

1 NATHAN N. KASED (STATE BAR No. 251400)
Email: nathan@kasedlegal.com

2 JENNIFER B. COTTIS (STATE BAR No. 180854)
Email: jennifer@kasedlegal.com

3 **KASED LAW GROUP APC**
4 2535 KETTNER BOULEVARD, SUITE 2A2
5 SAN DIEGO, CALIFORNIA 92101
6 PHONE: 619.333.6373
7 FAX: 619.399.3040

8 Attorneys for Plaintiff
9 JOSHUA BECKER
10 and Aggrieved Employees

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN DIEGO**

14 JOSHUA BECKER, an Individual, on behalf
15 of himself and all other aggrieved employees
16 of Defendants in the State of California,

17 Plaintiff,

18 vs.

19 DOUGLAS D. DE HART, INC., dba
20 SERVICEMASTER ABSOLUTE WATER &
21 FIRE DAMAGE SERVICES, a California
22 Corporation; MARK RALPH, an Individual;
23 and DOES 1-10, Inclusive,

24 Defendants.

Case No. 37-2022-00024627-CU-OE-CTL

UNLIMITED CIVIL CASE

FIRST AMENDED COMPLAINT FOR:

1. **Wrongful Termination in Violation of Public Policy;**
2. **Unlawful Retaliation and Discrimination;**
3. **Breach of Contract;**
4. **Failure to Pay Earned Wages (Cal. Lab. Code § 204);**
5. **Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1182.12, 1194, *et seq.*, 1197, 1198; IWC Wage Order No. 16-2001);**
6. **Failure to Pay Minimum Wages (San Diego Municipal Code §§ 39.0107, 39.0112);**
7. **Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 16-2001);**
8. **Failure to Pay Meal Period Compensation (Cal. Lab. Code §§ 226.7, 512, 1198; IWC Wage Order No. 16-2001);**
9. **Failure to Pay Rest Period Compensation (Cal. Lab. Code §§ 226.7, 1198; IWC Wage Order No. 16-2001);**

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
09/02/2022 at 03:51:00 PM
Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

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10. **Failure to Furnish Wage and Hour Statements (Cal. Lab. Code § 226);**
11. **Failure to Pay All Wages Earned at Separation (Cal. Lab. Code §§ 201, 203);**
12. **Illegal Offset Against Wages (Cal. Lab. Code §§ 221, 224; IWC Wage Order No. 16-2001);**
13. **Failure to Indemnify for All Necessary Expenditures (Cal. Lab. Code § 2802; IWC Wage Order No. 16-2001); and**
14. **Unfair Competition (Cal. Bus. & Prof. Code § 17200, *et seq.*); and**
15. **Civil Penalties for Violations of the Labor Code (Cal. Lab. Code, § 2698, *et seq.*).**

DEMAND FOR JURY TRIAL

1 Plaintiff JOSHUA BECKER (“BECKER” or “Plaintiff”) alleges as follows:

2 **NATURE OF THE ACTION**

3 1. This is an individual and representative action brought by BECKER for wrongful
4 and retaliatory discharge in violation of public policy and for numerous wage and hour against
5 defendants DOUGLAS D. DE HART, INC., dba SERVICEMASTER ABSOLUTE WATER &
6 FIRE DAMAGE SERVICES (“SERVICEMASTER” or the “COMPANY”) and MARK RALPH
7 (“RALPH”), to recover special, general, and punitive damages; and unpaid wages and related
8 penalties and compensation owed to him and his aggrieved peers. This representative action is
9 brought in accordance with California’s Private Attorneys General Act of 2004, codified at Labor
10 Code section 2698, *et seq.* (the “PAGA”).

11 2. **The class of aggrieved workers under the PAGA is composed of all individuals**
12 **who work for or have worked for SERVICEMASTER and/or RALPH on a non-salary basis,**
13 **as well as those whom Defendants have otherwise subjected to Labor Code violations,**
14 **including unpaid regular and minimum wages; unpaid overtime; noncompliant meal and rest**
15 **periods; wage statements that were inaccurate, untimely, and/or not provided at all; illegal**
16 **offsets against wages; unreimbursed necessary, work-related expenses; final pay violations;**
17 **and the like (the “PAGA Aggrieved Employees”) in the State of California from December 28,**
18 **2020 to the final judgment (the “PAGA Period”).**

19 **THE PARTIES**

20 3. Plaintiff JOSHUA BECKER is, and at all relevant times was, an individual residing
21 in the County of San Diego, State of California.

22 4. Defendant SERVICEMASTER is, and at all relevant times was, a California
23 corporation with its principal place of business in San Diego County, California.

24 5. On information and belief, Defendant RALPH is, and at all relevant times was, a
25 competent adult residing in San Diego County, California.

26 6. On information and belief, RALPH, at all relevant times, was a director, officer,
27 and/or managing agent of Defendant SERVICEMASTER within the meaning of California Labor
28 Code section 558.1 and California Civil Code section 3294. On information and belief, RALPH, at

1 all relevant times, exercised substantial discretion in his decision-making such that his decisions
2 ultimately determined company policy of the Company. On information and belief, RAPH
3 conceived of and implemented the unlawful compensation scheme to which BECKER and, on
4 information and belief, other employees were subjected during the relevant liability period, as
5 described in this Complaint. In addition, RALPH is sued individually pursuant to Labor Code
6 sections 558, 1197.1, and 2698 *et seq.* (the PAGA) as an employer or person acting on behalf of
7 an employer, who violated or causes to be violated, a section of Part 2, Chapter 1 of the California
8 Labor Code or any provision regulating hours and days of work in any order of the Industrial
9 Welfare Commission, and as an employer or other person acting either individually or as an
10 officer, agent, or employee of another person, who pays or causes to be paid to any employee a
11 wage less than the minimum fixed by an applicable state or local law, or by an order of the
12 Industrial Welfare Commission.

