

1 1. This class action is brought pursuant to Section 382 of the California Code of
2 Civil Procedure. The monetary damages and restitution sought by Plaintiff exceeds the
3 minimal jurisdiction limits of the Superior Court and will be established according to proof at
4 trial.
5

6 2. Venue is proper in the County of Alameda as at least some of the acts
7 complained of herein occurred in the County of Alameda and Defendant owns and operates its
8 principal place of business in the County of Alameda. At all times herein mentioned,
9 Representative Plaintiff and the class identified herein worked as employees for Defendant in
10 hourly nonexempt positions in locations assigned by Defendant. Defendant's nonexempt
11 hourly employees covered by this action are not employees who fall into an exception to the
12 California Labor Code Section 1194 and/or the California Industrial Welfare Commission
13 Wage Order applicable to Defendants' business. The acts complained of in this First Cause of
14 Action occurred, at least in part, within three years of the filing of the original complaint in this
15 action up to and including the time that this action is certified as a class action. The
16 Representative Plaintiff who worked in hourly nonexempt positions at locations assigned by
17 Defendant within the State of California is Haley Walsh.
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19

20 3. Defendant, OVERTON SECURITY SERVICES, INC., is California based,
21 California registered, corporation doing business in California. Defendant OVERTON
22 SECURITY SERVICES, INC., operates, manages and controls business operations in
23 California.
24

25 4. Plaintiff is informed and believes and thereon alleges that all times herein
26 mentioned Defendants and Does 1 through 50, are and were corporations, business entities,
27 individuals and partnerships, licensed to do business and actually doing business in the State of
28

1 California. Defendants own and operate an industry, business and establishment in locations
2 within the State of California, including within Alameda County, in the security business. As
3 such, and based upon all the facts and circumstances incident to Defendants' business in
4 California, Defendants are subject to California Labor Code § 1194, *et seq.*, California
5 Business and Professions Code § 17200, *et seq.*, (Unfair Practices Act) and the applicable
6 Wage Order.
7

8 5. Plaintiff does not know the true names or capacities, whether individual, partner
9 or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that
10 reason, said Defendants are sued under such fictitious names, and Plaintiffs pray leave to
11 amend this complaint when the true names and capacities are known. Plaintiffs are informed
12 and believe and thereon allege that each of said fictitious Defendants were responsible in some
13 way for the matters alleged herein and proximately caused Plaintiffs and members of the class
14 to be subject to the illegal employment practices, wrongs and injuries complained of herein.
15

16 6. At all times herein mentioned, each of said Defendants participated in the doing
17 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore,
18 the Defendants, and each of them, were the agents, servants and employees of each of the other
19 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
20 acting within the course and scope of said agency and employment.
21

22 7. At all times herein mentioned, Defendants, and each of them, were members of,
23 and engaged in, a joint venture, partnership and common enterprise, and acting within the
24 course and scope of, and in pursuance of, said joint venture, partnership and common
25 enterprise.
26

27 8. At all times herein mentioned, the acts and omissions of various Defendants, and
28

1 each of them, concurred and contributed to the various acts and omissions of each and all of the
2 other Defendants in proximately causing the injuries and damages as herein alleged.

3
4 9. At all times herein mentioned, Defendants, and each of them, ratified each and
5 every act or omission complained of herein. At all times herein mentioned, the Defendants,
6 and each of them, aided and abetted the acts and omissions of each and all of the other
7 Defendants in proximately causing the damages as herein alleged. Further, at all times
8 mentioned herein, the wage and hour related compensation policies of Defendants' branch
9 locations in California are and were dictated by, controlled by, and ratified by the Defendants
10 herein and each of them.

11 10. Plaintiff is informed and believes and thereon alleges that at no time did they
12 enter into an arbitration agreement with Defendants. Plaintiff also alleges that if she did enter
13 into an arbitration agreement with Defendants, such agreement does not cover the claims
14 asserted herein, is void *ab initio*, unenforceable, unconscionable, unjust, unconstitutional,
15 illegal, and against public policy.

