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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

STEVEN DELCORSO, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

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

Defendants.

Case No.: CV-20-002807

Honorable John R. Mayne
Department 21

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of Labor Code § 2698, *et seq.* (California Labor Code Private Attorneys General Act of 2004); and
- (9) Violation of California Business and Professions Code §§ 17200, *et seq*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff STEVEN DELCORSO (“Plaintiff”), individually, on behalf of members of the general public similarly situated, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act (“PAGA”) alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over all Defendants because, upon information and belief, each party is either a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and transact business in the County of Stanislaus.

PARTIES

5. Plaintiff STEVEN DELCORSO is an individual residing in the State of California.

6. Defendant WESTLAND TECHNOLOGIES, INC., at all times herein mentioned, was and is, upon information and belief, a corporation organized and existing under the laws of the State of California, and transacts business throughout the State of California, including the County of Stanislaus.

7. At all relevant times, Defendant WESTLAND TECHNOLOGIES, INC. was the “employer” of Plaintiff within the meaning of all applicable state laws and statutes.

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8. At all times herein relevant, WESTLAND TECHNOLOGIES, INC. and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, representatives, servants, employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and consent of each Defendant designated herein.

9. The true names and capacities, whether corporate, associate, individual or otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues said defendants by such fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the Defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff as alleged in this Complaint. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

10. WESTLAND TECHNOLOGIES, INC. and DOES 1 through 100 will hereinafter collectively be referred to as Defendants.

11. Plaintiff further alleges that Defendants including the unknown Defendants identified as DOES, directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff and the other class members so as to make each of said Defendants employers and employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

12. Plaintiff brings this action on his own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under Code of Civil Procedure section 382.

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1 13. The proposed class is defined as follows:

2 All current and former California-based hourly-paid or non-exempt employees
3 (either directly or through a staffing agency or labor contractor) of Defendants
4 within the State of California at any time during the period from June 26, 2016
5 to final judgment.

6 14. Plaintiff reserves the right to establish subclasses as appropriate.

7 15. The class is ascertainable and there is a well-defined community of interest in
8 the litigation:

9 a. Numerosity: The class members are so numerous that joinder of all class
10 members is impracticable. The membership of the entire class is
11 unknown to Plaintiff at this time; however, the class is estimated to be
12 approximately fifty (50) individuals and the identity of such membership
13 is readily ascertainable by inspection of Defendants' records.

14 b. Typicality: Plaintiff's claims are typical of all other class members as
15 demonstrated herein. Plaintiff will fairly and adequately protect the
16 interests of the other class members with whom he has a well-defined
17 community of interest.

18 c. Adequacy: Plaintiff will fairly and adequately protect the interests of each
19 class member, with whom he has a well-defined community of interest
20 and typicality of claims, as demonstrated herein. Plaintiff has no interest
21 that is antagonistic to the other class members. Plaintiff's attorneys, the
22 proposed class counsel, are versed in the rules governing class action
23 discovery, certification, and settlement. Plaintiff has incurred, and during
24 the pendency of this action will continue to incur, costs and attorneys'
25 fees, that have been, are, and will be necessarily expended for the
26 prosecution of this action for the substantial benefit of each class member.

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1 d. Superiority: A class action is superior to other available methods for the
2 fair and efficient adjudication of this litigation because individual joinder
3 of all class members is impractical.

4 e. Public Policy Considerations: Certification of this lawsuit as a class
5 action will advance public policy objectives. Employers of this great state
6 violate employment and labor laws every day. Current employees are
7 often afraid to assert their rights out of fear of direct or indirect retaliation.
8 However, class actions provide the class members who are not named in
9 the complaint anonymity that allows for the vindication of their rights.

10 16. There are common questions of law and fact as to the class members that
11 predominate over questions affecting only individual members. The following common
12 questions of law or fact, among others, exist as to the members of the class:

13 a. Whether Defendants' failure to pay wages, without abatement or
14 reduction, in accordance with the California Labor Code, was willful;

15 b. Whether Defendants had a corporate policy and practice of failing to pay
16 their hourly-paid or non-exempt employees within the State of California
17 for all hours worked, missed meal and rest periods in violation of
18 California law;

19 c. Whether Defendants time keeping system rounded their hourly-paid or
20 non-exempt employees time to deprive them of wages for all hours
21 worked;

22 d. Whether Defendants required Plaintiff and the other class members to
23 work over eight (8) hours per day and/or over forty (40) hours per week
24 and failed to pay the legally required overtime compensation to Plaintiff
25 and the other class members;

