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8 and ALEXANDER MEDINA LOPEZ

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF RIVERSIDE**

12
13 TUAN Q LE and ALEXANDER MEDINA
LOPEZ, as an individual and on behalf of all
14 others similarly situated,

15 Plaintiff,

16
17 v.

18 FUTURE TECH METALS, INC., a
19 California corporation; and DOES 1-100,
inclusive,

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21 Defendants.
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Case No.: CVRI2105851

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Failure to Furnish Accurate Itemized Wage Statements**
6. **Failure to Timely Pay All Wages Due Upon Separation of Employment**
7. **Violation of the Private Attorneys General Act of 2004 and**
8. **Unfair Competition**

DEMAND FOR JURY TRIAL

1 Plaintiffs, TUAN Q LE and ALEXANDER MEDINA LOPEZ (“PLAINTIFFS”), as
2 individuals and on behalf of all others similarly situated, hereby file this First Amended Complaint
3 against Defendant FUTURE TECH METALS, INC., a California corporation, and DOES 1-100,
4 inclusive (collectively referred to herein as “DEFENDANTS”). PLAINTIFFS are informed and
5 believe and thereon allege as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is
8 proper in Riverside County, California, because DEFENDANTS transact business within this
9 judicial district, DEFENDANTS maintain its principal place of business in Riverside County,
10 DEFENDANTS employed PLAINTIFFS at one of its facilities located in Riverside County,
11 California, and some of the complained of conduct occurred in this judicial district.

12 **THE PARTIES**

13 2. PLAINTIFFS reside in the State of California. PLAINTIFFS worked for
14 DEFENDANTS in the State of California as non-exempt, hourly-paid employees during the relevant
15 time period.

16 3. Defendant FUTURE TECH METALS, INC. is a California corporation that at all
17 relevant times, was authorized to do business within the State of California and is doing business
18 within the State of California. DEFENDANTS and their managing agents own, operate, or
19 otherwise manage a machinery company specializing in the provision of precision machinery
20 services to the airline industry.

21 4. The true names and capacities of the DOE Defendants sued herein as DOES 1
22 through 100, inclusive, are currently unknown to PLAINTIFFS, who therefore sue each such
23 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
24 responsible for the unlawful acts alleged herein. PLAINTIFFS will seek leave of Court to amend
25 this Complaint to reflect the true names and capacities of the Doe Defendants when such identities
26 become known.

27 5. PLAINTIFFS are further informed and believe that, at all relevant times, each
28 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,

1 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
2 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
3 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
4 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
5 complaint. PLAINTIFFS are further informed and believe and thereon allege that each Defendant
6 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
7 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
8 controlled, aided and abetted the conduct of all other Defendants.

9 **JOINT LIABILITY**

10 6. Under California law, the definition of the terms “to employ” are broadly construed
11 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
12 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
13 to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*, 49
14 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
15 was to reach situations in which multiple entities control different aspects of the employment
16 relationship. Supervision of the work, in the specific sense of exercising control over how services
17 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
18 wage order. *Id.* at 76. A joint employer relationship exists when one entity (such as a temporary
19 employment agency) hires and pays a worker, and the other entity supervises the work. *Id.*

20 7. During PLAINTIFFS’ employment by DEFENDANTS, PLAINTIFFS and the Class
21 Members (defined below) were jointly employed by these DEFENDANTS for purposes of the Wage
22 Orders, under the alternative definitions of “to employ” adopted by the California Supreme Court
23 in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages,
24 hours and working conditions of PLAINTIFFS and the Class Members; (2) suffered or permitted
25 PLAINTIFFS and the Class Members to work for them; and, (3) engaged PLAINTIFFS and the
26 Class Members to work for them.

27 8. PLAINTIFFS are informed and believe, and thereon allege that at all relevant times
28 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized

1 human resources as a set forth herein. As a result, DEFENDANTS utilized the same unlawful
2 policies and practices across all of their locations/facilities and subjected all of the Class Members
3 to these same policies and practices regardless of the location(s) or facilities where they worked.

