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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Valeria Contreras, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

ROSA GOMEZ FELIX, on behalf of herself and
all others similarly situated,

Plaintiff,

vs.

WESTLAND SERVICES, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No. 37-2020-00015385-CU-OE-CTL

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, 1198);**
- (2) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (3) REST PERIOD VIOLATIONS
(LABOR CODE § 226.7, 516, 558);**
- (4) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (5) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203)**
- (6) FAILURE TO INDEMNIFY ALL
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE
§§ 2802 and 2804);**
- (7) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 et seq.).**
- (8) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §§
2698, et seq.)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Rosa Gomez Felix (“Plaintiff”), on behalf of herself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendant Westland Services, Inc. and DOES 1 through 100, inclusive
4 (collectively “Defendants”), and on information and belief allege as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business & Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226.7, 510, 512, 516, 558, 1182.12, 1194 *et seq.*,
9 1194.2 1197, 1198, 2802, 2804, 2698, *et seq.* and Industrial Welfare Commission Wage Order
10 No. 5 (“Wage Order 5”), in addition to seeking injunctive relief, declaratory relief, and restitution.

11 2. This Complaint is brought pursuant to California Code of Civil Procedure § 382.
12 The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdictional limits
13 of the Superior Court and will be established according to proof at trial.

14 3. This Court has jurisdiction over Defendants because, upon information and belief,
15 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
16 themselves to the California market so as to render the exercise of jurisdiction over them by the
17 California courts consistent with the traditional notions of fair play and substantial justice.

18 **VENUE**

19 4. Venue as to each Defendant is proper in this judicial district pursuant to California
20 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
21 complained of hereon occurred in San Diego County. Defendants own, maintain offices, transact
22 business, have agent(s) within San Diego County, and/or otherwise are found within San Diego
23 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

24 **PARTIES**

25 5. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
26 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
27 the filing of the Complaint in this action and within the statute of limitations periods applicable
28 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt

1 employee. Plaintiff was and is a victim of Defendants' policies and/or practices complained of
2 herein, lost money and/or property, and have been deprived of the rights guaranteed by California
3 Business & Professions Code § 17200 *et seq.*, Labor Code §§ 201-204, 226.7, 510, 512, 516, 558,
4 1182.12, 1194, *et seq.*, 1194.2, 1197, 1198, 2802, 2804, 2698, *et seq.* and Wage Order 5, which
5 sets employment standards for the public housekeeping industry.

6 6. Plaintiff is informed and believes, and based thereon alleges, that during the statute
7 of limitations applicable to each cause of action herein and continuing to the present, Defendants
8 were (and continue to be) in the business of cleaning facilities and living units in San Diego
9 County and other counties throughout California, and employed Plaintiff and other, similarly-
10 situated non-exempt employees within San Diego County and the State of California and,
11 therefore, were (and are) doing business in San Diego County and the State of California.

12 7. Plaintiff does not know the true names or capacities, whether individual, partner,
13 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
14 defendants are sued under such fictitious names. Plaintiff will seek leave from this Court to amend
15 this Complaint when such true names and capacities are discovered. Plaintiff is informed,
16 believes, and based thereon alleges that each of said fictitious defendants, whether individual,
17 partners, or corporate, was responsible in some manner for the acts and omissions alleged herein,
18 and proximately caused Plaintiff and the Classes (as defined in Paragraph 17) to be subject to the
19 unlawful employment practices, wrongs, injuries, and damages complained of herein.

20 8. Plaintiff is informed, believes, and thereon alleges that at all times mentioned
21 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

22 9. At all times mentioned herein, each of said Defendants participated in the doing
23 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
24 Defendants, and each of them, were the agents, servants, and employees of each and every one of
25 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned,
26 were acting within the course and scope of said agency and employment. Defendants, and each
27 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
28 omissions complained of herein.

1 10. At all times mentioned herein, Defendants, and each of them, were members of
2 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
3 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
4 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
5 members of the Classes.

