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Kern County Superior Court
By Vanesa Jackson, Deputy

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

DWAYNE WESLEY, individually, and on
behalf of other members of the general public
similarly situated, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act of 2004 ("PAGA");

Plaintiff,

v.

PREMIER EQUIPMENT RENTAL, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: BCV-20-101858-BCB

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

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

DEMAND FOR JURY TRIAL

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

JURISDICTION AND VENUE

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

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

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Kern. The majority of the acts and omissions alleged herein relating to Plaintiff took place in the State of California. Defendants employed Plaintiff within the State of California, County of Kern.

PARTIES

5. Plaintiff DWAYNE WESLEY is an individual residing in the State of California.

6. Defendant PREMIER EQUIPMENT RENTAL, INC., at all times herein mentioned, was and is, upon information and belief, a California corporation, and at all times herein mentioned, was and is, an employer whose employees are engaged throughout the State of California, including the County of Kern.

7. At all relevant times, Defendants PREMIER EQUIPMENT RENTAL, INC. was the “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

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

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

10. Defendants PREMIER EQUIPMENT RENTAL, INC. and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

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

CLASS ACTION ALLEGATIONS

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

1 13. The proposed class is defined as follows:
2 All current and former hourly-paid or non-exempt employees (whether hired
3 directly or through a staffing agency) of Defendants within the State of
4 California at any time during the period from August 10, 2016 to January 1,
5 2022.

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

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

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

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

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

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

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

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

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

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

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

23 d. Whether Defendants properly calculated the regular rate for Plaintiff and
24 the other class members to worked overtime and earned incentive pay;

25 e. Whether Defendants deprived Plaintiff and the other class members of
26 meal and/or rest periods or required Plaintiff and the other class
27 members to work during meal and/or rest periods without compensation;

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- 1 f. Whether Defendants failed to pay minimum wages to Plaintiff and the
2 other class members for all hours worked;
- 3 g. Whether Defendants failed to pay all wages due to Plaintiff and the other
4 class members within the required time upon their discharge or
5 resignation;
- 6 h. Whether Defendants failed to timely pay all wages due to Plaintiff and
7 the other class members during their employment;
- 8 i. Whether Defendants complied with wage reporting as required by the
9 California Labor Code, including, inter alia, section 226;
- 10 j. Whether Defendants failed to reimburse Plaintiff and the other class
11 members for necessary business-related expenses and costs;
- 12 k. Whether Defendants' conduct was willful or reckless;
- 13 l. Whether Defendants engaged in unfair business practices in violation of
14 California Business & Professions Code section 17200, *et seq.*;
- 15 m. The appropriate amount of damages, restitution, and/or monetary
16 penalties resulting from Defendants' violation of California law; and
- 17 n. Whether Plaintiff and the other class members are entitled to
18 compensatory damages pursuant to the California Labor Code.

19 **GENERAL ALLEGATIONS**

20 17. During the relevant time period set forth herein, Defendants employed Plaintiff
21 and other persons as hourly-paid or non-exempt employees within the State of California.

22 18. Defendants, jointly and severally, employed Plaintiff as an hourly-paid
23 employee from approximately March of 2018 to June of 2018 in the State of California,
24 County of Kern.

25 19. Defendants had the authority to hire and terminate Plaintiff and other class
26 members; to set work rules and conditions governing Plaintiff's and other class members'
27 employment; and to supervise their daily employment activities.

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1 20. Defendants exercised sufficient authority over the terms and conditions of
2 Plaintiff and other class members' employment for them to be joint employers of Plaintiff and
3 the other class members.

4 21. Defendants directly hired and paid wages and benefits to Plaintiff and other
5 class members.

6 22. Defendants continue to employ hourly-paid or non-exempt employees within the
7 State of California.

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

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

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

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

23 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knew or should have known that Plaintiff and other class members were entitled to receive all
25 timely and complete meal periods or payment of one additional hour of pay at Plaintiff's and
26 the other class members' regular rate of pay when a meal period was missed, late or
27 interrupted, and that Plaintiff and other class members did not receive all timely and proper
28 meal periods or payment of one additional hour of pay at their regular rate of pay when a meal

1 period was missed.

