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11 *situated*

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 09 2022

Raylene Martinez

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

14 DAVID MELGOZA, individually, and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 ECOLOGY RECYCLING SERVICES, LLC,
19 a California Limited Liability Company; and
20 DOES 1 through 10, inclusive,

21 Defendants.

CASE NO. **CIV SB 22 17 232**

CLASS ACTION COMPLAINT

1. Failure to Provide Required Meal Periods;
2. Failure to Provide Required Rest Breaks;
3. Failure to Pay Overtime Wages;
4. Failure to Pay Timely Wages;
5. Failure to Pay All Wages Due to Discharged and Quitting Employees;
6. Failure to Maintain Required Records;
7. Failure to Furnish Accurate Itemized Statements;
8. Failure to Reimburse Necessary Expenses; and
9. Unfair and Unlawful Business Practices.

REPRESENTATIVE ACTION

10. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

By Fax

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1. ERS is a privately held recycling center which operates several recycling and related facilities in the following in California. In particular, ERS operates facilities in the following cities: Barstow, Hesperia, Fontana, Santa Fe Springs, South Gate, Colton, Perris, Oceanside and San Diego.

2. Profit margins in the recycling industry are low. As a result, cutting labor costs is one of the primary and most expedient ways for ERS to maximize earnings. It does this, however, at the expense of its low-wage, non-exempt employees who work at its recycling centers and on whose behalf this case is brought.

3. As alleged herein, ERS has implemented several common policies and practices that have resulted in systematic violations of California's wage-and-hour laws at ERS's facilities throughout the State of California.

4. Plaintiff seeks declaratory, compensatory and other statutorily available relief for himself, and the proposed Class, during the applicable limitations period, to compensate them for the wages ERS has stolen from them and to protect current and future workers from being subjected to similar unlawful working conditions perpetrated by ERS.

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5. The Superior Court of the State of California has jurisdiction in this matter because ERS is a California corporation. No federal question is at issue because Plaintiff's claims are based solely on California law.

6. Venue is proper in this judicial district and the County of San Bernardino because Plaintiff, and all other persons similarly situated, performed work for ERS in the County of San Bernardino, ERS has several facilities located within the County of San Bernardino and its illegal

1 payroll policies and practices, which are the subject of this action were applied, at least in part, to
2 Plaintiff, and other persons similarly situated, in the County of San Bernardino.

3 **THE PARTIES**

4 7. Plaintiff is a resident and citizen of the State of California. Plaintiff is a non-exempt
5 employee for ERS in California from approximately April 2017 to the present.

6 8. Plaintiff, on behalf of himself and all other similarly situated individuals, brings
7 this class action to recover, among other things, wages and penalties from unpaid wages earned
8 and due, including but not limited to, ERS's failure to provide legally compliant meal and rest
9 breaks and failure to provide proper compensation for missed and otherwise unlawful meal and
10 rest breaks, ERS's failure to pay all wages due to discharged or quitting non-exempt employees,
11 ERS's failure to pay overtime and minimum wages to non-exempt employees, ERS's failure to
12 maintain required records and failure to provide accurate itemized wage statements, and related
13 violations of the California Labor Code.

14 9. ERS is, and at all times relevant herein was, a corporation organized and existing
15 under the laws of the State of California. ERS conducts business as a recycling company.

16 10. The true names and capacities of DOES 1 through 10, inclusive, are unknown to
17 Plaintiff at this time, and Plaintiff therefore sues such DOE Defendants under fictitious names.
18 Upon information and belief, each Defendant designated as a DOE is in some manner highly
19 responsible for the occurrences alleged herein, and Plaintiff and Class members' injuries and
20 damages, as alleged herein, were proximately caused by the conduct of such DOE Defendants.
21 Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
22 capacities of such DOE Defendants when ascertained.

