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(Additional counsel on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

DONALD HOLLINGSWORTH, an
individual; LUTRICIA RANDOLPH, an
individual; on behalf of all others similarly
situated,

Plaintiffs,

v.

WESTCARE CALIFORNIA, INC.; and
DOES 1 through 20, inclusive,

Defendants.

Case No. BCV-22-100324

*Assigned to All Purposes to:
Hon. David R. Zulfa
Div. J*

**SECOND AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Reimburse Business Expenses;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Pay All Wages Due Upon Separation of Employment;
8. Violation of Business and Professions Code §§ 17200, *et seq.*; and
9. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

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Attorneys for Plaintiff
LUTRICIA RANDOLPH and all others similarly situated.

1 Plaintiffs Donald Hollingsworth and Lutricia Randolph, individually and on behalf of
2 others similarly situated, allege as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Donald Hollingsworth and Lutricia Randolph (“Plaintiffs”) bring this
5 putative class and representative action pursuant to the Private Attorneys General Act of 2004,
6 Cal. Lab. Code. § 2698 *et seq.*, action against defendants WestCare California, Inc., and DOES 1
7 through 20, inclusive (collectively, “Defendants”), on Plaintiffs’ own behalf and on behalf of
8 California citizens who are and were employed by Defendants as non-exempt employees
9 throughout California.

10 2. Defendants are in the social services industry.

11 3. Through this action, Plaintiffs allege that Defendants engaged in a systematic
12 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
13 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair
14 competition.

15 4. Plaintiffs are informed and believe, and thereon allege, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) failing to pay all wages (including minimum wages and overtime wages);
- 18 (b) failing to authorize or permit lawful meal periods or provide compensation
19 in lieu thereof;
- 20 (c) failing to authorize or permit lawful rest breaks or provide compensation
21 in lieu thereof;
- 22 (d) failing to reimburse necessary business-related costs;
- 23 (e) failing to provide accurate itemized wage statements; and
- 24 (f) failing to pay all wages due upon separation of employment.

25 Plaintiffs seek monetary relief against Defendants on behalf of themselves and all others
26 similarly situated in California to recover, among other things, unpaid wages, un-reimbursed
27 business expenses, benefits, interest, attorneys’ fees, costs and expenses, and penalties pursuant
28 to Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,

1 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2802, 2698, *et seq.*, and Code of California Civil
2 Procedure § 1021.5.

3 **JURISDICTION AND VENUE**

4 5. This is a class action pursuant to California Code of Civil Procedure § 382. The
5 monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdictional limits of
6 the Superior Court and will be established according to proof at trial.

7 6. This Court has jurisdiction over this action pursuant to the California
8 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes
9 except those given by statutes to other courts. The statutes under which this action is brought do
10 not specify any other basis for jurisdiction.

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

16 8. Venue is proper in this Court because, upon information and belief, Defendants
17 reside, transact business, or have offices in this county, and the acts and omissions alleged herein
18 took place in this county.

19 **THE PARTIES**

20 9. Plaintiffs are residents of California and worked for Defendants during the
21 relevant time periods as alleged herein.

22 10. Plaintiffs are informed and believe, and thereon allege that at all times hereinafter
23 mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as
24 employers, whose employees were and are engaged throughout this county and the State of
25 California.

26 11. Plaintiffs are unaware of the true names or capacities of the defendants sued
27 herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend
28

1 this Complaint and serve such fictitiously named defendants once their names and capacities
2 become known.

3 12. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 20
4 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at
5 all relevant times.

6 13. Plaintiffs are informed and believe, and thereon allege, that each defendant acted
7 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
8 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
9 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the
10 employer and/or joint employer of Plaintiffs and the class members.

11 14. Plaintiffs are informed and believe, and thereon allege, that each and all of the
12 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
13 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
14 the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
15 official policy of Defendants.

16 15. At all relevant times, Defendants, and each of them, acted within the scope of
17 such agency or employment, or ratified each and every act or omission complained of herein. At
18 all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
19 each and all the other Defendants in proximately causing the damages herein alleged.

