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E-FILED
8/26/2025 7:52 PM
Superior Court of California
County of Fresno
By: Alexandria Payne, Deputy

Attorneys for Plaintiff PASCUAL LUJAN,
individually and on behalf of other similarly
situated employees and aggrieved employees
pursuant to the California Private Attorneys
General Act

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

PASCUAL LUJAN, individually and on behalf
of other similarly situated employees and
aggrieved employees pursuant to the California
Private Attorneys General Act,

Plaintiff,

vs.

GUSMER ENTERPRISES, INC.; and DOES 1
through 25, inclusive,

Defendants.

Case No.: 24CECG00166

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) Violation of Cal. Labor Code §§ 1194,
1197 and 1197.1 (Minimum Wages)**
- (2) Violation of Cal. Labor Code §§ 510
and 1198 (Unpaid Overtime)**
- (3) Violation of Cal. Labor Code §§ 226.7
and 512(a) (Meal Break Violations)**
- (4) Violation of Cal. Labor Code § 226.7
(Rest Break Violations)**
- (5) Violation of Cal. Labor Code §§ 204
and 210 (Wages Not Timely Paid
During Employment)**
- (6) Violation of Cal. Labor Code § 226(a)
(Wage Statement Violations)**
- (7) Violation of Cal. Labor Code §§ 201,
202 and 203 (Untimely Final Wages)**
- (8) Violation of Cal. Labor Code §§ 2800
and 2802 (Failure to Reimburse
Necessary Business Expenses)**

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**(9) Violation of Cal. Business &
Professions Code § 17200, *et seq.***

**(10) Violation of California Labor Code
Sections 2698, *et seq.* (California
Labor Code Private Attorneys
General Act of 2004)**

DEMAND FOR JURY TRIAL

1 Plaintiff PASCUAL LUJAN (“Plaintiff”), individually and on behalf of other similarly
2 situated employees and aggrieved employees pursuant to the California Private Attorneys General Act
3 (“PAGA”), alleges as follows against Defendant(s) GUSMER ENTERPRISES, INC., and DOES 1
4 through 25, inclusive (“Defendants”):

5 **INTRODUCTION**

6 1. This is class action to recover damages on behalf of Plaintiff and all similarly situated
7 individuals who worked for Defendants in the State of California as hourly-paid and non-exempt
8 employees at any time from four years prior to the date of the original Complaint through final
9 judgment (“Class Period”) (“Class Members”).

10 2. This is also an enforcement action under PAGA to recover civil penalties on behalf of
11 Plaintiff, the State of California, and all current and former non-exempt employees who worked for
12 Defendants in the State of California at any time from one year prior to Plaintiff’s submission of
13 written notice of Defendants’ alleged violations of the California Labor Code to the Labor &
14 Workforce Development Agency (“LWDA”) through final judgment (“Aggrieved Employees”).

15 3. Plaintiff alleges that Defendants hired Plaintiff and Class Members but, among other
16 things, failed to properly pay them all wages owed for all time worked (including minimum wages,
17 straight time wages, and overtime wages), failed to provide them with all meal periods and rest periods
18 and associated premium wages to which they were entitled, failed to timely pay them all wages due
19 during their employment, failed to timely pay them all wages due upon termination of their
20 employment, failed to provide them with accurate itemized wage statements, failed to maintain
21 accurate payroll records, and failed to reimburse them for necessary business expenses.

22 4. As a result, Defendants violated, *inter alia*, California Labor Code sections 201, 202,
23 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, 2698, *et*
24 *seq.*, and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Through this action,
25 Plaintiff seeks to recover all available remedies including but not limited to civil penalties, actual and
26 liquidated damages, and attorney’s fees and costs.

27 **JURISDICTION AND VENUE**

28 5. This is a class action lawsuit brought pursuant to California Code of Civil Procedure

1 section 382 and a PAGA action brought pursuant to California Labor Code sections 2698, *et seq.*

2 6. The monetary damages, restitution, statutory penalties, and other applicable legal and
3 equitable relief sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and
4 will be established according to proof at trial.

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

9 8. This Court has jurisdiction over all Defendants because, upon information and belief,
10 Defendants are either citizens of California, have sufficient minimum contacts in California, and/or
11 otherwise intentionally avail themselves of the California market so as to render the exercise of
12 jurisdiction over them by the California courts consistent with traditional notions of fair play and
13 substantial justice. Further, no federal question is at issue because the claims asserted herein are based
14 solely on California law.

15 9. Venue is proper in this Court because, upon information and belief, Defendants
16 maintain offices, have agents, employ individuals, and/or transact business in the State of California,
17 County of Fresno. Many of the acts, events, and violations alleged herein relating to Plaintiff occurred
18 throughout the state of California, including in the County of Fresno.

19 **THE PARTIES**

20 10. At all times herein mentioned, Plaintiff PASCUAL LUJAN is and was an individual
21 residing in Fresno County in the State of California.

