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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUL 28 2009

John A. Clarke Executive Officer/Clerk
BY MARY GARCIA, Deputy

6 Attorneys for Defendant
SECURITAS SECURITY SERVICES USA, INC.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10

11 WALTER LINARES, CHARLES
12 DUNAWAY, and SANDRA BLACKSHER,
individually and on behalf of others similarly
13 situated,

14 Plaintiffs,

15 v.

16 SECURITAS SECURITY SERVICES USA,
INC.; and DOES 1 through 50,

17 Defendants.

CASE NO.: BC 416555

Complaint Filed: June 16, 2009

**DEFENDANT SECURITAS SECURITY
SERVICES USA, INC.'S ANSWER TO
CLASS ACTION COMPLAINT FOR
DAMAGES AND RESTITUTION**

Assigned to the Honorable Michael L. Stern
Dept. 62

18

19 Defendant Securitas Security Services USA, Inc. ("Defendant") hereby submits this
20 Answer for itself and no one else in response to Plaintiffs Walter Linares, Charles Dunaway and
21 Sandra Blacksher's ("Plaintiffs") Class Action Complaint for Damages and Restitution
22 ("Complaint").

23 1. Pursuant to the provisions of California Code of Civil Procedure Section 431.30(d),
24 Defendant denies generally and specifically the allegations of Plaintiffs' unverified Complaint
25 and further denies that Plaintiffs, or any of them, suffered any damages as alleged in the
26 Complaint.

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FIRST AFFIRMATIVE DEFENSE

(FAILURE TO STATE A CLAIM)

2. Neither the Complaint nor any cause of action contained therein states sufficient facts to constitute a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(ERISA PREEMPTION)

3. The first, fourth and fifth causes of action in the Complaint are preempted by the Employee Retirement and Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§1001 *et seq.* ERISA §514(a) [29 U.S.C. §1144(a)] stated that ERISA “shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan[.]” Section 514(a) of ERISA expressly preempts any and all state laws that related to a covered welfare benefit plan. ERISA §502(a) [29 U.S.C. §1132(a)] provides an exclusive cause of action for violations of ERISA and displaces state law claims.

THIRD AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

4. Plaintiffs’ claims are barred, in whole or in part, by the applicable statutes of limitations, including without limitation, Code of Civil Procedure §§ 338(a), 339, and/or 340(a); and Business and Professions Code § 17208, to the extent they, or any of them, seek relief for conduct occurring outside of the relevant statute of limitations period.

FOURTH AFFIRMATIVE DEFENSE

(LABOR CODE SECTION 203 – WAGES TIMELY PAID)

5. Plaintiffs are barred from any recovery under Labor Code § 203 because, at all times relevant to this action, Defendant properly paid employees all wages due and owing within the time required by Labor Code §§ 201 and/or 202.

FIFTH AFFIRMATIVE DEFENSE

(LABOR CODE SECTION 203 – GOOD FAITH DISPUTE)

6. Plaintiffs are barred from any recovery under Labor Code § 203 because, at all times relevant to this action, there exists and/or existed a good faith factual and/or legal dispute that

1 any wages are and/or were due to Plaintiffs, or any of them, pursuant to Labor Code §§ 201
2 and/or 202.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 **(FAILURE TO STATE A CLASS ACTION – NO CLASS EXISTS)**

5 7. The Complaint and the purported causes of action set forth therein do not state facts
6 sufficient to certify a class pursuant to California Code of Civil Procedure § 382 in that common
7 questions of fact and law do not predominate and this action is not otherwise appropriate for
8 treatment as a class action.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 **(IMPROPER CLASS REPRESENTATIVE)**

11 8. Plaintiffs, or any of them, are not proper or adequate class representatives.

12 **EIGHTH AFFIRMATIVE DEFENSE**

13 **(NO CLASS-WIDE INJURY)**

14 9. There has been no class-wide injury as alleged by the named Plaintiffs. The injuries
15 for which recovery is sought by the named Plaintiffs on behalf of the alleged class cannot be
16 recovered without proof by each alleged class member as to the specific facts underlying the
17 wage violations alleged by each class member and the losses allegedly suffered as a direct and
18 proximate result of each such alleged violation.