16 **FACTUAL AND CLASS ALLEGATIONS**

17 11. Pursuant to California Labor Code §§ 218, 218.5, 218.6, and 1194, Plaintiffs
18 may bring a civil action for overtime wages directly against the employer without first filing a
19 claim with the California Division of Labor Standards Enforcement and may recover such
20 wages, together with interest thereon, penalties, attorney fees and costs.

21 12. Representative Plaintiff and all members of the class identified herein were
22 regularly scheduled as a matter of uniform company policy to work and in fact worked as
23 hourly nonexempt employees in excess of eight hours per workday and/or in excess of forty
24 hours per workweek without receiving all of the overtime compensation for such overtime
25 hours worked in violation of California Labor Code § 1194 and the applicable IWC Wage
26 Order. Representative Plaintiff and the class were paid in the form of an hourly wage.
27 However, Representative Plaintiff and the class were illegally and improperly not paid
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1 overtime compensation for all of the hours worked over 8 hours in a day or 40 hours in a week.
2 Representative Plaintiff and the class have the right to be compensated by Defendants at the
3 appropriate compensatory wage rate for said work heretofore performed, consisting of the
4 straight time rate plus the appropriate overtime premium as mandated by California law
5 including interest, attorney fees and costs, and civil penalties thereon pursuant to Labor Code
6 §§ 558 and 1197.1.

7 13. Plaintiff brings this complaint pursuant to California Code of Civil Procedure §
8 382 on behalf of a class. All claims alleged herein arise under California law for which
9 Plaintiffs seeks relief authorized under California law. The class is comprised of, and defined
10 as:

11 All current and former California based hourly nonexempt personnel
12 who worked and/or are working overtime for Defendants in the position
13 of Security Officer and other similar hourly paid job positions, within the
14 last four years of the filing of the original complaint in this action up to
15 and including the time that this action is certified as a class, yet were not
16 paid all overtime amounts due and owing.

17 Plaintiff further alleges sub-classes as set forth below:

18 1) The Business Expense Subclass:

19 All current and former California based hourly nonexempt personnel who
20 worked and/or are working for Defendants in the position of Security
21 Officer and other similar hourly paid job positions, within the last four
22 years of the filing of the original complaint in this action up to and
23 including the time that this action is certified as a class, who were required
24 to purchase equipment or materials in the performance of their
25 employment on behalf of Defendant.

26 2) The Uniform Sub-Class:

27 All current and former California based hourly nonexempt personnel who
28 worked and/or are working for Defendants in the position of Security
Officer and other similar hourly paid job positions, within the last four
years of the filing of the original complaint in this action up to and
including the time that this action is certified as a class, who were
required to provide a security deposit to Defendant for a uniform and who
were not provided with one or more of the following as required: a) an
itemized receipt for the security deposit; b) an agreement in writing

1 between the employee and employer for the payment and; c) a return of
2 the deposit with itemized interest.

3 3) The Meal and Rest Break Sub-Class:

4 All current and former California based hourly nonexempt personnel who
5 worked and/or are working for Defendants in the position of Security
6 Officer and other similar hourly paid job positions, within the last four
7 years of the filing of the original complaint in this action up to and
8 including the time that this action is certified as a class, who were not
9 provided meal and/or rest breaks as required under California law.

10 4) The Waiting Time Penalty Sub-Class:

11 All current and former California based hourly nonexempt personnel who
12 worked and/or are working for Defendants in the position of Security
13 Officer and other similar hourly paid job positions, within the last four
14 years of the filing of the original complaint in this action up to and
15 including the time that this action is certified as a class, who were not
16 timely paid their final wages at time of termination.

17 14. The members of the classes are so numerous that joinder of all members is
18 impracticable. The exact number of the members of the classes can be determined by
19 reviewing Defendant's records.

20 15. Plaintiff will fairly and adequately protect the interests of the Class and has
21 retained counsel that is experienced and competent in class action and employment litigation.
22 Plaintiff has no interests that are contrary to, or in conflict with, members of the Class.

23 16. A class action suit, such as the instant one, is superior to other available means
24 for fair and efficient adjudication of this lawsuit. The damages suffered by individual members
25 of the Class may be relatively small when compared to the expense and burden of litigation,
26 making it virtually impossible for members of the Class to individually seek redress for the
27 wrongs done to them.

