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

SEAN HESTON and ANTONIO DE LEON,
individually, and on behalf of other members
of the general public similarly situated;

Plaintiffs,

vs.

SERVICE WEST, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California
County of Alameda

06/18/2025

Chad Firke, Executive Officer / Clerk of the Court

By: D. Franklin Deputy

Case No.: 21CV002394

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES**

- (1) Recovery of Unpaid Minimum Wages
and Liquidated Damages**
- (2) Recovery of Unpaid Overtime Wages**
- (3) Failure to Provide Meal Periods or
Compensation in Lieu Thereof**
- (4) Failure to Provide Rest Periods or
Compensation in Lieu Thereof**
- (5) Failure to Furnish Accurate Itemized
Wage Statements**
- (6) Failure to Timely Pay All Wages Due
Upon Separation of Employment**
- (7) Failure to Reimburse Business Expenses**
- (8) Violation of California Labor
Code § 204 (Wages Not Timely
Paid During Employment);**
- (9) Violation of California Labor
Code § 1174(d) (Failure To Keep
Requisite Payroll Records);**
- (10) Unfair Competition and**
- (11) Violation of the Private Attorneys
General Act of 2004**

DEMAND FOR JURY TRIAL

Plaintiff, SEAN HESTON (“PLAINTIFF HESTON”) and ANTONIO DE LEON (“PLAINTIFF DE LEON”) (collectively referred to herein as “PLAINTIFFS”), individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, hereby file this First Amended Complaint against Defendants SERVICE WEST, INC., a California corporation; and DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFFS are informed and believe and thereon allege as follows:

JURISDICTION AND VENUE

1. This court possesses original subject matter jurisdiction over this matter. Venue is proper in the County of Alameda pursuant to California Code of Civil Procedure section 395.5 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed PLAINTIFFS to work in this judicial district and some of the acts, omissions, and conduct alleged by PLAINTIFFS herein occurred in this this judicial district. *See also Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in any county where the defendants committed Labor Code violations against some of its employees).

THE PARTIES

2. PLAINTIFFS are, and at all relevant times, were individuals domiciled in the State of California and a citizen of the State of California.

3. PLAINTIFF HESTON was employed by DEFENDANTS in the State of California as a non-exempt employee, from in or around June 2018 to approximately July 2020.

4. PLAINTIFF DE LEON was employed by DEFENDANTS in the State of California as a non-exempt employee, from in or around March 2018 through the separation of his employment, in or around April 2019, and subsequently employed by DEFENDANTS in the State of California as a non-exempt employee, beginning in or around the beginning of November 2021.

At times during the relevant period, PLAINTIFF DE LEON experienced breaks in employment longer than a single pay period and was not timely paid all owed wages upon each discharge.

5. PLAINTIFF DE LEON worked for DEFENDANTS as an installer, modular installer, modular carpenter and/or similar title(s) at several California locations as assigned by DEFENDANTS, including but not limited to, locations, warehouses, offices and/or facilities located in Mountain View, California and Oakland, California. At times, PLAINTIFF DE LEON worked in different positions including but not limited to administrative positions while employed by DEFENDANTS.

6. DEFENDANTS are a California corporation that, at all relevant times, were authorized to do business within the State of California and are doing business in the State of California.

7. DEFENDANTS own, operate, or otherwise manage a commercial furniture installation, warehousing and logistics business.¹

8. The true names and capacities of the DOE Defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to PLAINTIFFS, who therefore sue each such Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. PLAINTIFFS will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

9. PLAINTIFFS are further informed and believe that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this complaint. PLAINTIFFS are further informed and believe and thereon allege that each Defendant acted pursuant to and within the scope of the relationships alleged above, and that at all

¹ See <https://www.servicewest.com/> (Last visited on February 27, 2023).

relevant times, each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

JOINT LIABILITY

10. Under California law, the definition of the terms “to employ” are broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3) to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control was to reach situations in which multiple entities control different aspects of the employment relationship. Supervision of the work, in the specific sense of exercising control over how services are properly performed, is properly viewed as one of the “working conditions” mentioned in the wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a temporary employment agency) hires and pays a worker, and the other entity supervises the work. *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in California, applying a less stringent standard to what constitutes sufficient control by a business over its vendor’s employees’ wages and working conditions to render that business liable as a joint employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the wages, hours, or working conditions of the employee, that is a sufficient showing of joint employment,” *Id.* at 875 [emphasis added].

11. During PLAINTIFFS’ employment by DEFENDANTS, PLAINTIFFS and the Class Members (defined below) were jointly employed by DEFENDANTS for purposes of the Wage Orders, under the alternative definitions of “to employ” adopted by the California Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages, hours and working conditions of PLAINTIFFS and the Class Members and Aggrieved Employees; (2) suffered or permitted PLAINTIFFS and Class Members and Aggrieved Employees to work for them; and (3) engaged PLAINTIFFS and Class Members and Aggrieved Employees to work for them.

12. PLAINTIFFS are informed and believe, and thereon allege that at all relevant times DEFENDANTS operated as a single integrated enterprise with common ownership and centralized human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices across all of their locations/facilities and subjected all of the Class Members and Aggrieved Employees to these same policies and practices regardless of the location(s) where they worked. Among other things, PLAINTIFFS are informed and believe that: (1) there is common ownership in, and financial control, in DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who have control over the day-to-day operations and employment matters, including the power to hire and fire, set schedules, issue employee policies, and determine rates of compensation across its locations in California; (3) DEFENDANTS utilize the same policies and procedures for all California employees, including issuing the same employee handbooks and other form agreements; (4) DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.

13. PLAINTIFFS are informed and believe, and thereon allege that at all times relevant to this Complaint, DEFENDANTS were the joint employers of PLAINTIFFS and the Class Members and Aggrieved Employees upon whose behalf PLAINTIFFS bring these allegations and causes of action, in that DEFENDANTS, exercised sufficient control over PLAINTIFFS and the Class Members and Aggrieved Employees' wages, hours and working conditions, and/or suffered or permitted PLAINTIFFS and the Class Members and Aggrieved Employees to work so as to be considered the joint employers of PLAINTIFFS and the Class Members and Aggrieved Employees.

14. Upon information and belief, PLAINTIFFS allege that DEFENDANTS created a uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay, time-keeping practices, meal and rest periods, reimbursement of business expenses and other working conditions that were distributed to, and/or applied to PLAINTIFFS and the Class Members and Aggrieved Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFFS and the Class Members and Aggrieved Employees in a uniform manner. DEFENDANTS collectively represented to PLAINTIFFS and the Class

Members and Aggrieved Employees that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFFS' and Class Members and Aggrieved Employees' employment with or without cause. Upon information and belief, DEFENDANTS further collectively represented to PLAINTIFFS and Class Members and Aggrieved Employees in writing the details of their compensation, and the manner in which they were to take meal and rest periods, the procedures required by DEFENDANTS collectively for recordation of hours worked and the policies applicable to PLAINTIFFS and Class Members and Aggrieved Employees by which DEFENDANTS collectively would evaluate the wage rates of PLAINTIFFS and Class Members and Aggrieved Employees.

15. Thus, DEFENDANTS collectively exercised the right to control the wages, hours and working conditions of PLAINTIFFS and Class Members and Aggrieved Employees. As such, DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFFS' and the Class Members and Aggrieved Employees' employment, including the instrumentality that resulted in the illegal conduct for which PLAINTIFFS seek relief in this Complaint.

16. PLAINTIFFS are informed and believe that DEFENDANTS exercised the same control over, applied the same policies and practices, and engaged in the same acts and omissions with regard to the other Class Members and Aggrieved Employees.

CLASS ALLEGATIONS

17. PLAINTIFFS bring this action on behalf of PLAINTIFFS, and all others similarly situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFFS seek to represent are defined as follows and referred to as the "Class" or "Class Members":

All current and former non-exempt employees that worked either directly or via a staffing agency for any of the DEFENDANTS at any location in California at any time from November 10, 2017 to final judgment ("Class Period").

a. Numerosity. While the exact number of Class Members is unknown to PLAINTIFFS at this time, the Class is so numerous that the individual joinder of all members is impractical under the circumstances of this case.