13 7. Plaintiff sues fictitious DOES 1 through 10 inclusive, pursuant to Code of Civil
14 Procedure § 474, because the names and/or capacities and/or facts showing them liable is not
15 presently known. Plaintiff will amend this complaint when the true names and capacities are
16 ascertained. Unless otherwise indicated each Defendant is sued as the agent and/or employee of
17 every other Defendant acting within the course and scope of said agency and or employment, with
18 the knowledge and/or consent of said co-Defendants. Plaintiff is informed and believes and
19 thereon alleges that each of the fictitiously named Defendants is or are responsible in some
20 manner of the acts, omissions or other actionable conduct as alleged in this complaint.

21 8. Plaintiff is informed and believes and thereon alleges that at all times mentioned
22 herein each of the Defendants herein were the agents, servants, and employees of each of the co-
23 Defendants, and in doing the things hereinafter alleged were acting within the course and scope of
24 such agency, employment and authority, and gave each of the co-Defendants consent to, ratified
25 and authorized the acts alleged hereinafter.

26 **JURISDICTION AND VENUE**

27 9. Pursuant to Article VI, § 10 of the California Constitution, subject matter jurisdiction
28 is proper in the Superior Court of California, County of San Diego, State of California.

1 10. Venue is proper in this Court because Defendants did substantial business in San
2 Diego County, California, Defendants employed Plaintiff and the PAGA Aggrieved Employees in
3 San Diego County, and Plaintiff resides in San Diego County, California.

4 **GENERAL ALLEGATIONS**

5 11. Defendants: (1) failed to pay Plaintiff and the PAGA Aggrieved Employees the
6 required minimum wage; (2) failed to pay Plaintiff and the PAGA Aggrieved Employees the
7 required overtime compensation; (3) employed Plaintiff and the PAGA Aggrieved Employees for
8 more than five hours without timely, uninterrupted meal periods of not less than 30 minutes and
9 failed to compensate them for the missed meal periods; (4) employed Plaintiff and the PAGA
10 Aggrieved Employees for work periods of four hours or major fraction thereof without rest periods
11 of ten minutes net rest time and failed to compensate them rest period compensation for the missed
12 rest periods; (5) failed to provide Plaintiff and the PAGA Aggrieved Employees with timely and
13 accurate wage and hour statements; (6) took illegal deductions from the wages of Plaintiff and the
14 PAGA Aggrieved Employees; (7) took illegal offsets from the wages of Plaintiff and the PAGA
15 Aggrieved Employees; (8) failed to indemnify Plaintiff and the PAGA Aggrieved Employees for all
16 necessary expenditures they incurred in connection with their employment therewith; (9) failed to
17 pay Plaintiff and the PAGA Aggrieved Employees their earned wages in a timely manner upon
18 separation; and (10) engaged in unlawful and unfair business practices through the various Labor
19 Code violations. The foregoing acts and other acts by the Defendant violated provisions of the Labor
20 Code, including §§ 201, 202, 203, 204, 208, 221, 224, 226, 226.7, 510, 512, 1182.12, 1174, 1194,
21 1194.2, 1197, 1198, and 2802; violated the applicable Wage Orders issued by the IWC of the State
22 of California (the “Wage Order(s)”), and violated the rights of Plaintiff and the PAGA Aggrieved
23 Employees.

24 **FACTS COMMON TO ALL CAUSES OF ACTION**

25 12. The Company is generally in the business of restoring homes subjected to water
26 and fire damage to pre-loss condition. Its primary clients are insurance companies and performs
27 mostly “insurance work.”

28 ///

1 13. On information and belief, the Company employed about 60 workers during the
2 relevant liability period. In terms of workforce complexion, about five of the 60 are project
3 managers, BECKER's former role; 15 to 20 are "pack out" laborers, i.e., the personnel who move
4 home items out of storage; 10 to 15 are demolition laborers; four or so are estimators; and the
5 remainder work in operations and administration.

6 14. The Company employed BECKER from in or around November 2013 to on or
7 about September 10, 2021. He originally started as a demolition laborer at \$10.00 per hour. After
8 four months of employment, BECKER was elevated to project manager and he would remain in
9 that role until his termination.

10 15. For most of his employment, BECKER was a project manager for the Company,
11 overseeing and performing demolition after floods and/or other events. He oversaw other
12 employees and was employed on a salary basis. BECKER also typically inspected and took
13 photos of loss; interfaced with insurance adjusters regarding claims; contacted and coordinated
14 necessary personnel for restoration, such plumbers, electricians, and asbestos abatement
15 specialists; assessed and physically performed demolition; and like duties. After a typical full 14
16 or so hours onsite, BECKER typically completed related paperwork from home. This entailed all
17 project-related items, including contracts, work authorizations, diagramming of the subject home,
18 uploading and indexing of loss photos on a Company storage drive, among other tasks.

19 16. In addition to salary that BECKER was to receive, the Company maintained an
20 incentive/bonus structure, which vested when various metrics were met. This incentive was
21 expressly written to be "in addition to" the employee's regular salary. In effect, the complicated
22 compensation structure acted to deprived BECKER of his justly earned compensation.