6 **GENERAL FACTUAL ALLEGATIONS**

7 11. Plaintiff was employed by Defendants as a non-exempt “cleaner” during the time
8 periods relevant to the claims and causes of action pled herein. Plaintiff worked for Defendants
9 until approximately June 2018, when Plaintiff went on leave, and her employment was terminated
10 by Defendants in or about November 2019. As a cleaner, Plaintiff was generally assigned to clean
11 an entire building by herself each day.

12 12. During Plaintiff’s employment with Defendants, Defendants utilized a
13 timekeeping system which failed to compensate Plaintiff and other non-exempt employees for all
14 hours actually worked. Specifically, upon information and belief, Defendants only paid Plaintiff
15 and other non-exempt employees for exactly 8 hours of work in a given workday, regardless of
16 how much time was actually spent working. In addition, Plaintiff and other non-exempt
17 employees did not record their hours worked; rather, a supervisor would input a predetermined
18 number of hours (generally 8 hours per day) on employee timesheets, which upon information
19 and belief, did not represent all hours actually worked by Plaintiff and other non-exempt
20 employees. As a result, Plaintiff and other non-exempt employees have not been paid for all hours
21 worked, including on workdays when they worked over 8 hours and/or in workweeks when they
22 worked over 40 hours. Additionally, Defendants automatically deducted 30 minutes for a
23 purported meal period for each shift worked, irrespective of whether or not a full 30-minute meal
24 period was actually provided or taken, resulting in additional unpaid wages. The foregoing
25 timekeeping policies and/or practices regularly, systematically, and impermissibly under-reported
26 the hours worked by Plaintiff and other non-exempt employees, resulting in the failure to
27 compensate Plaintiff and other non-exempt employees for all hours worked, resulting in unpaid
28 minimum wages and overtime wages.

1 13. Plaintiff and other non-exempt employees also were not authorized and permitted
2 to take all legally compliant rest periods. Upon information and belief, Defendants understaffed
3 buildings and assigned non-exempt employees with more than 8 hours of job duties per workday,
4 such that Plaintiff and other non-exempt employees were unable to take a duty-free 10-minute
5 rest period per each 4 hours worked or major fraction thereof, due to the demands of their job
6 duties and the volume of work assigned to them. Upon information and belief, during at least a
7 portion of the putative class period, Defendants did not maintain any payroll code or other
8 mechanism for payment of rest period premiums as required by Labor Code § 226.7. Despite
9 failing to authorize and permit Plaintiff and other non-exempt employees to take all rest periods
10 to which they are entitled, upon information and belief, Defendants maintained no mechanism for
11 the payment of rest period premium payments as required by Labor Code section 226.7 and did
12 not pay Plaintiff or other non-exempt employees any rest period premiums.

13 14. Plaintiff and other non-exempt employees also were not provided with all legally
14 compliant meal periods due to Defendants' meal period policies/practices, which routinely failed
15 to provide Plaintiff and other non-exempt employees with a duty-free, uninterrupted 30-minute
16 meal period commencing before the end of the fifth hour of work. Specifically, Defendants failed
17 to provide Plaintiff and other non-exempt employees with their meal periods due to their
18 understaffing of their buildings, including, *inter alia*, staffing only one employee for an entire
19 building and assigning more than 8 hours of job duties, such that non-exempt employees were
20 often unable to take a duty-free 30 minute meal period during their shift. In addition, Plaintiff and
21 other non-exempt employees did not clock out for a meal periods, but Defendants would
22 nevertheless deduct a full 30 minutes from their pay each workday for purported meal periods.
23 In the event that a legally compliant meal period was not in fact provided, Plaintiff was not paid
24 the meal period premium required by Labor Code § 226.7. Upon information and belief, during
25 at least a portion of the relevant time period, Defendants did not maintain a payroll code or other
26 mechanism for the payment of meal period premiums under Labor Code § 226.7 in the event that
27 they failed to provide a legally compliant meal period to their non-exempt employees.

