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CONSTRUCTION PROTECTIVE SERVICES, INC.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE

10 MARTIN HOKE, *et al.* an individual for
11 himself, and on behalf of all others similarly
situated,

12 Plaintiffs,

13 vs.

14 CONSTRUCTION PROTECTIVE
15 SERVICES; and DOES 1 through 10,
inclusive,

16 Defendants.

) CASE NO. 05CC 00062
) Assigned for All Purposes to Judge David C. Velasquez

) **ANSWER OF DEFENDANT**
) **CONSTRUCTION PROTECTIVE**
) **SERVICES, INC. TO UNVERIFIED FIRST**
) **AMENDED COMPLAINT**

17
18 Defendant Construction Protective Services (“CPS“ or “Defendant”) answers, for
19 itself alone and no other defendant, the unverified First Amended Complaint for Damages
20 (“Complaint”) of plaintiffs Martin Hoke, *et al.* (“Plaintiffs”) as follows:

21 1. Pursuant to Section 431.30(d) of the California Code of Civil Procedure,
22 Defendant denies, generally and specifically, each and every allegation in Plaintiffs’
23 Complaint.

24 2. Defendant further denies, generally and specifically, that Plaintiff has been
25 damaged in any sum, or at all, by reason of any act or omission on the part of Defendant or
26 its agents or employees.

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AFFIRMATIVE DEFENSES

As separate and additional defenses to the Complaint, Defendant alleges the following affirmative defenses, based on information and belief. By alleging these defenses, Defendant does not in any way agree or concede that it has the burden of proof or persuasion on any of these issues.

FIRST AFFIRMATIVE DEFENSE

(Controlling Agreement to Arbitrate)

1. This action is barred by the “Mutual Agreement to Arbitration” entered into by CPS and each of the Plaintiffs which governs all allegations and causes of actions alleged in the Complaint.

SECOND AFFIRMATIVE DEFENSE

(Failure to State a Claim)

2. The Complaint, and each cause of action contained therein, fails to state facts sufficient to state a claim for which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

(Laches)

3. Plaintiff is barred, in whole or in part, from the relief sought by the Complaint, and each purported cause of action contained therein, because of the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

(Consent)

4. The Complaint, and each cause of action therein, is barred because the Plaintiffs consented to, approved, or participated in the alleged conduct about which they now complain. Plaintiffs’ consent includes, but is not limited to, voluntary consent to a “Meal Period Waiver and On-Duty Meal Agreement” and other employment agreements.

FIFTH AFFIRMATIVE DEFENSE

(Estoppel)

5. Plaintiffs are estopped by their own actions and course of conduct from pursuing the claims in the Complaint.

1 **SIXTH AFFIRMATIVE DEFENSE**

2 **(Waiver)**

3 6. Plaintiffs, by reason of their conduct and actions, have waived the right, if any,
4 to assert the purported claims in the Complaint.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 **(Unclean Hands)**

7 7. The Complaint, and each purported cause of action contained therein, is barred,
8 in whole or in part, by the doctrine of unclean hands based on Plaintiffs' own conduct.

9 **EIGHTH AFFIRMATIVE DEFENSE**

10 **(Mistake)**

11 8. To the extent that CPS may have failed to make proper wage payments to any
12 Plaintiff, or to any other alleged class members, such errors were made mistakenly, not
13 intentionally.

14 **NINTH AFFIRMATIVE DEFENSE**

15 **(No Entitlement to Penalties)**

16 9. To the extent that CPS may have failed to make proper wage payments to any
17 Plaintiff, or to any of the alleged class members, such failure to pay wages was not willful
18 and therefore waiting time penalties are not warranted.

19 **TENTH AFFIRMATIVE DEFENSE**

20 **(No Ratification)**

21 10. The Complaint, and each purported cause of action contained therein, is barred
22 in whole or in part because Defendant did not authorize, ratify, encourage, participate in, aid,
23 or abet any of the violations alleged by Plaintiffs.

24 **ELEVENTH AFFIRMATIVE DEFENSE**

25 **(Statutes of Limitations)**

26 11. The Complaint, and each cause of action is barred in whole or part by all
27 applicable statutes of limitations, including but not limited to California Code of Civil
28 Procedure sections 337,338, 339, 340.

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TWELFTH AFFIRMATIVE DEFENSE

(Rest and Meal Periods Authorized)

12. The Complaint, the Third Cause of Action relating to alleged unpaid meal periods, and the Fourth Cause of Action relating to alleged unpaid rest periods, all fail to state a claim because Defendant notified, authorized, and permitted Plaintiffs to take all required rest and/or meal periods at all times and any failure by Plaintiff to take such rest and/or meal periods was caused by Plaintiffs' own acts.

THIRTEENTH AFFIRMATIVE DEFENSE

(Res Judicata and/or Collateral Estoppel)

13. Some or all of Plaintiffs claims may be barred by the doctrines of Res Judicata and/or Collateral Estoppel because their claims have previously been adjudicated in a federal court action in the Central District of California.

FOURTEENTH AFFIRMATIVE DEFENSE

(Class Action Precluded)

14. Plaintiffs may not maintain this action as a class action or a representative action because the issue of class certification has already been adjudicated against them in a previous action.

FIFTEENTH AFFIRMATIVE DEFENSE

(Additional Defenses)

15. CPS reserves its right to assert additional affirmative defenses in the event discovery indicates that additional affirmative defenses are available to CPS.

WHEREFORE, CPS prays for judgment as follows:


1. That Plaintiffs take nothing by the Complaint;
2. That judgment be entered in favor of CPS and against Plaintiffs; and

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3. That CPS be awarded its costs and attorneys' fees
and any such other relief as the Court may deem
just and proper.

DATED: July 13, 2005

KNEE, ROSS & SILVERMAN LLP

By: 
JIM D. NEWMAN
Attorneys for Defendant
CONSTRUCTION PROTECTIVE SERVICES, INC.

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 18 and not a party to the within entitled action. My business address is 2049 Century Park
East, Suite 2050, Los Angeles, CA 90067.

5 On **July 13, 2005**, I served the following document described as **ANSWER OF**
6 **DEFENDANT CONSTRUCTION PROTECTIVE SERVICES, INC. TO**
7 **UNVERIFIED FIRST AMENDED COMPLAINT** on all parties in this action by placing a
true copy thereof enclosed in a sealed envelope addressed as follows:

8 Fenja Klaus, Esq.
9 CASTLE, PETERSEN AND KRAUSE, LLP
10 Attorneys At Law
11 4675 MacArthur Court, Suite 1250
12 Newport Beach, CA 92660
13 Tel.: (949) 417-5600
14 Fax: (949) 417-5610

15 (MAIL) I am readily familiar with the firm's practice of collecting and
16 processing correspondence for mailing. In the ordinary course of business it is deposited
17 with U.S. postal service on the same day that it is submitted for mailing. I am aware that
18 on motion by the party served, service is presumed invalid if the postal cancellation date or
19 postage meter date is more than 1 day after date of deposit for mailing stated in the
20 affidavit.

21 Executed on **July 13, 2005**, at Los Angeles, California.

22 (PERSONAL SERVICE) by personally delivering a true copy in a sealed
23 envelope to the offices of the addressee.

24 Executed on *, at Los Angeles, California.

25 (OVERNIGHT MAIL) I caused the above entitled document to be served by
26 overnight delivery in a sealed envelope to the offices of the addressee(s).

27 Executed on *, at Los Angeles, California.

28 (FACSIMILE) I caused the above entitled document to be served by facsimile
machine to the offices of the addressee(s).

Executed on *, at Los Angeles, California.

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

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