23 17. Under the incentive/bonus structure to which BECKER and others were subjected,
24 an employee received a percentage of each project based on billing. For example, if the Company
25 secured a \$10,000 project from one of its clients and BECKER was promised, say 15% under the
26 incentive scheme, BECKER would receive \$1,500 gross, subject to tax withholdings. **From the**
27 **net wages, the Company would further deduct for labor assigned to BECKER, as well as**
28 **deduct for equipment, supplies, and insurance fees assessed by the client.** In 2017, the

1 incentive payment percentage in effect for BECKER and others was 17.5%; in 2018 and 2019, it
2 was 19.5%; and in 2020 and 2021, it was 21.5%.

3 18. Throughout his employment with the Company, BECKER typically worked
4 upwards of 100 hours per workweek. BECKER typically started his workday at 7 a.m. and
5 physically worked on the jobsite until about 6 or 7 p.m. each night. He typically drove about 350
6 miles per day, as job locations were often beyond the bounds of San Diego County. After his work
7 onsite, BECKER typically spent a few hours at home each night completing work-related
8 paperwork.

9 19. Throughout his employment, BECKER typically did not have reasonable
10 opportunities to take uninterrupted meal and rest breaks to due to his extremely heavy workload.
11 In a typical workday for BECKER, Company projects were usually scheduled in two-hour blocks
12 and consecutive to each other. As such, as soon as BECKER and his team completed one project,
13 they were immediately off to the next.

14 20. During his employment with the Company, BECKER was to earn a salary of
15 \$130,000 per year, plus potential bonus, if the written metrics were met. Instead, the Company
16 passed on the cost of doing business, and the cost of employing its workers, to BECKER and, on
17 information and belief, to other similarly aggrieved employees. Many pay periods, BECKER had
18 a **negative** salary, in violation of the Labor Code and Wage Order 16. For the pay periods in
19 which BECKER had a negative salary, he was nonexempt as a matter of law and thus eligible for
20 the usual entitlements available to nonexempt employees, such as overtime and meal and rest
21 periods. In addition, BECKER was subjected to minimum wage violations for not being paid at
22 least a minimum wage for all hours worked.

23 21. One pay breakdown BECKER received, dated 3/10/21, states that he was
24 responsible for a gross total of \$7,692.88 of business. On that same page, his compensation has a
25 deduction for “helpers,” which indicates that he was charged for using employees to do the
26 Company’s business, in violation of Labor Code sections 221, 224, and 2802. The next item is
27 “less salary,” which is not being directed to BECKER, but just simply, deducted, in violation of
28 the Labor Code and Wage Order. Next, BECKER was charged for “administrative” services.

1 This one itemization falls short of Labor Code section 226's requirement that an employee can
2 readily understand what he earned and why. While there is a breakdown of sorts, it is unclear why
3 the employee is charged for his salary, for administrative costs, and for other employees. During
4 that one pay period, **BECKER was "charged" by the Company \$885.60, as it is a negative**
5 **entry, and no salary was paid for this pay period.** In other words, BECKER, while performing
6 work during the pay period, was charged \$885.60 during that time, rather than being paid for his
7 hours worked, even though he was promised a salary of \$130,000 per year. BECKER was not a
8 partner or other equity associate of Defendant. He was a W2 employee throughout the relevant
9 liability period.

10 22. The Company paid a nominal amount (\$1 or \$2 per employee) for tax purposes and
11 left the rest of the employee expenses to the project manager, including BECKER, again charging
12 the project manager for the costs of doing business, and paying taxes, in violation of California
13 and other laws.

14 23. Other unlawful pay breakdowns included negative items for on call time (this
15 should be a positive number).

16 24. Ultimately, the Company was unlawfully passing along the cost of doing business
17 to its project managers, including BECKER. This resulted in BECKER not earning his promised
18 salary, and not being paid the promised incentive pay when he met agreed metrics, which he met.

19 25. BECKER was required to engage the services of an attorney to redress the above
20 grievances: working 14-hours days and drawing a negative salary. After BECKER's counsel
21 communicated with Defendant about Defendant's ostensibly unlawful compensation scheme,
22 Defendant fired BECKER shortly thereafter, in violation of the Labor Code's proscriptions against
23 retaliation.

24 Tolling of Claims

25 26. The Judicial Council Emergency Rule 9, as amended May 29, 2020, suspended
26 from April 6, 2020, to October 1, 2020, the statutes of limitations and repose for civil causes of
27 action that exceed 180 days. The statute of limitations for each of BECKER's causes of action
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1 exceeds 180 days. As such, Plaintiff's individual claims are tolled approximately six months, by
2 Emergency Rule 9, and the statutory period relates back from on or about December 28, 2021.

3 Exhaustion of Administrative Remedies

4 27. On or about June 29, 2022, STEPHANA notified the California Labor &
5 Workforce Development Agency (the "LWDA") of the Labor Code violations to which he and his
6 aggrieved peers were subjected, and on information and belief, continue to be subjected.
7 Thereafter, he timely served this PAGA notice on Defendants by certified mail, in compliance
8 with the PAGA statute.

9 **FIRST CAUSE OF ACTION**

10 **Wrongful Termination in Violation of Public Policy**

11 **(As Against SERVICEMASTER and All DOE Defendants)**

12 28. Plaintiff incorporates the preceding paragraphs.

13 29. California codifies a number of fundamental public policies intended to protect
14 both employees and the public at large from unscrupulous and overreaching employers. An
15 employer's material violation of any such fundamental public policies when terminating the
16 employment of an employee supports a cause of action for wrongful termination of employment in
17 violation of public policy.