26 e. Whether Defendants properly calculated the regular rate for Plaintiff and
27 the other class members to worked overtime and earned incentive pay;

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- 1 f. Whether Defendants deprived Plaintiff and the other class members of
2 meal periods or required Plaintiff and the other class members to work
3 during meal periods without compensation;
- 4 g. Whether Defendants deprived Plaintiff and the other class members of
5 rest periods or required Plaintiff and the other class members to work
6 during rest periods without compensation;
- 7 h. Whether Defendants failed to pay minimum wages to Plaintiff and the
8 other class members;
- 9 i. Whether Defendants failed to pay all wages due to Plaintiff and the other
10 class members within the required time upon their discharge or
11 resignation;
- 12 j. Whether Defendants failed to timely pay all wages due to Plaintiff and
13 the other class members during their employment;
- 14 k. Whether Defendants complied with wage reporting as required by the
15 California Labor Code, including, inter alia, section 226;
- 16 l. Whether Defendants failed to reimburse Plaintiff and the other class
17 members for necessary business-related expenses and costs;
- 18 m. Whether Defendants' conduct was willful or reckless;
- 19 n. Whether Defendants engaged in unfair business practices in violation of
20 California Business & Professions Code section 17200, *et seq.*
- 21 o. The appropriate amount of damages, restitution, and/or monetary
22 penalties resulting from Defendants' violation of California law; and
- 23 p. Whether Plaintiff and the other class members are entitled to
24 compensatory damages pursuant to the California Labor Code.

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GENERAL ALLEGATIONS

17. At all relevant times set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California.

18. Defendants employed Plaintiff as an hourly-paid or non-exempt employee from approximately June of 2016 to October of 2016 in the State of California, County of Stanislaus.

19. Defendants hired Plaintiff and the other class members and classified them as hourly-paid or non-exempt employees and failed to properly calculate and compensate them for all hours worked, missed meal and rest periods.

20. Defendants had the authority to hire and terminate Plaintiff and the other class members, to set work rules and conditions governing Plaintiff's and the other class members' employment, and to supervise their daily employment activities.

21. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff and the other class members.

22. Defendants directly hired and paid wages and benefits to Plaintiff and the other class members.

23. Defendants continue to employ hourly-paid or non-exempt employees within the State of California, including the County of Stanislaus.

24. Plaintiff is informed and believes, and based thereon alleges, that at all times herein relevant, Defendants were advised by skilled lawyers and other professionals, employees, advisors, and consultants highly knowledgeable about California wage laws, employment and personnel practices.

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1 25. Plaintiff is informed and believes, and based thereon alleges, that at all times
2 herein relevant, without any justification, Defendants ignored the employment and personnel
3 policy changes proposed by skilled lawyers and other professionals, employees, advisors, and
4 consultants highly knowledgeable about California wage laws, employment and personnel
5 practices.

6 26. Plaintiff and the other class members worked over eight (8) hours in a day, and/or
7 forty (40) hours in a week during their employment with Defendants.

8 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or
10 non-exempt employees within the State of California. This scheme involved, *inter alia*, failing
11 to pay them for all hours worked, missed meal periods, and missed rest breaks in violation of
12 California law.

13 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knew or should have known that Plaintiff and the other class members were entitled to receive
15 certain wages for overtime compensation and that they were not receiving wages for overtime
16 compensation.

17 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that Plaintiff and the other class members were entitled to receive
19 overtime at the regular rate of pay that includes all forms of compensation instead of at just
20 hourly rate of pay.

21 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 failed to provide Plaintiff and the other class members the required meal periods and rest breaks
23 during the relevant time period as required under the Industrial Welfare Commission Wage
24 Orders and thus they are entitled to any and all applicable penalties.

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1 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class
4 member's regular rate of pay when a meal period was missed, and they did not receive all meal
5 periods or payment of one additional hour of pay at Plaintiff's and the other class member's
6 regular rate of pay when a meal period was missed.

7 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Plaintiff and the other class members were entitled to receive
9 all rest periods or payment of one additional hour of pay at Plaintiff's regular rate of pay when
10 a rest period was missed, and they did not receive all rest periods or payment of one additional
11 hour of pay at Plaintiff's and the other class members' regular rate of pay when a rest period
12 was missed.

13 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knew or should have known that Plaintiff and the other class members were entitled to receive
15 at least minimum wages for compensation and that they were not receiving at least minimum
16 wages for all hours worked.