4 9. PLAINTIFFS are informed and believe, and thereon allege that at all times relevant
5 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFFS and the Class
6 Members upon whose behalf PLAINTIFFS bring these allegations and causes of action, in that
7 DEFENDANTS, exercised sufficient control over PLAINTIFFS and the Class Members' wages,
8 hours and working conditions, and/or suffered or permitted PLAINTIFFS and the Class Members
9 to work so as to be considered the joint employers of PLAINTIFFS and the Class Members.
10 Specifically, upon information and belief, PLAINTIFFS allege that DEFENDANTS created a
11 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
12 time-keeping practices, meal and rest periods, and other working conditions that were distributed
13 to, and/or applied to PLAINTIFFS and the Class Members, and further that DEFENDANTS
14 uniformly compensated and controlled the wages of PLAINTIFFS and the Class Members in a
15 uniform manner. DEFENDANTS collectively represented to PLAINTIFFS and the Class Members
16 that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS collectively
17 retained the right to terminate PLAINTIFFS and the Class Members' employment with or without
18 cause. Upon information and belief, DEFENDANTS further collectively represented to
19 PLAINTIFFS and the Class Members in writing the details of their compensation, and the manner
20 in which they were to take meal and rest periods, the procedures required by DEFENDANTS
21 collectively for recordation of hours worked and the policies applicable to PLAINTIFFS and the
22 Class Members by which DEFENDANTS collectively would evaluate the wage rates of
23 PLAINTIFFS and the Class Members.

24 10. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
25 and working conditions of PLAINTIFFS and the Class Members. As such, DEFENDANTS
26 collectively held the right to control virtually every aspect of PLAINTIFFS' and the Class Members'
27 employment, including the instrumentality that resulted in the illegal conduct for which
28 PLAINTIFFS seeks relief in this Complaint.

11. PLAINTIFFS are informed and believe that DEFENDANTS exercised the same control over, applied the same policies and practices, and engaged in the same acts and omissions with regard to the other Class Members.

CLASS ALLEGATIONS

12. PLAINTIFFS bring this action on behalf of PLAINTIFFS and all others similarly situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFFS seek to represent are defined as follows and referred to as the “Class Members”: “All current and former non-exempt employees that worked either directly or via a staffing agency for any of the DEFENDANTS in California at any time within the four years prior to the filing of the initial complaint.”

a. Common Questions of Law and Fact. This lawsuit is suitable for class treatment because common questions of law and fact predominate over individual issues. Common questions include, but are not limited to, the following: (1) whether DEFENDANTS understated hours worked and failed to pay all amounts due to PLAINTIFFS and the Class Members for wages earned, including minimum and overtime wages, under California law; (2) whether DEFENDANTS provided PLAINTIFFS and the Class Members with all meal periods or premium payments in lieu thereof, in compliance with California law; (3) whether DEFENDANTS provided PLAINTIFFS and the Class Members with all rest periods or premium payments in lieu thereof, in compliance with California law; (4) whether DEFENDANTS provided PLAINTIFFS and the Class Members with accurate, itemized wage statements in compliance with California law, displaying, including but not limited to, the total hours worked during the pay period; (5) whether DEFENDANTS timely paid PLAINTIFFS and the Class Members all wages due upon separation of employment; and (6) whether DEFENDANTS violated California Business and Professions Code sections 17200, et seq.

b. Ascertainable Class. The proposed class is ascertainable as its members can be

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

3 c. Numerosity. The class is so numerous that the individual joinder of all Class
4 Members is impractical under the circumstances of this case. While the exact
5 number of Class Members is unknown to PLAINTIFFS, PLAINTIFFS are
6 informed and believe the class consists of at least 100 individuals.

