

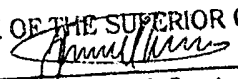


23034092

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

FILED
ALAMEDA COUNTY

JUL 12 2021

CLERK OF THE SUPERIOR COURT
By 
JANICE THOMAS, Deputy

Attorneys for Plaintiff and the Proposed Class

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

ENRIQUE SERRANO, an individual, on
behalf of himself and others similarly situated

PLAINTIFF,

v.

W SERVICES GROUP, LLC; and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO. RG21098576

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
4. Penalties Pursuant to Labor Code § 203
5. Violation of Labor Code § 226(a)
6. Violation of Business & Professions Code § 17200
7. Penalties Pursuant to Labor Code § 2699, et seq.

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

5 **I.**

6 **INTRODUCTION**

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

9 All individuals who performed commercial janitorial services, floor
10 care, exterior maintenance, specialty services, and emergency
11 response services for W SERVICES GROUP, LLC, in the state of
12 California who worked one or more pay periods since four years
13 prior to the filing of this action to the present. (“Proposed Class”)

14 2. From at least four (4) years prior to the filing of this action continuing to the present,
15 Defendant has had a consistent policy of failing to pay wages, overtime, and or doubletime to all
16 members of the Proposed Class, including Plaintiff, when they work more than eight hours in a
17 day or forty hours in a week. Plaintiff and other members of the Proposed Class were not properly
18 compensated for all hours worked at the appropriate rate of pay.

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

26 4. For at least four (4) years prior to the filing of this action and continuing to the
27 present, Defendant has failed to reimburse Plaintiff and members of the Proposed Class the cost
28 of using their personal cell phones for necessary work purposes. The work performed by Plaintiff
and the Proposed Class necessitated the use of cell phones. These cell phones were not provided
by Defendant. As a result, Plaintiff and the Proposed Class had to use their personal cell phones

1 and Defendant never reimbursed them for the cost.

2 5. For at least on (1) year prior to the filing of this action continuing to the present,
3 Defendant has failed to comply with Industrial Welfare Commission ("IWC") Wage Order 4-2001
4 and Labor Code § 226(a) by failing to issue accurate itemized wage statements that show all
5 required information as set forth in the statute.

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

9 7. Plaintiff, on behalf of himself and all Proposed Class members brings this action
10 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802;
11 Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, seeking unpaid
12 wages/overtime, meal period penalties, unreimbursed expenses, accurate itemized wage
13 statements, other penalties, injunctive and other equitable relief, and reasonable attorneys' fees
14 and costs.

15 8. Plaintiff, on behalf of himself and all Proposed Class Members, pursuant to
16 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
17 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

18 9. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
19 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
20 PAGA and continuing to the present, Defendant has violated Labor Code provisions, as detailed
21 below and in his notice letter, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of
22 himself and all aggrieved employees presently or formerly employed by Defendant during the
23 liability period as defined in his PAGA notice letter (*see* Exhibit "1"), brings this representative
24 action pursuant to Labor Code § 2699, et seq. seeking penalties for Defendant's failure to pay all
25 wages and/or overtime, failure to provide lawful meal periods, failure to reimburse Plaintiff and
26 the Proposed Class for business-related expenses, failure to provide accurate itemized wage
27 statements, and failure to pay all wages due at the time of termination.

28 ///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2

3
4
5
6
7

8
9
0
1

2
3
4
5

6
7
8
9
10

1

2

3

4

5

6
7

8

1 c. Work without being reimbursed for their out of pocket expenses; and,

2 d. Work without being provided accurate itemized wage statements that reflect
3 all applicable hourly rates in effect during the pay period and the corresponding number of hours
4 worked at each hourly rate by the employee.

5 16. Defendant willfully failed to compensate Plaintiff and all Proposed Class members
6 for wages at the termination of their employment with Defendant.

7 17. As a result of this conduct, Defendant has engaged in unfair competition and
8 unlawful business practices.

9 18. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA
10 are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code
11 §2699(c).)

12 **B. DEFENDANTS**

13 19. Defendant W SERVICES GROUP, LLC is believed to be a New York corporation
14 operating within the State of California. Defendant’s corporate address is believed to be 500
15 Wheeler Road, Hauppauge, NY 11788. Upon information and belief, Defendant employed
16 Plaintiff and similarly situated persons as hourly employees within California including in the
17 County of Alameda. Defendant has done and does business throughout the State of California.