23 11. At all relevant times herein, Defendants were the joint employers of Plaintiff and
24 aggrieved employees. Defendants were the alter egos, divisions, affiliates, integrated enterprises,
25 joint employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized
26 agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each
27 Defendant was completely dominated by his, her or its co-Defendants, and each was the alter ego
28 of the other. Moreover, at all material times there has been extensive interrelation of operations,

1 common management, centralized control of labor relations with respect to Plaintiff and Class
2 members, and common ownership or financial control between all Defendants.

3 12. As a direct and proximate result of the unlawful actions of ERS, Plaintiff and Class
4 members have suffered, and continue to suffer, from loss of earnings in amounts as yet
5 unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

6 **CLASS ACTION ALLEGATIONS**

7 13. Plaintiff brings this class action pursuant to Cal. Code of Civ. P. § 382 on behalf
8 himself and all members of the following Class:

9 All non-exempt employees of Ecology Recycling Services, LLC who are California citizens
10 and who performed work for Ecology Recycling Services, LLC in California during the time
period beginning four years prior to the filing of this Complaint to the present.

11 14. Plaintiff reserves the right to name additional Class representatives as may be
12 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of the
13 proposed Class and/or add subclasses before the Court determines whether certification is
14 appropriate.

15 15. Plaintiff is a Class member.

16 16. This action is appropriately suited for a class action because:

17 A. The proposed Class is a significant number. Plaintiff is informed and believes
18 that the proposed Class consists of more than one hundred and fifty (150) non-exempt employees,
19 rendering joinder impractical.

20 B. This action involves common questions of law and fact to the proposed Class
21 because the action focuses on the ERS's systematic course of unlawful conduct, which was applied
22 to all non-exempt employees in uniform violation of the California Labor Code, IWC Wage Orders,
23 and the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et. seq.*,
24 which prohibits unfair business practices arising from such violations. Several common questions
25 of law and fact will drive the resolution of this action, including:

26 1. Whether ERS failed to provide Class members with legally compliant
27 meal periods and rest breaks, and whether ERS failed to properly pay
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- 1 premiums as a result of missed and non-compliant meal periods and
2 rest breaks;
- 3 2. Whether ERS failed to properly calculate and pay regular and
4 overtime wages to Class members;
- 5 3. Whether ERS failed to timely pay wages owed to Class members;
- 6 4. Whether ERS failed to pay all wages owed to formerly-employed
7 Class members;
- 8 5. Whether ERS failed to maintain required records and accurate wage
9 statements for Class members; and
- 10 6. Whether ERS engaged in unfair and/or unlawful business practices.

11 C. Plaintiff's claims are typical of the proposed Class because ERS subjected all
12 of its non-exempt employees to the similar and overlapping violations of the California Labor Code,
13 the applicable IWC wage order, and the UCL.

14 D. Plaintiff is able to fairly and adequately protect the interests of all members
15 of the proposed Class because it is in his best interests to prosecute the claims alleged herein to
16 obtain full compensation due to the proposed Class for all services rendered and hours worked.
17 Plaintiff has also retained counsel that is experienced in wage-and-hour class and representative
18 action litigation.

19 **FIRST CAUSE OF ACTION**

20 **Failure to Provide Required Meal Periods**

21 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 1-2001, § 11 and All**
22 **Other Applicable IWC Wage Orders]**

23 ***(On Behalf of Plaintiff and the Class against all Defendants)***

24 17. Plaintiff incorporates herein by specific reference, as though fully set forth, the
25 allegations in paragraphs 1 through 16 (A) – (D).

26 18. At all times relevant herein, as part of ERS's unlawful policies and practices to
27 deprive its non-exempt employees of all wages earned and due, ERS required, permitted or
28 otherwise suffered Plaintiff and Class members to perform work during their meal periods, to

1 completely skip their meal periods, to take late and short meal periods, and ERS has otherwise failed
2 to provide the required meal periods to Plaintiff and Class members as required under Cal. Lab.
3 Code §§ 226.7, 512, and § 11 of the applicable IWC Order.