28 17. A class action is, therefore, superior to other available methods for the fair and
efficient adjudication of the controversy. Absent these actions, the members of the Class likely
will not obtain redress of their injuries and Defendant will retain the proceeds of their

1 violations of California law.

2 18. Even if any member of the Class could afford individual litigation against
3 Defendants, it would be unduly burdensome to the judicial system. Concentrating this
4 litigation in one forum will promote judicial economy and parity among the claims of
5 individual members of the Class and provide for judicial consistency.

6 19. There is a well-defined community of interest in the questions of law and fact
7 affecting the Class as a whole. Questions of law and fact common to each of the Class
8 predominate over any questions affecting solely individual members of the action. Among the
9 common questions of law and fact are:

10 a. Did Defendants have a uniform and customary practice of
11 requiring all class members to regularly and customarily work over 8 hours in a day and/or over
12 40 hours per week;

13 b. Were class members required to report to work at one location to
14 acquire Defendant's vehicle prior to driving to an assigned location without receiving
15 compensation;

16 c. Were class members required to drive from an assigned location
17 back to Defendant's worksite and to fuel, clean and prepare the vehicle for the next shift,
18 without compensation;

19 d. Were class members required by Defendant to purchase and
20 maintain certain equipment and items for the performance of their jobs, including but not
21 limited to equipment belts and flashlights, without being compensated for such purchases.

22 e. Were class members required by Defendant to wear and maintain
23 a company uniform for which Defendant required Plaintiff and all class members to provide a
24 security deposit.

25 f. Did Defendant provide an itemized receipt for the security
26 deposit, keep each deposit in interest bearing accounts and provide the return of the security
27 deposit, keep each deposit in interest bearing accounts and provide the return of the security
28 deposit.

1 deposit with interest to class members; and,

2 g. Did Defendant provide class members with meal breaks
3 consisting of at least 30 minutes of uninterrupted time during which the class members were
4 completely relieved of all duties and free to leave their assigned locations if they so chose;

5 h. Did Defendant make rest breaks available to all class members;

6 i. Whether the class has sustained damages and, if so, what is the
7 proper measure of damages.

8 20. Representative Plaintiffs' claims are typical of the claims of all members of the
9 class. Plaintiffs, as representative parties, will fairly and adequately protect the interests of the
10 class by vigorously pursuing this suit through attorneys who are skilled and experienced in
11 handling civil litigation of this type.

12
13 **FIRST CAUSE OF ACTION**
14 **(Labor Code § 1194)**

15 21. Plaintiff incorporates the allegations contained in the previous paragraphs of this
16 Complaint as if fully set forth herein.

17 22. California Wage Order 4-2001, 8 C.C.R. § 11040, and Labor Code § 510 state
18 that an employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay,
19 for all hours worked in excess of 40 per week and/or 8 per day.

20 23. California Labor Code § 510 further states that any work in excess of twelve in
21 one day or in excess of eight hours on the seventh day in one workweek shall be compensated
22 at a rate of no less than twice the employee's regular rate of pay.

23 24. Class members regularly work more than 40 hours per week and/or 8 hours per
24 day but are not paid overtime.

25 25. Pursuant to California Labor Code § 1194, the class is entitled to recover their
26 overtime wages, plus interest, attorney's fees, and costs, in amounts to be proven at trial.

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1 for which they were not reimbursed and did not properly maintain and return a bond payment,
2 with interest, for a deposit on required uniforms in violation of Labor Code §§ 400-410, 2802
3 and Cal. Code Reg. tit. 8, § 11040(8). Plaintiff and similarly situated Class Members are
4 entitled to reimbursement for, and repayment of, these expenses and required bond payments,
5 plus interest and attorneys' fees and costs.
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7 **SEVENTH CAUSE OF ACTION**
8 **(Bus. & Prof. Code § 17203 – Meal and Rest Breaks)**

9 45. Plaintiff incorporates the allegations contained in the previous paragraphs of this
10 Complaint as if fully set forth herein.