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

25 21. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
26 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
27 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
28 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the

1 employer and/or joint employer of Plaintiff and the Proposed Class members.

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

7 **IV.**

8 **FACTUAL BACKGROUND**

9 23. Plaintiff and the Proposed Class are, and at all times pertinent hereto, were
10 employed by Defendant in California including within the County of Alameda.

11 24. Upon information and belief, Plaintiff and the Proposed Class are covered by
12 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
13 Code of Regs. § 11040).

14 25. On a regular and consistent basis, Plaintiff and the Proposed Class members were
15 not properly compensated for all wages at the appropriate rate of pay. Plaintiff and all other
16 similarly situated employees were not paid at the proper corresponding rate for all hours worked,
17 including overtime and doubletime. Plaintiff and other aggrieved employees regularly worked
18 work in excess of eight hours in one workday and in excess of 40 hours in one workweek and were
19 not compensated at the appropriate overtime rate for all hours worked including overtime for all
20 hours worked over eight (8) in a day and/or forty (40) in a work week and double the employee's
21 regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours
22 worked in excess of eight on the seventh consecutive day of work in a workweek..

23 26. Defendant failed to inform Plaintiff and the members of the Proposed Class of their
24 right to take compliant meal periods by way of a lawful policy. In addition, Plaintiff and all
25 Proposed Class Members have been forced by Defendant to work over five (5) hours in one day
26 without being provided a thirty (30) minute uninterrupted meal break and not being compensated
27 one (1) hour of pay at the regular rate of compensation for each workday that a meal period was
28 not provided or provided after five (5) hours, all in violation of California labor laws, regulations,

1 and Industrial Welfare Commission Wage Orders.

2 27. On a regular and consistent basis, Plaintiff and the Proposed Class have not been
3 properly reimbursed for expenses associated with the cost of using their personal cell phones which
4 are necessary for the completion of their job duties.

5 28. Defendant has failed to comply with Industrial Welfare Commission ("IWC")
6 Wage Order 4-2001(7) and Labor Code § 226(a) by failing to provide accurate itemized wage
7 statements to Plaintiff and all members of the Proposed Class that show all gross wages earned,
8 total hours worked by the employee, the number of piece rate units earned (if any), all deductions,
9 the net wages earned, the inclusive dates of the pay period, the name of the employee and only the
10 last four digits of the social security number or employee identification number, the name and
11 address of the legal entity that is the employer and, all applicable hourly rates in effect during the
12 pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

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

17 **V.**

18 **CLASS ACTION ALLEGATIONS**

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

22 All individuals who performed commercial janitorial services, floor
23 care, exterior maintenance, specialty services, and emergency
24 response services for W SERVICES GROUP, LLC, in the state of
25 California who worked one or more pay periods since four years
26 prior to the filing of this action to the present. ("Proposed Class")

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

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

4 **A. NUMEROSITY**

5 34. The potential members of the Proposed Class as defined are so numerous that
6 joinder of all the members of the Proposed Class is impracticable. While the precise number of
7 Proposed Class members has not been determined at this time, Plaintiff is informed and believes
8 that Defendant currently employ, and during the relevant time periods employed over 50 members
9 of the Proposed Class.

10 35. Plaintiff alleges that Defendant's employment records would provide information
11 as to the number and location of all Proposed Class members. Joinder of all members of the
12 Proposed Class is not practicable.

13 **B. COMMONALITY**

14 36. There are questions of law and fact common to the Proposed Class that predominate
15 over any questions affecting only individual Proposed Class members. These common questions
16 of law and fact include, without limitation:

17 a. Whether Defendant failed to pay wages and/or overtime compensation as
18 required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, 1194.2 and 1199;

19 b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 4-
20 2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class
21 of their right to take meal periods, by failing to provide required meal periods throughout the term
22 of employment, and/or failing to compensate said employees one (1) hours wages in lieu of rest
23 periods;

24 c. Whether Defendants violated Labor Code § 2802 and/or Wage Order 4-
25 2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the
26 required use of personal cell phones necessary to perform work duties;

27 d. Whether Defendants violated Labor Code § 226(a) and Wage Order 4-2001
28 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing to

1 provide accurate itemized wage statements that show all required information;

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

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

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

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

11 **C. TYPICALITY**

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

16 **D. ADEQUACY OF REPRESENTATION**

17 38. Plaintiff will fairly and adequately represent and protect the interests of the
18 members of the proposed Class.