4 19. ERS has implemented several common policies and practices that have caused
5 Plaintiff and Class members to systematically miss or otherwise take non-compliant meal periods.

6 20. For example, ERS understaffs its recycling centers such that Class members are
7 given so much work to complete that they regularly miss or take non-compliant meal periods. As a
8 direct consequence of this understaffing, Plaintiff and Class members have so much work to
9 complete within their scheduled shifts that they are forced to skip their meal periods altogether, to
10 take them after working longer than five (5) hours, to perform work during their meal periods, or
11 return to work after working less than a thirty (30) minute meal period. In addition, Plaintiff and
12 Class members needed to secure permission from supervisors before taking a meal period, but they
13 were frequently unable to timely secure such permission, thus causing them to regularly miss and
14 otherwise take non-compliant meal periods. Moreover, when Plaintiff and the other Class members
15 do have meal periods, they often have their meal periods interrupted and are not afforded additional
16 time to complete their meal periods.

17 21. Despite work conditions that systematically result in missed and non-compliant meal
18 periods, and in order to keep labor costs down, ERS has implemented a common policy and practice
19 of failing to pay all meal period premium payments owed and due.

20 22. In short, ERS has violated, and continues to violate, Cal. Lab. Code § 226.7, IWC
21 Wage Order No. 1-2001, § 10, all related IWC Wage Orders and the UCL, by failing to compensate
22 Plaintiff and Class members who were not authorized and permitted to take a complete, timely,
23 uninterrupted meal period, one additional hour of compensation at the proper regular rate of pay for
24 each workday that such a meal period was not authorized or permitted. ERS further violated Cal.
25 Lab. Code §§ 510, 1194, 1197, and any other applicable provision of the California Labor Code, by
26 failing to compensate Plaintiff and Class members for all hours worked during their meal periods.

27 23. As a proximate result of the aforementioned violations, Plaintiff and Class members
28 have been damaged in an amount according to proof at trial, and seek all wages earned and due,

1 interest, penalties, expenses, and costs of suit.

2 **SECOND CAUSE OF ACTION**

3 **Failure to Provide Required Rest Breaks**

4 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 1-2001, § 12 and All Other Applicable**
5 **IWC Wage Orders]**

6 ***(On Behalf of Plaintiff and the Class against all Defendants)***

7 24. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in paragraphs 1 through 23.

9 25. At all times relevant herein, as part of ERS's unlawful policies and practices to
10 deprive its non-exempt employees of all wages earned and due, ERS failed to permit Plaintiff and
11 Class members to take rest breaks as required under Cal. Lab. Code §§ 226.7 and 512, and IWC
12 Wage Order No. 1-2001, § 12 and all other applicable IWC Wage Orders.

13 26. The same common policies and practices that deprive Plaintiff and Class members
14 from taking their meal periods, as alleged herein, similarly deprive them of the ability to take their
15 rest breaks. As alleged herein, ERS grossly understaffs its recycling centers, which creates so much
16 work for Plaintiff and Class members that they are frequently deprived of their right to take
17 compliant first and second rest breaks. In addition, Plaintiff and Class members needed to secure
18 permission from supervisors before taking a rest break, but they were frequently unable to timely
19 secure such permission, thus causing them to regularly miss and otherwise take non-compliant rest
20 breaks.

21 27. ERS further violated Cal. Lab. Code § 226.7, IWC Wage Order No. 1-2001, § 12, all
22 other applicable IWC Wage Orders, and the UCL, by failing to pay Plaintiff and Class members
23 who were not provided with a compliant rest break, in accordance with the applicable wage order,
24 one additional hour of compensation at the proper regular rate of pay for each workday that a rest
25 break was not provided. Indeed, ERS has a common policy and practice of not paying rest break
26 premium payments. On information and belief, based on examination of time and payroll records,
27 ERS has never paid a single rest break premium payment, nor does it even have a pay code for rest
28 break premium payments.

