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Attorneys for Plaintiffs Leo Hernandez Sr., Leo Hernandez Jr., Curtis Lupton, Gilberto Dedios, Alejandro Garcia, Justin Robinson, Laura Fernandez, Jose Garcia Martinez, Alma Gonzalez, Eric Valadez, David Bergeron, and Jorge Gonzalez on behalf of themselves and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BENITO

LEO HERNANDEZ SR., LEO HERNANDEZ JR., CURTIS LUPTON, GILBERTO DEDIOS, ALEJANDRO GARCIA, JUSTIN ROBINSON, LAURA FERNANDEZ, JOSE GARCIA MARTINEZ, ALMA GONZALEZ, ERIC VALADEZ, on behalf of themselves and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

WGS GROUP, INC., a Nevada corporation,
and DOES 1 through 10, inclusive,

Defendants.

CASE NO: CU-22-00225

Assigned to the Honorable Patrick K. Palacios, Dept. 3

SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR:

1. FAILURE TO PAY ALL WAGES DUE (LABOR CODE §§ 510. 1194, AND 1194.2)

2. FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE § 226.7; IWC WAGE ORDER 4-2001)

3. FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE §§ 226.7, 512, AND 1194; IWC WAGE ORDER 4-2001)

4. FAILURE TO REIMBURSE ALL BUSINESS-RELATED EXPENSES (LABOR CODE § 2802)

5. KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE § 226(a), (e))

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6. FAILURE TO PAY WAGES DUE AT SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)

7. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200

8. PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 204, 226(a), 226.7, 510, 512, 1194, AND 2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 210, 226.3, AND 558

DEMAND FOR JURY TRIAL

Plaintiffs LEO HERNANDEZ SR., LEO HERNANDEZ JR., CURTIS LUPTON, GILBERTO DEDIOS, ALEJANDRO GARCIA, JUSTIN ROBINSON, LAURA FERNANDEZ, JOSE GARCIA MARTINEZ, ALMA GONZALEZ, ERIC VALADEZ, DAVID BERGERON, and JORGE GONZALEZ (collectively, “Plaintiffs”), individually, on behalf of themselves and all similarly situated individuals (the “Class” or “Plaintiffs Class”), on behalf of the general public, and as “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004, complain of WGS GROUP, INC., a Nevada corporation, and/or any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”), as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiffs and all other employees who work or formerly worked for Defendants within the State of California.

2. For at least four (4) years prior to the filing of this action, plus any applicable tolled periods, and continuing to the present (the “liability period”), Defendants have had a consistent policies of failing to pay all minimum and overtime wages due to Class Members (as defined below), provide legally compliant meal and rest periods or compensation in lieu thereof to Class Members; reimburse all business-related expenses due to Class Members; provide accurately itemized wage

1 statements to Class Members; and to timely pay wages during employment and upon separation of
2 employment to Class Members.

3 3. Plaintiffs, on behalf of themselves and members of the Class, bring this action pursuant
4 to Labor Code §§ 201, 202, 204, 210, 226(a), 226.7, 510, 512, 1194, 1194.2, and 2802, seeking
5 compensation for all unpaid minimum and overtime wages, premium meal and rest period wages,
6 unpaid business-related expenses, liquidated damages, civil and statutory penalties, injunctive and
7 other equitable relief, and reasonable attorneys' fees and costs.

8 4. Plaintiffs, on behalf of themselves and members of Class and pursuant to Business &
9 Professions Code §§ 17200-17208, also seek injunctive relief, restitution, and disgorgement of all
10 benefits Defendants enjoyed from their failure to pay all wages and expense reimbursement due to
11 Class Members.

12 5. Plaintiffs, on behalf of themselves and all aggrieved employees pursuant to Labor
13 Code §§ 2698 *et seq.*, seek penalties and wages for Defendants' various violations of the California
14 Labor Code.

15 6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395
16 because Defendants employed Plaintiffs and Class Members in San Benito County, California.

