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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

CARLOS HUMBERTO CARRILLO DIAZ,
an individual, on behalf of himself and others
similarly situated

PLAINTIFF,

v.

RECON360, LLC; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 20CV370603

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
2. Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7
3. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
4. Penalties Pursuant to Labor Code § 203
5. Violation of Business & Professions Code § 17200
6. Penalties Pursuant to Labor Code §2699, et seq.

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 11/30/2020 9:14 AM
Reviewed By: R. Walker
Case #20CV370603
Envelope: 5373485**

1 Plaintiff CARLOS HUMBERTO CARRILLO DIAZ, an individual, on behalf of himself,
2 all others similarly situated, and on behalf of the people of the State of California and as an
3 “aggrieved employee” under Labor Code Private Attorneys General Act of 2004, §2699, et seq.
4 (hereafter “PAGA”), complains of Defendant RECON360, LLC (“Defendant”) and each of them,
5 as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure
9 §382, and Labor Code §2699, et seq., on behalf of Plaintiff and a Proposed Class defined as:

10 All persons who are employed or have been employed as an hourly
11 employee by RECON360, LLC, in the State of California since four
12 (4) years prior to the filing of this action to the present plus any
13 additional time during which the statutes of limitation for the causes
14 of action herein were tolled pursuant to Emergency Rule 9 of the
15 California Rules of Court, the ‘Emergency Rules Related to
16 COVID-19’. (“Proposed Class”)

17 2. From at least four (4) years prior to the filing of this action and continuing to the
18 present, Defendant has had a consistent policy of failing to inform Proposed Class Members of
19 their right to take meal periods by way of a lawful policy and requiring Proposed Class Members
20 within the State of California, including Plaintiff, to work at least five (5) hours without a meal
21 period and failing to pay such employees one (1) hour of pay at the employees’ regular rate of
22 compensation for each workday that the meal period is not provided or provided after five (5)
23 hours, as required by California state wage and hour laws.

24 3. For at least four (4) years prior to the filing of this action and continuing to the
25 present, Defendant has had a consistent policy of failing to inform Proposed Class Members of
26 their right to take rest periods by way of a lawful policy and of failing to provide Proposed Class
27 Members within the State of California, including Plaintiff, rest periods of at least ten (10) minutes
28 per four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour
of pay at the employee’s regular rate of compensation for each workday that the rest period was
not provided, as required by California state wage and hour laws.

4. For at least four (4) years prior to the filing of this action and continuing to the

1 present, Defendant has failed to reimburse Plaintiff and the Proposed Class for the cost of personal
2 cellphone usage and mileage necessary to perform their job duties.

3 5. For at least three (3) years prior to the filing of this action continuing to the present,
4 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
5 the Proposed Class.

6 6. Plaintiff, on behalf of himself and all Proposed Class Members brings this action
7 pursuant to Labor Code §§203, 226.7, 512, and 2802; and California Code of Regulations, Title 8,
8 Section 11160, seeking meal and rest period penalties, unreimbursed personal cell phone usage
9 and mileage expenses for business related purposes, other penalties, injunctive and other equitable
10 relief, and reasonable attorneys' fees and costs.

11 7. Plaintiff, on behalf of himself and all Proposed Class members, pursuant to
12 Business & Professions Code §§17200-17208, also seeks injunctive relief, restitution, and
13 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

14 8. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
15 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
16 PAGA and continuing to the present, Defendant has violated several Labor Code provisions, as
17 detailed below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of himself and all
18 aggrieved employees presently or formerly employed by Defendant during the liability period as
19 defined in their PAGA notice letter (*see* Exhibit "1"), brings this representative action pursuant to
20 Labor Code §2699, et seq. seeking penalties for Defendant's failure to provide meal breaks, failure
21 to provide rest breaks, failure to reimburse expenses, and failure to pay all wages due upon
22 termination.