20 16. Plaintiffs are informed and believe, and thereon allege, that each of said
21 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
22 omissions, occurrences, and transactions alleged herein.

23 **CLASS ACTION ALLEGATIONS**

24 17. Plaintiffs bring this action under Code of Civil Procedure § 382 on Plaintiffs' own
25 behalf and on behalf of all others similarly situated who were affected by Defendants' Labor
26 Code, Business and Professions Code §§ 17200, and IWC Wage Order violations.

27 18. All claims alleged herein arise under California law for which Plaintiffs seek
28 relief authorized by California law.

1 19. Plaintiffs' proposed class consists of and is defined as follows:

2 Class

3 All California citizens currently or formerly employed by Defendants as non-
4 exempt employees in the State of California at any time between March 1, 2019
5 and the date of class certification ("Class").

6 20. Plaintiff also seeks to certify the following subclasses of employees:

7 Waiting Time Subclass

8 All members of the Class who separated their employment with Defendant at any
9 time between March 1, 2019 and the date of class certification ("Waiting Time
10 Subclass").

11 21. Plaintiffs reserve the right to modify or re-define the Class, establish additional
12 subclasses, or modify or re-define any class or subclass definition as appropriate based on
13 investigation, discovery, and specific theories of liability.

14 22. Members of the Class and the Waiting Time Subclass described above will be
15 collectively referred to as "Class Members."

16 23. There are common questions of law and fact as to the Class Members that
17 predominate over any questions affecting only individual members including, but not limited to,
18 the following:

19 (a) Whether Defendants failed to pay Plaintiffs and Class Members all wages
20 (including minimum wages and overtime wages) for all hours worked by
21 Plaintiff and Class Members.

22 (b) Whether Defendants required Plaintiffs and Class Members to work over
23 eight (8) hours per day, over twelve (12) hours per day, and/or over forty
24 (40) hours per week and failed to pay them proper overtime compensation
25 for all overtime hours worked.

26 (c) Whether Defendants deprived Plaintiffs and Class Members of timely
27 meal periods or required Plaintiffs and Class Members to work through
28 meal periods without proper compensation.

- 1 (d) Whether Defendants deprived Plaintiffs and Class Members of rest breaks
2 or required Plaintiffs and Class Members to work through rest breaks
3 without proper compensation.
- 4 (e) Whether Defendants failed to reimburse Plaintiffs and Class Members for
5 necessary business-related costs expended for the benefit of Defendants.
- 6 (f) Whether Defendants failed to provide Plaintiffs and Class Members
7 accurate itemized wage statements.
- 8 (g) Whether Defendants failed to timely pay the Waiting Time Subclass all
9 wages due upon termination or within seventy-two (72) hours of
10 resignation.
- 11 (h) Whether Defendants' conduct was willful or reckless.
- 12 (i) Whether Defendants engaged in unfair business practices in violation of
13 Business and Professions Code §§ 17200, *et seq.*

14 24. There is a well-defined community of interest in this litigation and the proposed
15 Class and subclasses are readily ascertainable:

16 (a) Numerosity: The Class Members are so numerous that joinder of all
17 members is impractical. Although the members of the Class are unknown to Plaintiffs at this
18 time, on information and belief, the Class is estimated to be greater than five hundred (500)
19 individuals. The identities of the Class Members are readily ascertainable by inspection of
20 Defendants' employment and payroll records.

21 (b) Typicality: Plaintiffs' claims (or defenses, if any) are typical of the claims
22 (or defenses, if any) of the Class Members because Defendants' failure to comply with the
23 provisions of California's wage and hour laws entitled each Class Member to similar pay,
24 benefits, and other relief. The injuries sustained by Plaintiffs are also typical of the injuries
25 sustained by the Class Members, because they arise out of and are caused by Defendants'
26 common course of conduct as alleged herein.

27 (c) Adequacy: Plaintiffs will fairly and adequately represent and protect the
28 interests of all Class Members because it is in Plaintiffs' best interest to prosecute the claims

1 alleged herein to obtain full compensation and penalties due. Plaintiffs' attorneys, as proposed
2 class counsel, are competent and experienced in litigating large employment class actions and
3 versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have
4 incurred and, throughout the duration of this action, will continue to incur attorneys' fees and
5 costs that have been and will be necessarily expended for the prosecution of this action for the
6 substantial benefit of the Class Members.

