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and on behalf of all others similarly situated.

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Case #20CV365247
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

OSMAR OLEA and PAUL GARCIA, as
individuals and on behalf of all others
similarly situated,

Plaintiff,

vs.

RESPONSE TEAM 1 HOLDINGS d/b/a
JETSIDE HOLDINGS, LLC; ISOSCELES
HOLDINGS LLC d/b/a VENTURI
RESTORATION; MARK SAN
FRATELLO; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 20CV365247

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Reimburse Necessary Business-Related Expenses;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Pay All Wages Due Upon Separation of Employment;
8. Violation of Business and Professions Code §§ 17200, *et seq.*; and
9. Enforcement of Labor Code §§ 2698, *et seq.* ("PAGA")

1 Plaintiff Osmar Olea, individually, and on behalf of others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Osmar Olea and Paul Garcia (“Plaintiffs”) bring this putative class
5 action, pursuant to California Code of Civil Procedure § 382, and representative action, pursuant
6 to the Private Attorneys General Act of 2004 codified at California Labor Code §§ 2698, *et seq.*,
7 against defendants Response Team 1 Holdings, LLC d/b/a Jetside Holdings (“Jetside”), Isosceles
8 Holdings, LLC d/b/a Venturi Restoration (“Venturi”), Mark San Fratello, and DOES 1 through
9 20, inclusive (collectively, “Defendants”), on behalf of themselves as individuals, other
10 aggrieved employees, and on behalf of California citizens who are and were employed by
11 Defendants as non-exempt employees throughout California.

12 2. Defendants offer emergency response and property restoration services.

13 3. Through this action, Plaintiffs allege that Defendants have engaged in a
14 systematic pattern of wage and hour violations under the California Labor Code and Industrial
15 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
16 unfair competition.

17 4. Plaintiffs are informed and believe, and thereon alleges, that Defendants have
18 increased their profits by violating state wage and hour laws by, among other things:

- 19 (a) failing to pay all wages (including minimum wages and overtime wages);
- 20 (b) failing to pay overtime wages at the proper rates;
- 21 (c) failing to pay employees for required off-the-clock work;
- 22 (d) failing to provide lawful meal periods or compensation in lieu thereof;
- 23 (e) failing to authorize or permit lawful rest breaks or provide compensation
24 in lieu thereof;
- 25 (f) failing to reimburse employees for necessary business-related expenses;
- 26 (g) failing to compensate employees at twice the minimum wage, despite
27 requiring employees to provide and maintain tools, typically provided by
28 the employer and necessary to the trade (including general laborers tools

1 and specialized equipment for Defendant's projects on commercial and
2 residential buildings).

3 (h) failing to maintain or to provide accurate itemized wage statements; and

4 (i) failing to pay all wages due upon separation of employment.

5 5. Plaintiffs seek monetary relief against Defendants on behalf of themselves and all
6 others similarly situated in California to recover, among other things, unpaid wages and benefits,
7 interest, attorneys' fees, costs and expenses, and penalties pursuant to Labor Code §§ 201-203,
8 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1198,
9 2802, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

10 **JURISDICTION AND VENUE**

11 6. This is a class action pursuant to California Code of Civil Procedure § 382. The
12 monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdictional limits
13 of the Superior Court and will be established according to proof at trial.

14 7. This Court has jurisdiction over this action pursuant to the California Constitution,
15 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes, except those
16 given by statutes to other courts. The statutes under which this action is brought do not specify
17 any other basis for jurisdiction.

18 8. This Court has jurisdiction over all Defendants because, upon information and
19 belief, they are citizens of California, have sufficient minimum contacts in California, or
20 otherwise intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play and
22 substantial justice.

23 9. Venue is proper in this Court because, upon information and belief, Defendants
24 reside, transact business, or have offices in this county, and the acts and omissions alleged herein
25 took place in this county.

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28 **THE PARTIES**

1 10. Plaintiff Osmar Olea is a resident of California and worked for Defendants in
2 California during the relevant time periods as alleged herein.

3 11. Plaintiff Paul Garcia is a resident of California and worked for Defendants in
4 California during the relevant time periods as alleged herein.

5 12. Plaintiffs are informed and believe, and thereon alleges that at all times hereinafter
6 mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as
7 employers, whose employees were and are engaged throughout this county and the State of
8 California.