1 28. As a proximate result of the aforementioned violations, Plaintiff and Class members
2 have been damaged in an amount according to proof at trial, and seek all wages earned and due,
3 interest, penalties, expenses, and costs of suit.

4 **THIRD CAUSE OF ACTION**

5 **Failure to Pay Overtime Wages**

6 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 1-2001, § 3 and All Other**
7 **Applicable IWC Wage Orders]**

8 ***(On Behalf of Plaintiff and the Class against all Defendants)***

9 29. Plaintiff incorporates herein by specific reference, as though fully set forth, the
10 allegations in paragraphs 1 through 28.

11 30. Pursuant to Cal. Lab. Code §§ 510, 1194, IWC Wage Order No. 1-2001, § 3 and all
12 other applicable IWC Wage Orders, ERS is required to compensate Plaintiff and Class members for
13 all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
14 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight
15 (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of
16 twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
17 consecutive day of work in any workweek.

18 31. At all times relevant herein, ERS has failed to compensate Plaintiff and Class
19 members for all overtime hours worked by among other methods: failing to pay overtime at one and
20 one-half (1 ½) or double the regular rate of pay; improperly calculating the regular rate of pay;
21 improperly rounding the overtime hours worked in favor of ERS; requiring, permitting or suffering
22 Plaintiff and Class members to work off-the-clock, and to work through meal periods and rest
23 breaks, but not compensating them for this time; and other methods to be discovered.

24 32. In violation of California law, ERS has knowingly and willfully refused to perform
25 its obligations to compensate Plaintiff and Class members for all wages earned and all hours worked
26 at the legally required rates of pay. As a proximate result, Plaintiff and Class members have suffered,
27 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest
28 on such wages, and expenses and attorneys' fees in seeking to compel ERS to fully perform their

1 obligations under state law, all to their respective damages in amounts according to proof at time of
2 trial, and within the jurisdiction of this Court.

3 33. ERS's conduct described herein violates Cal. Lab. Code §§ 510, 1194, 1198, IWC
4 Wage Order No. 1-2001, § 3 and all other applicable IWC Wage Orders. Therefore, pursuant to Cal.
5 Lab. Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California
6 Labor Code and applicable IWC Wage Order(s), Plaintiff and Class members are entitled to recover
7 the unpaid balance of wages owed to them by ERS, plus interest, penalties, attorneys' fees, expenses,
8 and costs of suit.

9 **FOURTH CAUSE OF ACTION**

10 **Failure to Pay Timely Wages**

11 **[Cal. Lab. Code §§ 204, 210]**

12 ***(On Behalf of Plaintiff and the Class against all Defendants)***

13 34. Plaintiff incorporates herein by specific reference, as though fully set forth, the
14 allegations in paragraphs 1 through 33.

15 35. Cal. Lab. Code § 204 provides that all wages earned by any person in any
16 employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages
17 due upon termination of an employee, are due and payable between the 16th and 26th day of the
18 month during which the labor was performed. Cal. Lab. Code § 204 further provides that all wages
19 earned by any person in any employment between the 16th and the last day, inclusive, of any
20 calendar month, other than those wages due upon termination of an employee, are due and payable
21 between the 1st and the 10th day of the following month. Cal. Lab. Code § 204 further provides that
22 all wages eared for labor in excess of the normal work period shall be paid no later than the payday
23 for the next regular payroll period.

24 36. At all times relevant herein, ERS, among other things, willfully failed to pay Plaintiff
25 and Class members all wages earned and due to them, including, *inter alia*, meal period and rest
26 break premium payments, regular and overtime wages, and payment for work performed off-the-
27 clock, within any time period permissible under Cal. Lab. Code § 204.