7 (d) Superiority: The nature of this action makes use of class action
8 adjudication superior to other methods. A class action will achieve economies of time, effort, and
9 expense as compared with separate lawsuits and will avoid inconsistent outcomes because the
10 same issues can be adjudicated in the same manner for the entire Class and Waiting Time
11 Subclass at the same time. If appropriate, this Court can, and is empowered to, fashion methods
12 to efficiently manage this case as a class action.

13 (e) Public Policy Considerations: Employers in the State of California violate
14 employment and labor laws every day. Current employees are often afraid to assert their rights
15 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
16 because they believe their former employers might damage their future endeavors through
17 negative references and/or other means. Class actions provide class members who are not named
18 in the complaint with a type of anonymity that allows for the vindication of their rights while
19 affording them privacy protections.

20 **GENERAL ALLEGATIONS**

21 25. At all relevant times mentioned herein, Defendants employed Plaintiffs and other
22 California residents as non-exempt employees throughout California at Defendants' California
23 business location(s).

24 26. Defendants continue to employ non-exempt employees within California.

25 27. Plaintiffs are informed and believe, and thereon allege, that at all times herein
26 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who
27 were knowledgeable about California's wage and hour laws, employment and personnel
28 practices, and the requirements of California law.

1 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and Class Members were entitled to receive wages for all time
3 worked (including minimum wages and overtime wages) and that they were not receiving all
4 wages earned for work that was required to be performed. In violation of the Labor Code and
5 IWC Wage Orders, Plaintiffs and Class Members were not paid all wages (including minimum
6 wages and overtime wages) for all hours worked, including, but not limited to requiring Plaintiffs
7 and Class Members to work off-the-clock, and failing to compensate Plaintiffs and Class
8 Members for these hours.

9 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
10 should have known that Plaintiffs and Class Members were entitled to receive all required meal
11 periods or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular
12 rate of pay when they did not receive a meal period, or a timely, uninterrupted meal period. In
13 violation of the Labor Code and IWC Wage Orders, Plaintiffs and Class Members did not
14 receive all meal periods or payment of one (1) additional hour of pay at Plaintiffs' and Class
15 Members' regular rate of pay when they did not receive meal periods, or a timely, uninterrupted
16 meal period.

17 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
18 should have known that Plaintiffs and Class Members were entitled to receive all rest breaks or
19 payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of pay
20 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiffs
21 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay at
22 Plaintiffs' and Class Members' regular rate of pay when a rest break was missed

23 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
24 should have known that Plaintiffs and Class Members were entitled to reimbursement and/or
25 indemnification for all necessary business expenditures or losses as a direct consequence of the
26 discharge of their duties, or of their obedience to the directions of Defendants. In violation of the
27 Labor Code and IWC Wage Orders, Plaintiffs and Class Members incurred necessary business
28 expenses or losses, such as cell phones, but were not reimbursed nor indemnified of such

1 expenses or losses that were incurred as a direct consequence of the discharge of their duties, or
2 of their obedience to the directions of Defendants.

3 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and Class Members were entitled to receive itemized wage
5 statements that accurately showed the following information pursuant to the Labor Code: (1)
6 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
7 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
8 deductions, provided that all deductions made on written orders of the employee may be
9 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
10 which the employee is paid; (7) the name of the employee and only the last four digits of his or
11 her social security number or an employee identification number other than a social security
12 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
13 hourly rates in effect during the pay period and the corresponding number of hours worked at
14 each hourly rate by the employee. In violation of the Labor Code, Plaintiffs and Class Members
15 were not provided with accurate itemized wage statements.

16 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that the Waiting Time Subclass was entitled to timely payment of wages due
18 upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass did
19 not receive payment of all wages within the permissible time periods.

20 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
21 should have known they had a duty to compensate Plaintiffs and Class Members, and Defendants
22 had the financial ability to pay such compensation but willfully, knowingly, and intentionally
23 failed to do so in order to increase Defendants' profits.