17 II.

18 PARTIES

19 A. Plaintiffs

20 7. Plaintiff LEO HERNANDEZ SR. was employed by Defendants from June 2019
21 through February 2022 as a non-exempt employee in Oakland, California (Alameda County).

22 8. Plaintiff LEO HERNANDEZ JR. was employed by Defendants from November 2020
23 through May 2022 as a non-exempt employee in Greenfield, California (Monterey County).

24 9. Plaintiff CURTIS LUPTON was employed by Defendants from October 2021 through
25 May 2022 as a non-exempt employee in Greenfield, California (Monterey County).

26 10. Plaintiff GILBERTO DEDIOS was employed by Defendants from 2021 through 2022
27 as a non-exempt employee in Oakland, California (Alameda County).
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11. Plaintiff ALEJANDRO GARCIA was employed by Defendants from July 2021 through January 2022 as a non-exempt employee in Oakland, California (Alameda County).

12. Plaintiff JUSTIN ROBINSON was employed by Defendants from June 2021 through November 2021 as a non-exempt employee in Oakland, California (Alameda County).

13. Plaintiff LAURA FERNANDEZ was employed by Defendants from August 2021 through March 2022 as a non-exempt employee in Hollister, California (San Benito County).

14. Plaintiff JOSE GARCIA MARTINEZ was employed by Defendants from January 2021 through May 2022 as a non-exempt employee in Hollister, California (San Benito County).

15. Plaintiff ALMA GONZALEZ was employed by Defendants from September 2021 through May 2022 as a non-exempt employee in Hollister, California (San Benito County).

16. Plaintiff ERIC VALADEZ was employed by Defendants from February 2020 through April 2020 as a non-exempt employee in Greenfield, California (Monterey County).

17. Plaintiff DAVID BERGERON was employed by Defendants from May 2022 through November 2022 as a non-exempt employee in Greenfield, California (Monterey County).

18. Plaintiff JORGE GONZALEZ was employed by Defendants from 2018 through October 2021 as a non-exempt employee in Greenfield, California (Monterey County).

19. During their work with Defendants, Plaintiffs were:

- a. Willfully denied the payment of all wages during the course of employment, including all minimum and overtime wages;
- b. Willfully denied rest periods or compensation in lieu thereof;
- c. Willfully denied meal periods or compensation in lieu thereof;
- d. Willfully denied reimbursement of all business-related expenses;
- e. Willfully denied accurately itemized wage statements; and
- e. Denied the timely payment of wages during employment and upon separation of their employment.

B. Defendants

20. Defendant WGS GROUP, INC. is a Nevada corporation that employed Plaintiffs and Class Members throughout the State of California, including San Benito County, California.

21. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

22. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

23. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

III.

CLASS ACTION ALLEGATIONS

24. Plaintiffs bring this action on behalf of themselves, and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiffs seek to represent the following Class composed of and defined as follows:

THE CLASS

All non-exempt California employees employed by Defendants at any time since the date four years preceding the filing of this Action, plus any additional time tolled by the California State Judicial Council pursuant to Emergency Rule 9 in response to the COVID-19 pandemic and continuing through the present.

25. Plaintiffs reserve the right under Rule 3.765, California Rules of Court, to amend or modify this Class description with greater specificity or further division into subclasses or limitation to particular issues.

1 26. This action has been brought and may properly be maintained as a Class action under
2 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
3 interest in the litigation and the proposed Class is easily ascertainable.

4 **A. Numerosity**

5 27. The potential members of the Class as defined are so numerous that joinder of all Class
6 Members is impracticable. While the precise number of members of the Class has not been
7 ascertained at this time, Plaintiffs are informed and believe, and based thereon allege, that Defendants
8 currently employ, and during the relevant time periods employed, over 75 persons in the State of
9 California who fall within the Class definition.

10 28. Accounting for employee turnover during the relevant period necessarily increases this
11 number. Plaintiffs allege Defendants' employment records would provide information as to the
12 number and location of members of the Class. Joinder of members of the Class is not practicable.