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1 15. Defendants have also failed to reimburse Plaintiff and other non-exempt
2 employees for necessary business expenses. During Plaintiff's employment, Plaintiff was
3 required to use her personal cell phone to communicate with her supervisor regarding matters
4 associated with her job duties, such as which cleaning solutions to use for specific job duties.
5 Although Plaintiff was required to incur the expense of using her personal cell phone in
6 connection with her job duties, she was not reimbursed by Defendants for this expense. As a
7 result, Defendants have failed to reimburse Plaintiff and other non-exempt employees for
8 expenses incurred in the course of employment.

9 16. As a result of the above violations, Defendants also failed to timely pay Plaintiff
10 and other former non-exempt employees all wages owed at the time of their respective separations
11 from employment.

12 **CLASS AND COLLECTIVE ACTION ALLEGATIONS**

13 17. **Class Definitions:** Plaintiff brings this action on behalf of herself and the
14 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 15 a. The Overtime Class consists of all of Defendants' current and former non-exempt
16 employees in California who worked more than 8 hours in a workday and/or 40
17 hours in a workweek, and: (i) were subject to Defendants' timekeeping policies
18 and/or practices; and/or (ii) had automatic deductions taken for purported meal
19 periods, during the four years immediately preceding the filing of this lawsuit
20 through the present.
- 21 b. The Minimum Wage Class consists of all of Defendants' current and former non-
22 exempt employees in California who (i) were subject to Defendants' timekeeping
23 policies and/or practices; and/or (ii) had automatic deductions taken for purported
24 meal periods, during the four years immediately preceding the filing of this lawsuit
25 through the present.
- 26 c. The Rest Period Class consists of all of Defendants' current and former non-
27 exempt employees in California who worked a shift of 3.5 hours or more, during
28 the four years immediately preceding the filing of this lawsuit through the present.

d. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 5.0 hours; and/or (ii) had 30 minutes automatically deducted from their timekeeping records, during the four years immediately preceding the filing of this lawsuit through the present.

e. The Expense Reimbursement Class consists of all of Defendants' current and former non-exempt employees in California who used their personal cellular phone in connection with their work duties, during the four years immediately preceding the filing of the Complaint through the present.

f. The Waiting Time Class consists of the members of the Overtime Class, Minimum Wage Class, Rest Period Class, and Meal Period Class whose employment with Defendants ended at any time during the three years preceding the filing of this lawsuit through the present.

18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes and subclasses are unknown to Plaintiff at this time; however, it is estimated that the Class Members number greater than one hundred (100) individuals as to each Class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

19. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation:

i. Whether Defendants violated the applicable Labor Code provisions including, but not limited to, §§ 510 and 1194, by requiring overtime work and not paying for said work according to the overtime laws of the State of California;

ii. Whether Defendants violated California law by requiring members of the Minimum Wage Class to perform work for Defendants without paying them at least the minimum wage for all hours worked;

- 1 iii. Whether Defendants’ policy/practice with respect to rest periods has deprived
2 members of the Rest Period Class of all legally-compliant rest periods to which
3 they have been entitled as a matter of law;
- 4 iv. Whether Defendants provided all legally compliant meal periods to members of
5 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 6 v. Whether Defendants provided rest and/or meal period premium payments for non-
7 compliant rest and/or meal periods;
- 8 vi. Whether Defendants’ reimbursement policies/practices failed to reimburse or
9 indemnify Expense Reimbursement Class members for necessary business
10 expenditures, thereby depriving members of the Expense Reimbursement Class of
11 all reimbursements to which they have been entitled as a matter of law;
- 12 vii. Whether Defendants failed to pay members of the Waiting Time Class all of their
13 final wages at the time of separation of employment.

14 20. **Predominance of Common Questions:** Common questions of law and fact
15 predominate over questions that affect only individual members of the Classes. The common
16 questions of law and fact set forth above are numerous and substantial, and stem from Defendants’
17 policies and/or practices applicable to each individual member of the Classes, including but not
18 limited to Defendants’ uniform timekeeping and meal and rest period policies and/or practices,
19 and their failure to provide reimbursement for cell phone expenses incurred for work-related
20 purposes. As such, these common questions predominate over individual questions concerning
21 each individual Class member’s showing as to their eligibility for recovery or as to the amount of
22 their damages.