11 46. In violation of Labor Code § 512 and IWC Wage Order 4-2001, Defendant
12 failed to provide and document meal and rest period breaks for the class in the number, length
13 and manner as required. At no time has the Plaintiff or the class entered into any written
14 agreement with Defendant expressly or impliedly waiving their right to their meal and rest
15 breaks. Plaintiff and the class have been injured by Defendant's failure to comply with Labor
16 Code § 512 and IWC Wage Order 4-2001 and are thus entitled to the wages set forth in Labor
17 Code § 226.7.

18 47. Pursuant to Bus. & Prof. Code § 17203, Plaintiff requests Defendant make
19 restitution of all wages due to the class under this Third Cause of Action, in an amount to be
20 proven at trial.

21 **EIGHTH CAUSE OF ACTION**
22 **(Bus. & Prof. Code § 17203 – Injunction and Declaratory Relief)**

23 48. Plaintiff incorporates the allegations contained in the previous paragraphs of this
24 Complaint as if fully set forth herein.

25 49. Plaintiff, and all persons similarly situated, are further entitled to and do seek a
26 both a declaration that the above-described business practices are unfair, unlawful and/or
27 fraudulent and injunctive relief restraining Defendant from engaging in any of such business
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1 practices in the future. Such misconduct by Defendant, unless and until enjoined and restrained
2 by order of this Court, will cause great and irreparable injury to all members of the class in that
3 the Defendant will continue to violate California law, represented by labor statutes and IWC
4 Wage Orders, unless specifically ordered to comply with same. This expectation of future
5 violations will require current and future employees to repeatedly and continuously seek legal
6 redress in order to gain compensation to which they are entitled under California law. Plaintiff
7 has no other adequate remedy at law to insure future compliance with the California labor laws
8 and wage orders alleged to have been violated herein.

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10 **NINTH CAUSE OF ACTION**
11 **(Penalties)**

12 50. Plaintiff incorporates the allegations contained in the previous paragraphs of this
13 Complaint as if fully set forth herein.

14 51. Plaintiff seeks to recover penalties on behalf of the members of class pursuant to
15 the following Labor Code provisions:

16 a. Labor Code § 210 penalties for Defendant's failure to pay the class all
17 wages that were due as of the deadlines set forth in Labor Code § 204;

18 b. Labor Code § 226.3 penalties for Defendant's failure to pay the class
19 with proper wages statements pursuant to Labor Code § 226;

20 c. Labor Code § 558 penalties for Defendant's violation of Labor Code §§
21 510 and 512, as well as the provisions regulating hours and days of work in Wage Order 4-
22 2001; and,

23 d. Labor Code § 1174.5 penalties because Defendant has failed to maintain
24 records showing the daily hours worked by the class in violations of Labor Code § 1174(d).

25 **TENTH CAUSE OF ACTION**
26 **(Violations of the Private Attorneys General Act of 2004, Ca Labor Code §§ 2699, et. seq.)**

27 52. Pursuant to Labor Code § 2699, the Labor Code Private Attorneys General Act
28 of 2004, Plaintiff brings this action on behalf of herself and other former employees against

1 Overton Security Services, Inc. only and seek recovery of applicable civil penalties as follows:

- 2 a. where civil penalties are specifically provided in the Labor Code for
3 each of the violations alleged herein, Plaintiffs seek recovery of such
4 penalties;
5 b. where civil penalties are not established in the Labor Code for each
6 of the violations alleged herein, Plaintiffs seek recovery of the
7 penalties established in § 2699(e) of the Labor Code Private
8 Attorneys General Act of 2004, and in accordance with § 200.5 of
9 the Labor Code.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Representative Plaintiff, on her own behalf and on behalf of the
12 members of the class, prays for judgment as follows:

- 13 1. For an order certifying the proposed class;
14 2. For compensatory damages and all other statutory remedies permitted;
15 3. For an injunction and declaratory relief;
16 4. For penalties as alleged herein;
17 5. For prejudgment interest;
18 6. For an order awarding attorneys' fees and costs pursuant to Labor Code § 1194,
19 Code of Civil Procedure § 1021.5, and any other statutory or equitable basis;
20 7. For equitable restitution of all wages improperly withheld; and,
21 8. For all other relief as the Court deems just.

22 Dated: July 2, 2013

23 WYNNE LAW FIRM

24 By: 

25 J.E.B. Pickett

26 Counsel for Plaintiff