18 30. Section 923 of the California Labor Code embodies one such fundamental public
19 policy. It renders it against the public policy of the State for an employer to terminate an employee
20 because that employee hired an attorney to negotiate the employee's terms and conditions of
21 employment. *See Gelini v. Tishgart*, 77 Cal.App.4th 219 (1999); *Montalvo v. Zamora*, 7
22 Cal.App.3d 69 (1970)

23 31. BECKER was wrongfully retaliated against for hiring an attorney to negotiate the
24 terms and conditions of his employment, and he was subjected to a wrongful termination of
25 employment. He was fired, with no good cause or reason, shortly after he learned that the
26 Company had received and reviewed a certified letter sent by his counsel, which the Company
27 signed for on September 7, 2021. This adverse action was retaliatory and carried out within 120
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1 days of his protected activities, rendering his discharge presumptively retaliatory and
2 discriminatory under the Labor Code.

3 32. BECKER's protected activity, hiring a lawyer to negotiate the terms and conditions
4 of his employment, and the adverse action that followed, independently support a cause of action
5 for retaliation and wrongful termination of employment, in violation of Labor Code Section
6 1102.5. That statute prohibits retaliation against an employee who engages in protected activities,
7 including the hiring of a lawyer to negotiate the terms and conditions of employment and reporting
8 the nonpayment of earned wages and the reporting of the employer's suspected noncompliance or
9 violation of state or federal laws.

10 33. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has
11 suffered compensatory, consequential, and incidental damages all in amounts to be proven at the
12 time of trial herein.

13 34. As a further direct and proximate result of Defendants' acts and omissions, Plaintiff
14 has suffered general damages, including emotional distress, anxiety, and worry, all in amounts to
15 be proven at the time of trial herein. Defendants' conduct harmed Plaintiff emotionally and
16 mentally.

17 35. Defendants' conduct, intentionally perpetrated against Plaintiff, was malicious,
18 wanton, and despicable within the meaning of Civil Code §3294, as to entitle Plaintiff to an award
19 of punitive damages against Defendants, and each of them, in amounts deemed appropriate at the
20 time of trial. Defendants' conduct was intentional and outside all norms of society, bearing no
21 relationship to the normal employer-employee relationship.

22 36. Defendants' unfair and illegal conduct further entitles Plaintiff to the recovery of
23 his attorneys' fees and costs under the Labor Code, including Section 1102.5, as well as the
24 private attorney general provisions of California Code of Civil Procedure §1021.5. Plaintiff seeks
25 to vindicate important and substantial public interests and rights, namely for employees to be free
26 from unlawful retaliation and discrimination in the workplace. Defendants' conduct herein thus
27 warrants a finding that Plaintiff's fees and costs be paid by Defendants rather than from a recovery
28 in this matter.

1 **SECOND CAUSE OF ACTION**

2 **Unlawful Retaliation and Discrimination**

3 **(As Against SERVICEMASTER and All DOE Defendants)**

4 37. Plaintiff incorporates the preceding paragraphs.

5 38. As alleged herein above, Defendants engaged in a concerted course of action
6 intended to compromise and inhibit Plaintiff's and the public's rights and interests, which conduct
7 was substantially motivated by BECKER's engagement of an attorney to negotiate the terms and
8 conditions of his employment, to oppose the Company's unfair and illegal business practices, and
9 BECKER's objection to the Company's improper denial of compensation earned.

10 39. Defendants engaged in acts of retaliation and discrimination against BECKER when
11 taking the adverse actions against him as alleged herein, in violation of the California Labor Code,
12 including Sections 923, 1102.5 and such other statutes and promulgations, including those
13 mandating the timely payment to employees of all compensation earned. Defendants' acts and
14 omissions on account of BECKER's exercise of his rights and engagement in protected activities
15 constituted unlawful employment practices in violation of his rights and interests.

16 40. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has
17 suffered compensatory, consequential, and incidental damages all in amounts to be proven at the
18 time of trial herein.

19 41. As a further direct and proximate result of Defendants' acts and omissions, Plaintiff
20 has suffered general damages, including emotional distress, anxiety, and worry, all in amounts to be
21 proven at the time of trial herein. Defendants' conduct harmed Plaintiff emotionally and mentally.

22 42. Defendants' conduct, intentionally perpetrated against Plaintiff, was malicious,
23 wanton, and despicable within the meaning of Civil Code §3294, as to entitle Plaintiff to an award
24 of punitive damages against Defendants, and each of them, in amounts deemed appropriate at the
25 time of trial. Defendants' conduct was intentional and outside all norms of society, bearing no
26 relationship to the normal employer-employee relationship.

27 43. Defendants' unfair and illegal conduct further entitles Plaintiff to the recovery of his
28 attorneys' fees and costs under the Labor Code, including Section 1102.5, as well as the private

1 attorney general provisions of California Code of Civil Procedure §1021.5. Plaintiff seeks to
2 vindicate important and substantial public interests and rights, namely for employees to be free from
3 unlawful retaliation and discrimination in the workplace. Defendants' conduct herein thus warrants
4 a finding that Plaintiff's fees and costs be paid by Defendants rather than from a recovery in this
5 matter.

6 **THIRD CAUSE OF ACTION**

7 **Breach of Contract**

8 **(As Against SERVICEMASTER and All DOE Defendants)**

9 44. Plaintiff incorporates the preceding paragraphs.

10 45. Plaintiff and Defendants entered into a written agreement, wherein Defendants
11 would pay Plaintiff an annual salary of \$130,000, as a project manager.

12 46. In connection with his position as project manager, he was promised, in writing, a
13 performance incentive with various metrics.

14 47. Plaintiff performed all services agreed to as project manager.

15 48. Plaintiff met Defendant's goals regarding performance and was entitled to
16 performance bonuses under the written contract.