1 PLAINTIFFS are informed and believe the Class consists of at least 100
2 individuals.

- 3 b. Common Questions of Law and Fact. This lawsuit is suitable for class
4 treatment because common questions of law and fact predominate over
5 individual issues. Common questions include, but are not limited to, the
6 following: (1) whether DEFENDANTS understated hours worked and failed
7 to pay all amounts due to PLAINTIFFS and the Class Members for wages
8 earned, including minimum and overtime wages, under California law; (2)
9 whether DEFENDANTS provided PLAINTIFFS and the Class Members with
10 all meal periods or premium payments in lieu thereof in compliance with
11 California law; (3) whether DEFENDANTS provided PLAINTIFFS and the
12 Class Members with all rest periods or premium payments in lieu thereof, in
13 compliance with California law; (4) whether DEFENDANTS provided
14 PLAINTIFFS and Class Members with accurate, itemized wage statements in
15 compliance with California law, displaying, including but not limited to, the
16 total hours worked during the pay period; (5) whether DEFENDANTS timely
17 paid PLAINTIFFS and the Class Members all wages due upon separation of
18 employment; (6) whether DEFENDANTS failed to reimburse PLAINTIFFS
19 and the Class Members for all business expenses; (7) whether DEFENDANTS
20 failed to timely pay all wages due to PLAINTIFFS and other Class Members
21 during their employment; and (8) whether DEFENDANTS kept complete and
22 accurate payroll records as required by the California Labor Code, including,
23 inter alia, section 1174(d); and (9) whether DEFENDANTS violated
24 California Business and Professions Code sections 17200, *et seq.*
- 25 c. Ascertainable Class. The proposed Class is ascertainable as members can be
26 identified and located using information in DEFENDANTS' business, payroll
27 and personnel records.
- 28 d. Typicality. PLAINTIFFS' claims are typical of the claims of the Class

Members. PLAINTIFFS suffered a similar injury as members of the Class as a result of DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate and pay all owed minimum and overtime wages, failure to provide proper meal periods and rest periods or premium compensation in lieu thereof, failure to provide accurate wage statements, failure to keep accurate records, failure to reimburse business expenses, and failure to timely pay all wages due during and upon separation of employment.

e. Adequacy. PLAINTIFFS will fairly and adequately protect the interests of the Class Members. PLAINTIFFS have no interests adverse to the interests of the other Class Members. Counsel who represent PLAINTIFFS are competent and experienced in litigating similar class action cases and are California lawyers in good standing. Counsel for PLAINTIFFS have the experience and resources to vigorously prosecute this case.

f. Superiority. A class action is superior to other available means for the fair and efficient adjudication of this controversy since individual joinder of all members of the class is impractical. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Furthermore, as the damages suffered by each individual member of the Class may be relatively small, the expenses and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments. Finally, the alternative of filing a claim with the California Labor Commissioner is not superior, given the lack of discovery in

such proceedings, the fact that there are fewer available remedies, and the losing party has the right to a trial de novo in the Superior Court.

FACTUAL AND LEGAL ALLEGATIONS

18. During the relevant period, PLAINTIFFS, and each of the Class Members and Aggrieved Employees worked for DEFENDANTS in the State of California. At all times referenced herein, DEFENDANTS exercised control over PLAINTIFFS and Class Members and Aggrieved Employees, and suffered and/or permitted them to work.

19. PLAINTIFF HESTON was employed by DEFENDANTS in the State of California as a non-exempt employee, from in or around June 2018 to approximately July 2020. PLAINTIFF HESTON worked over eight (8) hours in a day, and/or forty (40) hours in a week during PLAINTIFF HESTON's employment with Defendants.

20. PLAINTIFF DE LEON was employed by DEFENDANTS in the State of California as a non-exempt employee, from in or around March 2018 through the separation of his employment, in or around April 2019, and subsequently employed by DEFENDANTS in the State of California as a non-exempt employee, from in or around the beginning of November 2021 through at least 2023.

21. PLAINTIFF DE LEON worked for DEFENDANTS as an installer, modular installer, modular carpenter and/or similar title(s). PLAINTIFF DE LEON's job duties included but were not limited to, performing installation and assembly of office furniture within DEFENDANTS' clients' facilities, loading and unloading product from delivery trucks and/or trailers, performing site cleanups, cleaning vehicles, tools and/or equipment, among other job duties. At times, PLAINTIFF DE LEON worked in an administrative position. PLAINTIFF DE LEON worked for DEFENDANTS at several California locations as assigned by DEFENDANTS, including but not limited to, locations, warehouses, offices and/or facilities located in Mountain View, California and Oakland, California, including but not limited to, from in or around the beginning of November 2021 through on or around December 21, 2021, when PLAINTIFF DE LEON went out on leave before returning to work in or around the month of October 2022 to work for approximately at least one workweek during the month of October 2022. At times during

1 the relevant period, PLAINTIFF DE LEON experienced breaks in employment longer than a
2 single pay period and was not timely paid all owed wages upon each discharge. At times during
3 the relevant period, PLAINTIFF DE LEON regularly worked at least twelve (12) hours per day at
4 least five (5) days per week, including but not limited to, from on or around November 9, 2021
5 through on or around December 21, 2021.

6 22. At all relevant times, PLAINTIFFS were non-exempt employees that were paid on
7 an hourly basis for time counted by DEFENDANTS as hours worked.

8 23. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
9 PLAINTIFFS and Class Members and Aggrieved Employees for all hours worked, resulting in the
10 underpayment of minimum and overtime wages. DEFENDANTS failed to compensate
11 PLAINTIFFS and Class Members and Aggrieved Employees for all hours worked by virtue of,
12 DEFENDANTS' automatic deduction and time rounding policies, and failure to relieve employees
13 of all duties/employer control during unpaid meal periods or otherwise unlawful practices for
14 missed or improper meal periods, as explained below.

15 24. Based on information and belief, DEFENDANTS implemented a policy and/or
16 practice of rounding meal period start and end times and/or automatically deducting at least thirty
17 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
18 PLAINTIFFS and other Class Members and Aggrieved Employees were subject to
19 DEFENDANTS' control during purported meal periods and/or were otherwise not afforded lawful
20 meal periods, depriving PLAINTIFFS and Class Members and Aggrieved Employees of all wages
21 owed.

22 25. Based on information and belief, Class Members and Aggrieved Employees were
23 not paid for all hours worked due to DEFENDANTS' policy and/or practice of rounding time
24 entries or paying according to scheduled hours worked instead of actual time worked, and/or
25 mandated off-the clock work policies and/or practices. For example, PLAINTIFFS and other Class
26 Members and Aggrieved Employees were required to complete pre-shift and post-shift off-the-
27 clock work due in part, to DEFENDANTS' failure to record the true shift start times and shift end
28 times and failure to provide any mechanism for PLAINTIFFS and other Class Members and

Aggrieved Employees to record their true hours worked. For example, at times, rather than requiring PLAINTIFF DE LEON to clock in and out for his shifts and/or record hours worked in any manner, DEFENDANTS simply required PLAINTIFF DE LEON to sign off each day on a written sheet filled out by DEFENDANTS merely reflecting that PLAINTIFF DE LEON had worked his scheduled shift that day. Based on information and belief, DEFENDANTS applied this same policy and practice of payment according to scheduled hours rather than actual hours worked to other Class Members and Aggrieved Employees, resulting in the substantial underpayment of minimum wages owed to Class Members and Aggrieved Employees.