23 **II.**

24 **JURISDICTION AND VENUE**

25 9. This Court has subject matter jurisdiction over all causes of action asserted herein
26 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
27 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
28 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the

1 State of California or is subject to adjudication in the courts of the State of California.

2 10. This Court has personal jurisdiction over Defendant because Defendant has caused
3 injuries in the County of Santa Clara and the State of California through their acts, and by their
4 violation of the California Labor Code, California state common law, and California Business &
5 Professions Code § 17200, *et seq.*

6 11. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
7 Civil Procedure § 395. Defendant operates within California and do business within Santa Clara
8 County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class
9 Members within the State of California and the county of Santa Clara.

10 12. This case should be classified as complex according to Rule 3.400 of the California
11 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
12 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive
13 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
14 require substantial post judgment judicial supervision.

15 **III.**

16 **PARTIES**

17 **A. PLAINTIFF**

18 13. Plaintiff CARLOS HUMBERTO CARRILLO DIAZ is a resident of California.

19 14. Plaintiff and all Proposed Class Members, were regularly required to:

- 20 a. Work without being provided meal periods;
21 b. Work without being provided rest periods; and
22 c. Work without being reimbursed for their out of pocket expenses for
23 personal cell phone usage and mileage for business related purposes.

24 15. Defendant willfully failed to compensate Plaintiff and all Proposed Class members
25 for wages at the termination of employment.

26 16. As a result of this conduct, Defendant has engaged in unfair competition and
27 unlawful business practices.

28 17. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA

are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code §2699(c).)

B. DEFENDANTS

18. Defendant RECON360, LLC is believed to be a California corporation operating within the State of California. Defendant’s corporate address is believed to be 1659 Branham Lane, Suite F205 San Jose, CA 95118. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

19. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

20. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class Members.

21. Furthermore, Defendants acted in all respects as the employers or joint employers of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or engaged, thereby creating a common law employment relationship, with the Proposed Class. Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

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1 **IV.**

2 **FACTUAL BACKGROUND**

3 22. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
4 classified as non-exempt employees by Defendant. Defendant hires employees who work as hourly
5 employees who are paid on an hourly basis.

6 23. Upon information and belief, Plaintiff and the Proposed Class are covered by
7 California Industrial Welfare Commission Occupational Wage Order No. 16-2001 (Title 8 Cal.
8 Code of Regs. § 11160).

9 24. Defendant failed to inform Plaintiff and the members of the Proposed Class of their
10 right to take compliant meal periods by way of a lawful policy.

11 25. Plaintiff and all Proposed Class Members have been forced by Defendant to work
12 over five (5) hours in one day without being provided a thirty (30) minute uninterrupted meal break
13 and not being compensated one (1) hour of pay at the regular rate of compensation for each
14 workday that a meal period was not provided or provided after five (5) hours, all in violation of
15 California labor laws, regulations, and Industrial Welfare Commission Wage Orders.

16 26. Defendant failed to inform Plaintiff and the members of the Proposed Class of their
17 right to take compliant rest periods by way of a lawful policy.

18 27. Plaintiff and the Proposed Class have been required to work four (4) hour
19 increments (or major fractions thereof) without being provided with ten (10) minute rest periods
20 as required.

21 28. On a regular and consistent basis, Plaintiff and the Proposed Class have not been
22 properly reimbursed expenses associated with the cost of personal cellphone usage and mileage
23 necessary for the completion of their job duties.

24 29. Defendant willfully failed to pay wages and compensation when Plaintiff and all
25 Proposed Class members quit or were discharged. This failure was willful, without legal
26 justification, and interfered with Plaintiff's and Class Members' rights.

27 30. As a result, Plaintiff alleges Defendant has engaged in unfair competition.

28 31. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

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V.

CLASS ACTION ALLEGATIONS

32. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a proposed class composed of and defined as follows:

All persons who are employed or have been employed as an hourly employee by RECON360, LLC, in the State of California since four (4) years prior to the filing of this action to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“Proposed Class”)

33. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

34. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the Proposed Classes are easily ascertainable.

A. NUMEROSITY

35. The potential members of the Proposed Class as defined are so numerous that joinder of all the members of the Proposed Class is impracticable. While the precise number of proposed Class Members has not been determined at this time, Plaintiff is informed and believes that Defendant currently employs, and during the relevant time periods employed over 50 members of the Proposed Class.