17 49. Plaintiff fully performed all terms of the employment contract or was excused from
18 full performance.

19 50. Plaintiff further fully performed all terms of the bonus/incentive pay written
20 contract.

21 51. Defendants breached the employment contract to pay a \$130,000 annual salary.

22 52. Defendants also breached the bonus/incentive pay written contract.

23 53. Defendants were not excused from performing under the salary contract.

24 54. Defendants were also not excused from performing under the bonus/incentive
25 contract.

26 55. Plaintiff was harmed by Defendants' breach of both compensation agreements.

27 56. Defendants' breach was the legal and proximate cause of Plaintiff's harm.

28 57. Plaintiff's damages will be shown at time of trial, according to proof.

1 **FOURTH CAUSE OF ACTION**

2 **Failure to Pay Earned Wages**

3 **(Cal. Lab. Code §204)**

4 **(As Against All Defendants)**

5 58. Plaintiff incorporates the preceding paragraphs.

6 59. Labor Code section 204(a) provides as follows:

7 All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or
8 204.2, earned by any person in any employment are due and payable twice
9 during each calendar month, on days designated in advance by the employer
10 as the regular paydays. Labor performed between the 1st and 15th days,
11 inclusive, of any calendar month shall be paid for between the 16th and the
12 26th day of the month during which the labor was performed, and labor
13 performed between the 16th and the last day, inclusive, of any calendar
14 month, shall be paid for between the 1st and 10th day of the following
15 month. However, salaries of executive, administrative, and professional
16 employees of employers covered by the Fair Labor Standards Act, as set
17 forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as
amended through March 1, 1969, in Part 541 of Title 29 of the Code of
Federal Regulations, as that part now reads or may be amended to read at
any time hereafter, may be paid once a month on or before the 26th day of
the month during which the labor was performed if the entire month's
salaries, including the unearned portion between the date of payment and
the last day of the month, are paid at that time.

18 60. Defendants failed to pay Plaintiff the wages that he earned, as required by Labor
19 Code section 204.

20 61. Plaintiff has been deprived of his rightfully earned wages as a direct and proximate
21 result of Defendants' failure to pay said compensation. Plaintiff is entitled to recover such
22 amounts, plus interest thereon, attorney's fees and costs.

23 **FIFTH CAUSE OF ACTION**

24 **For Failure to Pay Minimum Wages**

25 **(Cal. Lab. Code §§ 1182.12, 1194 *et seq.*, 1197, 1198; IWC Wage Order No. 16-2001)**

26 **(As Against All Defendants)**

27 62. Plaintiff incorporates the preceding paragraphs.

1 63. Plaintiff is entitled to minimum wage as provided under the Code and the Wage
2 Orders.

3 64. The Labor Code and the Wage Orders provide that an employer must pay a minimum
4 wage to an employee, which is ten dollars and fifty cents (\$10.50) per hour for all hours worked
5 effective January 1, 2017 through December 31, 2017 (for employers with 26 or more employees);
6 eleven dollars (\$11.00) per hour for all hours worked effective January 1, 2018 through December
7 31, 2018; twelve dollars (\$12.00) per hour for all hours worked effective January 1, 2019 through
8 December 31, 2019; thirteen dollars (\$13.00) per hour for all hours worked effective January 1,
9 2020 through December 31, 2020; fourteen dollars (\$14.00) per hour for all hours worked effective
10 January 1, 2021 through December 31, 2021; and fifteen dollars (\$15.00) per hour for all hours
11 worked effective January 1, 2022 through the present.

12 65. Defendants' illegal compensation scheme caused Plaintiff to receive no
13 compensation and even "negative" compensation, wherein the Company purported to charge
14 Plaintiff and deduct from his pay for labor, supplies, equipment, and other costs that should have
15 been borne by the Company, as described in this Complaint, all in violation of numerous provisions
16 of the California Labor Code.

17 66. As a result, Defendants failed to pay Plaintiff minimum wage for Plaintiff's work, as
18 required by the Code and the Wage Orders.

19 67. Defendants thus required Plaintiff to work under conditions prohibited by order of
20 the IWC, in violation of those orders.

21 68. Defendants deprived Plaintiff of his rightfully earned minimum wage compensation,
22 as a direct and proximate result of Defendants' failure to pay said compensation. Under Labor Code
23 § 1194, Plaintiff is entitled to recover such amounts, plus interest thereon, reasonable attorney's
24 fees, and costs.

25 69. In addition, under Labor Code § 1194.2, Plaintiff is entitled to recover liquidated
26 damages in an amount equal to the minimum wages unlawfully unpaid, and interest thereon.

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1 **SIXTH CAUSE OF ACTION**

2 **For Failure to Pay Minimum Wages**

3 **(San Diego Municipal Code §§ 39.0107, 39.0112)**

4 **(As Against All Defendants)**

5 70. Plaintiff incorporates the preceding paragraphs.

6 71. Plaintiff is entitled to minimum wage as provided under the San Diego Municipal
7 Code.

8 72. Plaintiff routinely worked for Defendants within the city limits of San Diego,
9 California during the relevant liability periods.

10 73. The San Diego Municipal Code sets minimum wage levels for employers at \$10.50
11 per hour for all hours worked effective July 11, 2016; \$11.50 per hour for all hours worked effective
12 January 1, 2017; \$12.00 per hour for all hours worked effective January 1, 2019; \$13.00 per hour
13 for all hours worked effective January 1, 2020; and \$14.00 per hour for all hours worked effective
14 January 1, 2021.