22 11. At all times herein mentioned, Defendant GUSMER ENTERPRISES, INC., was and
23 is, an employer who does business in California, with locations throughout the state of California, and
24 whose employees are engaged throughout Fresno County and the State of California, including at 81
25 M. Street, Fresno, California 93721.

26 12. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under
27 the fictitious names DOES 1 through 25 but will seek leave of this Court to amend the complaint and
28 serve such fictitiously named Defendants once their names and capacities become known.

13. Plaintiff is informed and believe, and thereon allege, that the acts and omissions alleged herein were performed by, or are attributable to (“Defendants”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of Defendants represent and were in accordance with Defendants’ official policies.

14. At all relevant times, Defendants were the employers of Plaintiff within the meaning of all applicable state laws and statutes. Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff so as to make each of said Defendants employers and employers liable under the statutory provisions set forth herein.

15. Defendants had the authority to hire and terminate Plaintiff and the other Class Members, to set work rules and conditions governing Plaintiff and the other Class Members' employment, and to supervise their daily employment activities.

16. Defendants exercised sufficient authority over the terms and conditions of Plaintiff and the other Class Members' employment for them to be joint employers of Plaintiff and the other class members.

17. Defendants directly hired and paid wages to Plaintiff and the other Class Members.

18. Defendants continue to employ hourly paid and/or non-exempt employees within the State of California.

19. At all relevant times, Defendants, and each of them, ratified each act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

20. Plaintiff is informed and believes, and thereon alleges, that each Defendant is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

20. Plaintiff worked for Defendants from approximately December 2019 through approximately May 2022 as a maintenance mechanic. Defendants jointly and severally employed

1 Plaintiff based out of their location in Fresno, California. Plaintiff performed various duties for
2 Defendants including, among other things, handling hydraulics, electrical and maintenance work.

3 21. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in a
4 pattern and practice of wage abuse against their hourly-paid and/or non-exempt employees. As set
5 forth in more detail below, this pattern and practice of wage abuse involved, *inter alia*, requiring
6 Plaintiff and the Class Members to work off-the-clock without compensation, failing to properly pay
7 wages for all hours worked, failing to provide all meal and rest breaks to which Plaintiff and Class
8 Members were entitled and failing to pay meal and rest break premiums when due, failing to timely
9 pay wages during employment and upon termination of employment, failing to provide accurate wage
10 statements, failing to reimburse necessary business-related expenses and failing to adhere to other
11 related protections afforded by the California Labor Code and the applicable Industrial Welfare
12 Commission Wage Order.

13 21. Defendants knew or should have known that they had a duty to compensate Plaintiff
14 and Class Members pursuant to California law. Defendants had the financial ability to pay such
15 compensation, but willfully, knowingly, and intentionally failed to do so to increase Defendants'
16 profits.

17 CLASS ACTION ALLEGATIONS

18 22. Plaintiff brings this lawsuit as a class action on behalf of Plaintiff and all others
19 similarly situated, as members of a proposed class pursuant to California Code of Civil Procedure
20 section 382. The class satisfies the numerosity, commonality, typicality, adequacy, predominance, and
21 superiority requirements under California Code of Civil Procedure section 382.

22 23. The proposed *Class* is defined as follows:

23 **All current and former hourly-paid and/or non-exempt employees**
24 **who worked for Defendants in the State of California at any time**
25 **during the period from four years prior to the date of the filing of**
26 **the original Complaint until final judgment.**

27 24. The proposed *Former Employee Sub-Class* is defined as follows:

28 **All former hourly-paid and/or non-exempt employees who worked**

for Defendants in the State of California at any time during the period from four years prior to the date of the filing of the original Complaint until final judgment.

25. Plaintiff reserves the right to establish additional subclasses as appropriate.

26. There is a well-defined community of interest in this litigation and the Class is easily ascertainable. While the exact number and identities of Class Members are currently unknown to Plaintiff, such information can be ascertained through appropriate discovery from records maintained by Defendants and their agents.

27. The Class is so numerous that the individual joinder of all its members is impracticable.

28. Common questions of fact and law exist as to all class members, which predominate over any questions affecting only individual members of the Class. The common legal and factual questions which do not vary from class member to class member, and which may be determined without reference to the individual circumstances of any class member include the following:

- i. Whether Defendants had a policy and practice of failing to pay minimum wages to Plaintiff and the other Class Members for all hours worked;
- ii. Whether Defendants had a policy and practice of failing to pay overtime wages to Plaintiff and the other Class Members for all overtime hours worked;
- iii. Whether Defendants had a policy and practice of failing to provide meal periods to Plaintiff and the other class members;
- iv. Whether Defendants had a policy and practice of failing to provide rest periods to Plaintiff and the other class members;
- v. Whether Defendants failed to pay their hourly-paid and/or non-exempt employees in the State of California for all hours worked, and for all missed, short, late, and/or interrupted meal periods and rest breaks;
- vi. Whether Defendants failed to timely pay all wages due to Plaintiff and the other Class Members during their employment;
- vii. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;

- viii. Whether Defendants failed to pay all wages due to Plaintiff and the other Class Members within the required time upon their discharge or resignation;
- ix. Whether Defendants failed to comply with wage reporting as required by the California Labor Code; including, *inter alia*, section 226;
- x. Whether Defendants failed to reimburse Plaintiff and the other Class Members for necessary business-related expenses and costs;
- xi. Whether Defendants' conduct was willful or reckless;
- xii. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, *et seq.*;
- xiii. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- xiv. Whether Plaintiff and the other Class Members are entitled to compensatory damages pursuant to the California Labor Code.

