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as individual on behalf of themselves
and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ROBERT SOSA and ANDRES
MORALES, as individuals on behalf of
themselves and on behalf of all others
similarly situated,

Plaintiffs,

v.

CITY OF LOS ANGELES, a California
public entity; and DOES 1-100, inclusive,

Defendants.

Case No.: 23STCV01058

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. Recovery of Unpaid Minimum Wages
and Liquidated Damages (California
Labor Code sections 1182.12, 1194, 1197,
1197.1 and IWC Wage Order No. 4-
2001)**
- 2. Violation of the Private Attorneys
General Act of 2004**

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Los Angeles

01/16/2024

David W. Slayton, Executive Officer / Clerk of Court

By: C. Gomez Deputy

1 Plaintiffs, ROBERT SOSA and ANDRES MORALES (“PLAINTIFFS”), individuals on
2 behalf of themselves and all other similarly situated Class Members (as defined below), and
3 Aggrieved Employees (defined below), and the State of California, hereby file this Second Amended
4 Complaint against Defendants CITY OF LOS ANGELES, a California public entity; and DOES 1-
5 100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFFS are informed
6 and believe and thereon allege as follows:

7 **JURISDICTION AND VENUE**

8 1. This court possesses original subject matter jurisdiction over this matter. Venue is
9 proper in the County of Los Angeles pursuant to California Code of Civil Procedure section 395.5
10 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
11 PLAINTIFFS to work in this judicial district and some of the acts, omissions, and conduct alleged
12 by PLAINTIFFS herein occurred in this this judicial district.

13 **THE PARTIES**

14 2. PLAINTIFFS are, and at all relevant times, were individuals domiciled in the State
15 of California and a citizen of the State of California.

16 3. PLAINTIFF SOSA was employed by DEFENDANTS in the State of California as a
17 non-exempt employee from in or around April 1990 and continuing through the present.

18 4. PLAINTIFF SOSA worked for DEFENDANTS in DEFENDANTS’ Department of
19 Public Works, Bureau of Sanitation, as a refuse collection field supervisor, field supervisor and/or
20 similar title(s) during the Class Period (defined below). PLAINTIFF MORALES was employed by
21 DEFENDANTS in the State of California as a non-exempt employee since in or around 1986 and
22 continuing through the present. PLAINTIFF MORALES worked for DEFENDANTS as a non-
23 exempt employee with a job title of, including but not limited to, refuse collections truck operator
24 and/or similar title(s) and/or position(s), from including but not limited to, in or around April 2022
25 through on or around March 23, 2023.

26 5. PLAINTIFF MORALES worked for DEFENDANTS as a refuse collections truck
27 operator and/or similar title(s) and/or position(s) during the Class Period (defined below) in
28 DEFENDANTS’ Department of Public Works, Bureau of Sanitation at DEFENDANTS’ Los
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1 Angeles, California location(s), including but not limited to, DEFENDANTS' yards, offices, sites
2 and/or facilities located at 452 N. San Fernando Rd in Los Angeles, California.

3 6. DEFENDANTS are a California public entity that, at all relevant times, were
4 authorized to do business within the State of California and are doing business in the State of
5 California. DEFENDANTS own, operate and/or otherwise manage 44 different departments,
6 including but not limited to, the Department of Public Works, and employ a workforce of more than
7 50,000 people across those various departments.¹

8 7. The true names and capacities of the DOE Defendants sued herein as DOES 1
9 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
10 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
11 responsible for the unlawful acts alleged herein. PLAINTIFFS will seek leave of Court to amend
12 this Complaint to reflect the true names and capacities of the Doe Defendants when such identities
13 become known.

14 8. PLAINTIFFS are further informed and believe that, at all relevant times, each
15 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
16 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
17 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
18 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
19 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
20 complaint. PLAINTIFFS are further informed and believe and thereon allege that each Defendant
21 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
22 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
23 controlled, aided and abetted the conduct of all other Defendants.

24 **JOINT LIABILITY**

25 9. Under California law, the definition of the terms "to employ" are broadly construed
26 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
27 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)

28 ¹ <https://lacity.gov/jobs> (Last visited on January 11, 2023).³

1 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
2 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
3 was to reach situations in which multiple entities control different aspects of the employment
4 relationship. Supervision of the work, in the specific sense of exercising control over how services
5 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
6 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
7 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
8 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
9 California, applying a less stringent standard to what constitutes sufficient control by a business
10 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
11 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
12 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
13 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
14 employment,” *Id.* at 875 [emphasis added].