15 74. Defendants' illegal compensation scheme caused Plaintiff to receive no
16 compensation and even "negative" compensation, wherein the Company purported to charge
17 Plaintiff and deduct from his pay for labor, supplies, equipment, and other costs that should have
18 been borne by the Company, as described in this Complaint, in violation of the San Diego Municipal
19 Code.

20 75. As a result, Defendants failed to pay Plaintiff the minimum wage for Plaintiff's work,
21 as required by the San Diego Municipal Code.

22 76. Per San Diego Municipal Code § 39.0112, an employer who violates Municipal Code
23 § 39.0107 shall be liable to the employee whose rights were violated for all relief, including, but not
24 limited to, the payment to each affected employee of wages unlawfully withheld, prevailing
25 employee attorneys' fees and costs, and liquidated damages equal to double the back wages
26 withheld.

27 77. Furthermore, per subdivision (c) of Municipal Code § 39.0112, employers in
28 violation of the local minimum wage law are subject to a civil penalty of no less than \$500 and no

1 more than \$1,000 per violation. "Each and every day that an Employer fails to pay an Employee
2 Minimum Wage...constitutes a separate and distinct violation." To date, BECKER is still owed
3 minimum wages.

4 **SEVENTH CAUSE OF ACTION**

5 **For Failure to Pay Overtime Compensation**

6 **(Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 16-2001)**

7 **(As Against All Defendants)**

8 78. Plaintiff hereby incorporate each preceding paragraph.

9 79. The Code and the Wage Order provide that a workday consists of eight hours, a
10 workweek consists of 40 hours, and an employer must compensate an employee who works
11 overtime hours with either one-and-one-half times or double the employee's regular rate of
12 compensation. Defendants employed Plaintiff for more than eight hours per day and more than 40
13 hours per workweek, but Defendants failed to pay Plaintiff the overtime compensation required by
14 the California Labor Code and the Wage Order.

15 80. Defendants thus required Plaintiff to work for longer hours than those fixed, or under
16 conditions prohibited, by order of the IWC, in violation of those orders.

17 81. Defendants deprived Plaintiff of his rightfully earned overtime compensation as a
18 direct and proximate result of Defendants' failure to pay said compensation. Under Labor Code §
19 1194, Plaintiff is entitled to recover such amounts, plus interest thereon, attorney's fees, and costs.

20 **EIGHTH CAUSE OF ACTION**

21 **For Failure to Pay Meal Period Compensation**

22 **(California Labor Code §§ 226.7, 512, 1198; IWC Wage Order No. 16-2001)**

23 **(As Against All Defendants)**

24 82. Plaintiff incorporates the preceding paragraphs.

25 83. The Code and the Wage Order provide that an employee is entitled to an
26 uninterrupted, off-the-clock meal period of not less than 30 minutes for every five hours worked.
27 The Code and the Wage Order also require the employer to pay the employee one hour at the
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1 employee's regular rate of compensation for each day that the employer does not provide at least
2 one required meal period.

3 84. Defendants employed Plaintiff for work periods of more than five (5) hours without
4 a timely meal period of not less than 30 minutes and failed to compensate Plaintiff for such meal
5 periods, as required by Labor Code § 226.7 and the Wage Order.

6 85. Defendants deprived Plaintiff of his rightfully earned compensation for meal periods
7 as a direct and proximate result of Defendant's failure to pay said compensation.

8 86. The remedy provided for in Code § 226.7 constitutes a wage, and Plaintiff is entitled
9 to interest thereon. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1099-1100;
10 *Naranjo v. Spectrum Security Services, Inc.* (2022), 13 Cal. 5th 93, 101.

11 87. Defendants thus required Plaintiff to work for longer hours than those fixed, or under
12 conditions prohibited, by order of the IWC, in violation of those orders.

13 **NINTH CAUSE OF ACTION**

14 **For Failure to Pay Rest Period Compensation**

15 **(California Labor Code §§ 226.7, 1198; IWC Wage Order No. 16-2001)**

16 **(As Against All Defendants)**

17 88. Plaintiff incorporates the preceding paragraphs.

18 89. The Code and the Wage Order provide that an employee is entitled to an
19 uninterrupted rest period of not less than 10 net minutes for every four hours worked or major
20 fraction thereof. The Code and the Wage Order require the employer to pay the employee one hour
21 at the employee's regular rate of compensation for each day that the employer does not provide at
22 least one required rest period.

23 90. Defendant employed Plaintiff for work periods of four hours or major fraction
24 thereof without rest periods of ten minutes' net rest time and failed to compensate Plaintiff for such
25 rest periods, as required by Code § 226.7 and the Wage Order.

26 91. Defendant deprived Plaintiff of his rightfully earned compensation for rest periods
27 as a direct and proximate result of Defendants' failure to pay said compensation.

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1 92. The remedy provided for in Code § 226.7 constitutes a wage, and Plaintiff is entitled
2 to interest thereon. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1099-1100;
3 *Naranjo v. Spectrum Security Services, Inc.* (2022), 13 Cal. 5th 93, 101.

4 93. Defendant thus required Plaintiff to work for longer hours than those fixed, or under
5 conditions prohibited, by order of the IWC, in violation of those orders.

6 **TENTH CAUSE OF ACTION**

7 **For Failure to Furnish Accurate Wage and Hour Statements**

8 **(Cal. Lab. Code § 226)**

9 **(As Against All Defendants)**

10 94. Plaintiff hereby incorporate each preceding paragraph.

11 95. Labor Code § 226(a) required Defendants, “semimonthly or at the time of each
12 payment of wages,” to furnish Plaintiff “an accurate itemized statement in writing” showing gross
13 and net wages earned, total hours worked by the employee/employees, rates of pay, and other
14 information.