1 37. As a proximate result of ERS's unlawful actions and omissions, Plaintiff and Class
2 members are entitled to all available statutory penalties, including civil penalties pursuant to Cal.
3 Lab. Code §§ 200, 210, 558, 1194, 1197.1, and other applicable provisions under the California
4 Labor Code and applicable IWC Wage Order(s), and an award of costs, expenses, and reasonable
5 attorneys' fees.

6 **FIFTH CAUSE OF ACTION**

7 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

8 **[Cal. Lab. Code §§ 201-203]**

9 ***(On Behalf of Plaintiff and the Class against all Defendants)***

10 38. Plaintiff incorporates herein by specific reference, as though fully set forth, the
11 allegations in paragraphs 1 through 37.

12 39. Pursuant to Cal. Lab. Code §§ 201, 202, and 203, ERS is required to pay all earned
13 and unpaid wages to an employee who is discharged. Cal. Lab. Code § 201 mandates that if an
14 employer discharges an employee, the employee's wages accrued and unpaid at the time of
15 discharge are due and payable immediately.

16 40. Furthermore, pursuant to Cal. Lab. Code § 202, ERS is required to pay all accrued
17 wages due to an employee no later than seventy-two (72) hours after the employee quits his or her
18 employment, unless the employee provided seventy-two (72) hours previous notice of his or her
19 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

20 41. Cal. Lab. Code § 203 provides that if an employer willfully fails to pay, in accordance
21 with Cal. Lab. Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the
22 employer is liable for waiting time penalties in the form of continued compensation to the employee
23 at the same rate for up to thirty (30) workdays.

24 42. At all times relevant herein, ERS has willfully failed to pay accrued wages and other
25 compensation to Plaintiff and Class members in accordance with Cal. Lab. Code §§ 201 and 202.
26 Because ERS has failed and continues to fail to properly compensate Plaintiff and Class members
27 for all hours worked when due, regular and overtime wages, and compensation for non-compliant
28 meal periods and rest breaks, ERS has also willfully failed and continues to fail to pay accrued

1 wages and other compensation to Plaintiff and Class members in accordance with Cal. Lab. Code
2 §§ 201 and 202.

3 43. As a result, Plaintiff and Class members are entitled to all available statutory
4 penalties, including the waiting time penalties provided in Cal. Lab. Code § 203, together with
5 interest thereon, as well as other available remedies.

6 **SIXTH CAUSE OF ACTION**

7 **Failure to Maintain Required Records**

8 **[Cal. Lab. Code §§ 226, 1174; IWC Wage Order No. 1-2001, § 7**

9 **and All Other Applicable IWC Wage Orders]**

10 ***(On Behalf of Plaintiff and the Class against all Defendants)***

11 44. Plaintiff incorporates herein by specific reference, as though fully set forth, the
12 allegations in paragraphs 1 through 43.

13 45. At all times relevant herein, as part of ERS's illegal payroll policies and practices to
14 deprive Plaintiff and Class members of all wages earned and due, ERS knowingly and intentionally
15 failed to maintain records as required under Cal. Lab. Code §§ 226, 1174, IWC Wage Order No. 1-
16 2001, § 7 and all other applicable IWC Wage Orders, including but not limited to, the following
17 records: total daily hours worked by each non-exempt employee; applicable rates of pay; all
18 deductions; meal periods; time records showing when each non-exempt employee begins and ends
19 each workday; and accurate itemized wage statements.

20 46. In addition, ERS's wage statements violate Cal. Lab. Code § 226(a)(1), (2), and (5)
21 by failing to list meal period and rest break premium payments that were owed and due, as required
22 under California law. *See Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13 Cal.5th 93, 972 ("failure
23 to report premium pay for missed breaks can support monetary liability under section 226 for failure
24 to supply an accurate itemized statement reflecting an employee's gross wages earned, net wages
25 earned, and credited hours worked.").