7 d. Typicality. PLAINTIFFS' claims are typical of the claims of the Class
8 Members. PLAINTIFFS suffered a similar injury as the other Class Members
9 as a result of DEFENDANTS' common practices regarding, *inter-alia*, failure
10 to calculate and pay all owed minimum and overtime wages, failure to provide
11 proper meal and rest periods or premium compensation in lieu thereof, failure
12 to provide accurate wage statements, and failure to pay all wages due upon
13 separation of employment.

14 e. Adequacy. PLAINTIFFS will fairly and adequately protect the interests of the
15 Class Members. PLAINTIFFS have no interests adverse to the interests of the
16 other Class Members. Counsel who represent PLAINTIFFS are competent and
17 experienced in litigating similar class action cases and are California lawyers in
18 good standing. Counsel for PLAINTIFFS have the experience and resources to
19 vigorously prosecute this case.

20 f. Superiority. A class action is superior to other available means for the fair and
21 efficient adjudication of this controversy since individual joinder of all members
22 of the class is impractical. Class action treatment will permit a large number of
23 similarly situated persons to prosecute their common claims in a single forum
24 simultaneously, efficiently, and without the unnecessary duplication of effort
25 and expense that numerous individual actions would engender. Furthermore, as
26 the damages suffered by each individual member of the class may be relatively
27 small, the expenses and burden of individual litigation would make it difficult
28 or impossible for individual members of the class to redress the wrongs done to

1 them, while an important public interest will be served by addressing the matter
2 as a class action. The cost to the court system of adjudication of such
3 individualized litigation would be substantial. Individualized litigation would
4 also present the potential for inconsistent or contradictory judgments. Finally,
5 the alternative of filing a claim with the California Labor Commissioner is not
6 superior, given the lack of discovery in such proceedings, the fact that there are
7 fewer available remedies, and the losing party has the right to a trial de novo in
8 the Superior Court.

9 **FACTUAL AND LEGAL ALLEGATIONS**

10 13. During the four-year period preceding filing of the original complaint, PLAINTIFFS,
11 and each of the Class Members, were employed by DEFENDANTS in the State of California as
12 non-exempt, hourly-paid workers. At all times referenced herein, DEFENDANTS exercised control
13 over PLAINTIFFS and each of the Class Members and suffered and/or permitted them to work.

14 14. PLAINTIFF LE was employed by DEFENDANTS as a non-exempt employee with
15 the job title of Production Lathe Machinist, Setup CNC Machinist, CNC Operator and/or similar
16 title, during the relevant time period, until the termination of PLAINTIFF LE's employment, on or
17 about August 4, 2020. PLAINTIFF LE typically worked shifts of at least ten to twelve hours per
18 day. PLAINTIFF LE primarily worked the night shift.

19 15. PLAINTIFF LOPEZ was employed by DEFENDANTS as a non-exempt employee
20 with the job title of Production Lathe Machinist, CNC Operator and/or other similar title, during the
21 relevant time period, until the termination of PLAINTIFF LOPEZ's employment, on or about
22 February 12, 2020. PLAINTIFF LOPEZ typically worked shifts lasting at least eight (8) to eleven
23 (11) hours per day, five (5) days per week. PLAINTIFF LOPEZ typically worked the day shift.

24 16. In violation of California's minimum wage and overtime laws, DEFENDANTS
25 failed to compensate PLAINTIFFS for all hours worked by virtue of, among other things, its time-
26 rounding policies and practices and failure to relieve PLAINTIFFS of all duties and employer
27 control during unpaid meal periods. DEFENDANTS implemented a policy and practice of time
28 rounding that, as applied, systematically deprived PLAINTIFFS of compensable time because the