36. Plaintiff alleges that Defendant’s employment records would provide information as to the number and location of all Proposed Class Members. Joinder of all members of the Proposed Class is not practicable.

B. COMMONALITY

37. There are questions of law and fact common to the Proposed Class that predominate over any questions affecting only individual Proposed Class Members. These common questions

of law and fact include, without limitation:

a. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 16-2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class of their right to take meal periods and by failing to provide required meal periods throughout the term of employment and failing to compensate said employees one (1) hours wages in lieu of rest periods;

b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 16-2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class of their right to take rest periods and failing to provide required rest periods throughout the term of employment and failing to compensate said employees one (1) hours wages in lieu of rest periods;

c. Whether Defendant violated Labor Code § 2802 and/or Wage Order 16-2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the cost of personal cellphone usage and mileage necessary for the completion of their job duties;

d. Whether Defendant violated §§201-203 of the Labor Code by failing to pay compensation due and owing at the time that any Proposed Class member's employment with Defendant terminated;

e. Whether Defendant violated §17200, *et seq.* of the Business & Professions Code by engaging in the acts previously alleged; and

f. Whether Plaintiff and the members of the Proposed Class are entitled to equitable relief pursuant to Business & Professions Code §17200, *et seq.*

g. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the acts alleged herein.

C. TYPICALITY

38. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and all members of the Proposed Class sustained injuries and damages arising out of and caused by Defendant's common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

1 **D. ADEQUACY OF REPRESENTATION**

2 39. Plaintiff will fairly and adequately represent and protect the interests of the
3 members of the proposed Class.

4 40. Counsel who represent Plaintiff and the Proposed Class are competent and
5 experienced in litigating large employment class actions.

6 **E. SUPERIORITY OF CLASS ACTION**

7 41. A class action is superior to other available means for the fair and efficient
8 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
9 practicable, and questions of law and fact common to the Proposed Class predominate over any
10 questions affecting only individual members of the Proposed Class. Each member of the Proposed
11 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
12 practice of failing to pay all wages due, failing to provide meal and rest periods, failing to
13 reimburse expenses, failing to provide accurate itemized wage statements, and failing to pay all
14 wages upon resignation or termination.

15 42. Class action treatment will allow those similarly situated persons to litigate their
16 claims in the manner that is most efficient and economical for the parties and the judicial system.
17 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
18 action that would preclude its maintenance as a class action.

19 **VI.**

20 **FIRST CAUSE OF ACTION**

21 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

22 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

23 **LABOR CODE § 226.7 AND LABOR CODE § 512**

24 43. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
25 by reference all previous paragraphs.

26 44. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
27 compensation for each meal period the employer fails to provide. Employees are entitled to a first
28 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the

1 first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts
2 over ten (10) hours. Defendant failed to maintain a policy informing Plaintiff and the Proposed
3 Class of these rights.

4 45. Defendant failed to inform Plaintiff and the members of the Proposed Class of their
5 right to take compliant meal periods by way of a lawful policy.

6 46. Defendant failed to provide Plaintiff and the Proposed Class with proper meal
7 periods of not less than thirty (30) minutes as required by the Labor Code during the relevant time
8 period. Plaintiff and members of the Proposed Class were required to keep radios, walkies talkies,
9 and/or phones on at all times during meal periods and were routinely interrupted during meal
10 periods. Plaintiff and the Proposed Class were not relieved of all duties and free from Defendant's
11 control.

12 47. Pursuant to Labor Code § 226.7, Plaintiff and the Class are entitled to damages in
13 an amount equal to one (1) hour of wages per missed meal break, per day in a sum to be proven at
14 trial.

15 **VII.**

16 **SECOND CAUSE OF ACTION**

17 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

18 **FAILURE TO ALLOW REST PERIODS PURSUANT TO**

19 **LABOR CODE § 226.7**

20 48. Plaintiff, on behalf of himself and the proposed Class, realleges and incorporates
21 by reference all previous paragraphs.