26. Moreover, DEFENDANTS' pay records, payroll registers and/or wage statements issued to Class Members and Aggrieved Employees evidence rounding to the at least the nearest quarter, half and/or whole hour. For example, DEFENDANTS' payroll register for PLAINTIFF DE LEON for paycheck dated December 3, 2021, shows an exact 23.50 regular hours worked and precisely 8.00 overtime hours worked; similarly, DEFENDANTS' payroll register for PLAINTIFF DE LEON for paycheck dated December 10, 2021, shows an exact 40.00 regular hours worked and precisely 28.00 overtime hours worked; similarly, DEFENDANTS' payroll register for PLAINTIFF DE LEON for paycheck dated December 17, 2021, shows precisely 40.00 regular hours worked and precisely 20.00 overtime hours worked; likewise, DEFENDANTS' payroll register for PLAINTIFF DE LEON for paycheck dated December 23, 2021 shows precisely 32.00 regular hours worked and precisely 24.50 overtime hours worked. Based on information and belief, DEFENDANTS rounded PLAINTIFF DE LEON's hours worked to at least the nearest quarter, half and/or whole hour during most if not all pay periods during the Class Period. Based on further information, DEFENDANTS also rounded other Class Members and Aggrieved Employees total hours worked to at least the nearest quarter, half and/or whole hour, during most if not all pay periods during the Class Period, resulting in the substantial underpayment of minimum wages and overtime wages owed to Class Members and Aggrieved Employees.

27. Based on information and belief, DEFENDANTS did not compensate Class Members and Aggrieved Employees for time spent donning and doffing personal protective equipment, safety gear and/or uniforms/work clothing (e.g., hard hats, safety glasses/goggles,

safety vests and/or gloves) during meal periods, rest periods, before the start of a scheduled shift, and after completing a scheduled shift, resulting in the underpayment of minimum wages owed to Class Members and Aggrieved Employees.

28. Based on further information and belief, Class Members and Aggrieved Employees were not paid for additional pre-shift and/or post-shift off-the-clock work and/or other work outside their scheduled shift times, including but not limited to all time spent gathering, preparing, maintaining, repairing and/or returning equipment/tools for work-related purposes and/or all time spent performing site cleanups, cleaning and readying all vehicles, tools and/or equipment for the next day's use and/or completing other work tasks.

29. Based on information and belief, on times during the Class Period, Class Members and Aggrieved Employees were required to record their work hours electronically/using DEFENDANTS' electronic timekeeping and/or computer time-keeping systems. Based on information and belief, at times, DEFENDANTS' electronic time-keeping system (e.g., DEFENDANTS' *REALtime* timekeeping system) malfunctioned such that Class Members and Aggrieved Employees were required to either reinitiate and/or otherwise troubleshoot the system and/or wait for the system to boot prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of wages owed to Class Members and Aggrieved Employees. Based on information and belief, Class Members and Aggrieved Employees experienced the same issues when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid minimum wages owed to Class Members and Aggrieved Employees.

30. Based on information and belief, Class Members and Aggrieved Employees were also required to complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or messages they received to their phones and were required to respond to, including but not limited to, communications from supervisors and/or other Class Members and Aggrieved Employees regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to Class Members and Aggrieved Employees. For example, PLAINTIFF DE LEON

consistently received calls and/or messages from supervisors and/or other Class Members and Aggrieved Employees regarding scheduling and/or other work tasks, including but not limited to, outside of his scheduled shift times and/or during unpaid meal periods, resulting in the underpayment of minimum wages owed to PLAINTIFF DE LEON.

31. Based on information and belief, DEFENDANTS failed to pay Class Members and Aggrieved Employees for time they were required to spend completing orientation, policy questionnaires, training, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by DEFENDANTS. Based on information and belief, this work time was completed off-the-clock and was not compensated.

32. Based on further information and belief, DEFENDANTS implemented a time-rounding system that as applied systematically deprived PLAINTIFFS and other Class Members and Aggrieved Employees of compensable time because the time-rounding system implemented by DEFENDANTS would almost always, if not always, result in understating actual compensable work time. For example, as explained above, DEFENDANTS' pay records and/or wage statements for PLAINTIFF DE LEON evidence rounding of PLAINTIFF DE LEON's hours worked to at least the nearest quarter, half and/or whole hour, resulting in the consistent underpayment of minimum wages owed to PLAINTIFF DE LEON. Based on information and belief, DEFENDANTS systemically rounded/shaved time off other Class Members and Aggrieved Employees workdays to at least the nearest quarter, half and/or whole hour during most if not all pay periods, resulting in the consistent underpayment of minimum wages owed to those Class Members and Aggrieved Employees.

33. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to PLAINTIFFS and Class Members and Aggrieved Employees as well as unpaid overtime wages for those Class Members and Aggrieved Employees who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

34. Based on information and belief, DEFENDANTS had actual and/or constructive

1 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure
2 to provide lawful meal periods (as described below) and/or other off-the-clock work resulted in
3 the underpayment of minimum wages owed to PLAINTIFFS and other Class Members and
4 Aggrieved Employees, in violation of California's minimum and overtime wage laws.

5 35. Based on information and belief, DEFENDANTS failed and continue to fail to pay
6 Class Members and Aggrieved Employees two times their regular rate of pay for time worked
7 beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh
8 consecutive day of work in a work week, in violation of California's overtime laws.

9 36. Based on information and belief, DEFENDANTS failed to incorporate all non-
10 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
11 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
12 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFFS and
13 other Class Members and Aggrieved Employees.

14 37. **Meal Period Violations.** PLAINTIFFS and other Class Members and Aggrieved
15 Employees consistently worked shifts of at least five and one-half hours or more, entitling them to
16 at least one meal period. However, PLAINTIFFS and other Class Members and Aggrieved
17 Employees would not receive legally compliant thirty (30) minute first and second meal periods.
18 Based on information and belief, Class Members and Aggrieved Employees were consistently
19 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to
20 take late meal periods, interrupted meal periods, and/or work through part or all their meal periods
21 due to understaffing, the nature and constraints of their job duties and/or commentary from
22 supervisors pressuring them to take non-compliant meal periods or skip meal periods completely.

23 38. Based on information and belief, other Class Members and Aggrieved Employees
24 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or
25 had their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or
26 otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints
27 of their job duties, and/or the need to meet DEFENDANTS' goals and expectations. For example,
28 at times during the Class Period, based on information and belief, Class Members and Aggrieved

1 Employees were not required to clock in and out for meal periods nor notate the timing of them in
2 any way, and were not provided with any mechanism with which to do so. Instead, if and when
3 meal periods were afforded to for example, PLAINTIFF DE LEON, per DEFENDANTS' policy
4 and practice, PLAINTIFF DE LEON's lead / supervisor would simply tell PLAINTIFF DE LEON
5 when to start and end his meal period. At times, based on information and belief, Class Members
6 and Aggrieved Employees' meal periods were cut short and/or interrupted due to the need to
7 respond to work communications, load/unload product from delivery trucks/trailers, and/or
8 complete other work tasks. Moreover, PLAINTIFFS and other Class Members and Aggrieved
9 Employees were consistently suffered, permitted and/or required to take their meal periods after
10 the fifth hour of work. Based on information and belief, DEFENDANTS did not pay Class
11 Members and Aggrieved Employees any meal period premiums for these late, shortened,
12 interrupted and/or otherwise non-compliant meal periods.

13 39. Based on information and belief, DEFENDANTS implemented policies and/or
14 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
15 DEFENDANTS' control during unpaid meal periods. For example, based on information and
16 belief, PLAINTIFFS and other Class Members and Aggrieved Employees were required to
17 monitor work communication devices during unpaid purportedly off duty meal periods and at
18 times were required to respond to work-related calls/messages from supervisors and/or other Class
19 Members and Aggrieved Employees during unpaid purportedly off-duty meal periods.

20 40. Based on information and belief, DEFENDANTS required Class Members and
21 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
22 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and
23 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
24 unaccounted pre-shift off-the-clock work.

25 41. Based on information and belief, despite DEFENDANTS' failure to provide lawful
26 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
27 times of PLAINTIFFS' and other Class Members and Aggrieved Employees' meal periods and/or
28 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal

1 periods despite having actual and/or constructive knowledge that PLAINTIFFS and other Class
2 Members and Aggrieved Employees did not receive lawful meal periods.