17 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that Plaintiff and other class members were entitled to receive the
19 wages owed to them upon discharge or resignation, including overtime and minimum wages
20 and meal and rest period premiums, and that Plaintiff and other class members did not, in fact,
21 receive such wages owed to them at the time of their discharge or resignation.

22 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 knew or should have known that Plaintiff and other class members were entitled to receive
24 complete and accurate wage statements in accordance with California law, but, in fact, Plaintiff
25 and other class members did not receive complete and accurate wage statements from
26 Defendants. The deficiencies included, inter alia, the failure to include the total number of hours
27 worked by Plaintiff and other class members.

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1 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 reimbursements for all business expenses incurred in discharge of his duties.

4 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 knew or should have known that Defendants had to keep complete and accurate payroll records
6 for Plaintiff and other class members in accordance with California law, but, in fact, did not
7 keep complete and accurate payroll records for Plaintiff and other class members.

8 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knew or should have known that they had a duty to compensate Plaintiff and the other class
10 members pursuant to California law, and that Defendants had the financial ability to pay such
11 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
12 represented to Plaintiff and the other class members that they were properly denied wages, all
13 in order to increase Defendants' profits.

14 39. At all material times set forth herein, Defendants failed to pay overtime wages to
15 Plaintiff and the other class members. Plaintiff and the other class members were required to
16 work more than eight (8) hours per day and/or forty (40) hours per week without overtime
17 compensation.

18 40. At all material times set forth herein, Defendants failed to provide uninterrupted
19 meal periods and rest breaks to Plaintiff and the other class members.

20 41. At all material times set forth herein, Defendants failed to pay Plaintiff and the
21 other class members at least minimum wages for all hours worked.

22 42. At all material times set forth herein, Defendants failed to pay Plaintiff and other
23 class members the wages owed to them upon discharge or resignation.

24 43. At all material times set forth herein, Defendants failed to provide complete or
25 accurate wage statements to Plaintiff and other class members.

26 44. At all material times set forth herein, Defendants failed to keep complete or
27 accurate payroll records for Plaintiff and other class members.

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45. At all material times set forth herein, Defendants failed to properly compensate Plaintiff and the other class members pursuant to California law in order to increase Defendants' profits.

California Labor Code section 218 states that noting in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against WESTLAND TECHNOLOGIES, INC. and Does 1 through 100)

46. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 46, and each and every part thereof with the same force and effect as though fully set forth herein.

47. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

48. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other class members employed by Defendants, who work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

49. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

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1 50. California Labor Code section 510 codifies the right to overtime compensation
2 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
3 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
4 of work, and overtime compensation at twice the regular hourly rate for hours worked in excess
5 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

6 51. During the relevant time period set forth herein, Plaintiff and other class
7 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a
8 week.

9 52. As a pattern and practice, during the relevant time period set forth herein,
10 Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and other
11 class members.

12 53. Defendants' pattern and practice of failing to pay Plaintiff and other class
13 members the unpaid balance of overtime compensation, as required by California laws, violates
14 the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

15 54. Pursuant to California Labor Code section 1194, Plaintiff and other class
16 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
17 attorneys' fees.

18 **SECOND CAUSE OF ACTION**

19 **(Violation of California Labor Code §§ 226.7 and 512(a))**

20 **(Against WESTLAND TECHNOLOGIES, INC. and Does 1 through 100)**

21 55. Plaintiff incorporates by reference the allegations contained in paragraphs 1
22 through 55, and each and every part thereof with the same force and effect as though fully set
23 forth herein.

24 56. During the relevant time period set forth herein, the IWC Order and California
25 Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and other class members'
26 employment by Defendants.

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1 57. During the relevant time period set forth herein, California Labor Code section
2 226.7 provides that no employer shall require an employee to work during any meal or rest
3 period mandated by an applicable order of the California IWC.

4 58. During the relevant time period set forth herein, the applicable IWC Wage Order
5 and California Labor Code section 512(a) provide that an employer may not require, cause or
6 permit an employee to work for a work period of more than five (5) hours per day without
7 providing the employee with a meal period of not less than thirty (30) minutes, except that if
8 the total work period per day of the employee is no more than six (6) hours, the meal period
9 may be waived by mutual consent of both the employer and employee.