22 49. Labor Code § 226.7 requires an employer to pay an additional hour (1) of
23 compensation for each rest period the employer fails to provide. Employees are entitled to a paid
24 ten (10) minute rest break for every four (4) hours worked (or major fraction thereof). Defendant
25 failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

26 50. Defendant failed to inform Plaintiff and the members of the Proposed Class of their
27 right to take compliant rest periods by way of a lawful policy.

28 51. Defendant failed to provide Plaintiff and the Class with rest breaks of not less than

1 ten (10) minutes as required by the Labor Code during the relevant time period. Defendant
2 routinely failed to provide rest breaks at all.

3 52. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
4 damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven
5 at trial.

6 **VIII.**

7 **THIRD CAUSE OF ACTION**

8 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

9 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO**

10 **LABOR CODE § 2802**

11 53. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
12 by reference all previous paragraphs.

13 54. Labor Code §2802 requires employers to indemnify employees for or all necessary
14 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
15 her duties.

16 55. Defendant has failed to reimburse Plaintiff and the Proposed Class for the cost of
17 cellular usage for work and mileage used for transportation despite the fact that these expenditures
18 were necessary for the performance of their job duties.

19 56. Defendant required Plaintiff and the Proposed Class to have an application on their
20 personal cellphones to clock in and clock out. Defendant also routinely texted and called Plaintiff
21 and Proposed Class Members throughout the workday.

22 57. Defendant required Plaintiff and the Proposed Class to incur mileage on their
23 personal vehicles to travel for work. Upon information and belief, in or around October 2019,
24 Defendant began to provide a company card for purchase of gas.

25 58. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have
26 been deprived of reimbursement in the amounts to be determined at trial, and are entitled to
27 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

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1 **IX.**

2 **FOURTH CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

5 59. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
6 by reference all previous paragraphs.

7 60. Numerous members of the Proposed Class including the Plaintiff are no longer
8 employed by Defendant. They were either fired or quit Defendant's employ.

9 61. Defendant's failure to pay wages, as alleged above was willful in that Defendant
10 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
11 penalties under Labor Code §203, which provides that an employee's wages shall continue as a
12 penalty until paid for a period of up to thirty (30) days from the time they were due.

13 62. Defendant has failed to pay Plaintiff and others a sum certain at the time of
14 termination or within seventy-two (72) hours of their resignation and have failed to pay those sums
15 for thirty (30) days thereafter. Pursuant to the provisions of Labor Code §203, Plaintiff and the
16 Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class
17 members' daily wage multiplied by thirty (30) days.

18 **X.**

19 **FIFTH CAUSE OF ACTION**

20 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

21 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE §17200**

22 63. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
23 by reference all previous paragraphs.

24 64. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
25 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
26 Business & Professions Code §17200, *et seq.* The conduct of Defendant as alleged in this
27 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
28 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public

1 interest within the meaning of Code of Civil Procedure §1021.5.

2 65. Plaintiff is a “person” within the meaning of Business & Professions Code §17204,
3 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
4 appropriate equitable relief.

5 66. Business & Profession Code §17200, *et seq.* prohibits unlawful and unfair business
6 practices.

7 67. California’s wage and hour laws express fundamental public policies. Providing
8 employees with proper wages and compensation are fundamental public policies of this State and
9 of the United States. Labor Code §90.5(a) articulates the public policies of this State to enforce
10 vigorously minimum labor standards, to ensure that employees are not required or permitted to
11 work under substandard and unlawful conditions, and to protect law-abiding employers and their
12 employees from competitors who lower their costs by failing to comply with minimum labor
13 standards.

14 68. Defendant has violated statutes and public policies as alleged herein. Through the
15 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
16 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
17 business practices in violation of Business & Profession Code §17200, *et seq.*, depriving Plaintiff,
18 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
19 guaranteed to all employees under law.

20 69. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
21 violation of §17200, *et seq.* of the Business & Professions Code.

22 70. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
23 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
24 §17200, *et seq.* of the Business & Professions Code.

25 71. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
26 others similarly situated have been damaged in a sum as may be proven.