3 42. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
4 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
5 compliant thirty (30) minute second meal period. For example, PLAINTIFF DE LEON often
6 worked shifts lasting longer than ten (10) and/or twelve (12) hours but was not provided with any
7 version of a second meal period during those shifts.

8 43. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF
9 DE LEON and other Class Members and Aggrieved Employees as to the timing and duty-free
10 nature of meal periods. Based on further information and belief, DEFENDANTS did not have a
11 compliant written meal period policy, nor did DEFENDANTS have any sort of compliant policy
12 in practice.

13 44. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
14 records of the true start and end times of PLAINTIFFS' and Class Members and Aggrieved
15 Employees' meal periods. Based on information and belief, to the extent meal period were
16 recorded, DEFENDANTS illegally rounded the start and end times of purported meal periods
17 resulting in PLAINTIFFS and other Class Members and Aggrieved Employees not being paid for
18 all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC*
19 (2021) 11 Cal.5th 58.

20 45. Based on information and belief, DEFENDANTS had actual and/or constructive
21 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
22 were free of DEFENDANTS' control owed to PLAINTIFFS and other Class Members and
23 Aggrieved Employees, in violation of California's meal period laws.

24 46. DEFENDANTS failed to pay PLAINTIFFS and other Class Members and
25 Aggrieved Employees, an additional hour of wages at their respective regular rates of
26 compensation for each workday a lawful meal period was not provided. DEFENDANTS either
27 failed to pay a meal period premium at all for each workday a lawful meal period was not provided
28 and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary

remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

47. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide PLAINTIFFS and other Class Members and Aggrieved Employees with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

48. PLAINTIFFS and other Class Members and Aggrieved Employees were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest periods per California law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of duty-free rest periods.

49. Based on information and belief, DEFENDANTS did not have a have a compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice.

50. Based on information and belief, Class Members and Aggrieved Employees' rest periods were interrupted, cut short, on duty, restricted to work premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/managers pressuring them to skip rest periods completely or otherwise take non-compliant rest periods.

51. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts lasting longer than ten hours. For example, PLAINTIFF DE LEON often worked shifts lasting longer than ten (10) hours but was not provided with any version of a third rest period on those shifts during which he worked more than ten (10) hours.

52. Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve PLAINTIFFS and other Class Members and Aggrieved Employees of all duties and DEFENDANTS' control during rest periods. For example, based on information and belief, PLAINTIFF and other Class Members and Aggrieved Employees were required to monitor work communication devices during any rest periods and often had to respond to work

communications during any rest periods rendering those rest periods on duty and/or worked through and thus noncompliant with California rest period law.

53. Based on information and belief, Class Members and Aggrieved Employees were pressured to complete their work duties according to a designated schedule such that rest periods were only taken once tasks were completed, and/or as time permitted. For example, due to the need to complete assigned projects according to DEFENDANTS' designated schedule, meet DEFENDANTS' deadlines and/or complete assigned work tasks, PLAINTIFFS were rarely, if ever, afforded the opportunity to take a ten-minute off-duty rest period during the Class Period.

54. Moreover, on information and belief, DEFENDANTS failed to authorize and permit rest periods that were a "net" ten minutes in a suitable rest area and instead, to the extent rest periods were provided at all, limited Class Members and Aggrieved Employees to only ten-minute rest periods, requiring them to be back at their workstations within ten minutes of leaving, in violation of California rest period law. DEFENDANTS' failure to communicate that the rest period is a net ten minutes deprived Class Members and Aggrieved Employees of their rights to a full rest period, as such as policy only relieves Class Members and Aggrieved Employees from their workstation for ten minutes to travel to and from a rest area and be back at the workstation by the end of that ten minutes.

55. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in which PLAINTIFFS and Class Members and Aggrieved Employees experienced a missed/unlawful rest period in violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each workday a proper rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

56. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to provide PLAINTIFFS and other Class Members and Aggrieved Employees with accurate wage statements that complied with Labor Code section 226. As DEFENDANTS failed to provide

1 PLAINTIFFS and Class Members and Aggrieved Employees with meal and rest periods that
2 complied with Labor section 226.7, the wage statements DEFENDANTS issued to PLAINTIFFS
3 and Class Members and Aggrieved Employees failed and continue to fail to correctly set forth the
4 gross wages earned, the total hours worked, the net wages earned, and all applicable hourly rates
5 in effect during the pay period and the corresponding number of hours worked at each hourly rate
6 by the employee.

7 57. DEFENDANTS issued wage statements to PLAINTIFFS and Class Members and
8 Aggrieved Employees that also failed to indicate the earned gross and net wages earned during the
9 pay period, the correct applicable rates of pay for all hours worked, and the total hours worked by
10 PLAINTIFFS and Class Members and Aggrieved Employees (by virtue of rounded time entries,
11 automatic deduction for meal periods/failure to relieve Class Members and Aggrieved Employees
12 of all duties and employer control during unpaid meal periods, payment according to scheduled
13 hours worked rather than actual hours worked, and/or other off-the-clock work policies and
14 practices) which results in a violation of Labor Code section 226(a).

15 58. As described herein, based on information and belief, DEFENDANTS also failed
16 to incorporate all forms of non-discretionary compensation earned during the pay period into the
17 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each
18 hour of overtime worked by PLAINTIFFS and other Class Members and Aggrieved Employees.

19 59. Moreover, based on information and belief, DEFENDANTS issued wage
20 statements to PLAINTIFFS and Class Members and Aggrieved Employees that further violate
21 Labor Code section 226(a), by among other things, failing to list the correct name and/or address
22 of the legal entity that is the employer.

23 60. As a result, DEFENDANTS issued wage statements to PLAINTIFFS and Class
24 Members and Aggrieved Employees that were not accurate and did not include all of the statutorily
25 required information. As such, DEFENDANTS violated Labor Code section 226.

26 61. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
27 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved
28 Employees all wages that were due and owing upon termination or resignation. Based on

information and belief, DEFENDANTS untimely provide final wages to Class Members and Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.

62. Upon separation of employment, Class Members and Aggrieved Employees' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, PLAINTIFFS' and Class Members and Aggrieved Employees' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued rates. For example, upon PLAINTIFFS' separation of employment during the Class Period, DEFENDANTS failed to timely pay PLAINTIFFS his final wages, including but not limited to all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

63. Moreover, DEFENDANTS failed to timely provide all owed wages immediately upon discharge of employment. For example, based on information and belief, at times, Class Members and Aggrieved Employees experienced breaks in their employment caused by DEFENDANTS whereby Class Members and Aggrieved Employees would not be called in for work for longer than a single pay period due to including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

64. These violations subject DEFENDANTS to civil penalties under Labor Code section 203, 210, and/or 256.

65. **Unreimbursed Business Expenses.** Based on information and belief, DEFENDANTS required PLAINTIFFS and Class Members and Aggrieved Employees to incur business expenses as a direct consequence of the performance of their job duties without providing reimbursement, in violation of Labor Code section 2802. Based on information and belief, PLAINTIFFS and Class Members and Aggrieved Employees were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

66. Based on information and belief, DEFENDANTS shifted the costs of doing business onto Class Members and Aggrieved Employees by requiring them to pay for business expenses, including but not limited to, the use of Class Members and Aggrieved Employees' personal mobile phone and data usage for work related purposes to receive and respond to work related messages and/or phone calls, the purchase and/or maintenance of work tools/equipment and/or uniforms/work clothing/protective equipment/safety gear (e.g., steel-toed/safety boots and/or gloves). For example, PLAINTIFF DE LEON was frequently required to respond to work-related calls and/or messages to his personal cell phone/mobile device from his supervisors and/or other Class Members and Aggrieved Employees regarding scheduling and/or other work tasks without receiving any/full reimbursement from DEFENDANTS for this business use of his personal cell phone/mobile device. Based on information and belief, other Class Members and Aggrieved Employees were also required to use their personal cell phones/computers/devices for work without receiving any/full reimbursement from DEFENDANTS for the business expenses they incurred in connection therewith.