26 47. As a proximate result of ERS's unlawful actions and omissions, Plaintiff and Class
27 members have been damaged in an amount according to proof at trial, and are entitled to all wages
28 earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all

1 available penalties, including but not limited to, penalties pursuant to Cal. Lab. Code §§ 226(e),
2 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but
3 not limited to those provided in Cal. Lab. Code § 226(e), as well as other available remedies.

4 **SEVENTH CAUSE OF ACTION**

5 **Failure to Furnish Accurate Itemized Wage Statements**

6 **[Cal. Lab. Code §§ 226; IWC Wage Order No. 1-2001, § 7 and**

7 **All Other Applicable IWC Wage Orders]**

8 ***(On Behalf of Plaintiff and the Class against all Defendants)***

9 48. Plaintiff incorporates herein by specific reference, as though fully set forth, the
10 allegations in paragraphs 1 through 47.

11 49. At all times relevant herein, ERS routinely failed to provide Plaintiff and Class
12 members with timely, accurate, and itemized wage statements in writing showing each employee's
13 gross wages earned, total hours worked, all deductions made, net wages earned, and all applicable
14 hourly rates in effect during each pay period and the corresponding number of hours worked at each
15 hourly rate, in violation of Cal. Lab. Code § 226, IWC Wage Order No. 1-2001, § 7 and other all
16 applicable IWC Wage Orders.

17 50. ERS's pay stubs violate Cal. Lab. Code § 226 because ERS failed to provide Plaintiff
18 and Class members with proper meal and rest breaks but failed to include in their wage statements
19 one (1) additional hour of compensation at their regular rates of pay for each non-compliant meal
20 or rest break. In addition, ERS rounds the hours worked by Plaintiff and Class members in favor of
21 ERS resulting in Plaintiff and Class members not being paid all of their wages resulting in inaccurate
22 wage statements. Further, ERS required Plaintiff and Class members to work off-the-clock without
23 compensation, thus reflecting incomplete and/or inaccurate hours worked on their pay stubs, ERS
24 also failed to provide for the available hours and hours taken by the aggrieved employees of
25 supplemental COVID-19 sick leave on its wage statements thereby making the wage statements
26 inaccurate and missing necessary information, in addition to other methods to be discovered.

27 51. As a proximate result of ERS's unlawful actions and omissions, Plaintiff and Class
28 members have been damaged in an amount according to proof at trial, and seek all wages earned

1 and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all available
2 penalties, including but not limited to penalties pursuant to Cal. Lab. Code §§ 226(e), 226.3, and
3 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited
4 to those provided in Cal. Lab. Code § 226(e), as well as other available remedies.

5 **EIGHTH CAUSE OF ACTION**

6 **Failure to Indemnify for Necessary Expenditures Incurred in Discharge of Duties**

7 **[Cal. Lab. Code § 2802]**

8 ***(On Behalf of Plaintiff and the Class against all Defendants)***

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10 52. Plaintiff incorporates herein by specific reference, as though fully set forth, the
11 allegations in paragraphs 1 through 51.

12 53. California Labor Code § 2802(a) requires an employer to indemnify an employee
13 for all necessary expenditures or losses incurred by the employee in direct consequence of the
14 discharge of her his or her duties, or of his or her obedience to the directions of the employer.

15 54. During the statute of limitations period, ERS knowingly and willfully failed to
16 indemnify Plaintiff and Class members for all business expenses and/or losses incurred in direct
17 consequence of the discharge of their duties while working under the direction of ERS, including
18 but not limited to, personal protective equipment during the COVID-19 in violation of California
19 Labor Code § 2802.

20 55. As a proximate result of ERS's unlawful actions and omissions, Plaintiff and Class
21 members have been damaged in an amount according to proof at trial, and seek reimbursement of
22 all necessary expenditures, plus interest thereon pursuant to California Labor Code § 2802(b).
23 Additionally, Plaintiff and Class members are entitled to all available statutory penalties and an
24 award of costs, expenses, and reasonable attorneys' fees, including those provided in California
25 Labor Code § 2802(c), as well as other available remedies.
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1 **NINTH CAUSE OF ACTION**

2 **Unfair and Unlawful Business Practices**

3 **[Cal. Bus. & Prof. Code § 17200, et. seq.]**

4 ***(On Behalf of Plaintiff and the Class against all Defendants)***

5 56. Plaintiff incorporates herein by specific reference, as though fully set forth, the
6 allegations in paragraphs 1 through 55.