2 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 knew or should have known that Plaintiff and other class members were entitled to receive all
4 timely rest periods without interruption or payment of one additional hour of pay at Plaintiff
5 and the other class members' regular rate of pay when a rest period was missed, late or
6 interrupted, and that Plaintiff and other class members did not receive all rest periods or
7 payment of one additional hour of pay at their regular rate of pay when a rest period was
8 missed.

9 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knew or should have known that Plaintiff and other class members were entitled to receive at
11 least minimum wages for compensation and that Plaintiff and other class members were not
12 receiving at least minimum wages for all hours worked.

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

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

24 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 knew or should have known that Plaintiff and the other class members were entitled to
26 reimbursement for necessary business-related expenses.

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

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

11 35. During the relevant time period set forth herein, Defendants failed to pay
12 overtime wages to Plaintiff and other class members for all hours worked. Plaintiff and other
13 class members were required to work more than eight (8) hours per day and/or forty (40) hours
14 per week without overtime compensation.

15 36. During the relevant time period set forth herein, Defendants failed to provide the
16 requisite uninterrupted and timely meal and rest periods to Plaintiff and other class members.

17 37. During the relevant time period set forth herein, Defendants failed to pay
18 Plaintiff and other class members at least minimum wages for all hours worked.

19 38. During the relevant time period set forth herein, Defendants failed to pay
20 Plaintiff and other class members the wages owed to them upon discharge or resignation.

21 39. During the relevant time period set forth herein, Defendants failed to provide
22 complete or accurate wage statements to Plaintiff and other class members.

23 40. During the relevant time period set forth herein, Defendants failed to keep
24 complete or accurate payroll records for Plaintiff and other class members.

25 41. During the relevant time period set forth herein, Defendants failed to properly
26 compensate Plaintiff and other class members pursuant to California law in order to increase
27 Defendants' profits.

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42. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

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

(Against PREMIER EQUIPMENT RENTAL, INC. and DOES 1 through 100)

43. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 42, and each and every part thereof with the same force and effect as though fully set forth herein.

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

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

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

47. 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 or for the first eight (8) hours worked on the seventh day of work, and 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.

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

49. During the relevant time period set forth herein, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and other class members.

50. Defendants' failure to pay Plaintiff and other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

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

SECOND CAUSE OF ACTION

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

(Against PREMIER EQUIPMENT RENTAL, INC. and DOES 1 through 100)

52. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 51, and each and every part thereof with the same force and effect as though fully set forth herein.

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

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

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

1 period may be waived by mutual consent of both the employer and employee.

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

9 57. During the relevant time period set forth herein, Plaintiff and other class
10 members who were scheduled to work for a period of time no longer than six (6) hours, and
11 who did not waive their legally-mandated meal periods by mutual consent, were required to
12 work for periods longer than five (5) hours without an uninterrupted meal period of not less
13 than thirty (30) minutes and/or without a rest period.

14 58. During the relevant time period set forth herein, Plaintiff and other class
15 members who were scheduled to work for a period of time no longer than twelve (12) hours,
16 and who did not waive their legally-mandated meal periods by mutual consent, were required
17 to work for periods longer than ten (10) hours without an uninterrupted meal period of not less
18 than thirty (30) minutes and/or without a rest period.

19 59. During the relevant time period set forth herein, Plaintiff and other class
20 members who were scheduled to work for a period of time in excess of six (6) hours were
21 required to work for periods longer than five (5) hours without an uninterrupted meal period of
22 not less than thirty (30) minutes and/or without a rest period.

23 60. During the relevant time period set forth herein, Plaintiff and other class
24 members who were scheduled to work for a period of time in excess of twelve (12) hours were
25 required to work for periods longer than ten (10) hours without an uninterrupted meal period of
26 not less than thirty (30) minutes and/or without a rest period.

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61. During the relevant time period set forth herein, Defendants intentionally and willfully required Plaintiff and other class members to work during meal periods and failed to compensate Plaintiff and the other class members the full meal period premium for work performed during meal periods.

62. During the relevant time period set forth herein, Defendants failed to pay Plaintiff and other class members the full meal period premium due pursuant to California Labor Code section 226.7.

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

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

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against PREMIER EQUIPMENT RENTAL, INC. and DOES 1 through 100)

65. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 64, and each and every part thereof with the same force and effect as though fully set forth herein.