67. Based on information and belief, at times, Class Members and Aggrieved Employees were also required to purchase, repair and/or maintain hand tools, power tools and/or other tools and/or equipment, such as but not limited to, wrenches, screw drivers, tape measurers, mallets, utility knives, sockets and/or other tools/equipment they required to perform their assigned job duties without receiving any and/or full reimbursement from DEFENDANTS for the expenses Class Members and Aggrieved Employees incurred in connection therewith.

68. Based on information and belief, DEFENDANTS required Class Members and Aggrieved Employees to use their personal vehicles to travel between DEFENDANTS' facilities and/or locations and/or between job sites and/or otherwise use their personal vehicles for DEFENDANTS' business purposes without providing any and/or full reimbursement to Class Members and Aggrieved Employees for the use of their personal vehicles, including but not limited to, cost of gas, mileage and wear and tear on the vehicle. Based on further information and belief, DEFENDANTS further failed to reimburse Class Members and Aggrieved Employees at all and/or in full for parking expenses incurred when parking at their assigned job sites.

69. Based on information and belief, DEFENDANTS regularly failed to reimburse and indemnify Class Members and Aggrieved Employees for business expenses. Pursuant to California Labor Code section 2802, PLAINTIFFS and Class Members and Aggrieved Employees were entitled to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

70. DEFENDANTS' failure to provide Class Members and Aggrieved Employees with full reimbursement for all reasonable expenses associated with carrying out their duties required that Class Members and Aggrieved Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

71. **Violation of Labor Code Section 204.** PLAINTIFFS are informed and believe, and based thereon allege, that DEFENDANTS knew or should have known that PLAINTIFFS and the other Class Members and Aggrieved Employees were entitled to receive all wages owed to them during their employment. PLAINTIFFS and the other Class Members and Aggrieved Employees did not receive payment of all wages, including overtime and minimum wages and meal and rest period premiums, within any time permissible under California Labor Code section 204.

72. **Failure to Keep Complete and Accurate Records.** PLAINTIFFS are informed and believe, and based thereon allege, that DEFENDANTS knew or should have known that DEFENDANTS had to keep complete and accurate payroll records for PLAINTIFFS and other Class Members and Aggrieved Employees in accordance with California law, but, in fact, did not keep complete and accurate payroll records.

73. PLAINTIFFS are informed and believe and allege thereon that DEFENDANTS engaged in these same herein described unlawful practices and that DEFENDANTS applied these same herein described unlawful practices to all of its employees that it applied to PLAINTIFFS.

FIRST CAUSE OF ACTION

Recovery of Unpaid Minimum Wages and Liquidated Damages (By PLAINTIFFS and the Class Members Against all DEFENDANTS)

74. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

75. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1

1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than
2 the minimum so fixed is unlawful.

3 76. During the relevant time period, DEFENDANTS failed to pay minimum wage to
4 PLAINTIFFS and the other class members as required, pursuant to California Labor Code
5 sections 1194, 1197, and 1197.1.

6 77. It is fundamental that an employer must pay its employees for all time worked.
7 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
8 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223
9 prohibits the pay of less than a statutory or contractual wage scale. Pursuant to California Labor
10 Code sections 1194 and 1197, and the Industrial Wage Commission (“IWC”) Wage Orders, an
11 employer must pay its employees for all hours worked, up to 40 hours per week or 8 hours per
12 day, at a regular rate no less than the mandated minimum wage. Payment to an employee of less
13 than the applicable minimum wage for all hours worked in a payroll period is unlawful. Labor
14 Code section 224 only permits deductions from wages when the employer is required or
15 empowered to do so by state or federal law or when the deduction is expressly authorized in writing
16 by the employee for specified purposes that do not have the effect of reducing the agreed upon
17 wage.

18 78. DEFENDANTS violated California’s minimum wage laws by failing to
19 compensate PLAINTIFFS and the Class Members for all hours worked by virtue of, among other
20 things, DEFENDANTS’ time rounding, automatic deduction for meal periods, off-the-
21 clock/unpaid work completed during meal periods, other pre-shift, post-shift and/or otherwise off-
22 the-clock work, and/or payment according to scheduled hours worked rather than actual hours
23 worked (described above), which resulted in the failure to account for all hours worked and thus
24 the denial of minimum wages.

25 79. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFFS
26 and Class Members for all hours worked.

27 80. Based on information and belief, DEFENDANTS had actual or constructive
28 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for

1 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
2 periods, policy and practice of payment according to scheduled work time rather than actual work
3 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
4 owed to PLAINTIFFS and other Class Members.

5 81. Pursuant to California Labor Code section 1194, 1197, and 1197.1, PLAINTIFFS
6 and other class members are entitled to recover the unpaid balance of their minimum wage
7 compensation as well as interest, costs, and attorneys' fees, and liquidated damages in an amount
8 equal to the wages unlawfully unpaid and interest thereon.

9 82. Pursuant to Labor Code section 1197.1, PLAINTIFFS and other class members are
10 entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum
11 wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

12 83. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFFS and the Class
13 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
14 attorney's fees and costs, in an amount to be proved at trial.

15 **SECOND CAUSE OF ACTION**
16 **Recovery of Unpaid Overtime Wages**
(By PLAINTIFFS and the Class Members Against all DEFENDANTS)

17 84. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

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

22 86. Specifically, the applicable IWC Wage Order provide that employees in California
23 must be paid overtime, equal to one and one-half times the employee's regular rate of pay for all
24 hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for
25 the first eight (8) hours worked on the seventh consecutive day of work in a workweek, and they
26 must be paid double the regular rate of pay for all hours worked in excess of 12 hours in any
27 workday and for all hours worked in excess of eight (8) on the seventh consecutive day of work in
28 a workweek, unless they are exempt.

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

88. PLAINTIFFS and the Class Members worked overtime hours for which they were not compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time rounding, automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according to scheduled hours worked rather than actual hours worked (described above), which resulted in the failure to account for all hours worked and thus the denial of all owed overtime wages.

89. Based on information and belief, DEFENDANTS failed to pay twice Class Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

90. Based on information and belief, DEFENDANTS further violated California's overtime wage laws by failing to incorporate all non-discretionary compensation, including but not limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFFS and other Class Members.

91. DEFENDANTS' conduct described above is in violation of California Labor Code sections 510, 1194, 1198 and all applicable Wage Orders.

92. PLAINTIFFS and the Class Members are entitled to recover all unpaid overtime wages, plus attorney's fees and costs, in an amount to be proved.

THIRD CAUSE OF ACTION
Failure to Provide Meal Periods or Compensation in Lieu Thereof
(By PLAINTIFFS and the Class Members Against all DEFENDANTS)

1 93. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

2 94. At all relevant times, the IWC Order and California Labor Code sections 226.7 and
3 512(a) were applicable to PLAINTIFFS' and other class members' employment by Defendants.

4 95. At all relevant times, California Labor Code section 226.7 provides that no
5 employer shall hire an employee to work during any meal period mandated by an applicable order
6 of the California IWC.

7 96. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
8 DEFENDANTS were required to provide PLAINTIFFS and the Class Members with one 30-
9 minute meal break free from all duties and employer control for all shifts longer than 5 hours, and
10 a second 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods
11 can be waived, but only under the following circumstances: (1) if an employee's total work period
12 in a day is over five (5) hours but no more than six (6) hours, the required meal period may be
13 waived by mutual consent of the employer and employee, and (2) if an employee's total work
14 period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal
15 period may be waived by mutual consent of the employer and employee, but only if the first meal
16 period was not waived. Employers covered by the Wage Orders have an obligation to both (1)
17 relieve their employees for at least one meal period for shifts over five hours (see above), and (2)
18 to record having done so.

19 97. Employers must pay employees an additional hour of wages at the employees'
20 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
21 meal period, first meal period provided after five (5) hours, second meal period provided after 10
22 hours). Lab. Code § 226.7.

23 98. As explained above, PLAINTIFFS and other Class Members were consistently
24 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
25 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
26 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
27 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
28 periods completely.