10 59. During the relevant time period set forth herein, the applicable IWC Wage Order
11 and California Labor Code section 512(a) further provide that an employer may not require,
12 cause, or permit an employee to work for a work period of more than ten (10) hours per day
13 without providing the employee with a second uninterrupted meal period of not less than thirty
14 (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second
15 meal period may be waived by mutual consent of the employer and the employee only if the
16 first meal period was not waived.

17 60. As a pattern and practice, during the relevant time period set forth herein,
18 Plaintiff and other class members who were scheduled to work for a period of time no longer
19 than six (6) hours, and who did not waive their legally-mandated meal periods by mutual
20 consent, were required to work for periods longer than five (5) hours without an uninterrupted
21 meal period of not less than thirty (30) minutes and/or without a rest period.

22 61. As a pattern and practice, during the relevant time period set forth herein,
23 Plaintiff and other class members who were scheduled to work for a period of time no longer
24 than twelve (12) hours, and who did not waive their legally-mandated meal periods by mutual
25 consent, were required to work for periods longer than ten (10) hours without an uninterrupted
26 meal period of not less than thirty (30) minutes and/or without a rest period.

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1 62. As a pattern and practice, during the relevant time period set forth herein,
2 Plaintiff and other class members who were scheduled to work for a period of time in excess of
3 six (6) hours were required to work for periods longer than five (5) hours without an
4 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

5 63. As a pattern and practice, during the relevant time period set forth herein,
6 Plaintiff and other class members who were scheduled to work for a period of time in excess of
7 twelve (12) hours were required to work for periods longer than ten (10) hours without an
8 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

9 64. As a pattern and practice, during the relevant time period set forth herein,
10 Defendants intentionally and willfully required Plaintiff and other class members to work during
11 meal periods and failed to compensate Plaintiff and the other class members the full meal period
12 premium for work performed during meal periods.

13 65. As a pattern and practice, during the relevant time period set forth herein,
14 Defendants failed to pay Plaintiff and other class members the full meal period premium due
15 pursuant to California Labor Code section 226.7.

16 66. Defendants' conduct violates applicable IWC Wage Order and California Labor
17 Code sections 226.7 and 512(a).

18 67. Pursuant to the applicable IWC Wage Order and California Labor Code section
19 226.7(b), Plaintiff and other class members are entitled to recover from Defendants one
20 additional hour of pay at the employee's regular rate of compensation for each workday that the
21 meal or rest period is not provided.

22 **THIRD CAUSE OF ACTION**

23 **(Violation of California Labor Code § 226.7)**

24 **(Against WESTLAND TECHNOLOGIES, INC. and Does 1 through 100)**

25 68. Plaintiff incorporates by reference the allegations contained in paragraphs 1
26 through 68, and each and every part thereof with the same force and effect as though fully set
27 forth herein.

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1 69. During the relevant time period set forth herein, the applicable IWC Wage Order
2 and California Labor Code section 226.7 were applicable to Plaintiff's and other class members'
3 employment by Defendants.

4 70. During the relevant time period set forth herein, California Labor Code section
5 226.7 provides that no employer shall require an employee to work during any rest period
6 mandated by an applicable order of the California IWC.

7 71. During the relevant time period set forth herein, the applicable IWC Wage Order
8 provides that "[e]very employer shall authorize and permit all employees to take rest periods,
9 which insofar as practicable shall be in the middle of each work period" and that the "rest period
10 time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time
11 per four (4) hours or major fraction thereof" unless the total daily work time is less than three
12 and one-half (3 ½) hours.

13 72. As a pattern and practice, during the relevant time period set forth herein,
14 Defendants required Plaintiff and other class members to work four (4) or more hours without
15 authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

16 73. As a pattern and practice, during the relevant time period set forth herein,
17 Defendants willfully required Plaintiff and other class members to work during rest periods and
18 failed to pay Plaintiff and the other class members the full rest period premium for work
19 performed during rest periods.

20 74. As a pattern and practice, during the relevant time period set forth herein,
21 Defendants failed to pay Plaintiff and the other class members the full rest period premium due
22 pursuant to California Labor Code section 226.7.

23 75. Defendants' conduct violates applicable IWC Wage Orders and California Labor
24 Code section 226.7.

25 76. Pursuant to the applicable IWC Wage Orders and California Labor Code section
26 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one
27 additional hour of pay at the employees' regular hourly rate of compensation for each workday
28 that the rest period was not provided.