19 **NINTH AFFIRMATIVE DEFENSE**

20 **(LACK OF DAMAGES)**

21 10. Plaintiffs and the entire purported class suffered no damages as a result of the actions
22 allegedly taken by Defendant and are thus barred from recovery on any cause of action against
23 Defendant.

24 **TENTH AFFIRMATIVE DEFENSE**

25 **(STANDING)**

26 11. The claims of Plaintiffs and the entire purported class they seek to represent under the
27 California Business & Professions Code are barred because Plaintiffs do not and cannot allege
28 that they have standing to assert such claims on behalf of the general public as required by

1 California Business & Professions Code §§ 17203 and 17204.

2 **ELEVENTH AFFIRMATIVE DEFENSE**

3 **(LEGITIMATE BUSINESS JUDGMENT)**

4 12. Any and all conduct of which Plaintiffs complain, which is attributed to Defendant
5 and/or which Defendant undertook, was a just and proper exercise of discretion and business
6 judgment, undertaken for a fair and honest reason and regulated by good faith under the
7 circumstances then existing.

8 **TWELFTH AFFIRMATIVE DEFENSE**

9 **(ASSUMPTION OF RISK)**

10 13. Plaintiffs' Complaint fails to state facts sufficient to constitute any cause of action in
11 that Plaintiffs, or any of them, assumed the risk of the occurrences and damages alleged.

12 **THIRTEENTH AFFIRMATIVE DEFENSE**

13 **(PROXIMATE CAUSE)**

14 14. Plaintiffs, or any of them, by their own acts and conduct, proximately caused the
15 damages complained of, and, therefore, Defendant has no liability for the purported damages
16 suffered by Plaintiffs.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 **(COMPARATIVE FAULT)**

19 15. Plaintiffs, or any of them, by their own acts and conduct, contributed to the damages
20 complained of, and the liability of Defendant, if any, for the purported damages suffered by
21 Plaintiffs must be reduced by an amount proportionate to Plaintiffs' comparative fault.

22 **FIFTEENTH AFFIRMATIVE DEFENSE**

23 **(UNCLEAN HANDS)**

24 16. Plaintiffs may not seek relief from this Court in that they, or any of them, come
25 before this Court with unclean hands.

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SIXTEENTH AFFIRMATIVE DEFENSE

(WAIVER)

17. Plaintiffs may not seek relief from this Court as their claims, or any of them, are subject to the doctrine of waiver.

SEVENTEENTH AFFIRMATIVE DEFENSE

(ESTOPPEL)

18. Plaintiffs may not seek relief from this Court as their claims, or any of them, are subject to the doctrine of estoppel.

EIGHTEENTH AFFIRMATIVE DEFENSE

(LACHES)

19. The Complaint, and each count set forth therein, is barred by the doctrine of laches.

NINETEENTH AFFIRMATIVE DEFENSE

(FAILURE TO MITIGATE)

20. Plaintiffs have failed to mitigate their damages, and to the extent of such failure to mitigate, any damages awarded to Plaintiffs, or any of them, should be reduced accordingly.

TWENTIETH AFFIRMATIVE DEFENSE

(PAYMENT OF OBLIGATION)

21. Everything owed to Plaintiffs by Defendant as a result of any employment relationship was paid to Plaintiffs.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(FAILURE OF OBLIGATIONS)

22. Plaintiffs have failed to perform all obligations as required by the terms of the alleged employment arrangement, and that performance and/or failure to perform on Plaintiffs', or any of their, parts was a condition precedent to the performance of Defendant's obligations.