24 35. Therefore, Plaintiffs bring this lawsuit seeking monetary and injunctive relief
25 against Defendants on Plaintiffs' own behalf and on behalf of all Class Members to recover,
26 among other things, unpaid wages (including minimum wages and overtime wages),
27 unreimbursed business expenditures, interest, attorneys' fees, penalties, costs, and expenses.
28

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 (Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order §3-4)

4 36. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein.

6 37. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
7 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
8 wage than the minimum so fixed is unlawful.

9 38. Plaintiffs and Class Members were employees entitled to the protections of Labor
10 Code §§ 1194 and 1197.

11 39. During the relevant time period, Defendants failed to pay Plaintiffs and Class
12 Members all wages owed when Defendants did not pay for all hours worked, including, but not
13 limited to, hours spent working off-the-clock.

14 40. During the relevant time period, Defendants failed to pay at least minimum wage
15 to Plaintiff and Class Members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

16 41. Defendants' failure to pay Plaintiffs and Class Members the required minimum
17 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiffs and Class
18 Members are entitled to recover the unpaid balance of their minimum wage compensation as
19 well as interest, costs, and attorneys' fees.

20 42. Pursuant to Labor Code § 1194.2, Plaintiffs and Class Members are entitled to
21 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
22 interest thereon.

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME**

25 (Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)

26 43. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
27 though fully set forth herein.

1 44. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
2 unlawful to employ persons without compensating them at a rate of pay either one and one-half
3 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
4 worked by the person on a daily or weekly basis.

5 45. Specifically, the applicable IWC Wage Orders provide that Defendants are and
6 were required to pay overtime compensation to Plaintiffs and Class Members at the rate of one
7 and one-half times (1½) their regular rate of pay when working and for all hours worked in
8 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
9 eight (8) hours of work on the seventh day of work in a workweek.

10 46. The applicable IWC Wage Orders further provide that Defendants are and were
11 required to pay overtime compensation to Plaintiffs and Class Members at a rate of two times
12 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours in
13 a day or in excess of eight (8) hours on the seventh day of work in a workweek.

14 47. California Labor Code § 510 codifies the right to overtime compensation at one
15 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a
16 day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
17 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
18 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
19 seventh day of work in a workweek.

20 48. Labor Code § 510 and the applicable IWC Wage Orders provide that employment
21 of more than six days in a workweek is only permissible if the employer pays proper overtime
22 compensation as set forth herein.

23 49. Plaintiffs and Class Members were employees entitled to the protections of
24 California Labor Code §§ 510 and 1194.

25 50. During the relevant time period, Defendants required Plaintiffs and Class
26 Members to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a
27 seventh consecutive day of work, entitling them to overtime wages.

1 51. During the relevant time period, Defendants failed to pay Plaintiffs and Class
2 Members overtime wages for all overtime hours worked when Defendants failed to pay for time
3 spent working off-the-clock. To the extent these hours qualify for the payment of overtime
4 wages, Plaintiffs and Class Members were not paid proper overtime wages.

5 52. In violation of California law, Defendants knowingly and willfully refused to
6 perform their obligations and compensate Plaintiffs and Class Members for all wages earned and
7 all hours worked.

8 53. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
9 overtime compensation, as required by California law, violates the provisions of Labor Code §§
10 510 and 1198, and is therefore unlawful.

11 54. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to
12 recover their unpaid overtime and double time compensation as well as interest, costs, and
13 attorneys' fees.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PROVIDE MEAL PERIODS**

16 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)

17 55. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
18 though fully set forth herein.

19 56. Labor Code § 226.7 provides that no employer shall require an employee to work
20 during any meal period mandated by the IWC Wage Orders.

21 57. Section 11 of the applicable IWC Wage Order provides an employer shall not
22 employ any person for a work period of more than five (5) hours without a meal period of "not
23 less than 30 minutes, except that when a work period of not more than six (6) hours will
24 complete the day's work the meal period may be waived by mutual consent of employer and
25 employee."