19 39. Counsel who represent Plaintiff and the Proposed Class are competent and
20 experienced in litigating large employment class actions.

21 **E. SUPERIORITY OF CLASS ACTION**

22 40. A class action is superior to other available means for the fair and efficient
23 adjudication of this controversy. Individual joinder of all Proposed Class members is not
24 practicable, and questions of law and fact common to the Proposed Class predominate over any
25 questions affecting only individual members of the Proposed Class. Each member of the Proposed
26 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
27 practice of failing to pay all wages due, failing to provide meal periods, failing to reimburse
28 expenses, failing to provide accurate itemized wage statements, and failing to pay all wages upon

1 resignation or termination.

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

6 **VI.**

7 **FIRST CAUSE OF ACTION**

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

9 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

10 **LABOR CODE §§ 510, 1194, AND 1199**

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

13 43. Labor Code §§ 1194 and 1194.2 and Code of Regulations, title 8, section 11040
14 also requires that every employer pay each employee not less than the applicable minimum wage
15 for all hours worked. Labor Code §§ 510, 1194 and 1199 also require an employer to compensate
16 its employees at one and one-half times the employee's regular rate of pay for all hours worked in
17 excess of eight hours up to and including 12 hours in any workday, and for the first eight hours
18 worked on the seventh consecutive day of work in a workweek; and double the employee's regular
19 rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in
20 excess of eight on the seventh consecutive day of work in a workweek.

21 44. Plaintiff and the Proposed Class were forced to work on a regular and consistent
22 basis without receiving compensation for all hours worked at the proper rate. Specifically, Plaintiff
23 and the Proposed Class were not paid at the proper overtime rate when they were working more
24 than eight (8) hours in one day or forty (40) hours in one week or the proper doubletime rate for
25 all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight
26 on the seventh consecutive day of work in a workweek.

27 45. By their policy of requiring Plaintiff and members of the Proposed Class to work
28 in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without

1 compensating them at the appropriate rate of pay, Defendant willfully violated the provisions of
2 Labor Code §§ 510, 1194 and 1199.

3 46. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
4 Members have been deprived of wages, overtime, and/or doubletime in amounts to be determined
5 at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
6 fees, and costs.

7 **VII.**

8 **SECOND CAUSE OF ACTION**

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

10 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

11 **LABOR CODE § 226.7 AND LABOR CODE § 512**

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

14 48. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
15 compensation for each meal period the employer fails to provide. Employees are entitled to a first
16 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the
17 first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts
18 over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after
19 no more than ten (10) hours of work. Defendant failed to maintain a policy informing Plaintiff
20 and the Proposed Class of these rights.

21 49. Defendant failed to inform Plaintiff and the members of the Proposed Class of their
22 right to take compliant meal periods by way of a lawful policy.

23 50. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.
24 Defendant failed to provide Plaintiff and the Proposed Class with proper meal periods of not less
25 than thirty (30) minutes during the relevant time period all in violation of California labor laws,
26 regulations, and Industrial Welfare Commission Wage Orders.

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

trial.

VIII.

THIRD CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

FAILURE TO REIMBURSE EXPENSES PURSUANT TO

LABOR CODE § 2802

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

53. Labor Code § 2802 requires employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties.

54. Defendant has failed to reimburse Plaintiff and the Proposed Class for the cost of using their personal cellular telephones/devices for necessary work purposes.

55. Plaintiff and the Proposed Class were required to download and use an application necessary for work purposes and also to use their phones to scan QR codes necessary for work purposes.

56. Though use of their personal cellphones was necessary for the performance of Plaintiff and the Proposed Class' job duties Defendant did not reimburse for these necessary expenditures.

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

IX.

FOURTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

VIOLATION OF LABOR CODE § 226(A)

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

59. Labor Code § 226(a) requires employers to issue employees an accurate itemized

statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee (Labor Code §§ 226(a)(1-9).)

60. Defendant has failed to issue to Plaintiff and the Proposed Class accurate itemized wage statements that include all required information as set forth in the statute. The itemized wage statements provided to Plaintiff and the Proposed Class did not accurately show all gross wages earned, total hours worked by the employee, the number of piece rate units earned (if any), all deductions, the net wages earned, the inclusive dates of the pay period, the name of the employee and only the last four digits of the social security number or employee identification number, the name and address of the legal entity that is the employer and, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

61. Defendant's failure to provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a regular and consistent basis.

62. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

X.

FIFTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

WAITING TIME PENALTIES UNDER LABOR CODE § 203

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

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

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

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

XI.

SIXTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200

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

68. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself, on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general 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 69. 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 70. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
6 practices.

7 71. 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 72. 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 73. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
21 violation of § 17200, *et seq.* of the Business & Professions Code.

22 74. 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 75. 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 76. 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

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

6 **XII.**

7 **SEVENTH CAUSE OF ACTION**

8 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

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

11 78. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
12 seeks penalties under Labor Code § 2699, et seq use of Defendant's violation of Labor Code §§
13 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802; Wage Order 4-2001; and
14 California Code of Regulations, Title 8, Section 11040, which call for civil penalties.

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

17 a. \$100 for the initial violation per employee per pay period.

18 b. \$200 for each subsequent violation per employee per pay period.

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

21 81. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
22 LWDA¹ and mailed a letter by certified mail to Defendant W SERVICES GROUP, LLC's entity
23 address, which is 500 Wheeler Road, Hauppauge, NY 11788, as proscribed by the Code on May
24 7, 2021, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a),
25 226.7, 510, 512, 1194, 1194.2, 1199, and 2802. (*see* Exhibit "1.") Plaintiff also obtained an e-
26 filing confirmation from the LWDA confirming receipt of the notice (*see* Exhibit "2").

27 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

82. 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 unpaid wages, overtime and/or doubletime not paid to Plaintiff and each Proposed Class member 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 member's hourly wage for each meal period missed, not provided in full, 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 out of pocket expenses as a requirement of employment;

4. For penalties pursuant to Labor Code §226(e) for violation of Labor Code §226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000);

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

6. An award of prejudgment and post judgment interest;

7. 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 wages and/or overtime, meal periods, reimbursement of expenses, accurate itemized wage statements, and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, 2802, and IWC 4-2001;

8. For restitution for unfair competition pursuant to Business & Professions Code

1 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

2 9. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
3 Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, 2802, and Wage Order 4-
4 2001;

5 10. An award providing for payment of costs of suit;

6 11. An award of attorneys' fees; and

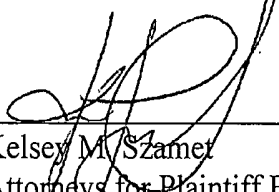
7 12. Such other and further relief as this Court may deem proper and just.

8 **DEMAND FOR JURY TRIAL**

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

10
11 DATED: July 12, 2021

KINGSLEY & KINGSLEY, APC

12
13 By: 

Kelsey M. Szamer

14 Attorneys for Plaintiff Enrique Serrano and the
15 Proposed Class
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

May 7, 2021

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

W SERVICES GROUP, LLC
500 Wheeler Road
Hauppauge, NY 11788

Re: ENRIQUE SERRANO v. W SERVICES GROUP, LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Enrique Serrano ("Plaintiff") and a proposed group of current and former employees working for W SERVICES GROUP, 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 individuals who performed commercial janitorial services, floor care, exterior maintenance, specialty services, and emergency response services for W SERVICES GROUP, 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 § 226.8 makes it unlawful for any person or employer to willfully misclassify an individual as an independent contractor. (See also *Dynamex Operations West, Inc. v. Superior Court*, (2018) 4 Cal.5th 903, 951.) Defendant willfully misclassified Plaintiff and other aggrieved employees as independent contractors though they were, in fact, employees. Defendant's failure to properly classify as employees Plaintiff and all aggrieved employees was done on a regular and consistent basis.