15 10. During PLAINTIFFS’ respective employments by DEFENDANTS, PLAINTIFFS
16 and the Class Members (defined below) and Aggrieved Employees (defined below) were jointly
17 employed by DEFENDANTS for purposes of the Wage Orders, under the alternative definitions of
18 “to employ” adopted by the California Supreme Court in *Martinez*, supra. As discussed below, these
19 DEFENDANTS (1) exercised control over wages, hours and working conditions of PLAINTIFFS
20 and the Class Members and Aggrieved Employees; (2) suffered or permitted PLAINTIFFS and
21 Class Members and Aggrieved Employees to work for them; and (3) engaged PLAINTIFFS and
22 Class Members and Aggrieved Employees to work for them.

23 11. PLAINTIFFS are informed and believe, and thereon allege that at all relevant times
24 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
25 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
26 across all of their locations/facilities and subjected all of the Class Members and Aggrieved
27 Employees to these same policies and practices regardless of the location(s) where they worked.
28 Among other things, PLAINTIFFS are informed⁴ and believe that: (1) there is common ownership
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1 in, and financial control, in DEFENDANTS' companies, (2) DEFENDANTS utilize common
2 management, who have control over the day-to-day operations and employment matters, including
3 the power to hire and fire, set schedules, issue employee policies, and determine rates of
4 compensation across its locations in California; (3) DEFENDANTS utilize the same policies and
5 procedures for all California employees, including issuing the same employee handbooks and other
6 form agreements; (4) DEFENDANTS use at least some of the same Human Resources personnel
7 and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.

8 12. PLAINTIFFS are informed and believe, and thereon allege that at all times relevant
9 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFFS and the Class
10 Members and Aggrieved Employees upon whose behalf PLAINTIFFS bring these allegations and
11 causes of action, in that DEFENDANTS, exercised sufficient control over PLAINTIFFS and the
12 Class Members and Aggrieved Employees' wages, hours and working conditions, and/or suffered
13 or permitted PLAINTIFFS and the Class Members and Aggrieved Employees to work so as to be
14 considered the joint employers of PLAINTIFFS and the Class Members and Aggrieved Employees.

15 13. Upon information and belief, PLAINTIFFS allege that DEFENDANTS created a
16 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
17 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
18 working conditions that were distributed to, and/or applied to PLAINTIFFS and the Class Members
19 and Aggrieved Employees, and further that DEFENDANTS uniformly compensated and controlled
20 the wages of PLAINTIFFS and the Class Members and Aggrieved Employees in a uniform manner.
21 DEFENDANTS collectively represented to PLAINTIFFS and the Class Members and Aggrieved
22 Employees that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS
23 collectively retained the right to terminate PLAINTIFFS' and Class Members and Aggrieved
24 Employees' employment with or without cause. Upon information and belief, DEFENDANTS
25 further collectively represented to PLAINTIFFS and Class Members and Aggrieved Employees in
26 writing the details of their compensation, and the manner in which they were to take meal and rest
27 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
28 and the policies applicable to PLAINTIFFS and Class Members and Aggrieved Employees by which

1 DEFENDANTS collectively would evaluate the wage rates of PLAINTIFFS and Class Members
2 and Aggrieved Employees.

3 14. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
4 and working conditions of PLAINTIFFS and Class Members and Aggrieved Employees. As such,
5 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFFS' and
6 the Class Members and Aggrieved Employees' employment, including the instrumentality that
7 resulted in the illegal conduct for which PLAINTIFFS seek relief in this Complaint.

8 15. PLAINTIFFS are informed and believe that DEFENDANTS exercised the same
9 control over, applied the same policies and practices, and engaged in the same acts and omissions
10 with regard to the other Class Members and Aggrieved Employees.

11 **CLASS ALLEGATIONS**

12 16. PLAINTIFFS bring this action on behalf of themselves, and all others similarly
13 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFFS
14 seek to represent are defined as follows and referred to as the "Class" or "Class Members":

15 All current and former non-exempt employees employed by
16 DEFENDANTS in California at any time within the three years prior
17 to the filing of the initial Complaint ("Class Period").

18 a. Numerosity. While the exact number of Class Members is unknown to
19 PLAINTIFFS at this time, the Class is so numerous that the individual joinder
20 of all members is impractical under the circumstances of this case. PLAINTIFFS
21 are informed and believe the Class consists of at least 100 individuals.