27 72. Unless restrained, Defendant will continue to engage in the unlawful conduct as
28 alleged above. Pursuant to the Business & Professions Code, this court should make such orders

or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendant, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and members of the Proposed Class the money Defendant has unlawfully failed to pay.

XI.

SIXTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.

56. Plaintiff, on behalf of himself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

57. As a result of the acts alleged above and specifically incorporated herein, Plaintiff seeks penalties under Labor Code §2699, et seq use of Defendant's violation of Labor Code §§ 203, 226.7, 512, 2802; Wage Order 16-2001; and California Code of Regulations, Title 8, Section 11160, which call for civil penalties.

58. For each such penalty, Plaintiff and the aggrieved employees are entitled to penalties in an amount to be shown at trial, subject to the following formula:

- a. \$100 for the initial violation per employee per pay period.
- b. \$200 for each subsequent violation per employee per pay period.

59. These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees.

60. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the LWDA¹ and mailed a letter by certified mail to Defendant RECON360, LLC's entity address, which is 1659 Branham Lane, Suite F205 San Jose, CA 95118, as proscribed by the Code on September 22, 2020, describing Defendant's conduct in violation of Labor Code §§ 203, 226.7, 512, and 2802. (see Exhibit "1.") Plaintiff also obtained an e-filing confirmation from the LWDA

¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California Labor and Workforce Development Agency / Department of Industrial Relations website (<https://dir.tfaforms.net/266>).

confirming receipt of the notice (*see* Exhibit “2”).

61. As no letter evidencing the LWDA's intention to investigate was received by Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil action as though the LWDA had not chosen to investigate pursuant to Labor Code §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First Amended Class and Representative Action Complaint immediately.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of Plaintiff's and each Proposed Class Members' hourly wage for each meal period missed or taken late from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For compensatory damages in the amount of Plaintiff's and each Proposed Class Members' hourly wage for each rest period missed or taken late from at least four (4) years prior to the filing of this action to the present as may be proven;

3. For compensatory damages in the amount of Plaintiff's and each Proposed Class Members' unreimbursed cost of personal cellphone usage and mileage for business related purposes as a requirement of employment;

4. For penalties pursuant to Labor Code §203 for all employees who were terminated or resigned equal to their daily wage times thirty (30) days;

5. An award of prejudgment and post judgment interest;

6. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiff with proper meal periods, rest periods, and reimbursement for the cost of personal cellphone usage and mileage for business related purposes pursuant to Labor Code §§226.7, 512, and 2802, and IWC 16-2001;

7. For restitution for unfair competition pursuant to Business & Professions Code §17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

8. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor Code §§ 203, 226.7, 512, 2802, and Wage Order 16-2001.

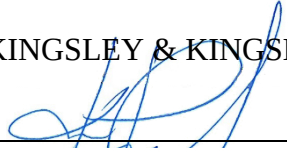
- 1 9. An award providing for payment of costs of suit;
2 10. An award of attorneys' fees; and
3 11. Such other and further relief as this Court may deem proper and just.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

6
7 DATED: November 30, 2020

KINGSLEY & KINGSLEY, APC

8 By: 

9 Kelsey M. Szamet
10 Attorneys for Plaintiff Carlos Humberto Carrillo
11 Diaz and the Proposed Class

EXHIBIT “1”

KINGSLEY & KINGSLEY

| L A W Y E R S |

September 22, 2020

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

RECON360, LLC
1659 Branham Lane, Suite F205
San Jose, CA 95118

Re: CARLOS HUMBERTO CARRILLO DIAZ v. RECON360, LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents CARLOS HUMBERTO CARRILLO DIAZ (“Plaintiff”) and a proposed group of current and former employees working for RECON360, LLC (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by RECON360, LLC, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Labor Code §§226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Pursuant to Labor Code §226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods. Defendant has had a consistent policy of failing to provide required meal periods. Defendant requires Plaintiff and all aggrieved employees to be available during meal periods on a walkie talkie, radio, and or cellphone and routinely interrupts meal periods. Plaintiff and the aggrieved employees are not relieved of all duties and free from Defendant’s control during meal periods.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

September 22, 2020

Page 2 of 2

Defendant also failed to pay all aggrieved employees one (1) hour of pay at the employees regular rate of compensation for each workday that the first meal period was not provided within the first (5) hours of the shift.