29. Plaintiff's claims are typical of the claims of the Class, and Plaintiff's interests are coincident with and not antagonistic to those of the other Class Members Plaintiff seeks to represent. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained attorneys experienced in the prosecution of class actions and Plaintiff intend to prosecute this action vigorously.

30. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual litigation of the claims of all Class Members is impracticable. Even if every class member could afford individual litigation, the court system could not. It would be unduly burdensome on the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent and/or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual and legal issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each class member.

31. Certification of this lawsuit as a class action will advance public policy objectives.

Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the Class Members who are not named in the complaint anonymity that allows for the vindication of their rights.

PAGA ALLEGATIONS

32. PAGA is and was applicable to Defendants' employment of Plaintiff and the Aggrieved Employees.

33. PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

34. Pursuant to PAGA, a civil action may be brought by an "aggrieved employee," who is any person employed by the alleged violator and against whom one or more of the alleged violations was committed.

35. Plaintiff and the other non-exempt employees are "Aggrieved Employees" as defined by California Labor Code section 2699(c) because they are current or former employees of Defendants against whom one or more of the alleged violations were committed.

36. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice by certified mail (hereinafter "Employee's Notice") to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- b. The LWDA shall provide notice ("LWDA Response") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee's

1 Notice. Upon receipt of the LWDA Response, or if the LWDA Response is not
2 provided within sixty-five (65) calendar days of the postmark date of the Employee's
3 Notice, the aggrieved employee may commence a civil action pursuant to California
4 Labor Code section 2699 to recover civil penalties in addition to any other penalties to
5 which the employee may be entitled.

6 37. On March 21, 2025, Plaintiff provided notice by electronic submission to the LWDA
7 and by certified mail to Defendants regarding the specific provisions of the California Labor Code
8 alleged to have been violated, including the facts and theories to support the alleged violations,
9 pursuant to California Labor Code section 2699.3. **A true and correct copy of the Employee's**
10 **Notice is attached hereto as Exhibit A.**

11 38. Plaintiff did not receive a LWDA Response within sixty-five (65) calendar days of
12 providing the Employee's Notice.

13 39. Therefore, the administrative prerequisites under California Labor Code section
14 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies for violations of,
15 *inter alia*, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1194, 1197,
16 1197.1, 1198, 2800, and 2802 have been satisfied.

17 **FIRST CAUSE OF ACTION**

18 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 1194, 1197, AND 1197.1**

19 **Failure to Pay Minimum Wage**

20 **(Against All Defendants)**

21 40. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

22 41. California Labor Code sections 1194, 1197 and 1197.1 provide that the minimum wage
23 for employees fixed by the Industrial Welfare Commission is the minimum wage to be paid to
24 employees, and the payment of a wage less than the minimum so fixed is unlawful. Plaintiff and the
25 other Class Members were frequently suffered or permitted to work "off-the-clock", such that they
26 were not paid minimum wage for all hours worked.

27 42. Such "off-the-clock" work that Plaintiff and Class Members were suffered and/or
28 permitted to work, and for which Plaintiff and Class Members did not receive minimum wage include

1 *inter alia*: interrupted and missed meal and rest periods.

2 43. Moreover, Defendants had a policy, practice and procedure of rounding employee time
3 such that Plaintiff and some or all Class Members were systematically unpaid and/or underpaid for
4 time worked over the course of their employment.

5 44. Accordingly, Defendants regularly failed to pay at least minimum wages to Plaintiff
6 and the other Class Members for all hours they worked in violation of California Labor Code sections
7 1194, 1197, and 1197.1.

8 45. Defendants knew or should have known that Plaintiff and Class Members were
9 performing such work “off-the-clock” because, among other things, Defendants’ management
10 witnessed, authorized, was made aware of, and/or required Plaintiff and Class Members to perform
11 such work.

12 46. Defendants’ failure to pay Plaintiff and the other Class Members the minimum wage
13 as required violates California Labor Code sections 1194, 1197 and 1197.1. Pursuant to those sections,
14 Plaintiff and the other Class Members are entitled to recover the unpaid balance of their minimum
15 wage compensation, as well as interest, costs, and attorney’s fees.

16 47. Pursuant to California Labor Code section 1194.2, Plaintiff and the other Class
17 Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
18 unpaid and interest thereon.