1 **FOURTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 1194 and 1197)**

3 **(Against WESTLAND TECHNOLOGIES, INC. and Does 1 through 100)**

4 77. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 77 and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 78. During the relevant time period set forth herein, California Labor Code sections
8 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a
9 lesser wage than the minimum so fixed, is unlawful.

10 79. As a pattern and practice, during the relevant time period set forth herein,
11 Defendants failed to pay minimum wages to Plaintiff and other class members as required,
12 pursuant to California Labor Code sections 1194 and 1197.

13 80. Defendants' failure to pay Plaintiff and other class members the minimum wage
14 as required violates California Labor Code sections 1194 and 1197. Pursuant to those sections,
15 Plaintiff and other class members are entitled to recover the unpaid balance of their minimum
16 wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an
17 amount equal to the wages unlawfully unpaid and interest thereon.

18 81. Pursuant to California Labor Code section 1194.2, Plaintiff and other class
19 members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
20 unpaid and interest thereon.

21 **FIFTH CAUSE OF ACTION**

22 **(Violation of California Labor Code §§ 201 and 202)**

23 **(Against WESTLAND TECHNOLOGIES, INC. and Does 1 through 100)**

24 82. Plaintiff incorporates by reference the allegations contained in paragraphs 1
25 through 82, and each and every part thereof with the same force and effect as though fully set
26 forth herein.

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1 83. During the relevant time period set forth herein, California Labor Code sections
2 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid
3 at the time of discharge are due and payable immediately, and if an employee quits his or her
4 employment, his or her wages shall become due and payable not later than seventy-two (72)
5 hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her
6 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

7 84. As a pattern and practice, during the relevant time period set forth herein,
8 Defendants intentionally and willfully failed to pay Plaintiff and other class members who are
9 no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72)
10 hours of their leaving Defendants' employ.

11 85. Defendants' pattern and practice of failing to pay Plaintiff and other class
12 members who are no longer employed by Defendants their wages, earned and unpaid, within
13 seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor
14 Code sections 201 and 202.

15 86. California Labor Code section 203 provides that if an employer willfully fails to
16 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
17 continue as a penalty from the due date thereof at the same rate until paid or until an action is
18 commenced; but the wages shall not continue for more than thirty (30) days.

19 87. Plaintiff and other class members are entitled to recover from Defendants the
20 statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum as
21 provided by Labor Code section 203.

22 **SIXTH CAUSE OF ACTION**

23 **(Violation of California Labor Code § 226(a))**

24 **(Against WESTLAND TECHNOLOGIES, INC. and Does 1 through 100)**

25 88. Plaintiff incorporates by reference the allegations contained in paragraphs 1
26 through 88, and each and every part thereof with the same force and effect as though fully set
27 forth herein.

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1 89. During the relevant time period set forth herein, California Labor Code section
2 226(a) provides that every employer shall furnish each of his or her employees an accurate
3 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
4 employee, (3) the number of piece-rate units earned and any applicable piece rate if the
5 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
6 written orders of the employee may be aggregated and shown as one item, (5) net wages earned,
7 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee
8 and his or her social security number, (8) the name and address of the legal entity that is the
9 employer, and (9) all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the employee. The deductions
11 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
12 showing the month, day, and year, and a copy of the statement or a record of the deductions
13 shall be kept on file by the employer for at least three years at the place of employment or at a
14 central location within the State of California.

15 90. As a pattern and practice, Defendants have intentionally and willfully failed to
16 provide Plaintiff and other class members with complete and accurate wage statements. The
17 deficiencies include but are not limited to: the failure to include the total number of hours
18 worked by Plaintiff and other class members.

19 91. As a result of Defendants' violation of California Labor Code section 226(a),
20 Plaintiff and other class members have suffered injury and damage to their statutorily protected
21 rights.

22 92. More specifically, Plaintiff and other class members have been injured by
23 Defendants' intentional and willful violation of California Labor Code section 226(a) because
24 they were denied both their legal right to receive, and their protected interest in receiving,
25 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

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1 93. Plaintiff and other class members are entitled to recover from Defendants the
2 greater of their actual damages caused by Defendants' failure to comply with California Labor
3 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

4 94. Plaintiff and other class members are also entitled to injunctive relief to ensure
5 compliance with this section, pursuant to California Labor Code section 226(g).

6 **SEVENTH CAUSE OF ACTION**

7 **(Violation of California Labor Code §§ 2800 and 2802)**

8 **(Against WESTLAND TECHNOLOGIES, INC. and Does 1 through 100)**

9 95. Plaintiff incorporates by reference the allegations contained in paragraphs 1
10 through 95, and each and every part thereof with the same force and effect as though fully set
11 forth herein.