23 21. **Typicality:** Plaintiff’s claims are typical of the Classes’ claims because
24 Defendants employed Plaintiff as a non-exempt employee in California during the statutes of
25 limitation applicable to each cause of action pled in this Complaint. As alleged herein, Plaintiff,
26 like the members of the Classes, was deprived of all overtime and minimum wages for all hours
27 worked, was not authorized and permitted all rest periods, was not provided all required meal
28 periods, did not receive premium pay for rest and/or meal period violations, was not paid all

wages owed at termination of employment, and did not receive all reimbursements to which he was entitled for necessary business expenses incurred.

22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

23. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee was required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would

1 substantially impair or impede the ability of the class members to protect their interests. Further,
2 the claims of the individual members of the class are not sufficiently large to warrant vigorous
3 individual prosecution considering all of the concomitant costs and expenses attending thereto.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME WAGES**

6 **(AGAINST ALL DEFENDANTS)**

7 24. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 25. This cause of action is brought on behalf of the Overtime Class pursuant to Labor
9 Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled
10 to all overtime wages and compensation for hours worked, and provide a private right of action
11 for the failure to pay all overtime compensation for overtime work performed.

12 26. Plaintiff and members of the Overtime Class worked overtime hours for
13 Defendants. At all times relevant herein, Defendants were required to properly compensate hourly
14 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
15 hours worked pursuant to California Labor Code § 1194 and IWC Wage Order No. 5. Wage Order
16 5, § 3 requires an employer to pay an employee “one and one-half (1½) times such employee’s
17 regular rate of pay” for work in excess of 8 hours per work day and/or in excess of 40 hours of
18 work in the workweek. Labor Code § 510 and Wage Order 5, Section 3 also require an employer
19 to pay an employee double the employee’s regular rate of work in excess of 12 hours each
20 workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. As
21 alleged herein, Defendants caused Plaintiff and the members of the Overtime Class to work in
22 excess of 8 hours in a workday and/or 40 hours in a workweek but did not properly compensate
23 Plaintiff and the members of the Overtime Class at one and one-half times (or two times, in the
24 case of double-time hours) their regular rate of pay for such hours.

25 27. Defendants’ policy and practice of requiring overtime work and not paying for all
26 overtime hours worked violates California Labor Code §§ 204, 210, 216, 510, 558, 1194, and
27 1198, and Wage Order 5.

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28. The foregoing policies and practices are unlawful and create an entitlement to recovery by Plaintiff and members of the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 218.6, 510, 558, 1194, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

**MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)**

29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

30. Wage Order 5, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorney's fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages, and interest accrued thereon.

31. Defendants' policy and practice of not paying all minimum wages violates California Labor Code §§ 204, 210, 216, 558, 1182.12, 1197.1, 1198, and the applicable IWC Wage Order.

32. Such a practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 218.6, 558, 1194, 1198, and Code of Civil Procedure § 1021.5.

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1 38. As a result, Defendants are responsible for paying premium compensation for meal
2 period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit,
3 according to California Labor Code §§ 226.7, 512, 558, 1198, and Wage Order 5, and Civil Code
4 §§ 3287(b) and 3289.

5 **FIFTH CAUSE OF ACTION**

6 **WAITING TIME PENALTIES**

7 **(AGAINST ALL DEFENDANTS)**

8 39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 40. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
10 an employer to pay all wages immediately at the time of termination of employment in the event
11 the employer discharges the employee or the employee provides at least 72 hours of notice of
12 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
13 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
14 employee's last date of employment.

15 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
17 at their termination, including, among other things, all earned minimum and overtime wages and
18 all meal and rest period premiums owed.

19 42. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
20 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
21 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
22 to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was
23 willful within the meaning of Labor Code § 203.

24 43. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
25 Time Class their earned wages upon separation from employment results in a continued payment
26 of wages up to thirty days from the time the wages were due. Therefore, Plaintiff and members
27 of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus
28 reasonable attorneys' fees and costs of suit.