99. Based on information and belief, DEFENDANTS had and continue to have a policy of rounding the start and end times of employees' meal periods and/or automatically deducting thirty minutes per shift despite having actual and/or constructive knowledge that PLAINTIFFS and Class Members did not receive compliant meal periods.

100. Moreover, based on information and belief, Class Members did not receive a timely, uninterrupted second meal period when working shifts over ten (10) hours in a workday.

101. PLAINTIFFS are informed and believe and thereon allege that DEFENDANTS had actual and/or constructive knowledge that its time-rounding and auto-deduction policies and practices, other unlawful policies and practices resulted in the denial of compliant meal periods in violation of California's meal period laws.

102. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal periods in violation of California law and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

103. As a result, under Labor Code section 226.7, PLAINTIFFS and the Class Members are entitled to one additional hour's pay at the employee's regular rate of compensation for each day a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs, all in an amount to be proved at trial.

FOURTH CAUSE OF ACTION
Failure to Provide Rest Periods or Compensation in Lieu Thereof
(By PLAINTIFFS and the Class Members Against all DEFENDANTS)

104. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

105. At all relevant times, the IWC Order and California Labor Code sections 226.7 were applicable to PLAINTIFFS' and other class members' employment by Defendants.

106. At all relevant times, California Labor Code section 226.7 provides that no employer shall hire an employee to work during any rest period mandated by an applicable order of the California IWC.

107. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer

1 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
2 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
3 “insofar as practicable.” In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012),
4 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
5 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up
6 to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.*
7 at 1029). The rest period requirement obligates employers to permit and authorize employees to
8 take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish
9 control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5
10 Cal.5th 257. If the employer fails to provide any required rest period, the employer must pay the
11 employee one hour of pay at the employee’s regular rate of compensation for each workday the
12 employer did not provide at least one legally required rest period, pursuant to Labor Code section
13 226.7.

14 108. PLAINTIFFS and the Class Members did not receive legally compliant, timely 10-
15 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
16 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
17 DEFENDANTS’ control due to the nature and constraints of Class Members’ job duties,
18 understaffing, and/or commentary from supervisors pressuring PLAINTIFFS and Class Members
19 to skip rest periods completely or otherwise take non-compliant rest periods.

20 109. Based on information and belief, DEFENDANTS implemented policies and/or
21 practices that failed to relieve PLAINTIFFS and other Class Members of all duties and employer
22 control during rest periods. Based on further information and belief, Class Members were
23 pressured to complete their work duties according to a designated schedule such that rest periods
24 were only taken once tasks were completed, and/or as time permitted.

25 110. As a result, PLAINTIFFS and Class Members did not receive legally compliant
26 first, second, or third rest periods as required by California law.

27 111. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
28 period premium to PLAINTIFFS and other Class Members for each workday in which there was

1 a missed or otherwise unlawful rest period. Based on further information and belief, when a rest
2 premium was paid, DEFENDANTS failed to include non-discretionary compensation including
3 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into
4 the regular rate of compensation for purposes of determining the owed rest period premium.

5 112. DEFENDANTS are therefore liable to PLAINTIFFS and the Class Members for
6 one hour of additional pay at the regular rate of compensation for each workday that a required
7 rest period was not provided, pursuant to California Labor Code section 226.7, 226.7(c) and the
8 applicable Wage Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount
9 to be proved at trial.

10 **FIFTH CAUSE OF ACTION**
11 **Failure to Furnish Accurate Itemized Wage Statements**
12 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

13 113. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

14 114. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFFS and the
15 Class

16 Members were entitled to receive, semimonthly or at the time of each payment of wages, an
17 itemized wage statement accurately stating the following:

18 (1) gross wages earned, (2) total hours worked by the employee,
19 except for any employee whose compensation is solely based on a
20 salary and who is exempt from payment of overtime under
21 subdivision (a) of Section 515 or any applicable order of the
22 Industrial Welfare Commission, (3) the number of piece-rate units
23 earned and any applicable piece rate if the employee is paid on a
24 piece-rate basis, (4) all deductions, provided that all deductions
25 made on written orders of the employee may be aggregated and
26 shown as one item, (5) net wages earned, (6) the inclusive dates of
27 the period for which the employee is paid, (7) the name of the
28 employee and his or her social security number, except that by
January 1, 2008, only the last four digits of his or her social security
number or an employee identification number other than a social
security number may be shown on the itemized statement, (8) the
name and address of the legal entity that is 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.

115. As DEFENDANTS have intentionally and willfully failed to provide PLAINTIFFS
and other Class Members with meal and rest periods that complied with Labor Code

1 section 226.7, the wage statements DEFENDANTS issued to PLAINTIFFS and
2 other Class Members failed and continue to fail to correctly set forth (a) the gross
3 wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours
4 worked by the employee in violation of Labor Code section 226(a)(2); (c) the net
5 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable
6 hourly rates in effect during the pay period and the corresponding number of hours
7 worked at each hourly rate by the employee, in violation of Labor Code section
8 226(a)(9).

9 116. Moreover, due to violations detailed above, including but not limited to,
10 DEFENDANTS' failure to pay regular and overtime wages for all hours worked,
11 failure to provide meal and rest break premiums, and failure to pay all sick leave
12 wages at the proper rates, DEFENDANTS have violated California Labor Code §
13 226 by willfully failing to furnish PLAINTIFFS and other Class Members with
14 accurate, itemized wage statements that listed the gross and net wages earned and
15 the correct applicable rates of pay for all hours worked. Based on information and
16 belief, DEFENDANTS failed to incorporate all forms of non-discretionary
17 compensation earned during the pay period into the regular rate of pay for purposes
18 of calculating the owed overtime rate, and as such, failed to display the proper
19 overtime rate(s) for each hour of overtime worked by PLAINTIFFS and other Class
20 Members.

21 117. As explained above, wage statements issued by DEFENDANTS failed to list the
22 "total hours worked" by PLAINTIFFS and Class Members (by virtue of rounded
23 time entries, automatic deduction for meal periods/failure to relieve Class Members
24 of all duties and employer control during unpaid meal periods, payment according
25 to scheduled hours worked rather than actual hours worked, and/or other off-the-
26 clock work policies and practices all described in greater detail *supra*), which
27 results in a violation of Labor Code section 226(a). Failure to list all hours worked
28 on a wage statement, gives rise to an inference of injury under Labor Code Section

226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

118. Separately, and independent from the above allegations, DEFENDANTS issued wage statements to PLAINTIFFS and Class Members that violate Labor Code section 226(a)(8), by failing to list the correct name and/or address of the legal entity that is the employer.

119. Based on information and belief, wage statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the Class Member is being paid.

120. DEFENDANTS' failure to accurately list all hours worked on all wage statements caused confusion to PLAINTIFFS and caused and continues to cause confusion to other Class Members over whether they received all wages owed to them.

121. As a result, PLAINTIFFS and other Class Members have suffered injury as they could not easily determine whether they received all wages owed to them and whether they were paid for all hours worked.

122. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or address of the legal entity that is the employer, PLAINTIFFS and Class Members have suffered injury as they could not contact their employer regarding any question(s) they had about wages paid.

123. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFFS and Class Members with accurate, itemized wage statements.

124. As a result of DEFENDANTS' unlawful conduct, PLAINTIFFS and Class Members have suffered injury. The absence of accurate information on their wage statements has prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and mathematical computations to determine the amount of wages owed, and will cause difficulty and expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the submission of inaccurate information about wages and amounts deducted from wages to state and federal government agencies. As a result, PLAINTIFFS and Class Members

are required to participate in this lawsuit and create more difficulty and expense from having to reconstruct time and pay records than if DEFENDANT had complied with its legal obligations.

125. Pursuant to California Labor Code section 226(e), PLAINTIFFS and Class Members are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226 violation occurred and one hundred dollars per employee per violation for each subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

126. Pursuant to California Labor Code § 226(h), PLAINTIFFS and Class Members are entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to provide currently employed Class Members with inaccurate wage statements in violation of California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance with California Labor Code § 226(a).

127. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFFS and Class Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable attorneys' fees, and costs of suit.