1 time-rounding system implemented by DEFENDANT, more often than not, if not always, resulted
2 in understating PLAINTIFFS' actual compensable work time and thus the underpayment of
3 minimum and overtime wages owed to PLAINTIFFS. For example, DEFENDANTS' time records
4 for PLAINTIFF LE for the period of July 20, 2020 to July 26, 2020 show a reported 40.46 hours
5 while DEFENDANTS' earnings statement for that same time period reveals PLAINTIFF LE was
6 compensated for a mere 40.0 hours of work. Based on information and belief, DEFENDANTS did
7 not compensate PLAINTIFFS for time spent donning and doffing personal protective equipment
8 and/or uniforms during meal periods, rest periods, before the start of a scheduled shift, and/or after
9 completing a scheduled shift. Further, DEFENDANTS implemented policies and practices that
10 failed to relieve PLAINTIFFS of all duties and employer control during unpaid meal breaks. For
11 example, based on information and belief, DEFENDANTS had a uniform policy and practice of
12 requiring its employees, including PLAINTIFFS, to remain on the worksite premises at all times
13 during their shifts, including during unpaid meal breaks. Based on further information and belief,
14 EMPLOYER illegally rounded the start and end times of employee meal periods resulting in
15 PLAINTIFFS not being paid for all time worked as well as late or shortened meal periods.
16 DEFENDANTS' time-rounding policies and practices pertaining to employee shift start and end
17 times and meal periods, DEFENDANTS' policies and practices of failing to relieve employees of
18 all duties and employer control during unpaid meal breaks, payment according to scheduled hours
19 rather than actual time work and mandated pre-shift and/or post-shift off-the-clock work described
20 herein resulted in significant uncompensated work time and the underpayment of minimum and
21 overtime wages owed to PLAINTIFFS.

22 17. Based on information and belief, PLAINTIFFS and other Class Members were also
23 required to complete off-the-clock work tasks outside of their scheduled shifts due to work-related
24 phone calls and/or messages they received and were required to respond to, prior to clocking in for
25 their shifts and/or after clocking out for their shifts. For example, after clocking out for his shift
26 each day, on average, at least three times per week, PLAINTIFF LOPEZ was required to respond
27 to work-related phone calls and/or text messages received on his personal cell phone, including but
28 not limited to, communications from supervisors and/or the next shift worker requesting an update

1 on the status of operations/activities at the end of PLAINTIFF LOPEZ's shift and/or regarding other
2 work tasks. PLAINTIFF LOPEZ estimates this resulted in an average of at least fifteen minutes of
3 off-the-clock work per week that was neither recorded nor compensated, resulting in the
4 underpayment of minimum and overtime wages owed to PLAINTIFF LOPEZ. Based on
5 information and belief, other Class Members were also required to complete off-the-clock work
6 outside of scheduled shifts due to work-related phone calls and/or messages they received on their
7 personal cell phones and were required to respond to, including but not limited to, communications
8 from co-workers and/or supervisors, resulting in significant off-the-clock work and the
9 underpayment of minimum and overtime wages owed to Class Members.

10 18. DEFENDANTS failed to pay twice PLAINTIFFS' regular rate(s) of pay for time
11 worked beyond twelve (12) hours per day and for time worked beyond eight (8) hours on the seventh
12 consecutive day of work in a work week, in violation of California's overtime laws. For example,
13 when PLAINTIFF LE would work twelve-hour shifts for seven (7) consecutive days in a work week,
14 DEFENDANTS would not pay four (4) hours of double time for the last four (4) hours worked on
15 the seventh consecutive day.

16 19. PLAINTIFFS typically worked at least ten hours per day during the relevant period.
17 PLAINTIFFS were not provided a thirty-minute, off-duty meal period before the end of the fifth
18 hour of work each day he worked for DEFENDANTS due to DEFENDANTS' policies and practices
19 described herein that failed to relieve PLAINTIFFS of all duties or employer control during meal
20 periods, pressure to meet warehouse quotas/work deadlines, lack of relief workers available, the
21 need to attend to work tasks requiring immediate attention and pressure from management to take
22 noncompliant meal periods. DEFENDANTS did not advise PLAINTIFFS that meal periods should
23 be free of all duties and employer control.