7 57. Each and every one of ERS's acts and omissions in violation of the California Labor
8 Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to, ERS's
9 failure to provide required meal periods and rest breaks, failure to properly pay regular and overtime
10 wages, requiring and/or condoning off-the-clock work, failure to pay all wages due to discharged or
11 quitting employees or to pay timely wages, and failure to furnish accurate itemized wage statements
12 or to maintain required records, constitute an unfair and unlawful business practice under the UCL.

13 58. ERS's violations of California wage and hour laws constitute a business practice
14 because ERS's aforementioned acts and omissions were done repeatedly over a significant period
15 of time, and in a systematic manner, to the detriment of Plaintiff and Class members.

16 59. ERS has avoided payment of wages, overtime wages, the provision of meal periods
17 and rest breaks, and other benefits as required by the California Labor Code, the California Code of
18 Regulations, and the applicable IWC Wage Order. Further, ERS has failed to record, report, and pay
19 the correct sums of assessment to the state authorities under the California Labor Code and other
20 applicable regulations.

21 60. As a result of these unfair and unlawful business practices, ERS has reaped unfair
22 and illegal profits during the Class period at the expense of Plaintiff and Class members, and
23 members of the public. ERS should be made to disgorge its ill-gotten gains and to restore them to
24 Plaintiff and Class members.

25 61. ERS's unfair and unlawful business practices entitle Plaintiff and Class members to
26 seek preliminary and permanent injunctive relief, including but not limited to orders that ERS
27 account for, disgorge, and restore to Plaintiff and Class members the wages and other compensation
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1 unlawfully withheld from them. Plaintiff and Class members are entitled to restitution of all monies
2 to be disgorged from ERS in an amount according to proof at the time of trial.

3 **TENTH CAUSE OF ACTION**

4 **Representative Action for Civil Penalties**

5 **[Cal. Lab. Code §§ 2698- 2699.5]**

6 ***(On Behalf of Plaintiff and Other Aggrieved Employees against all Defendants)***

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8 62. Plaintiff incorporates herein by specific reference as though fully set forth the
9 allegations in paragraphs 1 through 61, with exception of the allegations in Paragraphs 13 through
10 16 (A-D).

11 63. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code
12 § 2699(c), and is a proper representative to bring a civil action on behalf of himself, and other non-
13 exempt employees of Defendants who are California citizens, pursuant to the procedures specified
14 in California Labor Code § 2699.3, because Plaintiff was employed by Defendants and the alleged
15 violations of the California Labor Code were committed against Plaintiff.

16 64. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
17 Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to
18 penalties under California Labor Code §§ 2699, 210, 225.5, 226.3, 1174.5, 1197.1, 1775, 1199,
19 2802 and all applicable IWC wage order penalties, from ERS in a representative action for the
20 violations set forth above, including but not limited to violations of California Labor Code §§ 201,
21 202, 203, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1198 and 1774. Plaintiff is also entitled to
22 an award of reasonable attorneys’ fees and costs pursuant to California Labor Code § 2699(g)(1).

23 65. In addition to the foregoing allegations, ERS have violated Labor Code §248.1
24 relating to the provision of supplemental COVID-19 sick leave and two other sections of the
25 applicable IWC Wage Orders that gives rise to liability under the California Private Attorneys
26 General Act of 2004 (“PAGA”), Labor Code §§ 2698-2699.5.