13 **B. Commonality**

14 29. There are questions of law and fact common to the Class that predominate over any
15 questions affecting only individual Class Members. These common questions of law and fact include,
16 without limitation:

- 17 a. Whether Plaintiffs and the Class were denied the payment of all minimum and
18 overtime wages due during the course of employment, in violation of Labor
19 Code §§ 510, 1194, and 1194.2;
- 20 b. Whether Defendants failed to properly provide rest periods or compensation in
21 lieu thereof to Plaintiffs and Class Members, in violation of Labor Code §
22 226.7, and IWC Wage Order 4-2001;
- 23 c. Whether Defendants failed to properly provide meal periods or compensation
24 in lieu thereof to Plaintiffs and Class Members, in violation of Labor Code §§
25 226.7, 512, and 1194, and IWC Wage Order 4-2001;
- 26 d. Whether Defendants failed to reimburse all business-related expenses to
27 Plaintiffs and Class Members, in violation of Labor Code § 2802;

- 1 e. Whether Defendants failed to provide Plaintiffs and members of the Class with
2 accurately itemized wage statements, in accordance with Labor Code § 226(a)
3 and (e);
- 4 f. Whether Defendants failed to timely pay Plaintiffs and Class Members all
5 wages due and owing at the separation of their employment, in violation of
6 Labor Code §§ 201-203; and
- 7 g. Whether Plaintiffs and Class Members are entitled to equitable relief pursuant
8 to Business & Professions Code § 17200 *et seq.*

9 **C. Typicality**

10 30. The claims of the named Plaintiffs are typical of the claims of members of the Class.
11 Plaintiffs and members of the Class sustained injuries and damages arising out of and caused by
12 Defendants' common course of conduct in violation of laws, regulations that have the force and effect
13 of law, and statutes as alleged herein.

14 **D. Adequacy of Representation**

15 31. Plaintiffs will fairly and adequately represent and protect the interests of members of
16 the Class. Counsel who represents Plaintiffs are competent and experienced in litigating large
17 employment Class actions.

18 **E. Superiority of Class Action**

19 32. A Class action is superior to other available means for the fair and efficient
20 adjudication of this controversy. Individual joinder of all proposed members of the Class is not
21 practicable, and questions of law and fact common to the proposed Class predominate over any
22 questions affecting only individual members of the proposed Class. Each member of the proposed
23 Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or
24 practices.

25 33. Class action treatment will allow those similarly situated persons to litigate their
26 claims in the manner that is most efficient and economical for the parties and the judicial system.
27 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this
28 action that would preclude its maintenance as a Class action.

1 IV.

2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

5 **FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES**

6 **(LABOR CODE §§ 510, 1194, AND 1194.2)**

7 34. Plaintiffs incorporate paragraphs 1 through 33 of this Complaint as though fully set
8 forth herein.

9 35. Defendants failed to pay Plaintiffs and Class Members all minimum and overtime
10 wages earned during the course of employment, in violation of Labor Code §§ 510, 1194, and 1194.2.
11 Plaintiffs and Class Members routinely and frequently worked off-the-clock, without compensation:
12 they were not paid for time spent waiting for the next worker to take over their post. Plaintiffs and
13 Class Members would routinely be required to clock out for their shift at the scheduled time and then
14 be forced to remain at their posts until the next employee showed up for work—oftentimes this time
15 was extensive and results in significant unpaid wages. These failures to pay all minimum and
16 overtime wages due constitute violations of Labor Code §§ 510, 1194, and 1194.2.

17 36. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due,
18 Plaintiffs and Class members have been deprived of wages in amounts to be determined at trial, and
19 are entitled to restitution and recovery of such amounts, plus interests thereon, attorneys' fees, and
20 costs pursuant to Labor Code § 1194, and liquidated damages as authorized by Labor Code § 1194.2.

21 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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V.