24 20. Per DEFENDANTS' unlawful policies and practices pertaining to meal periods,
25 DEFENDANTS also failed to provide PLAINTIFFS a duty-free, uninterrupted, thirty-minute
26 second meal period before the end of the tenth hour of work despite PLAINTIFFS consistently
27 working over ten hours in a workday and thus being entitled to a second duty-free, uninterrupted,
28 thirty-minute meal period before the end of the tenth hour of work. For example, PLAINTIFFS

1 regularly worked over ten hours per shift, but was only provided with one meal period, and that
2 single meal period was non-compliant.

3 21. Based on information and belief, DEFENDANTS rounded the start and end times of
4 employee meal periods and start and end times of employee shifts resulting in PLAINTIFFS not
5 being paid for all time worked. PLAINTIFFS are further informed and believe and thereon allege
6 that DEFENDANTS had actual or constructive knowledge that its time-rounding and auto-
7 deduction policies and practices and policies and practices that failed to relieve PLAINTIFFS of all
8 duties or employer control during unpaid meal periods resulted in the denial of lawful meal periods
9 to PLAINTIFFS and the underpayment of wages owed PLAINTIFFS, in violation of California's
10 minimum and overtime wage and meal period laws. DEFENDANTS did not pay PLAINTIFFS an
11 additional hour of wages at PLAINTIFFS' regular rate of pay for each workday a proper meal period
12 was not provided.

13 22. DEFENDANTS did not authorize or permit PLAINTIFFS to take legally compliant
14 rest periods. DEFENDANTS did not advise PLAINTIFFS when rest periods should be taken, how
15 long rest periods should be, how many rest periods he should receive in a given shift, nor that rest
16 periods should be free of all duties and employer control.

17 23. PLAINTIFFS' work schedules typically entitled PLAINTIFFS to three (3) net ten-
18 minute, duty-free rest periods per shift given that PLAINTIFFS usually worked shifts longer than
19 ten hours. However, PLAINTIFFS were consistently unable to take a net ten-minute, off-duty rest
20 period for every four (4) hours worked or major fraction thereof. PLAINTIFFS were prohibited
21 from taking net ten-minute, uninterrupted, off-duty, rest periods due to pressure to meet warehouse
22 quotas/deadlines, lack of relief workers available, the need to attend to work tasks requiring
23 immediate attention and/or pressure from management to take noncompliant rest periods.
24 DEFENDANTS implemented policies and practices that failed to relieve PLAINTIFFS of all duties
25 and employer control during any rest periods. For example, per DEFENDANTS' uniform policy
26 and practice, PLAINTIFFS were prohibited from leaving the worksite premises during any rest
27 periods and thus remained under employer control during any rest periods, rendering said rest
28 periods noncompliant with California rest period law. PLAINTIFFS did not receive legally

1 compliant first, second, or third rest periods. DEFENDANTS never paid PLAINTIFFS any rest
2 period premium for any missed/non-compliant rest period.

3 24. DEFENDANTS failed to provide PLAINTIFFS with accurate wage statements that
4 complied with Labor Code section 226. Wage statements provided by DEFENDANTS do not
5 accurately reflect, *inter-alia*, the total hours worked for the pay period. Wage statements provided
6 by DEFENDANTS fail to indicate the “total hours worked” by PLAINTIFFS by virtue of, including
7 but not limited to, DEFENDANTS’ time-rounding practices and failure to relieve employees of all
8 duties and employer control during unpaid meal periods, as described herein. As a result, the wage
9 statements provided to the Class Members were not accurate and do not include all of the statutorily
10 required information, such as, but not limited to, the total hours worked. Accordingly,
11 DEFENDANTS violated Labor Code section 226.