12 96. Pursuant to California Labor Code sections 2800 and 2802, an employer must
13 reimburse its employee for all necessary expenditures incurred by the employee in direct
14 consequence of the discharge of his or her job duties or in direct consequence of his or her
15 obedience to the directions of the employer.

16 97. Defendants have intentionally and willfully failed to reimburse Plaintiff and
17 other class members for all necessary business-related expenses and costs. Plaintiff and other
18 class members are entitled to recover from Defendants their business-related expenses and costs
19 incurred during the course and scope of their employment, plus interest accrued from the date
20 on which the employee incurred the necessary expenditures at the same rate as judgments in
21 civil actions in the State of California.

22 **EIGHT CAUSE OF ACTION**

23 **(Violation of Labor Code Section 2698, *et seq.* ("PAGA"))**

24 **(Against WESTLAND TECHNOLOGIES, INC. and Does 1 through 100)**

25 98. Plaintiff incorporates by reference the allegations contained in paragraphs 1
26 through 98, and each and every part thereof with the same force and effect as though fully set
27 forth herein.

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1 99. PAGA expressly establishes that any provision of the California Labor Code
2 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
3 departments, divisions, commissions, boards, agencies or employees for a violation of the
4 California Labor Code, may be recovered through a civil action brought by an aggrieved
5 employee on behalf of himself or herself, and other current or former employees.

6 100. On January 29, 2021, Plaintiff provided written notice to the LWDA and
7 Defendants of the specific provisions of the Labor Code he contends were violated, and the
8 theories supporting his contentions. Plaintiff believes that on or about April 4, 2021, the sixty-
9 five (65) day notice period will expire as to all Defendants. Therefore, Plaintiff has exhausted
10 the statutory time period to bring this action.

11 101. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved
12 employees” as defined by California Labor Code § 2699(c) in that they are all current or former
13 employees of Defendants who worked for Defendants at any time during the period from
14 January 29, 2020 to the present, and one or more of the alleged violations was committed against
15 them.

16 **Failure to Pay Minimum and Overtime**

17 102. At all times relevant herein, Defendants were required to compensate their non-
18 exempt employees minimum wages for all hours worked and overtime wages for all hours
19 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
20 mandate of Labor Code §§ 510, 1194, 1197, and 1198

21 103. As a pattern and practice, Defendants failed to compensate Plaintiff and other
22 aggrieved current and former employees for all hours worked, resulting in a failure to pay all
23 minimum wages and overtime wages, where applicable.

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1 **Failure to Provide Meal Periods and Rest Breaks**

2 104. In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendants
3 were required to authorize and permit their non-exempt employees to take a 10-minute rest
4 break for every four (4) hours worked or major fraction thereof, and were further required to
5 provide their non-exempt employees with a 30-minute meal period for every five (5) hours
6 worked.

7 105. As a pattern and practice, Defendants failed to provide Plaintiff and other
8 aggrieved current and former employees with legally-mandated meal periods and rest breaks
9 and failed to pay proper compensation for this failure.

10 **Failure to Timely Pay Wages During Employment**

11 106. At all times relevant herein, Defendants were required to pay their employees
12 within a specified time period pursuant to the mandate of Labor Code § 204.

13 107. As a pattern and practice, Defendants failed to pay Plaintiff and other aggrieved
14 current and former employees all wages due and owing them within the required time period.

15 **Failure to Timely Pay Wages Upon Termination**

16 108. At all times relevant herein, Defendants were required to pay their employees all
17 wages owed in a timely fashion at the end of employment pursuant to California Labor Code
18 §§ 201 to 204.

19 109. As a result of Defendants' Labor Code violations alleged above, Defendants
20 failed to pay Plaintiff and the other aggrieved former employees their final wages pursuant to
21 Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to Labor Code
22 § 203.

23 **Failure to Provide Complete and Accurate Wage Statements**

24 110. At all times relevant herein, Defendants were required to keep *accurate* records
25 regarding their California employees pursuant to the mandate of Labor Code §§ 226 and 1174.

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1 111. As a result of Defendants' various Labor Code violations, Defendants failed to
2 keep accurate records regarding Plaintiff and other aggrieved current and former employees.
3 For example, Defendants failed in their affirmative obligation to keep accurate records
4 regarding Plaintiff and other aggrieved current and former employees' gross wages earned, total
5 hours worked, all deductions, net wages earned, and all applicable hourly rates and the number
6 of hours worked at each hourly rate.

7 **Failure to Reimburse Business Expenses**

8 112. At all times relevant herein, Defendants were required to reimburse its employees
9 for any and all necessary expenditures or losses incurred by the employees in direct
10 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code §§
11 2800 and 2802.

12 113. As a pattern and practice, Defendants failed to pay Plaintiff and other aggrieved
13 current and former employees all business expenses incurred and owing them within the
14 required time period.

15 **Penalties**

16 114. Pursuant to California Labor Code § 2699, Plaintiff, individually, and on behalf
17 of other current and former aggrieved employees, requests and is entitled to recover from
18 Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, as
19 well as all statutory penalties against Defendants, and each of them, including but not limited
20 to:

21 115. Penalties under California Labor Code § 2699 in the amount of a hundred dollars
22 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred
23 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

24 116. Penalties under California Code of Regulations Title 8 § 11040 in the amount of
25 fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one
26 hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent
27 violation;

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1 117. Penalties under California Labor Code § 210 in addition to, and entirely
2 independent and apart from, any other penalty provided in the California Labor Code in the
3 amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial
4 violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each
5 subsequent violation;

6 118. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100)
7 for each aggrieved employee per pay period for the initial violation, and two hundred fifty
8 dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

9 119. An amount sufficient to recover unpaid wages under Labor Code § 558;

10 120. An amount sufficient to recover unpaid wages under Labor Code § 1197.1;

11 121. Any and all additional penalties as provided by the Labor Code and/or other
12 statutes; and

13 122. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699, and
14 any other applicable statute.

15 **NINTH CAUSE OF ACTION**

16 **(Violation of California Business & Professions Code §§ 17200, *et seq.*)**

17 **(Against WESTLAND TECHNOLOGIES, INC. and Does 1 through 100)**

18 123. Plaintiff incorporates by reference the allegations contained in paragraphs 1
19 through 123, and each and every part thereof with the same force and effect as though fully set
20 forth herein.

21 124. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
22 unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants'
23 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public
24 interest within the meaning of Code of Civil Procedure section 1021.5.

25 125. Defendants' activities as alleged herein are violations of California law, and
26 constitute unlawful business acts and practices in violation of California Business & Professions
27 Code section 17200, *et seq.*

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126. A violation of California Business & Professions Code section 17200, *et seq.* may be predicated on the violation of any state or federal law. In this instant case, Defendants' pattern and practice of requiring Plaintiff and other class members work overtime hours without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' pattern and practice of requiring Plaintiff and other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants' pattern and practice of failing to timely pay wages to Plaintiff and other class members violate California Labor Code sections 201 and 202. Defendants also violated California Labor Code sections 226(a), 1194, 1197, 2800 and 2802.

127. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

128. Plaintiff and other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

129. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

DEMAND FOR JURY TRIAL

Plaintiff, individually, on behalf of other members of the general public similarly situated, and on behalf of aggrieved employees pursuant to PAGA, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, on behalf of members of the general public similarly situated, and on behalf of aggrieved employees pursuant to PAGA, prays for relief and judgment against Defendants, jointly and severally, as follows:

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1 **Class Certification**

- 2 1. That this action be certified as a class action;
- 3 2. That Plaintiff be appointed as the representative of the Class;
- 4 3. That counsel for Plaintiff be appointed as Class Counsel; and
- 5 4. That Defendants provide to Class Counsel, immediately upon its appointment,
- 6 the names and most current contact information (names, address, telephone numbers and
- 7 emails) of all class members.

8 **As to the First Cause of Action**

- 9 5. That the Court declare, adjudge and decree that Defendants violated California
- 10 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay
- 11 all overtime wages due to Plaintiff and the other class members;
- 12 6. For general unpaid wages at overtime wage rates and such general and special
- 13 damages as may be appropriate;
- 14 7. For pre-judgment interest on any unpaid overtime compensation commencing
- 15 from the date such amounts were due;
- 16 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
- 17 California Labor Code section 1194; and
- 18 9. For such other and further relief as the court may deem just and proper.

19 **As to the Second Cause of Action**

- 20 10. That the Court declare, adjudge and decree that Defendants violated California
- 21 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
- 22 provide all meal periods (including second meal periods) to Plaintiff and the other class
- 23 members;
- 24 11. That the Court make an award to Plaintiff and the other class members of one (1)
- 25 hour of pay at each employee's regular rate of compensation for each workday that a meal
- 26 period was not provided;
- 27 12. For all actual, consequential, and incidental losses and damages, according to
- 28 proof;

- 1 13. For premium wages pursuant to California Labor Code section 226.7(b);
2 14. For pre-judgment interest on any unpaid wages from the date such amounts were
3 due;
4 15. For reasonable attorneys' fees and costs of suit incurred herein; and
5 16. For such other and further relief as the court may deem just and proper.

6 **As to the Third Cause of Action**

7 17. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
9 rest periods to Plaintiff and the other class members;

10 18. That the Court make an award to Plaintiff and the other class members of one (1)
11 hour of pay at each employee's regular rate of compensation for each workday that a rest period
12 was not provided;

13 19. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 20. For premium wages pursuant to California Labor Code section 226.7(b);

16 21. For pre-judgment interest on any unpaid wages from the date such amounts were
17 due; and

18 22. For such other and further relief as the court may deem just and proper.

19 **As to the Fourth Cause of Action**

20 23. That the Court declare, adjudge and decree that Defendants violated California
21 Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiff and
22 the other class members;

23 24. For general unpaid wages and such general and special damages as may be
24 appropriate;

25 25. For pre-judgment interest on any unpaid compensation from the date such
26 amounts were due;

27 26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
28 California Labor Code section 1194(a);

1 27. For liquidated damages pursuant to California Labor Code section 1194.2; and

2 28. For such other and further relief as the court may deem just and proper.

3 **As to the Fifth Cause of Action**

4 29. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the
6 time of termination of the employment of the other class members no longer employed by
7 Defendants;

8 30. For all actual, consequential, and incidental losses and damages, according to
9 proof;

10 31. For statutory wage penalties pursuant to California Labor Code section 203 for
11 the other class members who have left Defendants' employ;

12 32. For pre-judgment interest on any unpaid compensation from the date such
13 amounts were due; and

14 33. For such other and further relief as the court may deem just and proper.

15 **As to the Sixth Cause of Action**

16 34. That the Court declare, adjudge and decree that Defendants violated the record
17 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
18 as to Plaintiff and other class members, and willfully failed to provide accurate itemized wage
19 statements thereto;

20 35. For actual, consequential and incidental losses and damages, according to proof;

21 36. For statutory penalties pursuant to California Labor Code section 226(e);

22 37. For injunctive relief to ensure compliance with this section, pursuant to
23 California Labor Code section 226(g); and

24 38. For such other and further relief as the court may deem just and proper.

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40. For actual, consequential and incidental losses and damages, according to proof;
41. For the imposition of civil penalties and/or statutory penalties;
42. For punitive damages and/or exemplary damages according to proof at trial;
43. For reasonable attorneys' fees and costs of suit incurred herein; and
44. For such other and further relief as the court may deem just and proper.

45. Upon the eight cause of action, for civil penalties pursuant to statute as set forth in Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

47. For such other and further relief the court may deem just and proper.

48. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members, failing to pay Plaintiff's and other class members' wages timely as required by California Labor Code section 201, 202.

49. For restitution of unpaid wages and other monies wrongfully withheld and retained by Defendants to Plaintiff and the other class members and prejudgment interest from the day such amount was due and payable;

1 50. For the appointment of a receiver to receive, manage and distribute any and all
2 funds disgorged from Defendants and determined to have been wrongfully withheld acquired
3 by Defendants as a result of violations of California Business & Professions Code section
4 17200, *et seq.*;

5 51. For reasonable attorneys' fees and costs of suit incurred herein that Plaintiff and
6 the other class members are entitled to recover under California Code of Civil Procedure section
7 1021.5;

8 52. For injunctive relief to ensure compliance with this section, pursuant to
9 California Business and Professions Code sections 17200, *et seq.*; and

10 53. For such other and further relief as the Court may deem equitable and
11 appropriate.

12
13 DATED: March 5, 2021

JUSTICE LAW CORPORATION

14
15 By: 

16 Douglas Han
17 Shunt Tatavos-Gharajeh
18 Areen Babajanian
19 *Attorneys for Plaintiff*
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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, 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 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is arivera@justicelawcorp.com

On March 10, 21, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **DeclCorso v. Westland Technologies, Inc.**
LWDA/Court Case No.: **LWDA-CM-820205-21**
 CV-20-002807
 Stanislaus County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on March 10, 2021, at Pasadena, California.



Allana Rivera