SECOND CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE § 226.7 AND IWC WAGE ORDER 4-2001)

37. Plaintiffs incorporate paragraphs 1 through 36 of this Complaint as though fully set forth herein.

38. Plaintiffs and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and IWC Wage Order 4-2001.

39. Defendants failed to pay premium wages to Plaintiffs and Class Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001. Plaintiffs and Class Members were routinely not authorized and unable to take an off-duty, 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. Plaintiffs and Class Members were simply denied and not authorized to take their legally entitled rest periods and were never paid premium wages for missed rest periods. Plaintiffs and Class Members were also impermissibly required to remain on the company premises, under Defendants' control, during any rest periods, rendering them impermissibly on-duty. This violates Labor Code § 226.7 and IWC Wage Order 4-2001.

40. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiffs seeks the payment of all rest period compensation which they and Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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1 VI.

2 THIRD CAUSE OF ACTION

3 PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

4 FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

5 (LABOR CODE §§ 226.7, 512, AND 1194 AND IWC WAGE ORDER 4-2001)

6 41. Plaintiffs incorporate paragraphs 1 through 40 of this Complaint as though fully set
7 forth herein.

8 42. Plaintiffs and Class Members are entitled to one hour of pay for each day that
9 Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7,
10 512 and IWC Wage Order 4-2001.

11 43. Defendants failed to pay premium wages to Plaintiffs and Class Members who were
12 denied meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001.
13 Plaintiffs and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-
14 minute meal period for every shift worked that exceeded five hours in duration, and a second meal
15 period when they worked shifts greater than ten hours, but were not paid premium wages of one
16 hour's pay for each missed meal period. When meal periods were provided, Plaintiffs and Class
17 Members were also impermissibly required to remain on the company premises, under Defendants'
18 control, during their meal periods, rendering them impermissibly on-duty. This violates Labor Code
19 §§ 226.7, 512, and 1194.

20 44. Pursuant to Labor Code §§ 226.7, 512, and 1194 and IWC Wage Order 4-2001,
21 Plaintiffs seek the payment of all meal period compensation and unpaid wages which they and Class
22 Members are owed for four years preceding the filing of this Action, according to proof.

23 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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VII.

FOURTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO REIMBURSE ALL BUSINESS-RELATED EXPENSES

(LABOR CODE §§ 221 AND 2802)

45. Plaintiffs incorporate paragraphs 1 through 44 of this Complaint as though fully set forth herein.

46. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse Plaintiffs and Class Members for all out-of-pocket expenses incurred by them in the performance of their job duties, in violation of Labor Code §§ 221 and 2802, including, but not limited to, uniform deductions as well as expenses incurred to operate their personal automobiles, such as gas, maintenance, and insurance. Labor Code § 2802 requires that an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties, and Defendants' failure to do so has violated Labor Code § 2802. Defendants have also violated Labor Code § 221 for unauthorized deductions from Plaintiffs and Class Members' wages.

47. As a proximate result of the aforementioned violations, Plaintiffs and Class Members have been damaged in an amount according to proof at the time of trial.

48. Pursuant to Labor Code §§ 221 and 2802, Plaintiffs and Class Members are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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VIII.
FIFTH CAUSE OF ACTION
PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS
KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT PROVISIONS
(LABOR CODE § 226(a), (e))

49. Plaintiffs incorporate paragraphs 1 through 48 of this Complaint as though fully set forth herein.

50. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

51. Defendants failed to issue Plaintiffs and members of the Class wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiffs and Class Members were not paid all wages due, including minimum and overtime wages, and premium wages for unauthorized meal and rest periods, as stated above. As such, the wage statements provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

1 52. Furthermore, and independent of the above allegations, the wage statements issued to
2 Plaintiffs and Class Members failed to set accurately forth all applicable hourly rates in effect during
3 the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9)
4 because, among other reasons, when double-time wages are earned, the wage statements do not set
5 forth the applicable double-time rate of pay. Moreover, and independent of the allegations above,
6 Plaintiffs and Class Members were not provided with wage statements or a separate document at the
7 time of the payment of wages that set forth all accrued sick leave, in violation of Labor Code § 246(i).