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

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

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

7 69. During the relevant time period set forth herein, Defendants required Plaintiff
8 and other class members to work four (4) or more hours without authorizing or permitting a ten
9 (10) minute rest period per each four (4) hour period worked.

10 70. During the relevant time period set forth herein, Defendants willfully required
11 Plaintiff and other class members to work during rest periods and failed to pay Plaintiff and the
12 other class members the full rest period premium for work performed during rest periods.

13 71. During the relevant time period set forth herein, Defendants failed to pay
14 Plaintiff and the other class members the full rest period premium due pursuant to California
15 Labor Code section 226.7.

16 72. Defendants’ conduct violates applicable IWC Wage Orders and California
17 Labor Code section 226.7.

18 73. Pursuant to the applicable IWC Wage Orders and California Labor Code section
19 226.7(b), Plaintiff and other class members are entitled to recover from Defendants one
20 additional hour of pay at the employees’ regular hourly rate of compensation for each workday
21 that the rest period was not provided.

22 **FOURTH CAUSE OF ACTION**

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

24 **(Against PREMIER EQUIPMENT RENTAL, INC. and DOES 1 through 100)**

25 74. Plaintiff incorporates by reference the allegations contained in paragraphs 1
26 through 73 and each and every part thereof with the same force and effect as though fully set
27 forth herein.

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

76. During the relevant time period set forth herein, Defendants failed to pay minimum wages to Plaintiff and other class members as required, pursuant to California Labor Code sections 1194 and 1197.

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

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

FIFTH CAUSE OF ACTION

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

(Against PREMIER EQUIPMENT RENTAL, INC. and DOES 1 through 100)

79. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 78, and each and every part thereof with the same force and effect as though fully set forth herein.

80. During the relevant time period set forth herein, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours 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.

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81. During the relevant time period set forth herein, Defendants intentionally and willfully failed to pay Plaintiff and other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

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

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

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

SIXTH CAUSE OF ACTION

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

(Against PREMIER EQUIPMENT RENTAL, INC. and DOES 1 through 100)

85. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 84, and each and every part thereof with the same force and effect as though fully set forth herein.

86. During the relevant time period set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the

1 employee and his or her social security number, (8) the name and address of the legal entity
2 that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee. The deductions
4 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
5 showing the month, day, and year, and a copy of the statement or a record of the deductions
6 shall be kept on file by the employer for at least three years at the place of employment or at a
7 central location within the State of California.

8 87. Defendants have intentionally and willfully failed to provide Plaintiff and other
9 class members with complete and accurate wage statements. The deficiencies include but are
10 not limited to: the failure to include the total number of hours worked by Plaintiff and other
11 class members.

12 88. As a result of Defendants' violation of California Labor Code section 226(a),
13 Plaintiff and other class members have suffered injury and damage to their statutorily protected
14 rights.

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

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

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

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1 **SEVENTH CAUSE OF ACTION**

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

3 **(Against PREMIER EQUIPMENT RENTAL, INC. and DOES 1 through 100)**

4 92. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 91, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 93. Pursuant to California Labor Code sections 2800 and 2802, an employer must
8 reimburse its employee for all necessary expenditures incurred by the employee in direct
9 consequence of the discharge of his or her job duties or in direct consequence of his or her
10 obedience to the directions of the employer.

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

17 **EIGHTH CAUSE OF ACTION**

18 **(Violation of California Labor Code §§ 17200, *et seq.*)**

19 **(Against PREMIER EQUIPMENT RENTAL, INC. and DOES 1 through 100)**

20 95. Plaintiff incorporates by reference the allegations contained in paragraphs 1
21 through 94, and each and every part thereof with the same force and effect as though fully set
22 forth herein.

23 96. PAGA expressly establishes that any provision of the California Labor Code
24 which provides for a civil penalty to be assessed and collected by the California Labor and
25 Workforce Development Agency (“LWDA”), or any of its departments, divisions,
26 commissions, boards, agencies, or employees for a violation of the California Labor Code, may
27 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
28 herself, and other current or former employees.