26 58. Labor Code § 512(a) provides that an employer may not require, cause, or permit
27 an employee to work for a period of more than five (5) hours per day without providing the
28 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if

1 the total work period per day of the employee is not more than six (6) hours, the meal period may
2 be waived by mutual consent of both the employer and the employee.

3 59. Labor Code § 512(a) also provides that an employer may not employ an employee
4 for a work period of more than ten (10) hours per day without providing the employee with a
5 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no
6 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
7 employer and the employee only if the first meal period was not waived.

8 60. During the relevant time period, Plaintiffs and Class Members did not receive
9 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
10 their meal periods were missed, late, short, interrupted, and/or they were not permitted to take a
11 second meal period.

12 61. During the relevant time period, Plaintiffs and Class Members did not receive
13 compliant meal periods for working more than ten (10) hours per day because their meal periods
14 were missed, late, short, interrupted, and/or they were not permitted to take a second meal
15 period.

16 62. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order requires
17 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
18 compensation for each work day that a compliant meal period is not provided.

19 63. At all relevant times, Defendants failed to pay Plaintiffs and Class Members meal
20 period premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code
21 § 226.7(b) and section 11 of the applicable IWC Wage Order.

22 64. As a result of Defendants' failure to pay Plaintiffs and Class Members an
23 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
24 Class Members suffered and continue to suffer a loss of wages and compensation

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PERMIT REST BREAKS**

3 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order)

4 65. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein.

6 66. Labor Code § 226.7(a) provides that no employer shall require an employee to
7 work during any rest period mandated by the IWC Wage Orders.

8 67. Section 12 of the applicable IWC Wage Order states “[e]very employer shall
9 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
10 the middle of each work period[,]” and the “[a]uthorized rest period time shall be based on the
11 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
12 fraction thereof[,]” unless the total daily work time is less than three and one-half (3½) hours.

13 68. During the relevant time period, Plaintiffs and Class Members did not receive a
14 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because
15 they were required to work through their daily rest periods, were not permitted to take timely rest
16 periods, and/or were not authorized to take their rest periods.

17 69. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
18 an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of
19 compensation for each work day that a compliant rest period is not provided.

20 70. At all relevant times, Defendants failed to pay Plaintiffs and Class Members rest
21 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
22 226.7(b) and section 12 of the applicable IWC Wage Order.

23 71. As a result of Defendants’ failure to pay Plaintiffs and Class Members an
24 additional hour of pay for each day a compliant rest period was not provided, Plaintiffs and Class
25 Members suffered and continue to suffer a loss of wages and compensation.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 (Violation of Labor Code §§ 2800, 2802)

4 72. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein.

6 73. Labor Code § 2800 states that “[a]n employer shall in all cases indemnify his
7 employee for losses caused by the employer’s want of ordinary care.”

8 74. Labor Code § 2802(a) states that “[a]n employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
11 the employer”

12 75. Labor Code § 2802(b) states that “[a]ll awards made by a court . . . for
13 reimbursement of necessary expenditures under this section shall carry interest at the same rate
14 as judgments in civil actions. Interest shall accrue from the date on which the employee incurred
15 the necessary expenditure or loss.”

16 76. Labor Code § 2802(c) states that “[f]or purposes of this section, the term
17 “necessary expenditures or losses” shall include all reasonable costs, including, but not limited
18 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

19 77. During the relevant time period, Plaintiffs and Class Members incurred necessary
20 business-related costs that were not fully reimbursed by Defendants, including, but not limited
21 to, cell phone, computer, and internet use required for work.

22 78. In violation of Labor Code §§ 2800 and 2802, Defendants failed to reimburse or
23 indemnify Plaintiff and Class Members for their expenses due to Defendants’ knowing and
24 intentional failure to reimburse necessary business expenditures in connection with Plaintiffs’
25 and Class Members’ work and job duties.

26 79. As a direct result, Plaintiffs and Class Members have suffered and continue to
27 suffer losses, and therefore seek complete reimbursement and indemnification of necessary
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1 business expenditures or losses, interest thereon at the required rate, and all reasonable costs in
2 enforcing the rights under Labor Code § 2802, including, but not limited to attorneys' fees.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

5 (Violation of Labor Code § 226; Violation of IWC Wage Order)

6 80. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
7 though fully set forth herein.