22 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
23 because common questions of law and fact predominate over individual issues.
24 Common questions include, but are not limited to, the following: (1) whether
25 DEFENDANTS understated hours worked and failed to pay all amounts due to
26 PLAINTIFFS and the Class Members for wages earned, including minimum
27 wages, under California law.

28 c. Ascertainable Class. The proposed Class is ascertainable as members can be

1 identified and located using information in DEFENDANTS' business, payroll
2 and personnel records.

3 d. Typicality. PLAINTIFFS' claims are typical of the claims of the Class
4 Members. PLAINTIFFS suffered a similar injury as members of the Class as a
5 result of DEFENDANTS' common practices regarding, *inter-alia*,
6 DEFENDANTS' failure to calculate and pay all owed minimum wages.

7 e. Adequacy. PLAINTIFFS will fairly and adequately protect the interests of the
8 Class Members. PLAINTIFFS have no interests adverse to the interests of the
9 other Class Members. Counsel who represent PLAINTIFFS are competent and
10 experienced in litigating similar class action cases and are California lawyers in
11 good standing. Counsel for PLAINTIFFS have the experience and resources to
12 vigorously prosecute this case.

13 f. Superiority. A class action is superior to other available means for the fair and
14 efficient adjudication of this controversy since individual joinder of all members
15 of the class is impractical. Class action treatment will permit a large number of
16 similarly situated persons to prosecute their common claims in a single forum
17 simultaneously, efficiently, and without the unnecessary duplication of effort
18 and expense that numerous individual actions would engender. Furthermore, as
19 the damages suffered by each individual member of the Class may be relatively
20 small, the expenses and burden of individual litigation would make it difficult
21 or impossible for individual members of the Class to redress the wrongs done to
22 them, while an important public interest will be served by addressing the matter
23 as a class action. The cost to the court system of adjudication of such
24 individualized litigation would be substantial. Individualized litigation would
25 also present the potential for inconsistent or contradictory judgments. Finally,
26 the alternative of filing a claim with the California Labor Commissioner is not
27 superior, given the lack of discovery in such proceedings, the fact that there are
28 fewer available remedies, and the losing party has the right to a trial de novo in

1 the Superior Court.

2 **FACTUAL AND LEGAL ALLEGATIONS**

3 17. During the relevant period, PLAINTIFFS, and each of the Class Members and
4 Aggrieved Employees, worked for DEFENDANTS in the State of California. At all times referenced
5 herein, DEFENDANTS exercised control over PLAINTIFFS and Class Members and Aggrieved
6 Employees, and suffered and/or permitted them to work.

7 18. PLAINTIFFS are employed by DEFENDANTS as non-exempt employees.
8 PLAINTIFF SOSA worked for DEFENDANTS as a refuse collection field supervisor, field
9 supervisor and/or similar title(s) at including but not limited to, 786 N. Mission Rd, Los Angeles,
10 California 90023 from in or around 2019 through on or about November 4, 2022.

11 19. PLAINTIFF MORALES was employed by DEFENDANTS in the State of California
12 as a non-exempt employee since in or around 1986 and continuing through the present. PLAINTIFF
13 MORALES worked for DEFENDANTS as a non-exempt employee with a job title of, including but
14 not limited to, refuse collections truck operator and/or similar title(s) and/or position(s), from
15 including but not limited to, in or around April 2022 through on or around March 23, 2023.

16 20. PLAINTIFF MORALES worked for DEFENDANTS in DEFENDANTS'
17 Department of Public Works, Bureau of Sanitation at DEFENDANTS' Los Angeles, California
18 location(s), including but not limited to, DEFENDANTS' yards, offices, sites and/or facilities
19 located at 452 N. San Fernando Rd in Los Angeles, California.

20 21. PLAINTIFFS regularly worked at least eight (8) hours per day, at least five (5) days
21 per week.

22 22. At all relevant times, PLAINTIFFS were non-exempt employees that were paid on
23 an hourly basis for time counted by DEFENDANTS as hours worked.

24 23. **Unpaid Minimum Wages.** DEFENDANTS failed to compensate PLAINTIFFS and
25 Class Members and Aggrieved Employees for all hours worked, resulting in the underpayment of
26 minimum wages. DEFENDANTS failed to compensate PLAINTIFFS and Class Members and
27 Aggrieved Employees for all hours worked by virtue of, including but not limited to,
28 interrupted/shortened meal periods (described below), time-rounding policies and practices,
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1 payment according to scheduled hours worked instead of actual time worked, and mandated pre-
2 shift/post-shift and/or other mandated off-the-clock work policies and practices.