27 66. Specifically, ERS violated Labor Code § 248.1, et seq., by failing to provide 80
28 hours of COVID-19 Supplemental Paid Sick leave and compensate Plaintiff and the other

aggrieved employees at their regular rate of pay for supplemental sick leave, i.e., their highest regular rate of pay, taking into consideration non-discretionary bonuses, etc., in violation of California Labor Code § 248.1(b)(3)(A). ERS also failed to provide COVID-19 Supplemental Sick Leave to aggrieved employees in violation of California Labor Code § 248.1(b)(2)(D). ERS also failed to accurately reflect any offset and/or the current amount of COVID-19 Supplemental Sick Leave available to Aggrieved Employees on their wage statements, in violation of California Labor Code §§ 248.1(b)(2)(D), 248.2, 248.6 and related provisions.

67. Next, ERS violated IWC Wage Order No. 1-2001, §13(B) and fails to provide suitable resting facilities in order to take their meal and rest periods as Plaintiff and the other aggrieved employees were required to use a small locker room in the same area in which Plaintiff and other aggrieved employees change their clothing before and at the end of their shifts.

68. ERS also violated IWC Wage Order No. 1-2001, §15(A) and (B) by not maintaining reasonable temperatures in the workplace. Moreover, ERS failed to take all feasible means to reduce such excessive heat and provide reasonable comfort to Plaintiff and the other aggrieved employees. Plaintiff and the other aggrieved employees are exposed to excessive heat during working hours and ERS fails to take all feasible means to provide reasonable comfort.

69. Pursuant to California Labor Code §§ 2699.3, on June 3, 2022, Plaintiff gave written notice by certified mail to the California Labor and Workforce Development Agency (“LWDA”) and ERS of the specific provisions of the California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories to support the alleged violations. Within sixty-five (65) calendar of the postmark date of Plaintiff’s notice letter, the LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations. Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to commence a representative action under PAGA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other persons similarly situated, respectfully prays for relief against ERS and Does 1 through 10, inclusive, and each of them, as follows:

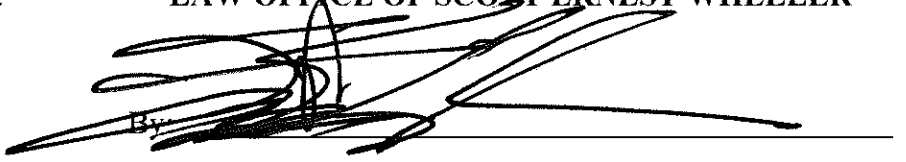
1. For an order certifying the First through Ninth Causes of Action as a class action;
2. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as Class counsel;
3. For compensatory damages in an amount to be ascertained at trial;
4. For meal period and rest break compensation pursuant to Cal. Lab. Code § 226.7 and IWC Wage Order No. 1-2001 and all applicable IWC Wage Orders;
5. For liquidated damages pursuant to Cal. Lab. Code § 1194.2;
6. For waiting time penalties pursuant to Cal. Lab. Code § 203;
7. For statutory penalties according to proof, including but not limited to all penalties authorized by the Cal. Lab. Code §§ 210, 225.5, 226(e), 226.3, 558, 1174.5, 1197.1 and 2699;
8. For interest on the unpaid wages at 10 percent per annum pursuant Cal. Lab. Code §§ 218.6, 1194, Cal. Civ. Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
9. For restitution of all monies due to Plaintiff and Class members, as well as disgorged profits from the unfair and unlawful business practices of ERS;
10. For reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §§ 218.5, 226, 1194, 2699, Cal. Civ. Code § 1021.5, and/or any other applicable provisions providing for attorneys' fees and costs;
11. For declaratory relief;
12. For preliminary and permanent injunctive relief enjoining ERS from violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from engaging in the unlawful business practices complained of herein; and
13. For such further relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: August 9, 2022

LAW OFFICE OF SCOTT ERNEST WHEELER

By 

Scott E. Wheeler

Attorneys for Plaintiff and the Putative Class