SIXTH CAUSE OF ACTION

Failure to Timely Pay All Wages Due Upon Separation of Employment (By PLAINTIFFS and the Class Members Against all DEFENDANTS)

128. PLAINTIFFS incorporate all preceding paragraphs as if fully set forth herein.

129. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

130. California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her

employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

131. Based in information and belief, DEFENDANTS failed and continue to fail to timely pay final wages to PLAINTIFFS and Class Members upon separation of employment in violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFFS and Class Members do not include all wages owed as they are devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

132. Moreover, DEFENDANTS failed to timely provide all owed wages immediately upon discharge of employment. For example, based on information and belief, at times, PLAINTIFFS and other Class Members experienced breaks in their employment caused by DEFENDANTS whereby PLAINTIFFS and other Class Members would not be called in for work for longer than a single pay period due to including but not limited to DEFENDANTS’ lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

133. Under Labor Code section 203, PLAINTIFFS and the Class Members who are no longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days’ pay, plus attorney’s fees and costs, in an amount to be proved at trial.

SEVENTH CAUSE OF ACTION
Failure to Reimburse Business Expenses
(By PLAINTIFF and the Class Members Against all DEFENDANTS)

134. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

135. California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”
136. Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.
137. As described above, PLAINTIFFS and the Class Members were improperly required to pay for business expenses that are legally the responsibility of the employer.
138. DEFENDANTS’ failure to provide PLAINTIFFS and the Class Members with full reimbursement for all reasonable expenses associated with carrying out their duties required that PLAINTIFFS and the Class Members subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.
139. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFFS and the Class Members have suffered injury in that they were not completely reimbursed as mandated by California law.
140. Pursuant to California Labor Code section 2800 and 2802, PLAINTIFFS and the

Class Members are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable attorneys' fees, and costs of suit.

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code § 204)

(Against SERVICE WEST, INC. and DOES 1 through 100)

141. PLAINTIFFS incorporate by reference the allegations contained in paragraphs 1 through 140, and each and every part thereof with the same force and effect as though fully set forth herein.
142. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed.
143. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.
144. At all times herein set forth, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.
145. During the relevant time period, DEFENDANTS intentionally and willfully failed to pay PLAINTIFFS and the other Class Members all wages due to them, within any time period permissible under California Labor Code section 204.
146. PLAINTIFFS and the other Class Members are entitled to recover all remedies available for violations of California Labor Code section 204.

NINTH CAUSE OF ACTION

(Violation of California Labor Code § 1174(d))

(Against SERVICE WEST, INC. and DOES 1 through 100)

147. PLAINTIFFS incorporate by reference the allegations contained in paragraphs 1 through 146, and each and every part thereof with the same force and effect as though fully set forth herein.
148. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.
149. DEFENDANTS have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to PLAINTIFFS and other Class Members.
150. As a result of DEFENDANTS' violation of California Labor Code section 1174(d), PLAINTIFFS and other Class Members have suffered injury and damage to their statutorily-protected rights.
151. More specifically, PLAINTIFFS and other Class Members have been injured by DEFENDANTS' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

TENTH CAUSE OF ACTION

Unfair Competition

(By PLAINTIFFS and the Class Members Against all DEFENDANTS)

152. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.
153. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition within the meaning of California Business and Professions Code section 17200 *et*

1 *seq.* This unfair conduct includes all unlawful conduct alleged herein, including but
2 not limited to: DEFENDANTS' failure to pay minimum and overtime wages by
3 virtue of its illegal policies and practices; DEFENDANTS' failure to authorize or
4 permit, or provide, all required meal and rest periods or pay proper premiums in
5 lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
6 wage statements; DEFENDANTS' failure to reimburse business expenses;
7 DEFENDANTS' failure to timely pay all wages owed upon separation of
8 employment; and DEFENDANTS' failure to provide paid sick leave (or paid time
9 off in lieu thereof) at the properly accrued rates (due to, including but not limited
10 to, DEFENDANTS' failure to incorporate all non-discretionary compensation into
11 the sick pay calculation and failure to base the accrued sick leave on the correct
12 number of hours worked as a result of DEFENDANTS' time-rounding/auto
13 deduction policies and practices, payment according to scheduled hours worked
14 and/or other off-the-clock work policies and practices).

15 154. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
16 California Labor Code, DEFENDANTS have gained a competitive advantage over
17 other comparable companies doing business in the State of California that comply
18 with their obligations to authorize or permit rest periods and meal periods or pay
19 proper meal and rest period premiums in lieu thereof, to properly accrue and pay
20 sick time benefits, to provide complete and accurate itemized wage statements, to
21 reimburse employees for all business expenses, to pay all owed minimum and
22 overtime wages and to pay all wages due upon separation of employment of their
23 employees.

24 155. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFFS
25 and Class Members have suffered injury in fact and lost money or property, as
26 described in more detail above. Pursuant to California Business and Professions
27 Code section 17200, *et seq.*, PLAINTIFFS and Class Members are entitled to
28 restitution of all wages and other monies rightfully belonging to them that

DEFENDANTS failed to pay and wrongfully retained by means of their unlawful and unfair business practices.

156. PLAINTIFFS also seek an injunction against DEFENDANTS on behalf of the Class Members, enjoining DEFENDANTS and any and all persons acting in concert with them from engaging in each of the unlawful practices and policies set forth herein.

157. PLAINTIFFS also seek an award of attorney's fees pursuant to Code Civ. Proc Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted by law.

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ELEVENTH CAUSE OF ACTION

**Violation of the Private Attorneys General Act of 2004
(By PLAINTIFFS and the Aggrieved Employees Against All DEFENDANTS)**

158. PLAINTIFFS incorporate all preceding paragraphs as if full alleged herein.

159. PLAINTIFFS bring this action under the Private Attorneys General Act of 2004, Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of PLAINTIFFS, the State of California and Aggrieved Employees, regarding violations of the California Labor Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

All current and former non-exempt employees that worked either directly or via a staffing agency for any of the DEFENDANTS at any location in California at any time from one year plus 65 days from the filing of the initial Complaint through the present ("PAGA Period").

160. PLAINTIFFS are each an "aggrieved employee," as that term is defined under Labor Code section 2699(c), as PLAINTIFFS were employed by DEFENDANTS during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein. Accordingly, PLAINTIFFS seek to recover on behalf of the State of California and all Aggrieved Employees, the civil penalties

provided by PAGA, plus reasonable attorney's fees and costs. PLAINTIFFS have standing to bring a PAGA cause of action on behalf of PLAINTIFFS, the State of California, and all Aggrieved Employees, as PLAINTIFFS were jointly employed by DEFENDANTS and is thereby affected by one or more of the alleged violations. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by the employer - regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS

161. On September 17, 2021, PLAINTIFF HESTON provided written notice by online submission to the California Labor and Workforce Development Agency ("LWDA") and by U.S. Certified Mail to DEFENDANTS of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations ("HESTON PAGA Notice").
162. On March 3, 2023, PLAINTIFF DE LEON, through counsel, gave written notice by online filing with the LWDA informing it that DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged in this Complaint ("DE LEON PAGA Notice"). THE DE LEON PAGA Notice was also sent to DEFENDANTS via certified mail.
163. The LWDA did not provide notice of its intention to investigate DEFENDANTS' violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA. Accordingly, PLAINTIFFS have exhausted the administrative remedies as required by Labor Code section 2699.3. Consequently, PLAINTIFFS' right to file the instant lawsuit against DEFENDANTS has duly accrued.
164. PLAINTIFFS seek to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior*

Court (2009) 46 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

165. From one year prior to PLAINTIFFS' filing of the required PAGA notice with the LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California Labor Code sections, 201-203, 204, 210, 216, 221-223, 225.5, 226, 226(a), 226.7, 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2800, 2802, 2810.5, and all applicable Wage Orders.

166. As set forth above, DEFENDANTS have committed numerous violations of the California Labor Code due to including but not limited to their failure to pay all owed minimum wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses, and failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties are in addition to any other relief available under the Labor Code.