1 97. On May 23, 2018, the Court of Appeal published its decision in the case *Huff v.*
2 *Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, clarifying that an employee
3 who brings a representative action and who was affected by at least one of the violations
4 alleged in the complaint has standing to pursue penalties on behalf of the state not only for that
5 violation, but also for violations affecting other employees and can recover penalties.

6 98. On November 23, 2021, Plaintiff provided written notice to the California Labor
7 and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of
8 the Labor Code she contends were violated and the theories supporting her contentions.
9 Plaintiff believes that on or about January 27, 2022, the sixty-five (65) days’ notice period will
10 expire, and Plaintiff will have exhausted the statutory time period to bring this action.

11 99. Plaintiff and the other non-exempt employees are “aggrieved employees” as
12 defined by California Labor Code section 2699(c) in that they are all current and former
13 individuals who are or who have been employed by Defendant in California during the period
14 from August 10, 2019 to January 1, 2022 as a non-exempt employee (or if any such person is
15 incompetent, deceased, or unavailable due to military service, the person’s legal representative
16 or successor in interest evidenced by reasonable verification), and one or more of the alleged
17 violations was committed against them.

18 **Failure to Pay Minimum and Overtime Wages**

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

23 101. As a pattern and practice, Defendants failed to compensate Plaintiff and other
24 aggrieved employees for all hours worked, resulting in a failure to pay all minimum wages and
25 overtime wages, where applicable.

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

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

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

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

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

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

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

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

19 107. As a pattern and practice, as a result of Defendants' Labor Code violations
20 alleged above, Defendants failed to pay Plaintiff and other aggrieved former employees their
21 final wages, pursuant to the mandates of Labor Code sections 201 through 204. Accordingly,
22 Defendants owe waiting time penalties pursuant to Labor Code section 203.

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

24 108. At all times relevant herein, Defendants were required to keep *accurate* records
25 regarding their California employees, pursuant to the mandates of Labor Code sections 226 and
26 1174.

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1 109. As a pattern and practice, as a result of Defendants' various Labor Code
2 violations, Defendants willfully failed to keep accurate records regarding Plaintiff and other
3 aggrieved employees. Specifically, Defendants willfully failed in their affirmative obligations
4 to keep accurate records regarding Plaintiff's and other aggrieved employees' gross wages
5 earned, total hours worked, net wages earned, as well as all deductions, all applicable hourly
6 rates, and the number of hours worked at each hourly rate. Defendants thereby failed to
7 provide Plaintiff and other aggrieved employees with complete and accurate wage statements,
8 pursuant to the mandate of Labor Code section 226(a). Defendants also willfully failed to keep
9 accurate and complete payroll records showing the hours worked daily and the wages paid to
10 Plaintiff and other aggrieved employees, pursuant to the mandate of Labor Code section
11 1174(d). Accordingly, Defendants owe penalties pursuant to Labor Code section 1174.5.

12 **Failure to Reimburse Business Expenses**

13 110. At all times relevant herein, Defendants were required to reimburse their
14 employees for any and all necessary expenditures or losses incurred by the employees in direct
15 consequence of the discharge of their duties, pursuant to the mandates of Labor Code sections
16 2800 and 2802.

17 111. As a pattern and practice, Defendants regularly failed to reimburse Plaintiff and
18 other aggrieved employees for all business expenses incurred and owed to them within the
19 required time period.

20 **Failure to Pay the Minimum Wage**

21 112. At all times relevant herein, Defendants were required to pay the minimum
22 wage to employees. The payment of a lesser wage than the minimum so fixed is unlawful,
23 pursuant to the mandates of Labor Code sections 1194 and 1197.

24 113. As a pattern and practice, Defendants did not provide Plaintiff and other
25 aggrieved employees with the minimum wages to which they were entitled despite having
26 constructive and actual knowledge of off-the-clock work, including pre- and post-shift hours
27 worked and working during supposedly off-duty meal breaks.

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Penalties

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

- a. Penalties under California Labor Code section 2699 in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- d. Penalties under Labor Code section 1197.1 in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;
- e. Wages under California Labor Code section 558 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code;

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- 1 f. Any and all additional penalties as provided by the Labor Code and/or
2 other statutes; and
3 g. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194,
4 and 2699, and any other applicable statute.