12 25. Upon separation of employment, PLAINTIFFS’ final paychecks were not timely
13 provided, and PLAINTIFFS’ final paychecks, once provided, did not include all wages owed as
14 they were devoid of, including but not limited to, all earned and unpaid minimum wages, overtime
15 wages, and all accrued paid time off at the properly accrued rates. For example, based on
16 information and belief, PLAINTIFF LOPEZ was terminated on February 12, 2020; however,
17 PLAINTIFF LOPEZ’s final paycheck, dated February 13, 2020, was not provided until after his
18 date of termination, and did not include all wages owed as it was devoid of all earned and unpaid
19 minimum wages, overtime wages and all accrued paid time off at the properly accrued rates.

20 26. PLAINTIFFS are informed and believe and allege thereon that DEFENDANTS
21 engaged in these same herein described unlawful practices with regard to all of the Class Members,
22 and that DEFENDANTS applied these same herein described unlawful practices to all of its
23 employees that it applied to PLAINTIFFS.

24 **FIRST CAUSE OF ACTION**

25 **Recovery of Unpaid Minimum Wages and Liquidated Damages**
26 **(Against All Defendants)**

27 27. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

28 28. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up

1 to forty per week or eight (8) per day, at a regular time rate no less than the mandated minimum
2 wage. Payment to an employee of less than the applicable minimum wage for all hours worked in
3 a payroll period is unlawful.

4 29. DEFENDANTS violated California's minimum wage laws by, including but not
5 limited to, failing to compensate PLAINTIFFS and the Class Members for all hours worked by
6 virtue of, among other things, DEFENDANTS' failure to relieve PLAINTIFFS and the Class
7 Members of all duties and employer control during unpaid meal periods, DEFENDANTS' policies
8 and practices of mandating pre-shift and or post-shift off-the-clock work, payment of wages based
9 on scheduled hours and not actual hours worked and rounded time entries.

10 30. DEFENDANTS had and continues to have a continuous policy of failing to pay
11 PLAINTIFFS and Class Members for all hours worked.

12 31. DEFENDANTS had and continue to have a continuous policy of clocking out
13 PLAINTIFFS and Class Members/requiring PLAINTIFFS and Class Members clock out for at least
14 one thirty-minute meal period per shift, even though PLAINTIFFS and Class Members were not
15 relieved of all duties and employer control during said meal periods, rendering the unpaid time
16 compensable under California law.

17 32. DEFENDANTS had and continue to have a continuous policy of rounding the Class
18 Members time punches, including meal period time punches. On information and belief, this policy
19 favored DEFENDANTS more often than not, resulting in significant uncompensated time worked
20 by the Class Members. Moreover, based on information and belief, DEFENDANTS did not
21 compensate PLAINTIFFS and the Class Members for time spent donning and doffing personal
22 protective equipment and/or uniforms during meal periods, rest periods, before the start of a
23 scheduled shift, and/or after completing a scheduled shift.

24 33. DEFENDANTS had and continue to have a continuous policy of paying
25 PLAINTIFFS and Class Members for scheduled hours, rather than actual time worked.

26 34. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFFS and the Class
27 Members are entitled to recover all unpaid minimum time wages and liquidated damages thereon,
28 plus attorney's fees and costs, in an amount to be proved at trial.

SECOND CAUSE OF ACTION
Recovery of Unpaid Overtime Wages
(Against All Defendants)

35. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

36. Employees in California must be paid overtime, equal to one and one-half times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of work in a workweek, and they must be paid double the regular rate of pay for all hours worked in excess of twelve hours in any workday and for all hours worked in excess of eight (8) on the seventh consecutive day of work in a workweek, unless they are exempt.