3 24. Based on information and belief, PLAINTIFFS and other Class Members and
4 Aggrieved Employees were consistently unable to take uninterrupted meal periods and/or were
5 required to work through part or all their unpaid meal periods due to the nature and constraints of
6 their job duties and/or understaffing. For example, based on information and belief, PLAINTIFFS
7 and other Class Members and Aggrieved Employees' meal periods were often interrupted, cut short
8 and/or worked through completely due to lack of relief workers, the need to respond to work-related
9 communications and/or complete other work tasks. Nevertheless, despite failing to provide off-duty
10 thirty-minute uninterrupted meal periods, DEFENDANTS implemented a policy and/or practice of
11 automatically deducting at least thirty minutes per shift for meal periods, despite having actual
12 and/or constructive knowledge that the purported meal periods were interrupted, cut short and/or
13 worked through completely, thereby depriving PLAINTIFFS and Class Members and Aggrieved
14 Employees of all earned minimum wages.

15 25. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
16 records of the true start and end times of PLAINTIFFS' and Class Members' and Aggrieved
17 Employees' meal periods. Based on information and belief, to the extent meal period were recorded,
18 DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in
19 PLAINTIFFS and other Class Members and Aggrieved Employees not being paid for all time
20 worked. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

21 26. Based on information and belief, Class Members and Aggrieved Employees were
22 not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to
23 scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies
24 and/or practices. For example, DEFENDANTS compensated PLAINTIFFS only for scheduled
25 hours worked rather than all hours actually worked.

26 27. For example, DEFENDANTS' time records for PLAINTIFF SOSA for week
27 beginning 3/13/22 and ending 3/19/22 show rounded daily totals of precisely 8.00 regular hours
28 worked and/or precisely 1.00 or .50 overtime hours worked. Similarly, DEFENDANTS' time
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1 records for PLAINTIFF SOSA for week beginning 3/20/22 through 3/26/22, show rounded daily
2 totals of precisely 8.00 regular hours worked and/or precisely 1.20 overtime hours.

3 28. Based on information and belief, DEFENDANTS recorded only scheduled total
4 daily hours worked regardless of when PLAINTIFFS and other Class Members and Aggrieved
5 Employees actually started and stopped working on those days, which did not account for pre-shift
6 and/or post-shift off-the-clock work that was not recorded and not compensated by DEFENDANTS
7 and, as such, resulted in the significant underpayment of wages owed to Class Members and
8 Aggrieved Employees.

9 29. Based on information and belief, Class Members and Aggrieved Employees were
10 also pressured to complete at least some of their work tasks off-the-clock in order to meet
11 DEFENDANTS' goals and expectations.

12 30. For example, based on information and belief, Class Members and Aggrieved
13 Employees were also required to complete off-the-clock work outside of scheduled shifts due to
14 work-related phone calls and/or messages they received and were required to respond to, including
15 but not limited to, communications from supervisors regarding scheduling and/or other work tasks,
16 resulting in the underpayment of wages owed to Class Members and Aggrieved Employees.

17 31. For example, at times, PLAINTIFF SOSA received work-related phone calls and/or
18 messages to his cell phone from his supervisor and/or other Class Members and Aggrieved
19 Employees outside of his scheduled shift times lasting at least five (5) to ten (10) minutes per call.
20 This time PLAINTIFF SOSA was required to spend responding to work-related phone calls and/or
21 messages outside of his scheduled shift times was not compensated, resulting in the underpayment
22 of wages owed to PLAINTIFF SOSA.

23 32. Moreover, PLAINTIFFS and other Class Members and Aggrieved Employees were
24 required to perform other off-the-clock work for which they were not compensated.

25 33. For example, PLAINTIFF SOSA was often required to give a debriefing of work
26 performed and/or events that had transpired during PLAINTIFF SOSA's shift to the subsequent
27 shift worker, resulting in at least ten (10) minutes of post-shift off-the-clock work that was neither
28 recorded nor compensated and the significant underpayment of wages owed to PLAINTIFF SOSA.