19 **SECOND CAUSE OF ACTION**

20 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 510 AND 1198**

21 **Unpaid Overtime**

22 **(Against All Defendants)**

23 48. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

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

28 50. Specifically, the applicable IWC Wage Order provides that Defendants were required

1 to pay Plaintiff and the other Class Members at the rate of time-and-one-half for all hours worked in
2 excess of eight (8) hours in a day, in excess of forty (40) hours in a workweek and/or the first eight
3 (8) hours worked on the seventh consecutive day in a workweek.

4 51. The applicable IWC Wage Order further provides that Defendants were required to pay
5 Plaintiff and the other Class Members overtime compensation at a rate of two (2) times their regular
6 rate of pay for all hours worked in excess of twelve (12) hours in a day and/or for all hours worked in
7 excess of eight (8) hours on the seventh consecutive day in a workweek.

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

13 53. Plaintiff and the other Class Members regularly worked in excess of eight (8) hours in
14 a day, in excess of twelve (12) hours in a day, in excess of forty (40) hours in a week and/or seven (7)
15 consecutive days in a workweek. However, Defendants did not accurately record Plaintiff and the
16 other class members' actual hours worked and intentionally and willfully failed to pay all overtime
17 wages owed to Plaintiff and the other class members. Defendants' failure to pay correct overtime
18 wages included, *inter alia*: (a) when the combined total of the off-the-clock work discussed *supra* and
19 the on-the-clock work exceed the number of hours that trigger the payment of overtime wages under
20 Labor Code sections 510 and 1198 and/or the applicable Wage Order; (b) when Defendants
21 intentionally, willfully and/or negligently mischaracterized overtime as straight time; (c) when
22 Defendants assigned more work than could reasonably be completed in a workday or workweek to
23 Plaintiff and class members, but refused to authorize the overtime necessary for them to complete the
24 assigned work; and (d) when Defendants failed to include all required wages and remuneration when
25 calculating setting the overtime rate.

26 54. Defendants' failure to pay Plaintiff and the other Class Members as outlined above
27 violates California Labor Code sections 510 and 1198 and the applicable Wage Order and is therefore
28 unlawful.

1 55. Pursuant to California Labor Code section 1194, Plaintiff and the other Class Members
2 are entitled to recover their unpaid overtime compensation, and interest, costs, and attorneys' fees.

3 **THIRD CAUSE OF ACTION**

4 **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 512**

5 **Meal Break Violations**

6 **(Against All Defendants)**

7 56. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

8 57. California Labor Code sections 226.7 and 512(a) and the applicable Wage Order
9 govern Plaintiff and the other class members' employment by Defendants.

10 58. California Labor Code section 226.7 provides that no employer shall require an
11 employee to work during any meal period mandated by an applicable IWC Order.

12 59. The applicable IWC Wage Order and California Labor Code section 512(a) provide
13 that an employer may not require, cause, or permit an employee to work for a period of more than five
14 (5) hours per day without providing the employee with a meal period of not less than thirty (30)
15 minutes, except that if the total work period per day of the employee is not more than six (6) hours,
16 the meal period may be waived by mutual consent of both the employer and the employee.

17 60. The applicable IWC Wage Order and California Labor Code section 512(a) further
18 provide that an employer may not require, cause, or permit an employee to work a work period of
19 more than ten (10) hours per day without providing the employee with a second uninterrupted meal
20 period of not less than thirty (30) minutes, except if the total hours worked is no more than twelve (12)
21 hours, the second meal period may be waived by mutual consent of the employer and the employee
22 only if the first meal period was not waived.

23 61. Plaintiff and the other Class Members who were scheduled to work for shifts no longer
24 than six (6) hours, and who did not waive their legally mandated meal periods by mutual consent, were
25 required to work for periods longer than five (5) hours without an uninterrupted meal period of not
26 less than thirty (30) minutes.

27 62. Plaintiff and the other Class Members who were scheduled to work for shifts in excess
28 of ten (10) hours but no longer than twelve (12) hours, and who did not waive their legally-mandated

meal periods by mutual consent, were required to work for periods longer than ten (10) hours without a second uninterrupted meal period of not less than thirty (30) minutes.

63. Defendants intentionally and willfully required Plaintiff and the other Class Members to work during meal periods and failed to compensate Plaintiff and the other Class Members for work performed during meal periods. This includes, among other things, requiring Plaintiff and Class Members to work through their meal periods, permitting and/or requiring Plaintiff and Class Members to take late meal periods, permitting and/or requiring Plaintiff and Class Members to take short meal periods, interrupting and/or allowing others to interrupt Plaintiff and Class Members during their meal periods, failing to relieve Plaintiff and Class Members of all duties during their meal periods, and restricting Plaintiff and Class Members from leaving the premises during their meal periods.

64. Further, because of Defendants' rounding policy, meal periods were at times incorrectly recorded as compliant, when in reality they were untimely and/or cut short.

65. During the relevant time period, Defendants failed to pay Plaintiff and the other Class Members all meal period premiums due pursuant to California Labor Code section 226.7 and 512 and the applicable Wage Order.

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

67. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one additional hour of pay at their regular rate of compensation for each workday that a compliant meal period was not provided as well as interest thereon.

FOURTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE SECTION 226.7

Rest Break Violations

(Against All Defendants)

68. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

69. California Labor Code section 226.7 and the applicable IWC Wage Order govern Plaintiff and the other class members' employment by Defendants.

1 70. California Labor Code section 226.7 provides that no employer shall require an
2 employee to work during any rest period mandated by an applicable order of the California IWC.

3 71. The applicable IWC Wage Order provides that “[e]very employer shall authorize and
4 permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
5 work period” and that the “rest period time shall be based on the total hours worked daily at the rate
6 of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily
7 work time is less than three and one-half (3½) hours.”

8 72. Defendants routinely required Plaintiff and the other Class Members to work three and
9 one-half (3 ½) or more hours without authorizing or permitting a compliant ten (10) minute rest period
10 per each four (4) hour period, or major fraction thereof, worked.

11 73. Moreover, Defendants willfully required, suffered and permitted Plaintiff and the other
12 Class Members to work during what should have been their rest periods. Defendants also failed to
13 relieve Plaintiff and the other Class Members of all duties for ten (10) minutes as required for
14 compliant rest breaks.

15 74. As a result, Plaintiff worked through rest periods, took late rest periods, took
16 interrupted rest periods, and/or took short rest periods, if at all.

17 75. Pursuant to the applicable IWC Wage Order and California Labor Code section
18 226.7(b), Plaintiff and the other Class Members were entitled to recover from Defendants one (1)
19 additional hour of pay at their regular hourly rate of compensation for each workday that compliant
20 rest period(s) were not provided.

21 76. Defendants had no policy or practice to pay a premium when rest periods were missed,
22 short, late, and/or interrupted, or otherwise failed to comply with California law, and thus Defendants
23 failed to pay Plaintiff and the other Class Members the full rest period premium due to them in
24 violation of California Labor Code section 226.7 and the applicable IWC Wage Order.

25 77. Pursuant to the applicable IWC Wage Orders and California Labor Code section
26 226.7(c), Plaintiff and the other Class Members are entitled to recover from Defendants one additional
27 hour of pay at their regular rate of compensation for each workday complaint rest period(s) were not
28 provided as well as interest thereon.

1 **FIFTH CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA LABOR CODE §§ 204 AND 210**

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

4 **(Against All Defendants)**

5 78. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

6 79. California Labor Code section 204 provides that all wages earned by any person in any
7 employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages
8 due upon termination of an employee, are due and payable between the 16th and 26th day of the month
9 during which the labor was performed.

10 80. California Labor Code section 204 provides that all wages earned by any person in any
11 employment between the 16th and the last day, inclusive, of any calendar month, other than those
12 wages due upon termination of an employee, are due and payable between the 1st and the 10th day of
13 the following month.

14 81. California Labor Code section 204 provides that all wages earned for labor in excess
15 of the normal work period shall be paid no later than the payday for the next regular payroll period.

16 82. As a result of the violations set forth in detail above (failure to pay overtime, failure to
17 pay minimum wages, meal break violations and rest break violations), Defendants intentionally and
18 willfully failed to timely pay Plaintiff and other Class Members all wages due to them within the
19 period permissible under California Labor Code section 204.

20 83. Plaintiff and other Class Members are entitled to recover all available remedies for
21 Defendant's violations of California Labor Code section 204, including statutory penalties pursuant to
22 Labor Code section 210(b).

23 **SIXTH CAUSE OF ACTION**

24 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 226(a)**

25 **Failure to Provide Accurate Wage Statements**

26 **(Against All Defendants)**

27 84. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

28 85. At all material times set forth herein, California Labor Code section 226(a) provides

1 that every employer shall furnish each of its employees an accurate itemized wage statement in writing,
2 including, but not limited to, the name and address of the legal entity that is the employer, total hours
3 worked, and all applicable hourly rates.

4 86. As a result of the violations set forth in detail above (failure to pay overtime, failure to
5 pay minimum wages, meal break violations and rest break violations), Defendants intentionally and
6 willfully failed to provide Plaintiff and the other Class Members with complete and accurate wage
7 statements. The deficiencies include, among other things, the failure to state all hours worked, the
8 failure to state the actual gross wages earned, the failure to include meal and rest break premiums, and
9 the failure to include correct rates of pay. Accordingly, Defendants violated California Labor Code
10 226(a).

11 87. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff
12 and the other Class Members have suffered injury and damage to their statutorily protected rights.

13 88. Specifically, Plaintiff and the other Class Members have been injured by Defendants'
14 intentional violation of California Labor Code section 226(a) because they were denied both their legal
15 right to receive, and their protected interest in receiving, accurate, itemized wage statements under
16 California Labor Code section 226(a). In addition, because Defendants failed to provide the accurate
17 number of total hours worked on wage statements, Plaintiff and the other Class Members have been
18 prevented by Defendants from determining if all hours worked were paid and the extent of the
19 underpayment. Plaintiff had to file this lawsuit, and will further have to conduct discovery, reconstruct
20 time records, and perform computations in order to analyze whether in fact Plaintiff and the other
21 Class Members were paid correctly and the extent of the underpayment, thereby causing Plaintiff to
22 incur expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these
23 costs had Defendants provided the accurate number of total hours worked. This has also delayed
24 Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

25 89. Plaintiff and the other Class Members are entitled to recover from Defendants the
26 greater of their actual damages caused by Defendants' failure to comply with California Labor Code
27 section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000).

1 **SEVENTH CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 201, 202, AND 203**

3 **Final Wages Not Timely Paid**

4 **(Against All Defendants)**

5 90. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

6 91. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are required
7 to timely pay all earned and unpaid wages to an employee who is discharged. California Labor Code
8 section 201 mandates that if an employer discharges an employee, the employee's wages accrued and
9 unpaid at the time of discharge are due and payable immediately. California Labor Code section 202
10 mandates that if an employee quits, his or her wages shall become due and payable not later than
11 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of
12 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
13 quitting.

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

19 93. As a result of the violations set forth in detail above (failure to pay overtime, failure to
20 pay minimum wages, meal break violations and rest break violations), at the time that Plaintiff and the
21 other class members' employment with Defendants ended, Defendants knowingly and willfully failed
22 to pay them all wages owed to them pursuant to California Labor Code sections 201 and
23 202, including, without limitation, overtime wages, minimum wages, meal period premium wages,
24 and rest period premium wages, and all wages due to Plaintiff and Class Members as they became
25 due, as required per California Labor Code sections 204.

26 94. As a result, Plaintiff and the other Class Members are entitled to all available
27 statutory penalties, including the waiting time penalties provided in California Labor Code section
28 203, together with interest thereon, as well as other available remedies.

1 **EIGHTH CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 2800 AND 2802**

3 **Failure to Reimburse Necessary Business Expenses**

4 **(Against All Defendants)**

5 95. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

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

10 97. Plaintiff and the other Class Members incurred necessary business-related expenses
11 and costs that were not fully reimbursed by Defendants, including, but not limited to the use of
12 personal cell phones and personal vehicles for work-related purposes, and the purchase of tools
13 required to perform job duties, including, but not limited to wrenches and sockets.

14 98. Defendants intentionally and willfully failed to reimburse Plaintiff and the other Class
15 Members for all necessary business-related expenses and costs. Plaintiff and the other Class Members
16 are entitled to recover from Defendants their business-related expenses and costs incurred during the
17 course and scope of employment, plus interest accrued from the date on which Plaintiff and the other
18 Class Members incurred the necessary expenditures at the same rate as judgments in civil actions in
19 the State of California.

20 **NINTH CAUSE OF ACTION**

21 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSION CODE SECTION 17200**

22 ***ET. SEQ.***

23 **Unfair and Unlawful Business Practices**

24 **(Against All Defendants)**

25 99. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

26 100. Each and every one of Defendants' acts and omissions in violation of the California
27 Labor Code and/or the applicable IWC Wage Order as alleged in this Complaint including but not
28 limited to Defendant's failure and refusal to pay overtime compensation, Defendant's failure and

1 refusal to pay minimum wages, Defendants' failure and refusal to provide required meal periods and/or
2 pay meal period premiums, Defendants' failure and refusal to provide required rest periods and/or pay
3 the required rest break premiums, Defendants' failure to timely pay wages at the correct rate during
4 employment, Defendants' failure and refusal to furnish accurate itemized wage statements,
5 Defendants' failure and refusal to reimburse business-related expenses, and Defendants' failure to
6 timely pay wages upon termination constitutes an unfair and unlawful business practice under
7 California Business and Professions Code sections 17200 *et seq.*

8 101. Defendants' violations of California wage and hour laws constitute an unfair and
9 unlawful business practice because. Among other things, they were done repeatedly over a significant
10 period of time, and in a systematic manner, to the detriment of Plaintiff and the other class members.

11 102. Defendants have avoided payment of overtime wages, minimum wages, meal period
12 premiums, rest period premiums, timely wages at the correct rate of pay, and other benefits as required
13 by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage
14 Order. Further, Defendants have failed to record, report, and pay the correct sums of assessment to the
15 state authorities under the California Labor Code and other applicable regulations.

16 103. As a result of Defendants' unfair and unlawful business practices, Defendants have
17 reaped unfair and illegal profits during Plaintiff and the other class members' tenure at the expense of
18 Plaintiff, the other class members, and members of the public. Defendants should be made to disgorge
19 their ill-gotten gains and to restore them to Plaintiff and the other class members.

20 104. Defendants' unfair and unlawful business practices entitle Plaintiff and the other Class
21 Members to seek preliminary and permanent injunctive relief, including but not limited to orders that
22 Defendants account for, disgorge, and restore to Plaintiff and the other Class Members the wages and
23 other compensation unlawfully withheld from them. Plaintiff and the other Class Members are entitled
24 to restitution of all monies to be disgorged from Defendants in an amount according to proof at the
25 time of trial.

26 **TENTH CAUSE OF ACTION**

27 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 2698, *ET SEQ.***

28 **(Against GUSMER ENTERPRISES, INC. and DOES 1-25)**

1 105. Plaintiff incorporates herein by specific reference, as though fully set forth, the
2 allegations in all preceding paragraphs.

3 106. Plaintiff brings this action on a representative basis on behalf of other Aggrieved
4 Employees and the State of California, in Plaintiff's capacity as a private attorney general pursuant to
5 the Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.*

6 107. PAGA expressly provides for a private right of action to recover civil penalties for
7 violations of the California Labor Code as follows: "*Notwithstanding any other provision of law, any*
8 *provision of this code that provides for a civil penalty to be assessed and collected by the Labor and*
9 *Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies,*
10 *or employees, for a violation of this code, may, as an alternative, be recovered through a civil action*
11 *brought by an aggrieved employee on behalf of himself or herself and other current or former*
12 *employees pursuant to the procedures specified in Section 2699.3.*" Cal. Lab. Code § 2699(a).

13 108. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
14 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to
15 exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

16 109. Plaintiff and the other non-exempt employees are "Aggrieved Employees" as defined
17 by California Labor Code section 2699(c) in that they are all current or former employees of
18 Defendants, and one or more of the alleged violations were committed against them.

19 110. Defendants' conduct, as alleged herein, violates numerous sections of the California
20 Labor Code, including, but not limited to, the following:

- 21 a. Violation of California Labor Code sections 510 and 1198 for failure to pay overtime
22 wages, as set forth more fully above;
- 23 b. Violation of California Labor Code sections 1194, 1197, and 1197.1 for failure to pay
24 minimum wages, as set forth more fully above;
- 25 c. Violation of California Labor Code sections 226.7 and 512(a) for failure to provide
26 legally required meal periods, as set forth more fully above;
- 27 d. Violation of California Labor Code sections 226.7 and 512(a) for failure to pay
28 required meal period premiums, as set forth more fully above;

- e. Violation of California Labor Code section 226.7 for failure to provide legally required rest periods, as set forth more fully above;
- f. Violation of California Labor Code section 226.7 for failure to pay required rest period premiums, as set forth more fully above;
- g. Violation of California Labor Code section 204 for failure to timely pay wages to Plaintiff and Aggrieved Employees during employment;
- h. Violation of California Labor Code sections 201, 202, and 203 for failure to pay all wages at time of discharge from employment, as set forth more fully above;
- i. Violation of California Labor Code section 226(a) for failure to provide accurate wage statements to Plaintiff and Aggrieved Employees, as set forth more fully above;
- j. Violation of California Labor Code sections 2800 and 2802 for failure to reimburse Plaintiff and Aggrieved Employees for necessary business-related expenses and costs, as set forth more fully above.

111. Pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for Plaintiff, all Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections set forth herein, including penalties under California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3, 1174.5, and 1197.1, penalties under the applicable IWC Wage Order, and any and all additional penalties and remedies as provided by the California Labor Code and/or other statutes.

112. Pursuant to California Labor Code section 2699(i), civil penalties recovered by Aggrieved Employees shall be distributed as follows: sixty-five percent (65%) to the LWDA for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and thirty-five (35%) to the Aggrieved Employees.

113. Plaintiff retained counsel to file this court action, and to assess and collect the civil penalties owed by Defendants. Plaintiff therefore seeks an award of reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5, and 2699(g)(1), and any other applicable statute.

1 **PRAYER FOR RELIEF**

2 Plaintiff, on behalf of other similarly situated employees and aggrieved employees pursuant
3 to PAGA, prays for relief and judgment against Defendants, jointly and severally, as follows:

4 **Class Certification**

- 5 1. That this action be certified as a class action as to the first nine causes of action;
6 2. That Plaintiff be appointed as the representative of the Class as to the first nine causes
7 of action;
8 3. That counsel for Plaintiff be appointed as Class Counsel; and
9 4. That Defendants provide to Class Counsel the names and most current/last known
10 contact information (address, e-mail and telephone numbers) of all Class Members.

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

- 12 5. That the Court declare, adjudge, and decree that Defendants violated California Labor
13 Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the
14 other Class Members;
15 6. For general unpaid wages and such general and special damages as may be appropriate;
16 7. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
17 Plaintiff and the other Class Members in the amount as may be established according to proof at trial;
18 8. For pre-judgment interest on any unpaid compensation from the date such amounts
19 were due;
20 9. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
21 Labor Code section 1194(a);
22 10. For liquidated damages pursuant to California Labor Code section 1194.2;
23 11. For such other and further relief as the Court may deem just and proper.