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO INDEMNIFY ALL NECESSARY BUSINESS EXPENDITURES**

3 **(AGAINST ALL DEFENDANTS)**

4 44. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 45. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
6 states that “an employer shall indemnify his or her employees for all necessary expenditures or
7 losses incurred by the employee in direct consequence of the discharge of his or her duties, or his
8 or her obedience to the directions of the employer.”

9 46. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
10 states that “any contract or agreement, express or implied, made by any employee to waive the
11 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
12 employee or her personal representative of any right or remedy to which she is entitled under the
13 laws of this State.”

14 47. As a proximate result of Defendants’ policies and/or practices in violation of Labor
15 Code §§ 2802 and 2804, and Wage Order 5, § 9, Plaintiff and members of the Expense
16 Reimbursement Class were damaged in sums, which will be shown according to proof.

17 48. Plaintiff and members of the Expense Reimbursement Class are entitled to
18 attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

19 49. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
20 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
21 Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall
22 accrue from the date on which they incurred the necessary expenditures.

23 **SEVENTH CAUSE OF ACTION**

24 **UNFAIR COMPETITION**

25 **(AGAINST ALL DEFENDANTS)**

26 50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27 51. Defendants have engaged, and continue to engage, in unfair and/or unlawful
28 business practices in California in violation of California Business & Professions Code § 17200

et seq., by: (a) failing to pay Plaintiff and members of the Overtime Class all earned overtime wages; (b) failing to pay Plaintiff and members of the Minimum Wage Class at least the minimum wage for all hours worked; (c) failing to authorize and permit all required duty-free rest periods to Plaintiff and members of the Rest Period Class, and/or failing to pay them rest period premiums payments; (d) failing to provide Plaintiff and Meal Period Class members all meal periods to which they are entitled, and failing to pay them meal period premiums; (e) failing to pay Plaintiff and members of the Waiting Time Class all wages due at separation of employment; and (f) failing to reimburse all necessary business expenses to Plaintiff and members of the Expense Reimbursement Class.

52. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff, and continues to deprive members of the Classes, of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

53. Because Plaintiff was and is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff, for herself and on behalf of the Class members, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Bus. & Prof. Code §§ 17203 and 17208.

54. The acts complained of herein occurred within the last four years immediately preceding the filing of this action.

55. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and those of the Classes, to obtain restitution, to secure injunctive relief on behalf of Plaintiff and Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover under Code of Civil Procedure § 1021.5.

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1 **EIGHTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **(AGAINST ALL DEFENDANTS)**

4 56. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
5 fully set forth herein.

6 57. Defendants have committed several Labor Code violations against Plaintiff,
7 members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee”
8 within the meaning of Labor Code § 2698 *et seq.* (“PAGA”), acting on behalf of herself and other
9 aggrieved employees, brings this representative action against Defendants to recover the civil
10 penalties due to Plaintiff, other aggrieved employees, and the State of California according to
11 proof, pursuant to Labor Code § 558 and § 2699 (a) and (h) including, but not limited to: (1)
12 \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
13 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
14 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
15 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
16 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
17 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
18 initial violation and \$1,000.00 for each subsequent violation of Lab. Code § 226 pursuant to Labor
19 Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200
20 for each subsequent violation per employee per pay period for those violations of the Labor Code
21 for which no civil penalty is specifically provided, based on the following Labor Code violations:

- 22 a. Failing to compensate aggrieved employees all overtime wages earned in violation
23 of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 24 b. Failing to compensate aggrieved employees the statutory minimum wage for all
25 hours worked in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197
26 and 1198;

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- c. Failing to authorize and permit aggrieved employees to take their statutorily mandated rest periods and failing to pay rest period premiums in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- d. Failing to provide aggrieved employees with their statutorily mandated meal periods and failing to pay meal period premiums in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- e. Failing to timely pay all final wages and compensation earned by aggrieved employees at the time of separation in violation of Labor Code §§ 201- 203;
- f. Failing to furnish accurate itemized wage statements to aggrieved employees, in violation of Labor Code § 226;
- g. Failing to reimburse aggrieved employees for all necessary business expenses in violation of Labor Code §§ 1198, 2802 and 2804;
- h. Failing to pay aggrieved employees all wages earned at least twice each calendar month in violation of Labor Code § 204; and
- i. Failing to maintain accurate records on behalf of aggrieved employees in violation of Labor Code § 1174.