1 34. Additionally, PLAINTIFF SOSA was consistently required to arrive at work prior to
2 the start of his scheduled shift start time to assist co-workers and/or perform other work tasks
3 resulting in at least five (5) minutes of pre-shift off-the-clock work at least several times per month
4 and the significant underpayment of wages owed to PLAINTIFF SOSA. Based on information and
5 belief, other Class Members and Aggrieved Employees were also required to undergo off-the-clock
6 shift debriefings, assist co-workers and/or complete other work tasks outside of their scheduled shift
7 times resulting in consistent off-the-clock work and the underpayment of minimum wages owed to
8 Class Members and Aggrieved Employees.

9 35. Based on information and belief, DEFENDANTS required Aggrieved Employees to
10 be at their assigned workstations at the start of a scheduled shift, thereby forcing Aggrieved
11 Employees to gather work-related equipment and/or safety gear, make any necessary adjustments
12 to tools/equipment and/or their assigned vehicles and/or perform maintenance/cleaning tasks, don
13 work clothing/uniforms and/or protective equipment, and/or complete other work tasks prior to their
14 scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock
15 work.

16 36. For example, prior to clocking in/signing in for the start of his shift each workday,
17 PLAINTIFF MORALES was typically required to spend at least approximately fifteen (15) to
18 twenty (20) minutes donning work uniforms/work clothing, work shoes/boots and/or
19 protective/safety gear DEFENDANTS required PLAINTIFF MORALES wear for work.

20 37. For example, prior to clocking in/signing in for the start of his shift each day
21 DEFENDANTS required PLAINTIFF MORALES to first retrieve his uniform, work shoes/boots,
22 and/or protective/safety gear from DEFENDANTS' lockers/storage area, change out of his personal
23 clothing and into his uniform, work shoes/boots, and/or protective/safety gear, including but not
24 limited to, work pants, a work shirt with DEFENDANTS' logo, safety vest, boots, eye protection, a
25 hard hat and/or other uniforms/required work clothing and/or protective/safety gear.

26 38. Based on information and belief, DEFENDANTS also required other Aggrieved
27 Employees to perform pre-shift off-the-clock work in the form of including but not limited to,
28 donning uniforms/work clothing/work shoes and/or protective/safety gear, DEFENDANTS

1 required Aggrieved Employees to don prior to clocking in/signing in for the start of their shifts each
2 day, resulting in DEFENDANTS' failure to pay Aggrieved Employees for all hours worked and the
3 underpayment of wages owed to Aggrieved Employees.

4 39. Aggrieved Employees were required to complete additional off-the-clock work tasks
5 prior to clocking in/signing in for the start of their shifts.

6 40. For example, PLAINTIFF MORALES was also required to perform pre-shift off-
7 the-clock work in the form of, including but not limited to, preparing PLAINTIFF MORALES'
8 work vehicle and/or performing pre-trip vehicle and/or equipment inspections, resulting in at least
9 approximately twenty (20) minutes of pre-shift off-the-clock work at least approximately two (2) to
10 three (3) times per week, and the underpayment of wages owed to PLAINTIFF MORALES.

11 41. Also, based on information and belief, PLAINTIFF MORALES and other Aggrieved
12 Employees were required to perform administrative tasks, complete DEFENDANTS' required
13 paperwork and/or data entry and/or complete other work tasks prior to clocking in/signing in for the
14 start of their shifts, resulting in pre-shift off-the-clock work and the underpayment of wages owed
15 to PLAINTIFF MORALES and other Aggrieved Employees.

16 42. Based on information and belief, Aggrieved Employees were required to complete
17 other off-the-clock work tasks after clocking out/signing out for the end of their shifts and/or during
18 uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum
19 and overtime wages owed to Aggrieved Employees.

20 43. For example, based on information and belief, DEFENDANTS required Aggrieved
21 Employees to clock out for the end of their shifts but to continue working due to the need to
22 return/maintain tools, perform post-trip vehicle and/or equipment inspections, clean and/or organize
23 their work stations/areas, provide shift status updates and/or debriefings and/or participate in work
24 meetings, respond to work-related communications and/or perform other work tasks off-the-clock,
25 resulting in the underpayment of minimum wages and overtime wages owed to Aggrieved
26 Employees.