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TWENTY-SECOND AFFIRMATIVE DEFENSE

(ATTORNEYS' FEES)

23. Plaintiffs may not recover attorneys' fees under Labor Code § 218.5 because the Action is not one for the nonpayment of wages, fringe benefits or health and welfare or pension fund contributions as defined by Labor Code § 218.5.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(ARBITRATION)

24. Defendant alleges that Plaintiffs' Complaint is barred in whole or in part because each of Plaintiffs' claims, or any of them, are subject to a proper and enforceable contract and agreement for Arbitration, and Defendant has neither excused nor waived Plaintiffs' obligation to abide by that agreement for Arbitration.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

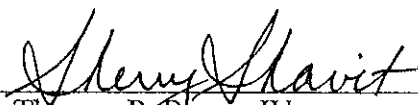
(ADDITIONAL AFFIRMATIVE DEFENSES)

25. Defendant is informed and believes, and thereon alleges, that certain additional affirmative defenses are available to Defendant. Said affirmative defenses will require further discovery and/or investigation before they can be properly alleged. Defendant will move to amend the answer to allege such affirmative defenses once they have been fully ascertained and can be properly alleged.

WHEREFORE, Defendant prays for judgment dismissing the Complaint with prejudice, Plaintiffs to take nothing, and that judgment be entered for Defendant for its attorneys' fees and costs of suit herein, and for such other and further relief as the Court determines is proper.

DATED: July 28, 2009

BROWN GITT LAW GROUP, LLP

By: 
Thomas P. Brown IV
Sherry B. Shavit
Attorneys for Defendant
SECURITAS SECURITY SERVICES USA, INC.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

- 1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
- 2. My business address is 300 North Lake Avenue, Suite 200, Pasadena, California 91101.
- 3. I served copies of the following documents (specify the exact title of each document served):

DEFENDANT SECURITAS SECURITY SERVICES USA, INC.'S ANSWER TO CLASS ACTION COMPLAINT FOR DAMAGES AND RESTITUTION

- 4. I served the documents listed above in item 3 on the following persons at the addresses listed:

Dennis F. Moss, Esq.
 Gregory E. Givens, Esq.
SPIRO MOSS LLP
 11377 W. Olympic Boulevard, 5th Floor
 Los Angeles, CA 90064-1683

Telephone: 310/235.2468
 Facsimile: 310/235.2456

Sahag Majarian II, Esq.
LAW OFFICE OF SAHAG MAJARIAN II
 18250 Ventura Boulevard
 Tarzana, CA 91356

Telephone: 818/609.0807
 Facsimile: 818/609.0892

- 5. a. **By personal service.** I personally delivered the documents on the date shown below to the persons at the addresses listed above in item 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party delivery was made to the party or by leaving the documents at the party's residence between the hours of eight in the morning and six in the evening with some person not less than 18 years of age.

- b. **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 4 and *(specify one)*:

- (1) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid on the date shown below, or

- (2) placed the envelope for collection and mailing on the date shown below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Pasadena, California.

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- c. **By overnight delivery.** I enclosed the documents on the date shown below in an envelope or package provided by an overnight delivery carrier and addressed to the person at the addresses in item 4. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. **By messenger service.** I served the documents on the date shown below by placing them in an envelope or package addressed to the person on the addresses listed in item 4 and providing them to a professional messenger service for service. (A declaration by the messenger must accompany this proof of service or be contained in the Declaration of Messenger below.)
- e. **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents on the date shown below to the fax numbers of the persons listed in item 4. No error was reported by the fax machine that I used. A copy of the fax transmission, which I printed out, is attached.
- f. **By e-mail or electronic transmission.** Based on an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent on the date shown below to the e-mail addresses of the persons listed in item 4. I did not receive within a reasonable time after the transmission any electronic message or other indication that the transmission was unsuccessful.

6. I served the documents by the means described in item 5 on (date): July 28, 2009

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

7/28/09
DATE

Sandra Cervantes
(TYPE OR PRINT NAME)


(SIGNATURE OF DECLARANT)

DECLARATION OF MESSENGER

By personal service. I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 4. I delivered the documents on the date shown below to the persons at the addresses listed in item 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence between the hours of eight in the morning and six in the evening with some person not less than 18 years of age.

At the time of service, I was at least 18 years of age. I am not a party to the above referenced legal proceeding.

I served the envelope or package, as stated above, on (date): _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)