8 52. As a consequence of Defendants' willful conduct in failing to provide Class Members
9 with accurate itemized wage statements, Plaintiffs and members of the Class have been injured
10 because they have not been paid all wages due and were issued wage statements which do not reflect,
11 and fail to state, all information required by Labor Code § 226(a). The missing information cannot
12 be discerned at all from the face of the wage statements themselves. As a result, Plaintiffs and
13 members of the Class are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater
14 of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per
15 employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000
16 per employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor
17 Code § 226(h).

18 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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IX.

SIXTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)

53. Plaintiffs incorporate paragraphs 1 through 52 of this Complaint as though fully set forth herein.

54. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

55. Defendants paid Plaintiffs and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiffs and Class Members were not paid all wages due and owing throughout the course of their employment, including all minimum and overtime wages and premium wages for missed and denied meal and rest periods, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment. Furthermore, when Plaintiffs separated their employment, they were not issued all of their final wages within 72 hours of their separation—instead, their final wages were issued seven or more days after their separation. Plaintiffs allege that Defendants maintain a policy of untimely paying final wages to their former employees.

56. More than 30 days have passed since Plaintiffs and Class Members have left Defendants' employ.

57. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiffs and Class Members are entitled to up to 30 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of employment.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

X.

SEVENTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

58. Plaintiffs incorporate paragraphs 1 through 57 of this Complaint as though fully set forth herein.

59. This is a Class Action for Unfair Business Practices. Plaintiffs, on their own behalf and on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiffs, the general public, and members of the Class. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

60. Plaintiffs are “persons” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

61. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

62. Wage and hour laws express fundamental public policies. Properly providing employees with all wages and expense reimbursement due are fundamental public policies of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and its employees from competitors who lower their costs by failing to comply with minimum labor standards.

63. Defendants have violated statutes and public policies. Through the conduct alleged

1 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
2 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
3 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiffs,
4 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
5 guaranteed to all employees under law.

6 64. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
7 §17200 *et seq.* of the Business & Professions Code.

8 65. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
9 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
10 17200 *et seq.* of the Business & Professions Code.

11 66. As a proximate result of the above-mentioned acts of Defendants, Plaintiffs and others
12 similarly situated have been damaged in a sum as may be proven.

13 67. Unless restrained by this Court, Defendants will continue to engage in the unlawful
14 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
15 should make such orders or judgments, including the appointment of a receiver, as may be necessary
16 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
17 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
18 to, disgorgement of profits which may be necessary to restore Plaintiffs and members of the Class to
19 the money Defendants have unlawfully failed to pay.

20 **XI.**

21 **EIGHTH CAUSE OF ACTION**

22 **PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**

23 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**

24 **LABOR CODE §§ §§ 201, 202, 204, 226(a), 226.7, 510, 512, 1194, AND 2802 AND**

25 **PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF**

26 **LABOR CODE §§ 210, 226.3, AND 558**

27 68. Plaintiffs incorporate paragraphs 1 through 67 of this Complaint as though fully set
28 forth herein.

1 69. As a result of the acts alleged above, including the Labor Code violations set forth
2 herein (Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 510, 512, 558, 1194, and 2802), Plaintiffs seek
3 penalties pursuant to Labor Code § 2698 *et seq* on behalf of themselves and all other non-exempt
4 California employees who currently work or formerly worked for Defendants from September 1, 2021
5 through the present (“Non-Exempt Aggrieved Employees”). Furthermore, and in addition to the
6 above allegations, Defendants failed to timely pay Plaintiffs and other California employees who
7 currently work or formerly worked for Defendants from September 1, 2021 through the present
8 (“Aggrieved Employees”) (Non-Exempt Aggrieved Employees and Aggrieved Employees are
9 collectively referred to as “All Aggrieved Employees”) all wages due during their employment, in
10 violation of Labor Code §§ 204 and 210. Defendants paid Plaintiffs and Aggrieved Employees on a
11 bi-weekly basis, but failed to issue them all their wages within seven days of the conclusion of the
12 payroll period, as required by Labor Code § 204(d); instead, Plaintiffs and Aggrieved Employees
13 were paid nine or more days after the close of each pay period. This subjects Defendants to penalties
14 as authorized by Labor Code § 210.

15 70. For each such violation, Plaintiffs and All Aggrieved Employees are entitled to
16 penalties in an amount to be shown at the time of trial subject to the following formula:

- 17 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
18 each subsequent violation of Labor Code §§ 201, 202, 204, 226(a), 226.7, 510,
19 512, 1194, and 2802; and
20 b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor
21 Code §§ 210, 226.3, and 558.

22 71. Penalties recovered will be allocated 75% to the Labor and Workforce Development
23 Agency, and 25% to the affected employees.

24 72. On September 1, 2022, October 6, 2022, and December 15, 2022, Plaintiffs sent letters,
25 by online submission to the LWDA and by certified mail, return receipt requested, to Defendants
26 setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor
27 Code § 2698 *et seq*. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiffs
28 from the LWDA within sixty-five (65) calendar days of September 1, 2022, October 6, 2022, or

December 15, 2022. Plaintiffs may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiffs and All Aggrieved Employees they seek to represent request relief as described below.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

1. For compensatory damages pursuant to Labor Code § 1194 in the amount of all unpaid wages due to Plaintiffs and Class Members;
2. For liquidated damages pursuant to Labor Code § 1194.2 in the amount of all unpaid minimum wages due to Plaintiffs and Class Members;
3. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiffs and Class Members pursuant to Labor Code §§ 226.7 and 512;
4. For penalties pursuant to Labor Code § 226(e) for Plaintiffs and members of the Class;
5. For penalties pursuant to Labor Code § 203 for Plaintiffs and members of the Class;
6. For reimbursement of all expenses incurred by Plaintiffs and Class Members pursuant to Labor Code § 2802;
7. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiffs and Class Members;
8. An award of prejudgment and post-judgment interest;
9. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiffs and All Aggrieved Employees;
10. An award providing for payment of costs of suit pursuant to Labor Code §§ 226, 1194, and 2699(g)(1) and other applicable law;
11. An award of attorneys' fees pursuant to Labor Code §§ 226, 1194, and 2699(g)(1) and other applicable law; and
12. Such other and further relief as this Court may deem just and proper.

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1 Dated: March 20, 2023

Respectfully submitted,

2 GAINES & GAINES
3 A Professional Law Corporation

4 By: _____
5 DANIEL F. GAINES
6 EVAN S. GAINES
7 Attorney for Plaintiffs

8 **DEMAND FOR JURY TRIAL**

9 Plaintiffs hereby demands a trial of their claims by jury to the extent authorized by law.

10 Dated: March 20, 2023

Respectfully submitted,

11 GAINES & GAINES
12 A Professional Law Corporation

13 By: *Daniel F. Gaines*
14 DANIEL F. GAINES
15 EVAN S. GAINES
16 Attorney for Plaintiffs
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PROOF OF SERVICE AND CERTIFICATION

I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the within action; my business address is 4550 East Thousand Oaks Boulevard, Suite 100, Westlake Village, CA 91362

____ (For messenger) my business address is:

On March 20, 2023, I served the foregoing document described as **SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

**Christine D. Baran, Esq.
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614**

**William R.H. Mosher, Esq.
FISHER & PHILLIPS LLP
621 Capitol Mall, Suite 1400
Sacramento, California 95814**

 X (BY x U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more that one day after date of deposit for mailing in affidavit.

____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

____ (BY FACSIMILE TRANSMISSION) On _____, at _____, at Westlake Village, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the telephone number(s) of the receiving facsimile machine was (916) 920-4402. A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

____ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

____ (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission via email on the counsel of record listed above.

I certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 20, 2023, at Westlake Village, California.



JEREMY REYES
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