167. Additionally, DEFENDANTS have violated the following Labor Code sections and provisions of the applicable Wage Order as to the PLAINTIFFS and other Aggrieved Employees.

Failure to Keep Accurate Records

168. California Labor Code § 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by all non-exempt employees. All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

169. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate and complete records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFFS and other Aggrieved Employees began and ended each work

period, time records of meal periods, and accurate itemized wage statements.

170. DEFENDANTS' failure to keep "accurate and complete" payroll records for PLAINTIFFS and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay period during which the referenced statutes and Wage Order provisions were violated.²

Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432

171. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

172. Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction." An employer's failure to comply within this

² Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid") (emphasis added).

timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

173. Personnel Records. In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature. Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

174. Based on information and belief, DEFENDANTS fail to timely produce or make available Aggrieved Employees' personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

Statutory Wage Violations

175. California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages. As described above, DEFENDANTS willfully and systematically denied PLAINTIFFS and Aggrieved Employees of all earned minimum and overtime compensation for all hours worked which resulted in the payment of less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but not limited to, minimum and overtime wages, to which they were entitled to under California law. Thus, DEFENDANTS paid PLAINTIFFS and other Aggrieved Employees lower wages than those they were

entitled to while purporting that PLAINTIFFS and other Aggrieved Employees were properly paid. As a result, PLAINTIFFS and other Aggrieved Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Refusal to Make Payment

176. Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated and continue to violate this section by failing to pay PLAINTIFFS and Aggrieved Employees for all hours worked at the proper wage rate and by failing to pay an additional hour of pay for each meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period during which the statute provisions were violated.³

Standard Conditions of Labor Violations

177. Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS' violations with respect to meal periods, rest periods, record keeping provisions, business expenses, minimum/overtime wages and other violations described herein result in separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

³ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

Unlawful Deductions

178. Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee.” Based on information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees paychecks during the relevant period, including but not limited to deducting costs of uniforms and/or other business costs and/or deducting wages for purported overpayments from previous pay periods and/or unlawfully deducting wages for negligently damaged property and/or deducting costs advanced by DEFENDANTS from Aggrieved Employees’ final paychecks. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

179. Each violation results in a separate civil penalty, for each Aggrieved Employee, for each pay period during which the statute provisions were violated. See Lab. Code §225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

Sick Leave Violations

180. DEFENDANTS violated California’s paid sick leave laws including, Labor Code section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to PLAINTIFFS and other Aggrieved Employees or failed to properly accrue paid sick leave due to DEFENDANTS’ failure to account for actual hours worked (as explained above), and/or failure to incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary compensation into the sick leave pay rate calculation.

181. DEFENDANTS further failed to give PLAINTIFFS and other Aggrieved

Employees notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFFS and Aggrieved Employees’ intelligent exercise of their paid sick leave.

182. But for this failure, PLAINTIFFS and other Aggrieved Employees would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

183. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records documenting the hours worked and paid sick days accrued and used by PLAINTIFFS and all Aggrieved Employees, permitting the presumption that PLAINTIFFS and all Aggrieved Employees were entitled to the maximum number of hours accruable.

184. Upon information and belief, DEFENDANTS failed and continue to fail to comply with Labor Code section 246, by failing to provide PLAINTIFFS and all Aggrieved Employees with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

185. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

186. On information and belief, PLAINTIFFS allege that all of these practices were experienced and continue to be experienced by other Aggrieved Employees.

187. Accordingly, PLAINTIFFS seek all appropriate relief under the PAGA, the aforementioned code provisions including but not limited to Labor Code section 233 and 234, and seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

Failure To Provide Supplemental Paid Sick Leave

188. Labor Code § 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFFS and other Aggrieved Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

Failure to Pay Vested Vacation/Paid Time Off

189. California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination.

190. Based on information and belief, DEFENDANTS had and continue to have a uniform policy and practice of failing to allow Aggrieved Employees to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off to Aggrieved Employees upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

Semimonthly Payment Violations

191. Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. DEFENDANTS violated this section by, including but not limited to, failing to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours

worked. These violations subject DEFENDANTS to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

192. Under the provisions of PAGA and the above mentioned Labor Code sections, including but not limited to Labor Code sections 201-203, 204, 210, 216, 221-223, 225.5, 226, 226(a), 226.7, 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2800, 2802, 2810.5 and all applicable Wage Orders as well as all interpretations of these laws by California Courts and administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- a. All statutorily-specified penalties recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed herein only if permitted by the PAGA statute, pursuant to Labor Code section 2699(a); and
- b. Default PAGA penalties for any violation of the enumerated list of Labor Code violations without a civil penalty recoverable under the PAGA, all in the default amounts provided by Labor Code section 2699(f).
- c. The proper measure of penalties under PAGA is the number of violations, whether those violations were committed as against PLAINTIFFS or any Aggrieved Employee, whether a party to this action or not.

193. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, PLAINTIFFS are entitled to recover civil penalties, costs, and attorney's fees.

PRAYER FOR RELIEF

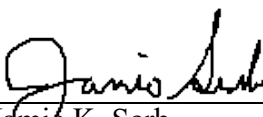
WHEREFORE, PLAINTIFF pray for relief and judgment, on behalf of PLAINTIFFS and Class Members and Aggrieved Employees as follows:

1. For an order that the action be certified as a class action;
2. For an order that PLAINTIFFS be appointed as class representative;

3. For an order that counsel for PLAINTIFFS be appointed as class counsel;
4. For compensatory damages according to proof;
5. For liquidated damages according to proof;
6. For penalties according to proof;
7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully withheld from PLAINTIFFS and the Class Members;
8. For an order finding DEFENDANTS have engaged in unfair competition in violation of section 17200, *et seq.*, of the California Business and Professions Code;
9. For an order enjoining DEFENDANTS from further acts of unfair competition;
10. For pre-judgment interest as permitted by law;
11. For attorney's fees and costs reasonably incurred;
12. For civil penalties according to proof, including PAGA penalties; and
13. For such other and further relief that the Court deems just and proper.

Dated: June 11, 2025

CROSNER LEGAL, PC

By: 
Jamie K. Serb
Attorneys for Plaintiff
ANTONIO DE LEON

LAWYERS for JUSTICE, PC

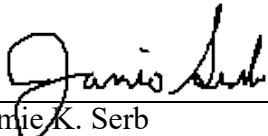
By: 
Brian J. St. John
Maria Halwadjian
Attorneys for Plaintiff
SEAN HESTON

DEMAND FOR JURY TRIAL

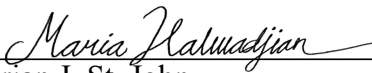
PLAINTIFFS demand a trial by jury on all claims so triable.

Dated: June 11, 2025

CROSNER LEGAL, PC

By: 
Jamie K. Serb
Attorneys for Plaintiff
ANTONIO DE LEON

LAWYERS for JUSTICE, PC

By: 
Brian J. St. John
Maria Halwadjian
Attorneys for Plaintiff
SEAN HESTON

PROOF OF SERVICE

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 450 North Brand Blvd., Suite 900, Glendale, California 91203.

On June 19, 2025, I served the foregoing document(s) described as:

- **SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES [CONFORMED COPY]**

on interested parties in this action by Electronic Service as follows:

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Attorneys for Defendant Service West, Inc.

[X] BY E-MAIL

The above-referenced document was transmitted to the person(s) at the e-mail addresses listed herein at their most recent known e-mail address or e-mail of record in this action. I did not receive, within reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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1 State of California, Labor & Workforce Development Agency Web URL:

2 <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

3 **[X] BY ONLINE SUBMISSION**

4 The foregoing documents were transmitted to the California Labor and Workforce Develop-
5 ment Agency through the online system established for the submission of notices and docu-
6 ments, in conformity with California Labor Code section 2699(l). I did not receive, within a
7 reasonable time after the transmission, any electronic message or other indication that the trans-
mission was unsuccessful.

8 **[X] STATE**

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

10 Executed on June 19, 2025, at Glendale, California.

11 
12 Deven Launchbaugh