15 96. Defendants knowingly and intentionally failed to provide Plaintiff with such wage
16 and hour statements accurately reflecting the true amount of wages earned in violation of section
17 226(a).

18 97. Plaintiff suffered injury as a result of Defendants’ knowing and intentional failure to
19 provide him with the wage and hour statements required by law.

20 98. Under Labor Code § 226, subsections (e) and (f), and based on Defendants’ conduct
21 as alleged herein, Plaintiff is entitled to: (a) fifty dollars (\$50) for the initial pay period in which a
22 wage and hour statement violation occurred, and one hundred dollars (\$100) per employee for each
23 violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
24 (\$4,000); (b) injunctive relief to ensure Defendants’ compliance with Labor Code § 226; and (c) an
25 award of costs and reasonable attorney's fees.

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ELEVENTH CAUSE OF ACTION

Failure to Pay All Wages Earned at Separation

(Cal. Lab. Code §203)

(As Against All Defendants)

99. Plaintiff hereby incorporate each preceding paragraph.

100. Labor Code section 203(a) provides as follows:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents themselves to avoid payment to them, or who refuses to receive the payment when fully tendered to them, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which the employee so avoids payment.

101. Defendants willfully failed to pay Plaintiff accrued wages due to him promptly upon separation, as required by California Labor Code § 202.

102. Based on Defendants’ conduct as alleged herein, Defendants are liable for statutory penalties pursuant to Labor Code § 203.

TWELFTH CAUSE OF ACTION

Illegal Offset Against Wages

(Cal. Lab. Code §§ 221, 224; IWC Wage Order No. 16-2001)

(As Against All Defendants)

103. Plaintiff hereby incorporate each preceding paragraph.

104. Labor Code § 221 provides: “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

105. Defendant unlawfully withheld wages owed to BECKER by deducting its own cost of doing business, including for compensation for other employees, for business materials, and other unlawful deductions from his earned compensation, in violation of section 221.

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106. Plaintiff has been deprived of his rightfully earned wages as a direct and proximate result of Defendants' failure to pay said compensation. Plaintiff is entitled to recover such amounts, plus interest thereon, attorney's fees and costs.

THIRTEENTH CAUSE OF ACTION

For Failure to Indemnify for All Necessary Expenditures or Losses

(Cal. Lab. Code § 2802; IWC Wage Order No. 16-2001)

(As Against All Defendants)

107. Plaintiff hereby incorporates each preceding paragraph.

108. Labor Code § 2802(a) provides:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

109. Throughout the relevant liability periods, Defendants required Plaintiff to conduct necessary, work-related tasks for Defendants using his personal devices, including his mobile phone and computer, all without reimbursement. Plaintiff is entitled to a “reasonable percentage” of his mobile phone bill. *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144. Plaintiff is also entitled to a reasonable reimbursement for his compelled, work-related use of his personal devices on behalf of Defendants.

110. Defendants have not indemnified Plaintiff to date for the necessary, work-related expenditures on behalf of Defendants, as described in this Complaint.

111. Under Labor Code § 2802(c), Plaintiff is entitled to recover all reasonable costs, including attorney's fees, incurred in enforcing his rights granted by Labor Code § 2802.

FOURTEENTH CAUSE OF ACTION

For Unfair Competition

(Cal. Bus. & Prof. Code § 17200, *et seq.*)

(As Against SERVICEMASTER and All DOE Defendants)

112. Plaintiff hereby incorporates each preceding paragraph.

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113. Defendants' violations of the Code and the Wage Order, including Defendants' failure to pay Plaintiff his earned wages, minimum wages, overtime wages, meal period compensation, and rest period compensation, constitute unfair business practices in violation of the UCL.

114. The UCL prohibits any practices forbidden by law, be they civil or criminal, federal, state, or municipal, statutory, regulatory, or court made. *South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal. App. 4th 861, 880.

115. Plaintiff has suffered injury in fact and has lost money or property as a result of Defendants' unfair business practices, and Defendants have reaped unfair benefits and illegal profits at Plaintiff's expense.

116. Plaintiff is entitled to immediate possession of all amounts owed to him by Defendants, with interest.

117. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent injunctive relief, including but not limited to orders that Defendants account for, disgorge, and restore to Plaintiff the compensation unlawfully withheld from him.

FIFTEENTH CAUSE OF ACTION

For Civil Penalties for Violations of the Labor Code

(California Labor Code Section 2698, *et seq.*)

By BECKER Individually, On Behalf of All Aggrieved Employees, and

On Behalf of the Public Against All Defendants

118. Plaintiff incorporates the preceding paragraphs.

119. Throughout the PAGA Period, Defendants have violated and, on information and belief, continue to violate provisions of the Labor Code, including §§ 201, 202, 203, 204, 208, 221, 224, 226, 226.7, 510, 512, 1182.12, 1174, 1194, 1194.2, 1197, 1198, and 2802.

120. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf of himself or herself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code § 2699.3.

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1 121. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
2 § 2699.3. By letter dated June 29, 2022, Plaintiff gave written notice by online filing with the LWDA
3 and by certified mail to Defendants of Plaintiff's allegations of Defendants' violations of the Labor
4 Code. The LWDA failed to notify this representative Plaintiff by certified mail that it does not intend
5 to investigate the alleged violations within 60 calendar days of the postmark date of the notice filing
6 and failed to send any notice within 65 days of Plaintiff's filing of the notice of its intention to
7 investigate Plaintiff's claimed violations.