5 **NINTH CAUSE OF ACTION**

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

7 **(Against PREMIER EQUIPMENT RENTALS, INC. and DOES 1 through 100)**

8 115. Plaintiff incorporates by reference the allegations contained in paragraphs 1
9 through 114, and each and every part thereof with the same force and effect as though fully set
10 forth herein.

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

15 117. Defendants' activities as alleged herein are violations of California law, and
16 constitute unlawful business acts and practices in violation of California Business &
17 Professions Code section 17200, *et seq.*

18 118. A violation of California Business & Professions Code section 17200, *et seq.*
19 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
20 policy and practice of requiring Plaintiff and other class members work overtime hours without
21 paying them proper compensation violate California Labor Code sections 510 and 1198.
22 Additionally, Defendants' policy and practice of requiring Plaintiff and other class members,
23 to work through their meal and rest periods without paying them proper compensation violate
24 California Labor Code sections 226.7 and 512(a). Moreover, Defendants' policy and practice
25 of failing to timely pay wages to Plaintiff and other class members violate California Labor
26 Code sections 201 and 202. Defendants also violated California Labor Code sections 226(a),
27 1194, 1197, 2800 and 2802.

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

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

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

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff, individually, and on behalf of other members of the general public similarly
13 situated, requests a trial by jury.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general
16 public similarly situated, prays for relief and judgment against Defendants, jointly and
17 severally, as follows:

18 **Class Certification**

- 19 1. That this action be certified as a class action;
20 2. That Plaintiff be appointed as representative of the Class;
21 3. That counsel for Plaintiff be appointed as Class Counsel; and
22 4. That Defendants provide to Class Counsel immediately the names and most
23 current contact information (address, e-mail and telephone numbers) of all class members.

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

- 25 5. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay
27 all overtime wages due to Plaintiff and other class members;

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1 6. For general unpaid wages at overtime wage rates and such general and special
2 damages as may be appropriate;

3 7. For pre-judgment interest on any unpaid overtime compensation commencing
4 from the date such amounts were due;

5 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 California Labor Code section 1194; and

7 9. For such other and further relief as the court may deem just and proper.

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

9 10. That the Court declare, adjudge and decree that Defendants violated California
10 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
11 provide all meal periods (including second meal periods) to Plaintiff and the other class
12 members;

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

16 12. For all actual, consequential, and incidental losses and damages, according to
17 proof;

18 13. For premium wages pursuant to California Labor Code section 226.7(b);

19 14. For pre-judgment interest on any unpaid wages from the date such amounts
20 were due;

21 15. For reasonable attorneys' fees and costs of suit incurred herein; and

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

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

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

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

4 19. For all actual, consequential, and incidental losses and damages, according to
5 proof;

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

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

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

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

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

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

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

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

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

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

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

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

27 30. For all actual, consequential, and incidental losses and damages, according to
28 proof;

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

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

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

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

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

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

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

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

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

16 **As to the Seventh Cause of Action**

17 39. That the Court declare, adjudge and decree that Defendants violated California
18 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and other class
19 members for all necessary business-related expenses as required by California Labor Code
20 sections 2800 and 2802;

21 40. For actual, consequential and incidental losses and damages, according to proof;

22 41. For the imposition of civil penalties and/or statutory penalties;

23 42. For punitive damages and/or exemplary damages according to proof at trial;

24 43. For reasonable attorneys' fees and costs of suit incurred herein; and

25 44. For such other and further relief as the court may deem just and proper.

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As to the Eighth Cause of Action

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

46. For restitution of unpaid wages to Plaintiff and other class members and all pre-judgment interest from the day such amounts were due and payable;

47. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, *et seq.*;

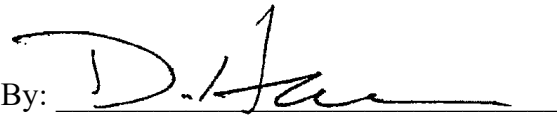
48. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

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

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

Dated: February 3, 2022

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Jason Rothman
Attorneys for Plaintiff

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is aokada@justicelawcorp.com

On February 18, 2022, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Wesley v. Premier Equipment Rental, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-854255-21**
Court Case No.: BCV-20-101858
Kern County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on February 18, 2022, at Pasadena, California.



Anna Okada