37. PLAINTIFFS and the Class Members worked overtime hours for which they were not compensated by DEFENDANTS by virtue of DEFENDANTS' auto-deduction and time-rounding/time-shaving policies and other mandated off-the-clock work policies and practices described above. Based on information and belief, DEFENDANTS also failed to pay the correct overtime rate(s) to Class Members due to DEFENDANTS' failure to incorporate all forms of non-discretionary compensation, including but not limited to, non-discretionary bonuses, shift differential pay and or multiple regular rates of pay and or other non-discretionary compensation, into the regular pay rate used to calculate the owed overtime rate(s). Failure to include all non-discretionary compensation in the overtime pay rate calculation resulted in the underpayment of owed overtime wages to Class Members.

38. DEFENDANTS failed to pay twice PLAINTIFFS and the Class Members regular rate(s) of pay for time worked beyond twelve (12) hours per day and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

39. DEFENDANTS' conduct described above is in violation of California Labor Code sections 510 and 1194 and all applicable Industrial Wage Commission Wage Orders.

40. PLAINTIFFS and the Class Members are entitled to recover all unpaid overtime wages, plus attorney's fees and costs, in an amount to be proved.

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THIRD CAUSE OF ACTION
Failure to Provide Meal Periods or Compensation in Lieu Thereof
(Against All Defendants)

41. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

42. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders, DEFENDANTS were required to provide PLAINTIFFS and the Class Members with one thirty-minute meal period free from all duties and employer control for all shifts longer than five (5) hours, and a second thirty-minute meal period free from all duties for all shifts longer than ten hours. Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed no meal period was provided.

43. PLAINTIFFS and the Class Members were not able to take timely, off-duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods and/or work through part or all of their meal periods due to the nature and constraints of their job duties, lack of relief workers available/scheduling issues, pressure to meet warehouse quotas/deadlines, lack of relief workers available, the need to attend to work tasks requiring immediate attention and pressure from DEFENDANTS to take noncompliant meal periods or skip meal periods completely.

44. Per DEFENDANTS' unlawful policies and practices pertaining to meal periods, DEFENDANTS also failed to provide PLAINTIFFS and the Class Members with duty-free, uninterrupted, thirty-minute, second meal periods before the end of the tenth hour of work when working more than ten hours.

45. DEFENDANTS have and continue to have a continuous policy of clocking out PLAINTIFFS and Class Members/requiring PLAINTIFFS and the Class Members clock out for at

1 least thirty minutes per shift for a meal period, even though PLAINTIFFS and Class Members were
2 not relieved of all duties and employer control during said meal periods, rendering the unpaid time
3 compensable under California law.

4 46. Based on further information and belief, DEFENDANTS rounded the start and end
5 times of employee meal periods resulting in PLAINTIFFS and the Class Members receiving late or
6 shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

7 47. PLAINTIFFS are further informed and believe and thereon allege that
8 DEFENDANTS had actual or constructive knowledge that its time-rounding and auto-deduction
9 policies and practices resulted in the denial of meal periods to PLAINTIFFS and the Class Members,
10 in violation of California's meal period laws.

11 48. DEFENDANTS did not pay PLAINTIFFS and the Class Members an additional hour
12 of wages at their respective regular rates of pay for each workday a proper meal period was not
13 provided. DEFENDANTS either failed to pay a meal period premium at all for each workday a
14 legally compliant meal period was not provided or failed to pay the proper meal period premium for
15 failure to incorporate all non-discretionary remuneration, including but not limited to, non-
16 discretionary bonus compensation, multiple regular pay rates, and/or shift differential
17 compensation, into the regular pay rate for purposes of calculating the owed meal period premiums.

18 49. DEFENDANTS failed to provide PLAINTIFFS and the Class Members with all
19 required meal periods, or with proper compensation in lieu thereof. As a result, under Labor Code
20 section 226.7, PLAINTIFFS and the Class Members are entitled to one additional hour's pay at the
21 proper premium pay rate for each day a meal period was missed, late or interrupted, all in an amount
22 to be proved at trial.