58. On or around June 19, 2020, Plaintiff notified Westland Services, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified herein. Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

59. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which she is entitled to recover under California Labor Code § 2699(g).

1 **PRAYER**

2 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
3 this suit is brought against Defendants, jointly and severally, as follows:

- 4 1. For an order certifying the proposed Classes;
- 5 2. For an order appointing Plaintiff as representative of the Classes;
- 6 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 7 4. Upon the First Cause of Action, for compensatory, consequential, general and
8 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 9 5. Upon the Second Cause of Action, for payments of minimum wages, liquidated
10 damages, and penalties according to proof pursuant to Labor Code §§ 558, 1182.12, 1194, 1194.2
11 and 1199;
- 12 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
13 special damages according to proof pursuant to Labor Code §§ 226.7, 516, 558, and 1198;
- 14 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
15 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;
- 16 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
17 Labor Code § 203;
- 18 9. Upon the Sixth Cause of Action, for compensatory, consequential, general, and
19 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
- 20 10. Upon the Seventh Cause of Action, for injunctive relief and restitution to Plaintiff
21 and members of the Classes of all money and/or property unlawfully acquired by Defendants by
22 means of any acts or practices declared by this Court to be in violation of Business & Professions
23 Code § 17200 *et seq.*;
- 24 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
25 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
26 558 and 2699(a) and (f) including, but not limited to: 1) \$100.00 for each initial violation for each
27 failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional
28 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the

1 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent
2 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
3 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
4 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
5 violation of Labor Code § 226 pursuant to Labor Code § 226.3 per employee per pay period;
6 and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
7 employee per pay period for those violations of the Labor Code for which no civil penalty is
8 specifically provided, based on the violations of Labor Code sections cited in Paragraph 57 (a)-
9 (i);

10 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor
11 Code §§ 218.6, 1194(a), 2802(b) and Civil Code §§ 3287 and 3289;

12 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
13 §§ 1194 *et seq.*, 2699(g), 2802(c), and Code of Civil Procedure § 1021.5; and

14 14. For such other and further relief the Court may deem just and proper.
15

16 Dated: August 21, 2020
17 Respectfully submitted,
HAINES LAW GROUP, APC

18 By: 
19

Paul K. Haines
Attorneys for Plaintiff
20

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.
23

24 Dated: August 21, 2020
25 Respectfully submitted,
HAINES LAW GROUP, APC

26 By: 
27

Paul K. Haines
Attorneys for Plaintiff
28

PROOF OF SERVICE

Rosa Gomez Felix v. Westland Services, Inc.

San Diego County Superior Court Case No. 37-2020-00015385-CU-OE-CTL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 180, El Segundo, California 90245.

On August 24, 2020, I served the foregoing document(s) described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

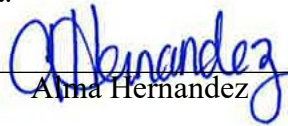
on the interested party(ies) in this action as follows:

Daniel E. Gardenswartz, Esq.
Email: dgardenswartz@swsslaw.com
Jing Y. Li, Esq.
Email: jli@swsslaw.com
SOLOMON WARD SEIDENWURM & SMITH, LLP
401 B Street, Suite 1200
San Diego, California 92101
Attorneys for Defendant *WESTLAND SERVICES, INC.*

☒ (VIA ELECTRONIC MAIL) I caused a true and correct copy of the document(s) described above to be electronically served on counsel of record at the electronic service addresses listed above by transmission through ONE LEGAL.

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

Executed on August 24, 2020, at El Segundo, California.


Alma Hernandez