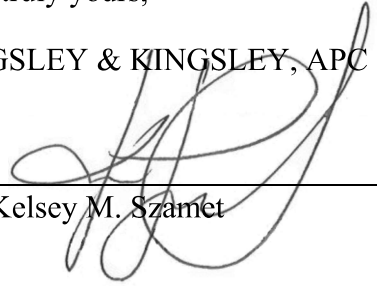
Pursuant to Labor Code §226.7 and Wage Order 16-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Here, Defendant fails to provide compliant meal periods altogether. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code §226.7.

Labor Code §2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones and mileage for business related purposes. Defendant required Plaintiff and the aggrieved employees to download an application on their personal phones in order to clock in and out for work. Defendant required Plaintiff and the aggrieved employees to be available by cell phone and answer/use their cell phones for calls and texting while working. Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones. Defendant required Plaintiff and aggrieved employees to incur mileage on their personal vehicles for business related purposes that was necessary to perform their job duties. On or about October 2019, Defendant began to provide a company card for purchase of gas.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§203, 226.7, 512, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/jl

- Cc: 1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/266>
2. RECON360, LLC via USPS Certified Mail # 7015 0640 0003 6595 5901

EXHIBIT “2”



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey



Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.

Your Street Name, Number and Suite/Apt *

16133 Ventura Boulevard

Your Mobile Phone Number

818-990-8300

Your City *

Encino

Your Work Phone Number

Your State *

California



Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Carlos Humberto Carrillo Diaz

Plaintiff/Aggrieved Employee Occupation *

Painter

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select...



Employer Name *

RECON360, LLC

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

1659 Branham Lane, Suite F205

Employer City

San Jose

Employer State

California



Employer Zip/Postal Code

95118

Employer Industry *

Other



Employer Industry for "Other" *

General Contractor

Add additional defendants

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☐ Not paid for all hours worked
- ☐ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☐ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice. Filing fees should be paid by check, made out to LWDA, and sent by regular mail to:

Department of Industrial Relations
Accounting Unit
455 Golden Gate Ave, 10th Floor
San Francisco, CA 94102

The check should be accompanied by a cover letter with sufficient information to identify the notice, including the LWDA case number assigned upon submission of this form.

Parties requesting in forma pauperis status should complete a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form and submit it online with the notice below.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

☒ I declare that I have or will pay the filing fees required by statute [Labor Code section 2699.3(a)(1)(B)] according to the instructions on the PAGA home page, unless I have claimed in forma pauperis by checking the box below.

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

LWDA Letter- ...360, LLC.pdf

Other Attachment – (if any) (must be a .pdf)

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

Julie Lewis

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Tuesday, September 22, 2020 11:02 AM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

9/22/2020

LWDA Case No. LWDA-CM-807253-20
Law Firm : Kingsley & Kingsley
Plaintiff Name : Carlos Humberto Carrillo Diaz
Employer: RECON360, LLC

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

KINGSLEY & KINGSLEY

| L A W Y E R S |

September 22, 2020

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

RECON360, LLC
1659 Branham Lane, Suite F205
San Jose, CA 95118

Re: CARLOS HUMBERTO CARRILLO DIAZ v. RECON360, LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents CARLOS HUMBERTO CARRILLO DIAZ (“Plaintiff”) and a proposed group of current and former employees working for RECON360, LLC (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by RECON360, LLC, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

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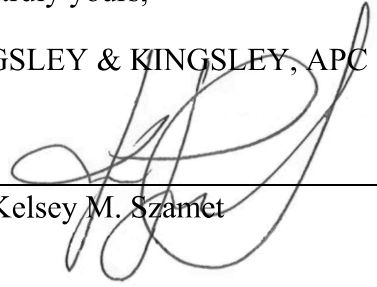
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KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/jl

- Cc: 1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/266>
2. RECON360, LLC via USPS Certified Mail # 7015 0640 0003 6595 5901