8 122. Pursuant to Labor Code § 2699.3, subdivision (a)(2), Plaintiff may seek civil
9 penalties under the PAGA, codified at Labor Code §§ 2698, *et seq.*

10 123. Pursuant to Labor Code § 2699, subdivisions (a) and (f), Plaintiff is entitled to
11 recover civil penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 208, 221,
12 224, 226, 226.7, 510, 512, 1182.12, 1174, 1194, 1194.2, 1197, 1198, and 2802, in the following
13 amounts:

- 14 a. For violation of Labor Code § 201, one hundred dollars (\$100) for each
15 underpaid employee for each pay period the employee was underpaid, and
16 two hundred dollars (\$200) for each subsequent violation for each underpaid
17 employee for each pay period (penalty amounts established by Labor Code
18 Section 2699(f)(2));
- 19 b. For violation of Labor Code § 204, one hundred dollars (\$100) for each
20 underpaid employee for each pay period the employee was underpaid, and
21 two hundred dollars (\$200) for each subsequent violation or any willful or
22 intentional violation, for each underpaid employee for each pay period, plus
23 25 percent of the amount unlawfully withheld (penalty amounts established
24 by Labor Code Section 210);
- 25 c. For violation of Labor Code § 208, one hundred dollars (\$100) for each
26 aggrieved employee per pay period for the initial violation and two hundred
27 dollars (\$200) for each aggrieved employee per pay period for each
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subsequent violation (penalty amounts established by Labor Code Section 2699(f)(2));

d. For violation of Labor Code § 221, 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, plus 25 percent of the amount unlawfully withheld (penalty amounts established by Labor Code Section 225.5);

e. For violation of Labor Code § 224, 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 (penalty amounts established by Labor Code Section 2699(f)(2));

f. For violation of Labor Code § 226(a), two hundred fifty dollars (\$250) for each employee per pay period for the initial violation and one thousand dollars (\$1,000) per employee in a subsequent violation (penalty amounts established by Labor Code Section 226.3) *or* 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;

g. For violation of Labor Code § 226(b), 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 (penalty amounts established by Labor Code Section 2699(f)(2));

h. For violation of Labor Code § 226.7, 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 (penalty amounts established by Labor Code Section 2699(f)(2));

i. For violation of Labor Code § 510, fifty dollars (\$50) for each underpaid employee for each pay period the employee was underpaid in addition to an amount sufficient to recover underpaid wages, and one hundred dollars (\$100) for each subsequent violation for each underpaid employee for each pay period in addition to an amount sufficient to recover underpaid wages (penalty amounts established by Labor Code Section 558);

j. For violation of Labor Code § 512, fifty dollars (\$50) for each underpaid employee for each pay period the employee was underpaid in addition to an amount sufficient to recover underpaid wages, and one hundred dollars (\$100) for each subsequent violation for each underpaid employee for each pay period in addition to an amount sufficient to recover underpaid wages (penalty amounts established by Labor Code Section 558);

k. For violation of Labor Code § 1174, five hundred dollars (\$500) for any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174 (penalty amounts established by Labor Code Section 1174.5);

l. For violation of Labor Code § 1194(a), 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 (penalty amounts established by Labor Code Section 2699(f)(2));

m. For violation of Labor Code § 1197, one hundred dollars (\$100) for each underpaid employee for each pay period the employee was underpaid, and two hundred dollars (\$250) for each subsequent violation for each underpaid

employee for each pay period (penalty amounts established by Labor Code Section 1197.1);

n. For violation of Labor Code § 1198, one hundred dollars (\$100) for each underpaid employee for each pay period the employee was underpaid, and two hundred dollars (\$200) for each subsequent violation for each underpaid employee for each pay period (penalty amounts established by Labor Code Section 2699(f)(2)); and

o. For violation of Labor Code § 2802, 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 (penalty amounts established by Labor Code Section 2699(f)(2)).

124. Plaintiff further demands reasonable attorney's fees, costs of suit, and interest pursuant to California Labor Code §§ 2699(g)(1).

PRAYER FOR DAMAGES

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as to each cause of action, as follows:

On all Causes of Action:

1. For costs of suit incurred herein;
2. For prejudgment interest on the foregoing at the legal rate
3. For such further relief as the Court may deem appropriate.

On the First and Second Causes of Action against SERVICEMASTER:

4. For general damages according to proof;
5. For special damages according to proof;
6. For punitive damages according to proof;
7. For attorneys' fees and costs.

On the Third Cause of Action against SERVICEMASTER:

8. For contract damages according to proof;

On the Fourth through Thirteenth Causes of Action:

9. For unpaid wages in an amount according to proof;
10. For overtime compensation in an amount according to proof;
11. For meal period compensation in an amount according to proof;
12. For rest period compensation in an amount according to proof;
13. For injunctive relief to ensure Respondents' compliance with Labor Code § 226;
14. For Labor Code § 226(e) statutory penalties in an amount according to proof;
15. For indemnification for necessary work-related expenses in an amount according to proof;
16. For illegal deductions and offsets from wages in an amount according to proof;
17. For Labor Code § 203 penalties in an amount according to proof;
18. For attorneys' fees and costs.

On the Fourteenth Cause of Action:

19. For restitution to Plaintiff and/or disgorgement from Defendants pursuant to Business & Prof. Code §17200, *et seq.*;
20. For prejudgment interest on the foregoing at the legal rate.

On the Fifteenth Cause of Action:

21. For civil penalties in accordance with Labor Code § 2698, *et seq.*;
22. For attorneys' fees and costs.

Dated: September 2, 2022

KASED LAW GROUP APC

By: 

Nathan N. Kased
Jennifer B. Cottis
Attorneys for Plaintiff
JOSHUA BECKER and Aggrieved Employees