27 44. For example, after clocking out/signing out for the end of PLAINTIFF MORALES'
28 shift each workday, DEFENDANTS required¹² PLAINTIFF MORALES to change out of
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1 PLAINTIFF MORALES' work uniforms/work clothing, work shoes/boots, and/or protective/safety
2 gear and back into his personal clothing and then bestow the work uniforms/work clothing, work
3 shoes/boots and/or protective/safety gear in DEFENDANTS' locker/storage area before
4 PLAINTIFF MORALES could finally leave the work site, resulting in at least approximately five
5 (5) to ten (10) minutes of post-shift off-the-clock work during most if not all shifts PLAINTIFF
6 MORALES worked during PLAINTIFF MORALES' employment and the underpayment of wages
7 owed to PLAINTIFF.

8 45. Based on information and belief, Aggrieved Employees were required to undergo
9 security screenings and/or other mandated screenings before and/or after a scheduled shift and/or
10 before or after clocking in/out for work, resulting in pre-shift and/or post-shift off-the-clock work.

11 46. Based on information and belief, DEFENDANTS required Aggrieved Employees to
12 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
13 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

14 47. As explained above, DEFENDANTS did not compensate Aggrieved Employees for
15 all time spent donning and doffing personal protective equipment, safety equipment and/or
16 uniforms/work clothing (e.g. safety vests, work shoes/boots, eye protection, hard hats/head
17 protection and/or other uniforms/required work clothing and/or protective/safety gear) before the
18 start of a scheduled shift, during unpaid meal periods and/or after completing a scheduled shift,
19 resulting in DEFENDANTS' failure to pay Aggrieved Employees for all work time and the
20 underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

21 48. Based on information and belief, Aggrieved Employees were also pressured to
22 complete at least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals
23 and expectations.

24 49. For example, based on information and belief, Aggrieved Employees were required
25 to complete off-the-clock work outside of scheduled shifts due to including but not limited to, work-
26 related phone calls and/or messages they received to their phones and/or mobile devices and were
27 required to respond to, including but not limited to, communications from supervisors regarding
28 scheduling and/or other work tasks, resulting in the underpayment of wages owed to Aggrieved

1 Employees.

2 50. Based on information and belief, DEFENDANTS required PLAINTIFFS and other
3 Aggrieved Employees to record their scheduled hours worked rather than actual hours worked
4 and/or otherwise required PLAINTIFFS and other Aggrieved Employees to forego recording all
5 work time, resulting in DEFENDANTS' failure to pay PLAINTIFFS and other Aggrieved
6 Employees for all work time and the underpayment of wages owed to PLAINTIFFS and other
7 Aggrieved Employees.

8 51. Based on information and belief, DEFENDANTS required/requires Aggrieved
9 Employees to travel between DEFENDANTS' yards, facilities/locations and/or between job sites
10 without compensating Aggrieved Employees for the travel time, resulting in off-the-clock work and
11 the underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

12 52. Based on information and belief, DEFENDANTS failed to pay Class Members and
13 Aggrieved Employees for time they were required to spend completing orientation, policy
14 questionnaires, and/or time spent completing the onboarding process including but not limited to
15 reviewing various documents and policies provided by DEFEDANTS. Based on information and
16 belief, this work time was completed off-the-clock and was not compensated.

17 53. Based on information and belief, DEFENDANTS rounded the start and end times of
18 employee meal periods and true shift start and end times resulting in PLAINTIFFS and other Class
19 Members and Aggrieved Employees not being paid all owed minimum wages for all time worked.
20 On information and belief, DEFENDANTS implemented a time-rounding system that as applied
21 systematically deprived PLAINTIFFS and Class Members and Aggrieved Employees of
22 compensable time because the time-rounding system implemented by DEFENDANTS would
23 almost always, if not always, result in understating actual compensable work time.

24 54. For example, DEFENDANTS' wage statements issued to PLAINTIFF SOSA show
25 DEFENDANTS rounded PLAINTIFF SOSA's hours worked. For instance, DEFENDANTS' wage
26 statement issued to PLAINTIFF SOSA for pay period ending 6/18/22 shows exactly 80.00 Hours
27 Worked and exactly 2.00 Overtime Hours. Likewise, DEFENDANTS' wage statement issued to
28 PLAINTIFF SOSA for pay period ending 6/4/22 shows exactly 64.00 Hours Worked and exactly

1 11.00 Overtime Hours. Based on information and belief, DEFENDANTS' wage statements issued
2 to other Class Members and Aggrieved Employees also evidence rounding of hours worked.
3 DEFENDANTS' failure to pay for all time worked by virtue of its time-rounding practices resulted
4 in the underpayment of minimum wages owed to PLAINTIFFS and Class Members and Aggrieved
5 Employees.