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

- 25 12. That the Court declare, adjudge and decree that Defendants violated California Labor
26 Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime
27 wages due to Plaintiff and the other Class Members;
28 13. For general unpaid wages at overtime wage rates and such general and special

damages as may be appropriate;

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

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

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

As to the Third Cause of Action

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

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

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

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

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

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

As to the Fourth Cause Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and the applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other Class Members;

24. For premium wages pursuant to California Labor Code section 226.7(c);

25. For all actual, consequential, and incidental losses and damages, according to proof;

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

27. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

28. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the Class;

29. For statutory penalties pursuant to California Labor Code section 210; and

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

As to the Sixth Cause of Action

31. That the Court declare, adjudge and decree that Defendants violated the provisions of California Labor Code section 226(a) and applicable IWC Wage Order as to Plaintiff and the other Class Members, and willfully failed to provide accurate itemized wage statements to them;

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

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

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

35. For such other and further relief as the Court may deem just and proper.

As to the Seventh Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other Class Members no longer employed by Defendants;

37. For all actual, consequential, and incidental losses and damages, according to proof;

38. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other Class Members who have left Defendants' employ;

39. For pre-judgment interest on any unpaid compensation from the date due; and

40. For such other and further relief as the Court may deem just and proper.

As to the Eight Cause of Action

41. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other Class Members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

42. For all actual, consequential and incidental losses and damages, according to proof;

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

- 1 44. For reasonable attorneys' fees and costs of suit incurred herein; and
2 45. For such other and further relief as the Court may deem just and proper.

3 **As to the Ninth Cause of Action**

4 46. That the Court declare, adjudge and decree that Defendants violated the following
5 California Labor Code sections as to Plaintiff and the other Class Members: 510 and 1198 (by failing
6 to pay overtime wages); 1194, 1197, and 1197.1 (by failing to pay minimum wages); 226.7 and 512(a)
7 (by failing to provide meal and rest periods or compensation in lieu thereof); 204 (by failing to timely
8 pay wages during employment); 226(a) (by failing to provide accurate wage statements); 201, 202,
9 and 203 (by failing to pay all wages owed upon termination); and 2800 and 2802 (by failing to
10 reimburse business-related expenses);

11 47. For restitution of unpaid wages to Plaintiff and all the other Class Members and all pre-
12 judgment interest from the day such amounts were due and payable;

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

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

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

20 **As to the Tenth Cause of Action**

21 51. For the imposition of civil penalties pursuant to California Labor Code sections 2699,
22 210, 558, 226, 226.3, 1174.5, and 1197.1, and all other penalties allowed by the California Labor Code
23 and/or other applicable statutes;

24 52. For statutory attorneys' fees and costs pursuant to sections 210, 218.5, and 2699(g)(1)
25 of the California Labor Code; and

26 53. For such other and further relief as the Court may deem proper.
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28

1
2 DATED: August 26, 2025

BLACKSTONE LAW, APC

3
4 By:



Jonathan M. Genish, Esq.
Barbara DuVan Clarke, Esq.
Danielle L. GruppChang
P.J. Van Ert, Esq.
Annabel Blanchard

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8 *Attorneys for Plaintiff PASCUAL LUJAN,*
9 *individually and on behalf of others similarly*
10 *situated, and other aggrieved employees*
11 *pursuant to the California Private Attorneys*
12 *General Act*
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2 **DEMAND FOR JURY TRIAL**

3 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.
4

5 DATED: August 26, 2025

BLACKSTONE LAW, APC

6
7 By: 

Jonathan M. Genish, Esq.
Danielle L. GruppChang, Esq.
Barbara DuVan Clarke, Esq.
P.J. Van Ert, Esq.
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11 *Attorneys for Plaintiff PASCUAL LUJAN,*
12 *individually and on behalf of others similarly*
13 *situated*
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF FRESNO

I, Karina Hernandez, certify and declare as follows:

I am over eighteen years of age and not a party to the within action; my business address is 8383 Wilshire Blvd, Suite 745, Beverly Hills, California 90211. On August 26, 2025, I served a copy of the following document(s):

• **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

On the interested parties as follows:

Ian B. Wieland

Justin G. Donner

SAGASER, WATKINS & WIELAND, PC

5260 North Palm Avenue, Suite 400

Fresno, California 93704

Telephone: (559) 421-7000

Facsimile: (559) 473-1483

Emails: ian@sw2law.com; justin@sw2law.com; Tristan@sw2law.com

Attorneys for Defendant GUSMER ENTERPRISES INC.

☒ **BY ELECTRONIC MAIL (E-MAIL):** I caused said document(s) to be delivered electronically to be delivered to the above referenced addressee(s) via email from email address khernandez@blackstonepc.com pursuant to California Code of Civil Procedure section 1010.6(e)(1). I did not receive any electronic message or other indication that the transmission was unsuccessful.

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

Executed on August 26, 2025 at Beverly Hills, California.

/s/ Karina Hernandez

Karina Hernandez