Defendant has failed to pay Plaintiff and all aggrieved employees proper wages for all hours worked at the proper corresponding rate in violation of Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and require an employer to compensate its employees at one and one-half times the employee's regular rate of pay for all hours worked in excess of eight hours up to and including 12 hours in any workday, and for the first eight hours worked on the seventh consecutive day of work in a workweek; and double the employee's regular rate of pay for all hours worked in

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

May 7, 2021

Page 2 of 4

excess of 12 hours in any workday and for all hours worked in excess of eight on the seventh consecutive day of work in a workweek. Here, Plaintiff and other aggrieved employees were not paid at the proper corresponding rate for all hours worked, including overtime and doubletime as a result of Defendant's misclassification of these individuals as independent contractors. Plaintiff and other aggrieved employees regularly worked work in excess of eight hours in one workday and in excess of 40 hours in one workweek and were not compensated at the appropriate overtime rate for all hours worked including overtime for all hours worked over eight (8) in a day and/or forty (40) in a work week and double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight on the seventh consecutive day of work in a workweek.

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. Likewise, the Wage Orders (4-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. 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 and failed to provide timely meal periods. Defendant has had a consistent policy of: (1) failing to provide compliant meal periods to Plaintiff and the aggrieved employees within the first five hours of each shift; (2) requiring Plaintiff and the aggrieved employees to work shifts over ten (10) hours without providing a second meal period of thirty minutes in length altogether; and (3) failing to pay such 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 or that a second meal period was not provided.

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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Here, Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones for necessary business related purposes. Specifically, Defendant required Plaintiff and the aggrieved employees to download and use an application necessary for work purposes and also to use their phones to scan QR codes necessary for work purposes. Defendant

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

May 7, 2021

Page 3 of 4

failed to reimburse Plaintiff and the aggrieved employees for the costs associated with use of their personal cell phones..

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee (Labor Code §§ 226(a)(1-9)).

The itemized wage statements provided to Plaintiff and the aggrieved employees did not accurately show all gross wages earned, total hours worked by the employee, the number of piece rate units earned (if any), all deductions, the net wages earned, the inclusive dates of the pay period, the name of the employee and only the last four digits of the social security number or employee identification number, the name and address of the legal entity that is the employer and, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code § 203 provides that if “an employer willfully fails to pay... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 226.8, 510, 512, 1194, 1199, 1194.2, 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.

LABOR & WORKFORCE DEVELOPMENT AGENCY

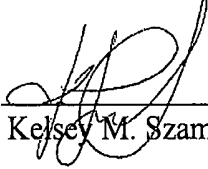
California Labor Code §2699 Penalties

May 7, 2021

Page 4 of 4

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/gm

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. W SERVICES GROUP, LLC via USPS Certified Mail #7018 1130 0001 5815 0294

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 Blvd., Suite

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California ▼

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

ENRIQUE SERRANO

Plaintiff/Aggrieved Employee Occupation *

Cleaner

Add Additional Plaintiffs

Employer Information

Employer Entity Type

Corporation ▼

Employer Name *

W SERVICES GROUP, LLC.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

Employer City

500 WHEELER ROAD

HAUPPAUGE

Employer State

New York ▼

Employer Zip/Postal Code

11788

Employer Industry *

Janitorial ▼

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.

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.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

Visa

Credit Card Number *

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

YYYY

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

 PAGA Letter - ...OUP, 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; personal addresses, personal telephone numbers, personal email addresses, 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.

[Previous Page](#)[Submit](#)

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

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
To: Service Email
Subject: Thank you for submission of your PAGA Case.
Date: Friday, May 7, 2021 3:12:50 PM

5/7/2021

LWDA Case No. LWDA-CM-831646-21
Law Firm : Kingsley & Kingsley
Plaintiff Name : ENRIQUE SERRANO
Employer: W SERVICES GROUP, LLC.
Filing Fee : \$75.00
IFP Claimed : No

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

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
To: Service Email
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation
Date: Friday, May 7, 2021 3:12:59 PM

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-831646-21

Order Number: ORD-000105364

Total:\$75.00

Card Type: Visa

Date: 5/7/2021

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Suite 1200

Encino, California

91436