6 55. DEFENDANTS' time rounding, automatic deduction policies and practices as well
7 as mandated off-the-clock work explained above resulted in a failure to account for all hours worked
8 and deprived PLAINTIFFS and Class Members and Aggrieved Employees of all owed minimum
9 wages.

10 56. Based on information and belief, DEFENDANTS had actual or constructive
11 knowledge that its time-rounding policies and practices, automatic deduction for meal periods that
12 were interrupted/cut short, and/or off-the-clock work completed during unpaid meal periods,
13 payment according to scheduled hours rather than actual hours worked/other off-the-clock work
14 policies and practices described above, resulted in the underpayment of minimum wages owed to
15 PLAINTIFFS and Class Members and Aggrieved Employees.

16 57. PLAINTIFFS are informed and believe and allege thereon that DEFENDANTS
17 engaged in these same herein described unlawful practices with regard to all of the Class Members
18 and Aggrieved Employees and that DEFENDANTS applied these same herein described unlawful
19 practices to all of their employees that it applied to PLAINTIFFS.

20 **FIRST CAUSE OF ACTION**

21 **Recovery of Unpaid Minimum Wages and Liquidated Damages** 22 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

23 58. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

24 59. DEFENDANTS failed to pay the minimum wage for all hours worked to
25 PLAINTIFFS and Class Members, in violation of Labor Code sections 1182.12, 1194, 1197, 1197.1,
26 and all applicable Wage Orders, including but not limited to IWC Wage Order No. 4-2001.

27 60. Labor Code section 1182.12(b) provides in pertinent part, "...the minimum wage for
28 all industries shall not be less than...(D) From January 1, 2021 to December 31, 2021, inclusive -
twelve dollars (\$12) per hour and (E) From January 1, 2022 to December 2021, inclusive, --thirteen
PLAINTIFFS' SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 dollars (\$13) per hour."

2 61. Labor Code section 1194 provides, "...any employee receiving less than the legal
3 minimum wage...applicable to the employee is entitled to recover in a civil action the unpaid
4 balance of the full amount of this minimum wage...including interest thereon, reasonable attorneys'
5 fees and costs of suit." Payment of a lower wage than the minimum so fixed is unlawful. Labor
6 Code section 1197.

7 62. California Labor Code section 1197.1 provides penalties for any employer who pays
8 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
9 local law.

10 63. DEFENDANTS violated Labor Code sections 1182.12, 1194, 1197, 1197.1, and
11 subsection 4(A)(1) of all applicable IWC Wage Orders, including but not limited to, IWC Wage
12 Order No. 4-2001, by failing to compensate PLAINTIFFS and the Class Members for all hours
13 worked by virtue of, among other things, DEFENDANTS' time rounding policies and practices,
14 payment according to scheduled hours worked instead of actual time worked, mandated off-the-
15 clock work policies and/or practices, automatic deduction policies and practice for interrupted meal
16 periods(described above).

17 64. DEFENDANTS had and continue to have a continuous policy of failing to pay
18 PLAINTIFFS and Class Members for all hours worked at the minimum wage.

19 65. Based on information and belief, DEFENDANTS had and continue to have a
20 continuous policy of requiring PLAINTIFFS and the Class Members to perform work prior to
21 clocking in for their shifts and/or outside of their scheduled shift times and during
22 interrupted/shortened meal periods, resulting in unpaid minimum wages.

23 66. Based on information and belief, DEFENDANTS had actual or constructive
24 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
25 interrupted/shortened meal periods, mandated off-the-clock work, policy and practice of payment
26 according to scheduled work time rather than actual work time resulted in the underpayment of
27 minimum wages owed to PLAINTIFFS and other Class Members.

28 67. DEFENDANTS were required to compensate PLAINTIFFS and Class Members
PLAINTIFFS' SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 with the minimum wage for all hours worked. DEFENDANTS failed to do so, and pursuant to
2 Labor Code section 1194(a), PLAINTIFFS and Class Members are entitled to recover “the unpaid
3 balance of the full amount of this minimum wage compensation, including interest thereon,
4 reasonable attorneys’ fees and costs of suit.

5 **SECOND CAUSE OF ACTION**

6 **Violation of the Private Attorneys General Act of 2004**

7 **(By PLAINTIFFS and the Aggrieved Employees Against All DEFENDANTS)**

8 68. PLAINTIFFS incorporate all preceding paragraphs as if full alleged herein.

