  
10 applicable IWC Wage Order provisions.

11 37. Representative Plaintiff is informed and believes and, on that basis, alleges that  
12 Defendant has never paid the one hour of compensation to any Class Member due to its  
13 violations of the California Labor Code and applicable IWC Wage Order provisions.

14 38. As a direct and proximate result of Defendant's unlawful conduct, as set forth  
15 herein, Representative Plaintiff and Class Members have sustained damages, including lost  
16 compensation resulting from missed meal and/or rest periods, in an amount to be established at  
17 trial.

18 39. As a further direct and proximate result of Defendant's unlawful conduct, as set  
19 forth herein, certain Class Members are entitled to recover "waiting time" and other penalties, in  
20 amounts to be established at trial, as well as recovery of attorneys' fees and costs, pursuant to  
21 statute.

22 **SECOND CAUSE OF ACTION**  
23 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**  
24 **(California Labor Code §§ 226 and 1174)**

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

28 41. California Labor Code § 226(a) provides:

Each 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

1 check or cash, an itemized wage statement in writing showing: (1)  
2 gross wages earned; (2) total number of hours worked by each  
3 employee whose compensation is based on an hourly wage; (3) all  
4 deductions, provided that all deductions made on written orders of  
5 the employee may be aggregated and shown as one item; (4) net  
6 wages earned; (5) the inclusive date of the period for which the  
7 employee is paid; (6) the name of the employee and his or her  
8 social security number; and (7) the name and address of the legal  
9 entity which is the employer.

6 42. Moreover, California Labor Code § 226(e) provides:

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

12 43. Finally, California Labor Code § 1174(d) provides:

13 Every person employing labor in this state shall . . . [k]eep, at a  
14 central location in the state...payroll records showing the hours  
15 worked daily by and the wages paid to...employees.... These  
16 records shall be kept in accordance with rules established for this  
17 purpose by the commission, but in any case shall be kept on file for  
18 not less than two years.

17 44. Representative Plaintiff seeks to recover actual damages, costs, and attorneys'  
18 fees under these provisions on behalf of herself and on behalf of all Class Members.

19 45. Defendant has failed to provide timely, accurate itemized wage statements to the  
20 Representative Plaintiff and Class Members in accordance with California Labor Code § 226.  
21 Representative Plaintiff is informed and believes and, on that basis, alleges that none of the  
22 statements provided by Defendant accurately reflected actual gross wages earned, net wages  
23 earned, or the appropriate deductions of such Class Members.

24 46. As a direct and proximate result of Defendant's unlawful conduct, as set forth  
25 herein, the Representative Plaintiff and Class Members have sustained damages in an amount to  
26 be established at trial, and are entitled to recover attorneys' fees and costs of suit.  
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**THIRD CAUSE OF ACTION  
FAILURE TO PAY WAGES ON TERMINATION  
(California Labor Code § 203)**

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

48. California Labor Code § 203 provides that:

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.

49. Plaintiff and numerous Class Members were employed by Defendant during the class period and were thereafter terminated or resigned from their positions, yet they were not paid all premium (overtime) wages due upon said termination or within 72 hours of said resignation of employment therefrom. Said non-payment was the direct and proximate result of a willful refusal to do so by Defendant.

50. More than 30 days have elapsed since certain Class Members were involuntarily terminated or voluntarily resigned from Defendant's employ.

51. As a direct and proximate result of Defendant's willful conduct in failing to pay said Class Members for all hours worked, affected Class Members are entitled to recover "waiting time" penalties of up to thirty days' wages pursuant to California Labor Code § 203 in an amount to be established at trial, together with interest thereon, and attorneys' fees and costs.

**FOURTH CAUSE OF ACTION  
UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT  
(California Business & Professions Code §§ 17200-17208)**

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

53. Representative Plaintiff further brings this cause of action seeking equitable and statutory relief to stop Defendant's misconduct, as complained of herein, and to seek restitution

1 of the amounts Defendant acquired through the unfair, unlawful, and fraudulent business  
2 practices described herein.

3 54. Defendant's knowing conduct, as alleged herein, constitutes an unlawful and/or  
4 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-  
5 17208. Specifically, Defendant conducted business activities while failing to comply with the  
6 legal mandates cited herein.

7 55. Defendant has clearly established a policy of accepting a certain amount of  
8 collateral damage, as represented by the damages to the Representative Plaintiff and to Class  
9 Members herein alleged, as incidental to its business operations, rather than accept the  
10 alternative costs of full compliance with fair, lawful, and honest business practices, ordinarily  
11 borne by its responsible competitors and as set forth in legislation and the judicial record.

12  
13 **RELIEF SOUGHT**

14 **WHEREFORE, the Representative Plaintiff, on behalf of herself and the proposed**  
15 **Plaintiff Class, prays for judgment and the following specific relief against defendants, and each**  
16 **of them, jointly and separately, as follows:**

17 1. That the Court declare, adjudge, and decree that this action is a proper class action  
18 and certify the proposed Class and/or any other appropriate subclasses under California Code of  
19 Civil Procedure § 382;

20 2. That the Court declare, adjudge, and decree that Defendant willfully violated its  
21 legal duties to pay all wages due under the California Labor Code and the applicable California  
22 Industrial Welfare Commission Wage Orders;

23 3. That the Court make an award to the Representative Plaintiff and the Class  
24 Members of one hour of pay at each employee's regular rate of compensation for each workday  
25 that a meal period was not provided;

26 4. That the Court make an award to the Representative Plaintiff and the Class  
27 Members of one hour of pay at each employee's regular rate of compensation for each workday  
28 that a rest period was not provided;