9 13. Plaintiffs are unaware of the true names or capacities of the defendants sued herein
10 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
11 First Amended Complaint and serve such fictitiously named defendants once their names and
12 capacities become known.

13 14. Plaintiffs are informed and believes, and thereon alleges, that DOES 1 through 20
14 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at
15 all relevant times.

16 15. Plaintiffs are informed and believes, and thereon alleges, that each defendant
17 acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint
18 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
19 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
20 the employer and/or joint employer of Plaintiffs and the class members.

21 16. Plaintiffs are informed and believes, and thereon alleges, that each and all of the
22 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
23 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
24 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
25 the official policy of Defendants.

26 17. At all relevant times, Defendants, and each of them, acted within the scope of such
27 agency or employment, or ratified each and every act or omission complained of herein. At all
28

1 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each
2 and all the other Defendants in proximately causing the damages herein alleged.

3 18. Plaintiffs are informed and believes, and thereon alleges, that each of said
4 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
5 omissions, occurrences, and transactions alleged herein.

6 **CLASS ACTION ALLEGATIONS**

7 19. Plaintiffs bring this action under Code of Civil Procedure § 382 on behalf of
8 themselves and all others similarly situated who were affected by Defendants' Labor Code,
9 Business and Professions Code §§ 17200, and IWC Wage Order violations.

10 20. All claims alleged herein arise under California law for which Plaintiffs seek relief
11 authorized by California law.

12 21. Plaintiffs' proposed class consists of and is defined as follows:

13 Class

14 All California citizens currently or formerly employed by Defendants as non-
15 exempt employees in the State of California within four years prior to the filing of
16 this action to the date the class is certified ("Class").

17 22. Plaintiffs also seeks to certify the following subclass of employees:

18 Waiting Time Subclass

19 All Class Members who separated their employment with Defendants at any time
20 within three years prior to the filing of this action to the date the class is certified
21 ("Subclass" or "Waiting Time Subclass").

22 23. Plaintiffs reserve the right to modify or re-define the Class, establish additional
23 subclasses, or modify or re-define any class or subclass definition as appropriate based on
24 investigation, discovery, and specific theories of liability.

25 24. Members of the Class and the Subclass described above will be collectively
26 referred to as "Class Members."

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1 25. There are common questions of law and fact as to the Class Members that
2 predominate over any questions affecting only individual members including, but not limited to,
3 the following:

- 4 (a) Whether Defendants fail to pay Plaintiffs and Class Members all wages
5 (including minimum wages, double time wages, and overtime wages) for
6 all hours worked by Plaintiff and Class Members.
- 7 (b) Whether Defendants paid Plaintiffs and other Class Members overtime
8 compensation at the proper rates;
- 9 (c) Whether Defendants failed to pay Plaintiffs and other Class Members for
10 required off-the-clock work.
- 11 (d) Whether Defendants required Plaintiffs and Class Members to work over
12 eight (8) hours per day, over twelve (12) hours per day, over forty (40)
13 hours per week, and/or seven (7) consecutive days and failed to pay them
14 overtime compensation at the proper rate.
- 15 (e) Whether Defendants deprived Plaintiffs and Class Members of timely
16 meal periods or required Plaintiffs and Class Members to work through
17 meal periods without proper compensation.
- 18 (f) Whether Defendants deprived Plaintiffs and Class Members of rest breaks
19 or required Plaintiffs and Class Members to work through rest breaks
20 without proper compensation.
- 21 (g) Whether Defendants failed to properly reimburse necessary business-
22 related expenses incurred by Plaintiffs and Class Members.
- 23 (h) Whether Defendants failed to pay Plaintiffs and other Class Members two
24 times the applicable minimum wage to employees who were required to
25 provide and maintain hand tolls and equipment typically provided by the
26 employer and required for the trade.
- 27 (i) Whether Defendants failed to provide Plaintiffs and Class Members
28 accurate itemized wage statements.

1 (j) Whether Defendants failed to timely pay the Waiting Time Subclass all
2 wages due upon termination or within seventy-two (72) hours of
3 resignation.

4 (k) Whether Defendants' conduct was willful or reckless.

5 (l) Whether Defendants engaged in unfair business practices in violation of
6 Business and Professions Code §§ 17200, *et seq.*

7 26. There is a well-defined community of interest in this litigation and the proposed
8 Class and Subclass are readily ascertainable:

9 (a) Numerosity: The Class Members are so numerous that joinder of all
10 members is impractical. Although the members of the entire Class and Subclass are unknown to
11 Plaintiff at this time, on information and belief, the class is estimated to be greater than twenty-
12 five (25) individuals. The identities of the Class Members are readily ascertainable by inspection
13 of Defendants' employment and payroll records.

14 (b) Typicality: The claims (or defenses, if any) of Plaintiffs are typical of the
15 claims (or defenses, if any) of the Class Members because Defendants' failure to comply with
16 the provisions of California's wage and hour laws entitled each Class Member to similar pay,
17 benefits, and other relief. The injuries sustained by Plaintiffs are also typical of the injuries
18 sustained by the Class Members because they arise out of and are caused by Defendants' common
19 course of conduct as alleged herein.

20 (c) Adequacy: Plaintiffs will fairly and adequately represent and protect the
21 interests of all Class Members because it is in his best interest to prosecute the claims alleged
22 herein to obtain full compensation and penalties due to him and the Class Members. Plaintiffs'
23 attorneys, as proposed class counsel, are competent and experienced in litigating large
24 employment class actions and versed in the rules governing class action discovery, certification,
25 and settlement. Plaintiffs have incurred and, throughout the duration of this action, will continue
26 to incur attorneys' fees and costs that have been and will be necessarily expended for the
27 prosecution of this action for the substantial benefit of the Class Members.
28

1 (d) Superiority: The nature of this action makes use of class action
2 adjudication superior to other methods. A class action will achieve economies of time, effort, and
3 expense as compared with separate lawsuits and will avoid inconsistent outcomes because the
4 same issues can be adjudicated in the same manner for the entire Class and Subclass at the same
5 time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently manage
6 this case as a class action.

7 (e) Public Policy Considerations: Employers in the State of California violate
8 employment and labor laws every day. Current employees are often afraid to assert their rights
9 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
10 because they believe their former employers might damage their future endeavors through
11 negative references and/or other means. Class actions provide class members who are not named
12 in the complaint with a type of anonymity that allows for the vindication of their rights while
13 affording them privacy protections.

14 **GENERAL ALLEGATIONS**

15 27. At all relevant times mentioned herein, Defendants employed Plaintiffs and other
16 California residents as non-exempt employees at Defendants' California business location(s).

17 28. Defendants employed Plaintiffs as non-exempt employees at Defendants'
18 California business location.

19 29. Defendants continue to employ non-exempt employees within California.

20 30. Plaintiffs are informed and believe, and thereon alleges, that at all times herein
21 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who
22 were knowledgeable about California's wage and hour laws, employment and personnel
23 practices, and the requirements of California law.

24 31. Plaintiffs are informed and believes, and thereon alleges, that Defendants knew
25 or should have known that Plaintiffs and Class Members were entitled to receive wages for all
26 time worked (including minimum wages and overtime wages) and that they were not receiving
27 all wages earned for work that was required to be performed. In violation of the Labor Code and
28 IWC Wage Orders, Plaintiffs and Class Members were not paid all wages (including minimum

1 wages, double time wages, and overtime wages) due to Defendants illegal employment practices,
2 including, but not limited to: requiring unpaid off-the clock work; failing to pay at least two (2)
3 times the applicable minimum wage rate to employees who were required to provide and
4 maintain hand tools and equipment customarily provided by the employer and required for the
5 employees' trade; failing to pay for daily overtime wages; failing to pay Plaintiff and other Class
6 Members for "waiting time" in between service calls; and failing to pay Plaintiffs and other Class
7 Members at the proper hourly rates for all hours worked, among other reasons.

8 32. Plaintiffs are informed and believe, and thereon alleges, that Defendants
9 improperly calculated the overtime rate of pay for Plaintiffs and Class Members because the rates
10 did not include non-discretionary wages, including, but not limited to, bonuses, shift premiums,
11 and/or other incentive pay into the computation of their regular rate of pay for purposes of
12 calculating the overtime rate of pay.

13 33. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew or
14 should have known that Plaintiffs and Class Members were entitled to receive all required meal
15 periods or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular
16 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
17 Labor Code and IWC Wage Orders, Plaintiffs and Class Members did not receive all meal periods
18 or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of
19 pay when they did not receive a timely, uninterrupted meal period.

20 34. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew or
21 should have known that Plaintiffs and Class Members were entitled to receive all rest breaks or
22 payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of pay
23 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiffs
24 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
25 at Plaintiffs' and Class Members' regular rate of pay when a rest break was missed.

26 35. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew or
27 should have known that Plaintiffs and Class Members were entitled to reimbursement for
28 necessary expenditures incurred in connection with the performance and execution of their job

1 duties. In violation of the California Labor Code, Plaintiffs and Class Members did not receive
2 adequate reimbursement for necessary business expenses, including, but not limited to,
3 reimbursement for: the purchase and maintenance of tools, typically provided by the employer
4 and necessary for the trade; travel and gasoline expenses; and for necessary business expenditures
5 such as dry-wall and caulking materials.

6 36. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew or
7 should have known that Plaintiffs and Class Members were entitled to receive itemized wage
8 statements that accurately showed the following information pursuant to the Labor Code: (1)
9 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
10 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
11 deductions, provided that all deductions made on written orders of the employee may be
12 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
13 which the employee is paid; (7) the name of the employee and only the last four digits of his or
14 her social security number or an employee identification number other than a social security
15 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
16 hourly rates in effect during the pay period and the corresponding number of hours worked at
17 each hourly rate by the employee. In violation of the Labor Code, Plaintiffs and Class Members
18 were not provided with accurate itemized wage statements.

19 37. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew or
20 should have known that the Waiting Time Subclass was entitled to timely payment of wages due
21 upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass did
22 not receive payment of all wages within permissible time periods.

23 38. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew or
24 should have known they had a duty to compensate Plaintiffs and Class Members, and Defendants
25 had the financial ability to pay such compensation but willfully, knowingly, and intentionally
26 failed to do so in order to increase Defendants' profits.

27 39. Therefore, Plaintiffs bring this lawsuit seeking monetary and injunctive relief
28 against Defendants on behalf of himself and all Class Members to recover, among other things,

1 unpaid wages (including minimum wages, double time wages, and overtime wages), unpaid meal
2 period premium payments, unpaid rest period premium payments, interest, attorneys' fees,
3 penalties, costs, and expenses.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGES**

6 (Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197; Violation of IWC Wage Order §3-4)

7 40. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
8 though fully set forth herein.

9 41. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
10 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
11 wage than the minimum so fixed is unlawful.

12 42. During the relevant time period, Defendants paid Plaintiffs and Class Members
13 less than minimum wages when they failed to pay proper compensation for all hours worked. To
14 the extent these hours do not qualify for the payment of overtime, Plaintiffs and Class Members
15 were not being paid at least the lawful minimum wage for their work.

16 43. During the relevant time period, Defendants regularly failed to pay at least
17 minimum wage to Plaintiffs and Class Members for all hours worked pursuant to Labor Code
18 §§ 1194 and 1197.

19 44. Defendants' failure to pay Plaintiffs and Class Members the required minimum
20 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class
21 Members are entitled to recover the unpaid balance of their minimum wage compensation as well
22 as interest, costs, and attorneys' fees.

23 45. Pursuant to Labor Code § 1194.2, Plaintiffs and Class Members are entitled to
24 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
25 interest thereon.

26 **SECOND CAUSE OF ACTION**

27 **FAILURE TO PAY OVERTIME**

28 (Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)

1 46. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
2 though fully set forth herein.

3 47. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
4 unlawful to employ persons without compensating them at a rate of pay either one and one-half
5 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours or days
6 worked by the person on a daily or weekly basis.

7 48. Specifically, the applicable IWC Wage Orders provide that Defendants are and
8 were required to pay overtime compensation to Plaintiffs and Class Members at the rate of one
9 and one-half times (1½) their regular rate of pay when working and for all hours worked in
10 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
11 eight (8) hours of work on the seventh day of work in a workweek.

12 49. The applicable IWC Wage Orders further provide that Defendants are and were
13 required to pay overtime compensation to Plaintiffs and Class Members at a rate of two times
14 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours
15 in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

16 50. California Labor Code § 510 codifies the right to overtime compensation at one
17 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in
18 a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
19 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
20 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
21 seventh day of work in a workweek.

22 51. Labor Code § 510 and the applicable IWC Wage Orders provide that employment
23 of more than six days in a workweek is only permissible if the employer pays proper overtime
24 compensation as set forth herein.

25 52. Plaintiffs and Class Members were non-exempt employees entitled to the
26 protections of California Labor Code §§ 510 and 1194.

27 53. During the relevant time period, Defendants required Plaintiffs and Class
28 Members to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or for a

seventh consecutive day in a workweek without paying Plaintiffs and Class Members proper overtime wages for their work.

54. During the relevant time period, Defendants failed to pay Plaintiffs and Class Members overtime wages for all overtime hours worked when Plaintiff and Class Members worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh consecutive day of work in a workweek, or when Plaintiffs and Class Members worked in excess of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a work week.

55. During the relevant time period, Defendants failed to pay Plaintiffs and Class Members overtime wages at the correct rate because they failed to include non-discretionary wages, including, but not limited to, bonuses, shift premiums, and/or other incentive pay in the computation of their overtime rate of pay, which caused Plaintiffs and Class Members to not be paid all overtime wages owed.

56. In violation of state law, Defendants knowingly and willfully refused to perform their obligations and compensate Plaintiffs and Class Members for all wages earned and all hours worked.

57. Defendants' failure to pay Plaintiffs and Class Members the unpaid balance of overtime and double time compensation, as required by California law, violates the provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

58. Pursuant to Labor Code § 1194, Plaintiffs and Class Members are entitled to recover their unpaid overtime and double time compensation as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

59. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as though fully set forth herein

1 60. Labor Code § 226.7 provides that no employer shall require an employee to work
2 during any meal period mandated by the IWC Wage Orders.

3 61. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall employ
4 any person for a work period of more than five (5) hours without a meal period of not less than
5 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s
6 work the meal period may be waived by mutual consent of the employer and the employee.”

7 62. Labor Code § 512(a) provides that an employer may not require, cause, or permit
8 an employee to work for a period of more than five (5) hours per day without providing the
9 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the
10 total work period per day of the employee is not more than six (6) hours, the meal period may be
11 waived by mutual consent of both the employer and the employee.

12 63. Labor Code § 512(a) also provides that an employer may not employ an employee
13 for a work period of more than ten (10) hours per day without providing the employee with a
14 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no
15 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
16 employer and the employee only if the first meal period was not waived.

17 64. During the relevant time period, Plaintiffs and Class Members did not receive
18 compliant meal periods for working more than five (5) and/or ten (10) hours per day because their
19 meal periods were missed, late, short, interrupted, and/or they were not permitted to take a second
20 meal period.

21 65. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order requires
22 an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of
23 compensation for each work day that a compliant meal period is not provided.

24 66. At all relevant times, Defendants failed to pay Plaintiffs and Class Members meal
25 period premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code
26 § 226.7(b) and section 11 of the applicable IWC Wage Order.

1 67. As a result of Defendants' failure to pay Plaintiffs and Class Members an
2 additional hour of pay for each day a compliant meal period was not provided, Plaintiffs and Class
3 Members suffered and continue to suffer a loss of wages and compensation.

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO PERMIT REST BREAKS**

6 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

7 68. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
8 though fully set forth herein.

9 69. Labor Code § 226.7(a) provides that no employer shall require an employee to
10 work during any rest period mandated by the IWC Wage Orders.

11 70. Section 12 of the applicable IWC Wage Order states "[e]very employer shall
12 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
13 the middle of each work period[,]" and the "[a]uthorized rest period time shall be based on the
14 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
15 fraction thereof[,]" unless the total daily work time is less than three and one-half (3½) hours.

16 71. During the relevant time period, Plaintiffs and Class Members did not receive a
17 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because they
18 were required to work through their daily rest periods, were not permitted to take timely rest
19 periods, and/or were not authorized to take their rest periods.

20 72. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
21 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
22 compensation for each work day that a compliant rest period is not provided.

23 73. At all relevant times, Defendants failed to pay Plaintiffs and Class Members rest
24 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
25 226.7(b) and section 12 of the applicable IWC Wage Order.

26 74. As a result of Defendants' failure to pay Plaintiffs and Class Members an
27 additional hour of pay for each day a compliant rest period was not provided, Plaintiffs and Class
28 Members suffered and continue to suffer a loss of wages and compensation.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

3 **(Violation of Labor Code §§ 2800, 2802)**

4 75. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 76. Labor Code § 2800 states that an employer shall in all cases indemnify his
7 employee for losses.

8 77. Labor Code § 2802 requires employers to indemnify their employees for all
9 necessary expenditures or losses incurred by employees in direct consequence of the discharge of
10 their duties.

11 78. Section 9 of the applicable IWC Wage Order states that when tools or equipment
12 are required by the employer or are necessary to the performance of a job, such tools and
13 equipment shall be provided and maintained by the employer.

14 79. During the relevant time period, Defendants required Plaintiff and class members
15 to incur travel expenses without properly compensating them for such expenses.

16 80. During the relevant time period, Defendants required Plaintiff and class members
17 to store, care for, and maintain its company vehicles, but did not properly reimburse employees
18 for these expenses.

19 81. During the relevant time period, Defendants required Plaintiff and class members
20 to purchase, store, and maintain their own tools, which were necessary for the trade and typically
21 provided by the employer, but failed to pay Plaintiff and other class members at two (2) times the
22 minimum wage for all hours worked.

23 82. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify
24 Plaintiff and class members for these expenses.

25 83. In committing the violations as herein alleged, Defendants have intentionally and
26 willfully failed to fully reimburse Plaintiff and class members for necessary business-related costs
27 and expenses. As a direct result, Plaintiff and class members have suffered and continue to suffer
28

1 substantial losses relating to the use and enjoyment of such compensation, wages, expenses, and
2 attorney's fees.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

5 (Violation of Labor Code § 226)

6 84. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
7 though fully set forth herein.

8 85. Labor Code § 226(a) requires Defendants to provide each employee with an
9 accurate wage statement in writing showing nine pieces of information, including, the following:
10 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
11 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
12 deductions, provided that all deductions made on written orders of the employee may be
13 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
14 which the employee is paid, (7) the name of the employee and the last four digits of his or her
15 social security number or an employee identification number other than a social security number,
16 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
17 rates in effect during the pay period and the corresponding number of hours worked at each hourly
18 rate by the employee.

19 86. During the relevant time period, Defendants have knowingly and intentionally
20 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiffs
21 and Class Members. Defendants provided Plaintiffs and Class Members with wage statements
22 that were missing or inaccurately stated one or more of the following items: (1) gross wages
23 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any
24 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
25 that all deductions made on written orders of the employee may be aggregated and shown as one
26 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid,
27 (7) the name of the employee and the last four digits of his or her social security number or an
28 employee identification number other than a social security number, (8) the name and address of

1 the legal entity that is the employer, and/or (9) all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate by the employee.

3 87. As a result of Defendants' knowing and intentional failure to comply with Labor
4 Code § 226(a), Plaintiffs and Class Members have suffered injury and damage to their statutorily-
5 protected rights. Specifically, Plaintiffs and Class Members are deemed to suffer an injury
6 pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor Code §
7 226(a). Plaintiffs and Class Members were denied both their legal right to receive, and their
8 protected interest in receiving, accurate itemized wage statements under Labor Code § 226(a). In
9 addition, because Defendants failed to provide the accurate rates of pay on wage statements,
10 Defendants prevented Plaintiffs and Class Members from determining if all hours worked were
11 paid at the appropriate rate and the extent of the underpayment. Plaintiffs have had to file this
12 lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiffs to incur
13 expenses and lost time. Plaintiffs would not have had to engage in these efforts and incur these
14 costs had Defendants provided the accurate hours worked, wages earned, and rates of pay. This
15 has also delayed Plaintiffs' ability to demand and recover the underpayment of wages from
16 Defendants.

17 88. Plaintiffs and Class Members are entitled to recover from Defendants the greater
18 of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
19 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
20 (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding
21 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

22 89. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs and
23 Class Members from knowing, understanding, and disputing the wages paid to them and resulted
24 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
25 intentional failure to comply with California Labor Code § 226(a), Plaintiff and Class Members
26 have suffered an injury, in the exact amount of damages and/or penalties to be shown according
27 to proof at trial.
28

1 90. Class Members that are still employed by Defendants are also entitled to injunctive
2 relief under California Labor Code § 226(h), compelling Defendants to comply with California
3 Labor Code § 226. Accordingly, affected Class Members seek the recovery of attorneys' fees and
4 costs incurred in obtaining this injunctive relief.

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

7 (Violation of Labor Code §§ 201, 202, and 203)

8 91. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
9 though fully set forth herein.

10 92. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
11 the wages earned and unpaid at the time of discharge are due and payable immediately, and that
12 if an employee voluntarily leaves his employment, his or her wages shall become due and payable
13 not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72)
14 hours previous notice of an intention to quit, in which case the employee is entitled to his or her
15 wages at the time of quitting.

16 93. During the relevant time period, Defendants willfully failed to pay the Waiting
17 Time Subclass all their earned wages upon termination, including, but not limited to, proper
18 minimum wage and overtime compensation, meal period premiums, and rest period premiums
19 either at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
20 employ.

21 94. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the
22 time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in
23 violation of Labor Code §§ 201 and 202.

24 95. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
25 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then
26 the wages of the employee shall continue as a penalty from the due date at the same rate until paid
27 or until an action is commenced; but the wages shall not continue for more than thirty (30) days.
28

96. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members' regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a maximum of thirty (30) days.

EIGHTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

(Violation of Business and Professions Code §§ 17200, *et seq.*)

97. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as though fully set forth herein.

98. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice . . .”

99. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on a violation of any state or federal law. In the instant case, Defendants' policies and practices violated state law, causing Plaintiffs and Class Members to suffer and continue to suffer injuries-in-fact.

100. Defendants' policies and practices violated state law in at least the following respects:

(a) Failing to pay all wages earned (including minimum wage, double time, and overtime wages) to Plaintiffs and Class Members as a result of unpaid off-the-clock work, failing to compensate employees for providing and maintaining necessary tools for the trade, among other violations, in violation of Labor Code §§ 510, 1182.12, 1194, 1194.2, 1197, and 1198.

(b) Failing to pay all overtime wages at the proper rate to Plaintiffs and Class Members in violation of Labor Code §§ 510, 1194 and 1198;

(c) Failing to provide compliant meal periods without paying Plaintiffs and Class Members premium wages for every day said meal periods were not provided in violation of Labor Code §§ 226.7 and 512.

1 (d) Failing to authorize or permit compliant rest breaks without paying Plaintiffs and
2 Class Members premium wages for every day said rest breaks were not authorized
3 or permitted in violation of Labor Code § 226.7.

4 (e) Failing to reimburse Plaintiff and class members for necessary business expenses,
5 in violation of Labor Code §§ 2800 and 2802.

6 (f) Failing to provide Plaintiffs and Class Members with accurate itemized wage
7 statements in violation of Labor Code § 226.

8 (g) Failing to timely pay all earned wages to the members of the Waiting Time
9 Subclass upon separation of employment in violation of Labor Code §§ 201, 202,
10 and 203.

11 101. As alleged herein, Defendants systematically engaged in unlawful conduct in
12 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
13 (minimum and overtime wages), failing to provide meal periods and rest breaks or compensation
14 in lieu thereof, failing to furnish accurate wage statements, and failing to pay all wages due and
15 owing upon separation of employment in a timely manner, all in order to decrease their costs of
16 doing business and increase their profits.

17 102. At all relevant times herein, Defendants held themselves out to Plaintiffs and Class
18 Members as being knowledgeable concerning the labor and employment laws of California.

19 103. At all times relevant herein, Defendants intentionally avoided paying Plaintiffs
20 and Class Members wages and monies, thereby creating for Defendants an artificially lower cost
21 of doing business in order to undercut their competitors and establish and/or gain a greater
22 foothold in the marketplace.

23 104. As a result of Defendants' intentional, willful, purposeful, and wrongful
24 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
25 Plaintiffs and Class Members suffered a loss of wages and monies, all in an amount to be shown
26 according to proof at trial.
27
28

1 105. By violating the foregoing statutes and regulations as herein alleged, Defendants'
2 acts constitute unfair and unlawful business practices under California Business and Professions
3 Code §§ 17200, *et seq.*

4 106. As a result of the unfair and unlawful business practices of Defendants, as alleged
5 herein, Plaintiffs and Class Members are entitled to injunctive relief, disgorgement, and restitution
6 in an amount to be shown according to proof at trial.

7 107. Plaintiffs seek to enforce important rights affecting the public interest within the
8 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein,
9 has been and continues to be unfair, unlawful, and harmful to Plaintiffs, Class Members, and the
10 general public. Based on Defendants' conduct as alleged herein, Plaintiffs and Class Members
11 are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

12 **NINTH CAUSE OF ACTION**

13 **ENFORCEMENT OF LABOR CODE §§ 2698, ET SEQ. ("PAGA")**

14 108. Plaintiffs hereby re-allege and incorporates by reference the paragraphs above as
15 though fully set forth herein.

16 109. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
17 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
18 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for
19 violation of the Labor Code may, as an alternative, be recovered through a civil action brought
20 by an aggrieved employee on behalf of himself or herself and other current or former employees
21 pursuant to the procedures specified in Labor Code § 2699.3.

22 110. For all provisions of the Labor Code except those for which a civil penalty is
23 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
24 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
25 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
26 period in which Defendants violated these provisions of the Labor Code.

27 111. The following sections of the Labor Code include those violated by Defendants
28 and those upon which Plaintiffs seek the recovery of civil penalties:

- (a) Labor Code §§ 201-203, 204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, and 1198 for failure to timely pay all earned wages (including minimum wages, double time wages, and overtime wages) owed to Plaintiffs and other aggrieved employees during employment and upon separation of employment as herein alleged;
- (b) Labor Code §§ 510, 1194 and 1198 for failing to pay Plaintiff and other class members at the correct overtime rate of pay;
- (c)
- (d) Labor Code §§ 226.7 and 512 for failure to provide meal periods to Plaintiffs and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;
- (e) Labor Code § 226.7 for failure to permit rest breaks to Plaintiffs and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;
- (f) Labor Code §§ 2800 and 2802 for failure to reimburse necessary business expenses to Plaintiff and other aggrieved employees as herein alleged;
- (g) Labor Code §§ 226 and 226.3 for failure to provide accurate itemized wage statements to Plaintiffs and other aggrieved employees as herein alleged; and
- (h) Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees.

112. Plaintiffs are “aggrieved employees” because they were employed by the alleged violator and had one or more of the violations committed against him, and therefore are properly suited to represent the interests of all other aggrieved employees.

113. Plaintiffs have exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

114. Pursuant to Labor Code §§ 2699(a), 2699.3, and 2699.5, Plaintiffs are entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

115. For bringing this action, Plaintiffs are entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiffs, as individuals and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification under California Code of Civil Procedure § 382 of the proposed Class, Waiting Time Subclass, and any other appropriate subclasses;

2. For appointment of Osmar Olea and Paul Garcia as the class representatives;

3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;

4. For compensatory damages in an amount according to proof at trial;

5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties;

6. For economic and/or special damages in an amount according to proof at trial;

7. For liquidated damages pursuant to Labor Code § 1194.2;

8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;

10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;

12. For pre-judgment interest;

13. For civil penalties;

1 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
2 by law, including, but not limited to, Code of Civil Procedure § 1021.5, Labor Code §§ 226(e),
3 1194, and 2698, *et seq.*; and

4 15. For such other relief as the Court deems just and proper.
5

6 Dated: January 19, 2022

AEGIS LAW FIRM, PC

7
8 By: 
9 Jessica L. Campbell
10 Alexander G.L. Davies
11 Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

On January 20, 2022, I served the foregoing document entitled:

• **SECOND AMENDED CLASS ACTION COMPLAINT**
on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true copy thereof on the party(ies) addressed below as follows:

Robert L. Shipley Brandon S. Gray ROBERT L. SHIPLEY, APLC 2784 Gateway Road, Suite 104 Carlsbad, CA 92009 Telephone: 760.438.5199 rshipley@shipleylaw.com bgray@shipleylaw.com <i>Attorneys for Defendant:</i> RESPONSE TEAM 1 HOLDINGS, LLC	Susan E. Bishop, Esq. BERLINER COHEN LLP Ten Almaden Boulevard Eleventh Floor San Jose, California 95113-2233 susan.bishop@berliner.com <i>Attorneys for Defendant:</i> ISOSCELES HOLDINGS, LLC
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☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed. R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

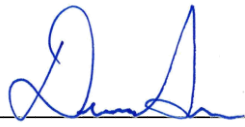
☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business practice of Aegis Law Firm PC for collection and processing correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal Code Civ. Proc.* § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via electronic transmission via the above listed email addresses on the date below. (*Cal. Code Civ. Proc.* § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.* 5(b)(2)(A).)

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

Executed on January 20, 2022, at Irvine, California.



Delaney Graves