9 69. PLAINTIFFS bring this action under the Private Attorneys General Act of 2004,
10 Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of the State of
11 California and Aggrieved Employees, regarding violations of the California Labor Code as set forth
12 herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

13 All current and former non-exempt employees employed by DEFENDANTS in
14 California at any time from one year plus 65 days from the filing of the initial
15 Complaint through the present (“PAGA Period”).

16 70. PLAINTIFFS are each an "aggrieved employee," as that term is defined under Labor
17 Code section 2699(c), as PLAINTIFFS were employed by DEFENDANTS during the applicable
18 statutory limitations period and suffered one or more of the Labor Code violations set forth herein.
19 Accordingly, PLAINTIFFS seek to recover on behalf of the State of California and all Aggrieved
20 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
21 PLAINTIFFS have standing to bring a PAGA cause of action on behalf of the State and all
22 Aggrieved Employees, as PLAINTIFFS were jointly employed by DEFENDANTS and are thereby
23 affected by one or more of the alleged violations. See *Huff v. Securitas Security Services USA, Inc.*
24 (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known
25 violations committed by the employer - regardless of whether Plaintiff experienced all violations
26 personally. *Id.* at 760-761.

27 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

28 71. On January 20, 2023, PLAINTIFF SOSA, through counsel, gave written notice by
online filing with the California Labor and Workforce Development Agency ("LWDA") informing

1 it that DEFENDANTS failed to comply with California's labor laws with regard to the allegations
2 alleged in this Complaint ("PAGA Notice").

3 72. On August 11, 2023, PLAINTIFF MORALES, through counsel, gave written notice
4 by online filing with the California Labor and Workforce Development Agency ("LWDA")
5 informing it that DEFENDANTS failed to comply with California's labor laws with regard to the
6 allegations alleged in this Complaint ("PAGA Notice").

7 73. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
8 violations after expiration of the 65-day waiting time periods, or at any time. To the extent any of
9 the alleged violations were curable, DEFENDANTS failed to cure within the time allotted by
10 PAGA. PLAINTIFFS have exhausted the administrative remedies as required by Labor Code
11 section 2699.3. Consequently, PLAINTIFFS' right to file the instant lawsuit has duly accrued.

12 74. PLAINTIFFS seek to recover the PAGA civil penalties through a representative
13 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
14 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

15 75. From one year prior to PLAINTIFFS' filing of the required PAGA notice with the
16 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
17 Labor Code sections 1182.12, 1194, 1197, 1197.1 and the applicable Wage Order.

18 76. Therefore, under the provisions of PAGA and Labor Code section 558, 558.1,
19 1194, 1194.2, 1197, 1197.1, 2699 and all applicable Wage Orders, as well as all interpretations
20 of these laws by California Courts and administrative bodies, as well as any other law that is
21 enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 22 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
23 relevant California Labor Code provisions listed herein only if permitted by the
24 PAGA statute

25 77. The proper measure of penalties under PAGA is the number of violations, whether
26 those violations were committed as against PLAINTIFFS or any Aggrieved Employee, whether a
27 party to this action or not.

28 78. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
PLAINTIFFS' SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 PLAINTIFFS are entitled to recover civil penalties, costs, and attorney's fees.

2
3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFFS pray for relief and judgment, on behalf of PLAINTIFFS, the
5 State of California, Aggrieved Employees and Class Members as follows:

- 6 1. For an order that the action be certified as a class action;
7 2. For an order that PLAINTIFFS be appointed as class representatives;
8 3. For an order that counsel for PLAINTIFFS be appointed as class counsel;
9 4. For compensatory damages according to proof;
10 5. For liquidated damages according to proof;
11 6. For penalties according to proof;
12 7. For pre-judgment interest as permitted by law;
13 8. For attorney's fees and costs reasonably incurred;
14 9. For civil penalties according to proof, including PAGA penalties (75% payable to the
15 LWDA and 25% payable to Aggrieved Employees); and
16 10. For such other and further relief that the Court deems just and proper.

17
18 Dated: January 16, 2024

CROSNER LEGAL, PC

19
20 By:  _____

21 Jamie Serb, Esq.
22 Brandon Brouillette, Esq.
23 Zachary M. Crosner, Esq.
24 Attorneys for Plaintiffs
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DEMAND FOR JURY TRIAL

PLAINTIFF demands a trial by jury on all claims so triable.

Dated: January 16, 2024

CROSNER LEGAL, PC

By: _____

Jamie Serb, Esq.
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiffs