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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 25 2021

BY Chris Goldstein
CHRIS GOLDSTEIN, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

ROSA ORNELAS, individually, and on behalf
of all other aggrieved employees,

Plaintiff,

v.

MASTERCORP COMMERCIAL
SERVICES, LLC, a Tennessee corporation;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO. **CIV SB 2114590**

**COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 ("PAGA")**

[California Labor Code § 2698 *et seq.*]

BY FAX

1 This is a representative action brought by Rosa Ornelas ("Plaintiff"), on behalf of all other
2 aggrieved employees and the State of California, relating to systemic violations of California wage
3 and hour laws by her employer MasterCorp Commercial Services, LLC (hereinafter referred to as
4 "MasterCorp" or "Defendant"). Plaintiff makes the following allegations on information and belief,
5 except as to allegations pertaining to Plaintiff individually, which are based on her personal
6 knowledge.

7 INTRODUCTION

8 1. Defendant provides janitorial services throughout the State of California doing
9 business as MasterCorp.

10 2. In an effort to conserve labor costs, and thereby maximize profits, Defendant has
11 implemented policies and practices that have resulted in systematic violations of California's wage
12 and hour laws.

13 3. For example, Defendant has implemented unlawful policies with respect to meal and
14 rest breaks. Defendant requires its non-exempt employees, who are informed that the needs of the
15 businesses take top priority, to work through meal and rest breaks, to take untimely meal periods and
16 to remain on call during such breaks. As a result, Plaintiff and other aggrieved employees have been
17 denied the ability to take the meal and rest breaks that they were and are legally entitled to take.

18 4. Moreover, Defendant has uniformly failed to pay Plaintiff and other aggrieved
19 employees proper overtime wages due the fact that it has willfully turn a blind eye to off-the-clock
20 work that Plaintiff and other non-exempt employees perform as a direct consequence of Defendant's
21 understaffing and imposition of an unreasonable workload.

22 5. Defendant also fails to indemnify Plaintiff and the other aggrieved employees for
23 Personal Protective Equipment relating to the COVID 19 pandemic, including but not limited to,
24 safety glasses, gloves and masks.

25 JURISDICTION AND VENUE

26 6. The Superior Court of the State of California has jurisdiction in this matter because
27 Plaintiff is a citizen of the State of California, and Defendant is licensed to do business under the laws
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1 of the State of California.

2 7. Venue is proper in this judicial district and the County of San Bernardino because
3 Defendant assigned Plaintiff to perform services in the County of San Bernardino. Many other
4 aggrieved employees also worked for Defendant and assigned to perform services in the County of
5 San Bernardino. In particular, Plaintiff was assigned to a client of Defendant in the City of Rancho
6 Cucamonga, California which is a city located within this judicial district.

7 8. Defendant employed Plaintiff and other aggrieved employees within the State of
8 California and the unlawful acts alleged herein have a direct effect on Plaintiff and other aggrieved
9 employees.

10 9. The State of California, San Bernardino County, has jurisdiction in this matter because
11 the individual claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional
12 threshold and the five million dollar (\$5,000,000.00) aggregate jurisdictional threshold for federal
13 court diversity jurisdiction. Further, there is no federal question at issue as the issues herein are based
14 solely on the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil
15 Procedure and Rules of Court. Thus, the State of California, San Bernardino County Superior Court
16 maintains the appropriate jurisdiction to hear this matter.

17 **THE PARTIES**

18 10. During the statute of limitations period, Plaintiff was employed by Defendant as a Day
19 Porter, providing cleaning and other janitorial services to customers of Defendant in San Bernardino,
20 California.

21 11. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all
22 times relevant hereto was, a corporation organized and existing under the laws of the State of
23 Tennessee and license to do business in the State of California.

24 12. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
25 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is
26 informed and believes, and thereon alleges, that each defendant designated as a DOE is in some
27 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved
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1 employees' injuries and damages, as alleged herein, were proximately caused by the conduct of such
2 DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true
3 names and capacities of such DOE defendants when ascertained.

4 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
5 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
6 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
7 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
8 employer and/or joint employer of Plaintiff and the other aggrieved employees.

9 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
10 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
11 Managing agent, and/or principal of the co-Defendants, and in performing the acts mentioned below
12 was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant,
13 partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and
14 consent of the co-Defendants. Plaintiff also alleges that the acts of each Defendant are legally
15 attributable to the other Defendants.

16 15. Plaintiff is informed and believes, and based thereon alleges, that each of the
17 Defendants sued herein was, at all relevant times, the employer, owner, shareholder, principal, joint
18 venture, alter-ego, employee, proxy, managing agent, and/or principal of the remaining Defendants,
19 and was acting, at least in part, within the course and scope of such employment and agency, with the
20 express and implied permission, consent and knowledge, approval and/or ratification of the other
21 Defendants. The above co-Defendant, managing agents, and supervisors, aided, abetted, condoned,
22 permitted, approved, authorized, and/or ratified the unlawful acts described herein.

23 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

24 16. On March 18, 2021, Plaintiff gave written notice by certified mail pursuant to
25 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
26 ("LWDA") and Defendant, of the specific provisions of the California Labor Code and IWC Wage
27 Order alleged to have been violated, including the facts and theories to support the alleged violations.
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1 Plaintiff has not received any response from the LWDA. As Plaintiff has waited more than sixty-five
2 (65) days from the March 18, 2021 postmark date of her written notice before filing this action,
3 Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to
4 commence a representative action under the California Private Attorneys General Act of 2004
5 (“PAGA”).

6 17. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this
7 action on behalf of the State of California, and all other aggrieved employees (e.g., current and
8 former non-exempt employees of Defendant and performed work for Defendant in the State of
9 California at any time within the period beginning one (1) year prior to the March 18, 2021 notice
10 Plaintiff provided to the LWDA and Defendant, and ending at the time this action proceeds to final
11 judgment (“statute of limitations period”).

12 **FACTUAL ALLEGATIONS**

13 **Failure to Provide Required Meal Periods**

14 18. During the statute of limitations period, as part of Defendant’s illegal policies and
15 practices to minimize labor costs and maximize corporate profits, Defendant has required, permitted
16 or otherwise suffered Plaintiff and aggrieved employees to perform work during their meal periods,
17 to completely skip their meal periods, to take late and short meal periods, and Defendant has
18 otherwise failed to provide the required meal periods to Plaintiff and aggrieved employees as
19 required under California Labor Code §§ 226.7, 512 and § 11 of the applicable IWC Order.

20 19. Defendant has implemented several practices that have caused Plaintiff and aggrieved
21 employees to systematically miss and otherwise take non-compliant meal periods. Defendant
22 systematically understaff its job sites such that non-exempt employees are given so much work to
23 complete that they regularly miss or otherwise take non-compliant meal periods. As a direct
24 consequence of this understaffing, Plaintiff and aggrieved employees have so much work to complete
25 within their scheduled shifts that they are forced to skip their meal periods altogether, to take them
26 after working longer than five (5) hours, to perform work during their meal periods, or return to work
27 after taking less than a thirty (30) minute meal period.

1 20. There are also frequent occasions when Plaintiff and aggrieved employees need to
2 perform other duties immediately before the time during which they are legally entitled to take a meal
3 period. Pursuant to Defendant's policies, Plaintiff and aggrieved employees cannot simply drop their
4 job duties and leave a customer to take a meal period. At other times Plaintiff and the other aggrieved
5 employees were too busy performing their job duties at Defendant's client facilities to stop their work
6 in middle of an assignment. Consequently, Plaintiff and aggrieved employees regularly miss meal
7 periods, take late meal periods, return early from meal periods, and even clock out for meal periods
8 but continue working.

9 21. Plaintiff and aggrieved employees often cannot simply stop their cleaning assignments
10 to take their meal period, and their inability to secure coverage regularly causes them to regularly
11 miss and otherwise take non-compliant meal periods, in addition to other violations yet to be
12 discovered.

13 22. Despite the foregoing, Defendant has implemented a policy and practice of actively
14 discouraging the issuance of meal period premium payments, and in the process, Defendant has
15 violated California Labor Code §§ 226.7 and § 11 of the applicable IWC Wage Order, by failing to
16 compensate Plaintiff and aggrieved employees who were not authorized and permitted to take a
17 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper
18 regular rate of pay for each workday that such a meal period was not authorized or permitted.

19 **Failure to Provide Required Rest Breaks**

20 23. During the statute of limitations period, as part of Defendant's illegal policies and
21 practices to minimize labor costs and maximize corporate profits, Defendant has failed to authorize
22 and permit Plaintiff and other aggrieved employees to take rest breaks as required under California
23 Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order.

24 24. The same or similar policies and practices that deprive Plaintiff and other aggrieved
25 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to
26 take their first and second and third rest breaks. As alleged herein, Defendant understaffs its client
27 facilities, which creates so much work for Plaintiff and other aggrieved employees that they are
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1 frequently unable to take rest breaks. Plaintiff and aggrieved employees often cannot simply stop
2 assisting a customer to take a rest break, and their inability to secure coverage regularly causes them
3 to regularly miss and otherwise take non-compliant rest breaks.

4 25. Defendant also does not provide adequate training regarding its legal obligations with
5 respect to the provision of rest breaks, does not implement a schedule regarding rest breaks for non-
6 exempt employees, and often interrupts staff who try to take rest periods. In short, Defendant
7 essentially has a non-existent rest break policy, as there is no guidance or specification as to when
8 Plaintiff and other aggrieved employees are authorized and permitted to take rest breaks during their
9 shifts.

10 26. Defendant also violated California Labor Code § 226.7, and § 12 of the applicable
11 IWC Order, by failing to pay Plaintiff and other aggrieved employees who were not provided with a
12 rest break, in accordance with the applicable wage order, one additional hour of compensation at the
13 proper regular rate of pay for each workday that a rest break was not provided.

14 **Failure to Pay Overtime Wages**

15 27. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC Order,
16 Defendant is required to compensate Plaintiff and other aggrieved employees for all overtime, which
17 is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of
18 eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the
19 seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in
20 any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of
21 work in any workweek.

22 28. During the statute of limitations period, Defendant failed to compensate Plaintiff and
23 other aggrieved employees for all overtime hours worked as required under the foregoing provisions
24 of the California Labor Code and IWC Wage Order by, among other methods: failing to pay overtime
25 at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§
26 510, 1194 and § 3 of the applicable IWC Order, requiring, permitting or suffering Plaintiff and other
27 aggrieved employees to work off-the-clock, and to work through meal and rest breaks, but not
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1 compensating them for this time, illegal rounding, improperly calculating the regular rate of pay
2 based on bonuses, commissions, and other remuneration, and other methods to be discovered.

3 29. Defendant has knowingly and willfully refused to perform its obligations to
4 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
5 violation of California Labor Code §§ 510, 1194 and 1198, and § 3 of the applicable IWC Order.

6 **Failure to Pay Minimum Wages**

7 **[Cal. Lab. Code §§ 1194, 1197; § 4 of the IWC Wage Orders]**

8 30. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order,
9 payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
10 period is unlawful.

11 31. During the statute of limitations period, the hourly rates for Plaintiff and other
12 aggrieved employees were precisely at California minimum wage. Based on this common practice,
13 Defendant failed to pay Plaintiff and other aggrieved employees minimum wages for all hours
14 worked by requiring, permitting or suffering Plaintiff and other aggrieved employees to work off the
15 clock, such as requiring them to work through meal and rest breaks but not compensating them for
16 this time, illegal rounding, and failing to include this time in all hours worked, and other methods to
17 be discovered.

18 32. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4
19 of the applicable IWC Wage Order. As a proximate result of the aforementioned violations, Plaintiff
20 and other aggrieved employees have been damaged in an amount according to proof at trial.
21 Therefore, pursuant to California Labor Code §§ 200, 203, 226, 1194, 1197.1, and any other
22 applicable law, Plaintiff and other aggrieved employees are entitled to recover the unpaid balance of
23 wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of
24 suit.

25 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

26 33. Pursuant to California Labor Code §§ 201, 202 and 203, Defendant is required to pay
27 all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
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1 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at
2 the time of discharge are due and payable immediately.

3 34. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay
4 all accrued wages due to an employee no later than 72 hours after the employee quits his or her
5 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
6 which case the employee is entitled to his or her wages at the time of quitting.

7 35. California Labor Code § 203 provides that if an employer willfully fails to pay, in
8 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
9 quits, the employer is liable for waiting time penalties in the form of continued compensation to the
10 employee at the same rate for up to 30 workdays.

11 36. During the statute of limitations period, Defendant has willfully failed to pay accrued
12 wages and other compensation to Plaintiff and other aggrieved employees in accordance with
13 California Labor Code §§ 201 and 202. On information and belief, Defendant does not have a
14 sufficient policy to provide Plaintiff and other aggrieved employees with their final paychecks within
15 the timeframes required under California law. Further, Plaintiff's employment ended on or about
16 January 25, 2021. Defendant failed to timely compensate Plaintiff for all hours worked when due,
17 overtime wages, and compensation for non-compliant meal and rest breaks. Defendant also willfully
18 failed and continues to fail to pay accrued wages and other compensation to other aggrieved
19 employees similarly situated as Plaintiff in accordance with California Labor Code §§ 201, 202 and
20 203.

21 **Failure to Furnish Accurate Itemized Wage Statements**

22 37. During the statute of limitations period, Defendant has routinely failed to provide
23 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
24 Defendant's pay stubs have violated California Labor Code § 226. Defendant was and is not
25 providing Plaintiff and other aggrieved employees with proper meal periods and rest breaks but
26 intentionally fails to include in their wage statements one (1) additional hour of compensation at their
27 regular rates of pay for each non-compliant meal period or rest break. Moreover, Defendant has failed
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1 to pay proper overtime wages to Plaintiff and other aggrieved employees and its wage statements
2 therefore fail to reflect the correct hourly rates worked by Plaintiff and other aggrieved employees.
3 Defendant also failed to reimburse Plaintiff and the other aggrieved employees for employment
4 related expenses resulting in inaccurate wage statements.

5 38. In order to conceal its wage theft, Defendant knowingly and intentionally failed to
6 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements
7 in accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

8 39. Plaintiff and other aggrieved employees suffered injury as a result of the failure of
9 Defendant to provide timely and accurate itemized wage statements because it prevented them from
10 discovering the scope and extent of Defendant's violations of California wage and hour laws,
11 prevented them from being able to accurately determine the gross wages earned, the total hours
12 worked, all deductions made, the net wages earned, all applicable hourly rates in effect during each
13 pay period and the corresponding number of hours worked at each hourly rate, and wages were
14 earned but remained unpaid and business expenses were incurred by unreimbursed by Defendant.

15 **Failure to Maintain Required Records**

16 40. During the statute of limitations period, as part of Defendant's illegal payroll policies
17 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
18 Defendant knowingly and intentionally failed to maintain records as required under California Labor
19 Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Order, including but not limited to the
20 following records: total daily hours worked by Plaintiff and the other aggrieved employees;
21 applicable rates of pay; all deductions; meal periods; time records showing when each employee
22 begins and ends each work period; and accurate itemized statements. Defendant had knowledge that
23 it was not providing its non-exempt employees with proper meal and rest periods, but knowingly
24 failed to include in the wage statements one (1) extra hour of compensation for each missed meal and
25 rest period. Defendant also illegally and inaccurately recorded the time in which Plaintiff and other
26 aggrieved employees worked. Defendant also failed to maintain records regarding employee
27 reimbursements.

1 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

2 41. California Labor Code § 2802(a) requires an employer to indemnify an employee for
3 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
4 of her his or her duties, or of his or her obedience to the directions of the employer.

5 42. Defendant has failed to properly indemnify Plaintiff and the other aggrieved
6 employees for the costs of safety glasses, clothing, shoes and personal protective equipment during
7 the COVID pandemic. The expenses were incurred in direct consequence of the discharge of their
8 duties.

9 43. Defendant knowingly, willingly and intentionally attempted to offset the cost of doing
10 business on Plaintiff and the other aggrieved employees.

11 **FIRST CAUSE OF ACTION**

12 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

13 **[Cal. Lab. Code § 2698 *et seq.*]**

14 **(On Behalf of Plaintiff and the Aggrieved Employees Against Defendant)**

15 44. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in paragraphs 1 through 43 above.

17 45. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
18 2699(c), and a proper representative to bring a civil action on behalf of herself and other aggrieved
19 employees pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff
20 was employed by Defendant and one or more of the alleged California Labor Code violations was
21 committed against Plaintiff during the statute of limitations period.

22 46. Plaintiff seeks to recover civil penalties through a representative action permitted by
23 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus,
24 class certification is not required.

25 47. Plaintiff further has standing to represent all aggrieved employees for all of her
26 asserted violations of the California Labor Code under PAGA. See *Huff v. Securitas Security Services*
27 *USA, Inc.* (2018) 23 Cal.App.5th 745, 757 (“For PAGA standing a plaintiff need only have been
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1 employed by the violator and affected by 'one or more' of the alleged violations. (Sec. 2699, subds.
2 (a), (c)).

3 48. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
4 penalties from Defendant in a representative action for the violations set forth above, including but
5 not limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174,
6 1194, 2802 and for the violations of the applicable IWC Wage Order alleged above.

7 49. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
8 against Defendant for violations of California Labor Code provisions for which a civil penalty is
9 specifically provided, including but not limited to, the following:

- 10 a. Pursuant to California Labor Code § 226.3, for violations of California Labor
11 Code § 226(a), Defendant is subject to a civil penalty in the amount of two
12 hundred and fifty dollars (\$250) per aggrieved employee for the initial pay
13 period where a violation occurs and one thousand dollars (\$1,000) per
14 aggrieved employee for violations in subsequent pay periods.
- 15 b. Pursuant to California Labor Code § 1174.5, for violations of California Labor
16 Code § 1174(d), Defendant is subject to a civil penalty of five hundred dollars
17 (\$500).

18 50. California Labor Code § 2699(f) provides that for all California Labor Code violations
19 for which a civil penalty is not specifically provided, the following civil penalties are established: one
20 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
21 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

22 51. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f)
23 for Defendant's violations of California Labor Code provisions for which a civil penalty is not
24 specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204,
25 226.7, 1197, 1024.5, and for the violations of the applicable IWC Wage Order alleged above.

26 52. All civil penalties sought and recovered under this action will be allocated as follows:
27 seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and
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1 aggrieved employees.

2 53. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California
3 Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays
6 for relief against Defendant, as follows:

- 7 1. For civil penalties according to proof;
- 8 2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g),
9 California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for
10 attorneys' fees and costs; and
- 11 3. For such further relief that the Court may deem just and proper.

12 DATED: May 5, 2021

LAW OFFICE OF SCOTT E. WHEELER

13
14 By: 
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SCOTT E. WHEELER

16 *Attorney for Plaintiff and the other Aggrieved*
17 *Employees*
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