8 81. Labor Code § 226(a) requires Defendants to provide each employee with an
9 accurate wage statement in writing showing nine pieces of information, including, the following:
10 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate
11 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
12 deductions, provided that all deductions made on written orders of the employee may be
13 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
14 which the employee is paid, (7) the name of the employee and the last four digits of his or her
15 social security number or an employee identification number other than a social security number,
16 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
17 rates in effect during the pay period and the corresponding number of hours worked at each
18 hourly rate by the employee.

19 82. During the relevant time period, Defendants have knowingly and intentionally
20 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiffs
21 and Class Members. The deficiencies include failing to include one or more of the categories of
22 information required by the Labor Code.

23 83. As a result of Defendants' knowing and intentional failure to comply with Labor
24 Code § 226(a), Plaintiffs and Class Members have suffered injury and damage to their
25 statutorily-protected rights. Specifically, Plaintiffs and Class Members are deemed to suffer an
26 injury pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor
27 Code § 226(a). Plaintiffs and Class Members were denied both their legal right to receive, and
28 their protected interest in receiving, accurate itemized wage statements under Labor Code

1 § 226(a). For example, because Defendants failed to provide the accurate rates of pay on wage
2 statements, Defendants prevented Plaintiffs and Class Members from determining if all hours
3 worked were paid at the appropriate rate and the extent of the underpayment. Plaintiffs had to
4 file this lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiffs to
5 incur expenses and lost time. Plaintiffs would not have had to engage in these efforts and incur
6 these costs had Defendants provided the accurate hours worked, wages earned, and rates of pay.
7 This has also delayed Plaintiffs' ability to demand and recover the underpayment of wages from
8 Defendants.

9 84. Plaintiffs and Class Members are entitled to recover from Defendants the greater
10 of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
11 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
12 (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding
13 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

14 85. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs and
15 Class Members from knowing, understanding, and disputing the wages paid to them and resulted
16 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
17 intentional failure to comply with California Labor Code § 226(a), Plaintiffs and Class Members
18 have suffered an injury, in the exact amount of damages and/or penalties to be shown according
19 to proof at trial.

20 SEVENTH CAUSE OF ACTION

21 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

22 (Violation of Labor Code §§ 201, 202, and 203)

23 86. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
24 though fully set forth herein.

25 87. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
26 the wages earned and unpaid at the time of discharge are due and payable immediately, and that
27 if an employee voluntarily leaves his or her employment, his or her wages shall become due and
28 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-

1 two (72) hours previous notice of an intention to quit, in which case the employee is entitled to
2 his or her wages at the time of quitting.

3 88. During the relevant time period, Defendants willfully failed to pay the Waiting
4 Time Subclass all their earned wages upon termination, including, but not limited to, proper
5 minimum wage, overtime compensation, and accrued vacation pay, either at the time of
6 discharge or within seventy-two (72) hours of their leaving Defendants' employ.

7 89. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the
8 time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in
9 violation of Labor Code §§ 201 and 202.

10 90. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
11 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then
12 the wages of the employee shall continue as a penalty from the due date at the same rate until
13 paid or until an action is commenced; but the wages shall not continue for more than thirty (30)
14 days.

15 91. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover
16 from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members'
17 regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a
18 maximum of thirty (30) days.

19 EIGHTH CAUSE OF ACTION

20 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

21 (Violation of Business and Professions Code §§ 17200, *et seq.*)

22 92. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
23 though fully set forth herein.

24 93. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
25 unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice . .
26 . ."

27 94. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
28 be predicated on a violation of any state or federal law. In the instant case, Defendants' policies

1 and practices violated state law, causing Plaintiffs and Class Members to suffer and continue to
2 suffer injuries-in-fact.

3 95. Defendants' policies and practices violated state law in at least the following
4 respects:

- 5 (a) Failing to pay all wages earned (including minimum wage and overtime
6 wages) to Plaintiffs and Class Members at the proper rate in violation of
7 Labor Code §§ 204, 510, 1194, 1194.2, 1197, and 1198.
- 8 (b) Failing to provide compliant meal periods without paying Plaintiffs and
9 Class Members premium wages for every day said meal periods were not
10 provided in violation of Labor Code §§ 226.7 and 512.
- 11 (c) Failing to authorize or permit compliant rest breaks without paying
12 Plaintiffs and Class Members premium wages for every day said rest
13 breaks were not authorized or permitted in violation of Labor Code §
14 226.7
- 15 (d) Failing to reimburse Plaintiffs and Class Members for necessary business-
16 related expenses in violation of Labor Code §§ 2800 and 2802.
- 17 (e) Failing to provide Plaintiffs and Class Members with accurate itemized
18 wage statements in violation of Labor Code § 226.
- 19 (f) Failing to timely pay all earned wages to the members of the Waiting
20 Time Subclass upon separation of employment in violation of Labor Code
21 §§ 201, 202, and 203.

22 96. As alleged herein, Defendants systematically engaged in unlawful conduct in
23 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
24 (minimum and overtime wages), failing to reimburse necessary business-related costs and
25 expenses, failing to furnish accurate wage statements, and failing to pay all wages due and
26 owing upon separation of employment in a timely manner to the Waiting Time Subclass, all in
27 order to decrease their costs of doing business and increase their profits.
28

1 97. At all relevant times herein, Defendants held themselves out to Plaintiffs and
2 Class Members as being knowledgeable concerning the labor and employment laws of
3 California.

4 98. At all times relevant herein, Defendants intentionally avoided paying Plaintiffs
5 and Class Members wages and monies, thereby creating for Defendants an artificially lower
6 cost of doing business in order to undercut their competitors and establish and/or gain a greater
7 foothold in the marketplace.

8 99. By violating the foregoing statutes and regulations as herein alleged, Defendants'
9 acts constitute unfair and unlawful business practices under California Business and Professions
10 Code §§ 17200, *et seq.*

11 100. As a result of the unfair and unlawful business practices of Defendants as alleged
12 herein, Plaintiffs and Class Members are entitled to injunctive relief, disgorgement, and
13 restitution in an amount to be shown according to proof at trial.

14 101. Plaintiffs seek to enforce important rights affecting the public interest within the
15 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
16 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiffs, Class Members,
17 and the general public. Based on Defendants' conduct as alleged herein, Plaintiffs and Class
18 Members are entitled to an award of attorneys' fees pursuant to California Code of Civil
19 Procedure § 1021.5.

20 NINTH CAUSE OF ACTION

21 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

22 102. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs
23 as though fully set forth herein.

24 103. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
25 for a civil penalty to be assessed and collected by the Labor and Workforce Development
26 Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or
27 employees for violation of the Labor Code may, as an alternative, be recovered through a civil
28

1 action brought by an aggrieved employee on behalf of himself or herself and other current or
2 former employees pursuant to the procedures specified in Labor Code § 2699.3.

3 104. For all provisions of the Labor Code except those for which a civil penalty is
4 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
5 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
6 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
7 period in which Defendants violated these provisions of the Labor Code.

8 105. Defendants' conduct violates numerous Wage Order and Labor Code sections,
9 including, but not limited to, the following:

- 10 a. violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 1182.12, 1194,
11 1197, and 1198 for failure to timely pay all earned wages (including
12 minimum wage and overtime wages) owed to Plaintiffs and other
13 aggrieved employees during employment and upon separation of
14 employment as herein alleged;
- 15 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
16 periods to Plaintiffs and other aggrieved employees and failure to pay
17 premium wages for missed meal periods as herein alleged;
- 18 c. violation of Labor Code § 226.7 for failure to permit rest breaks to
19 Plaintiffs and other aggrieved employees and failure to pay premium
20 wages for missed rest periods as herein alleged;
- 21 d. violation of Labor Code § 226 for failure to provide accurate itemized
22 wage statements to Plaintiffs and other aggrieved employees as herein
23 alleged;
- 24 e. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
25 accurate and complete records showing, among other things, the hours
26 worked daily by and the wages paid to aggrieved employees; and
27
28

1 f. violation of Labor Code §§ 2800 and 2802 for failure to reimburse
2 Plaintiffs and other aggrieved employees for necessary business expenses
3 as herein alleged.

4 106. Plaintiffs are “aggrieved employees” because they were employed by the alleged
5 violator and had one or more of the violations committed against them, and therefore is properly
6 suited to represent the interests of all other aggrieved employees.

7 107. Plaintiffs have exhausted the procedural requirements under Labor Code §
8 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of
9 themselves and all other aggrieved employees under PAGA.

10 108. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to
11 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
12 cited above.

13 109. For bringing this action, Plaintiffs are entitled to attorney’s fees and costs
14 incurred herein.

15 **PRAYER FOR RELIEF**

16 On Plaintiffs’ own behalf and on behalf of all others similarly situated, Plaintiffs pray
17 for relief and judgment against Defendants, jointly and severally, as follows:

18 1. For certification under California Code of Civil Procedure § 382 of the proposed
19 Class and any other appropriate subclass;

20 2. For appointment of Donald Hollingsworth and Lutricia Randolph as class
21 representatives;

22 3. For appointment of Aegis Law Firm, PC and Shanberg Stafford LLP, as class
23 counsel for all purposes;

24 4. For compensatory damages in an amount according to proof at trial;

25 5. For an award of damages in the amount of unpaid compensation including, but
26 not limited to, unpaid wages, unreimbursed expenses, benefits, and penalties;

27 6. For economic and/or special damages in an amount according to proof at trial;

28 7. For liquidated damages pursuant to Labor Code § 1194.2;

1 8. For statutory penalties to the extent permitted by law, including those pursuant to
2 the Labor Code and IWC Wage Orders;

3 9. For injunctive relief as provided by the California Labor Code and California
4 Business and Professions Code §§ 17200, *et seq.*;

5 10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

6 11. For an order requiring Defendants to restore and disgorge all funds to each
7 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair,
8 or fraudulent and, therefore, constituting unfair competition under Business and Professions
9 Code §§ 17200, *et seq.*;

10 12. For pre-judgment interest;

11 13. For civil penalties;

12 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
13 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
14 226(e), 1194, and 2698 *et seq.*; and

15 15. For such other relief as the Court deems just and proper.

16

17 Dated: May 16, 2023

AEGIS LAW FIRM, PC

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20

By: /s/ Joseph M. Szilagyi
Joseph M. Szilagyi
Attorneys for Plaintiff Donald Hollingsworth

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23 Dated: May 16, 2023

SHANBERG STAFFORD LLP

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25

26

By: /s/ Ross E. Shanberg
Ross E. Shanberg
Attorneys for Plaintiff Lutricia Randolph

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1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On May 16, 2023, I served the foregoing document entitled:

5 **SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT FOR**

6 on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true
copy thereof on the party(ies) addressed below as follows:

7 Alexander Chemers

8 Vi Applen

9 **OGLETREE DEAKINS NASH SMOAK & STEWART P.C.**

400 South Hope Street, Suite 1200

Los Angeles, CA 90071

Telephone: 213.239.9800

Facsimile: 213.239.9045

Alexander.chemers@ogletree.com

sally.navarrete@ogletreedekins.com

12 *Attorneys for Defendant:*

13 WESTCARE CALIFORNIA, INC.

14 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
15 correspondence for mailing. Under that practice it would be deposited with the U.S.
Postal Service on that same day with postage thereon fully prepaid at Irvine, California
16 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
17 day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
R. Civ. Proc. 5(a); *Fed. R. Civ. Proc.* 5(c).)

18 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
19 practice of Aegis Law Firm PC for collection and processing correspondence for
overnight delivery, and I caused such document(s) described herein to be deposited for
20 delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

21 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
22 electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

23 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
24 the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
5(b)(2)(A).)

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

3 Executed on May 16, 2023, at Irvine, California.

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5 _____
6 Jacquelyn Enciso
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