23 **FOURTH CAUSE OF ACTION**
24 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
25 **(Against All Defendants)**

26 50. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

27 51. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
28 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period

1 “insofar as practicable.” The rest period requirement obligates employers to permit and authorize
2 employees to take off-duty rest periods, meaning employers must relieve employees of all duties
3 and relinquish control over how employees spend their time. *Augustus v. ABM Security Services,*
4 *Inc.*, (2016) 5 Cal.5th 257. If the employer fails to provide any required rest period, the employer
5 must pay the employee one hour of pay at the employee’s regular rate of compensation for each
6 workday the employer did not provide at least one legally required rest period, pursuant to Labor
7 Code section 226.7.

8 52. PLAINTIFFS and the Class Members did not receive compliant, timely, net ten-
9 minute rest periods every four (4) hours worked or major fraction thereof. PLAINTIFFS and the
10 Class Members were consistently unable to take a net ten-minute, off-duty rest period for every four
11 (4) hours worked or major fraction thereof due to, including but not limited to, lack of relief workers
12 available, demands to meet warehouse quotas and/or work deadlines, having to attend to work tasks
13 requiring immediate attention, including during any purported rest periods.

14 53. DEFENDANTS implemented policies and practices that failed to relieve
15 PLAINTIFFS and the Class Members of all duties and employer control during any rest periods.
16 For example, per DEFENDANTS’ uniform policy and practice, PLAINTIFFS and the Class
17 Members were prohibited from leaving the worksite during any rest periods and thus remained under
18 employer control during any rest periods, rendering said rest periods noncompliant with California
19 rest period law. PLAINTIFFS and the Class Members did not receive legally compliant first, second,
20 or third rest periods. PLAINTIFFS and the Class Members were pressured to complete their work
21 tasks according to a schedule designated by DEFENDANTS that prohibited the taking of compliant
22 rest periods; rest periods were only taken once jobs were completed/as time permitted.

23 54. DEFENDANTS did not pay PLAINTIFFS and the Class Members an additional hour
24 of wages at their regular rate(s) of pay for each workday a proper rest period was not provided.

25 55. DEFENDANTS are therefore liable to PLAINTIFFS and the Class Members for one
26 hour of additional pay at the regular rate of compensation for each workday that a required rest
27 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
28 Order, plus pre-judgment interest.

FIFTH CAUSE OF ACTION
Failure to Furnish Accurate Itemized Wage Statements
(Against All Defendants)

56. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

57. Pursuant to California Labor Code section 226, subdivision (a), PLAINTIFFS and the Class Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement accurately stating the following:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (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.

58. During the relevant period, DEFENDANTS failed to provide PLAINTIFFS and the Class Members with accurate wage statements that complied with Labor Code section 226. Wage statements provided by DEFENDANTS do not accurately reflect, *inter-alia*, the total hours worked for the pay period. Wage statements provided by DEFENDANTS fail to indicate the “total hours worked” by PLAINTIFFS and the Class Members by virtue of DEFENDANTS’ automatic deduction for on-duty/shortened/interrupted/missed meal periods, time-rounding practices and mandated pre-shift/post-shift off-the-clock work and/or payment according to scheduled hours instead of actual hours worked as described herein. Based on information and belief, the wage statements provided to the Class Members do not include the name of the legal entity that is the employer. As a result, the wage statements provided to the Class Members were not accurate and do not include all of the statutorily required information, such as, but not limited to, the total hours worked. Accordingly, DEFENDANTS violated Labor Code section 226.

59. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFFS and the

1 Class Members with proper, itemized wage statements as any wage statements provided by
2 DEFENDANTS do not accurately reflect, *inter-alia*, the total hours worked per pay period.

3 60. As a result of DEFENDANTS' unlawful conduct, PLAINTIFFS and the Class
4 Members have suffered injury. The absence of accurate information on their wage statements has
5 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
6 mathematical computations to determine the amount of wages owed, and will cause difficulty and
7 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
8 submission of inaccurate information about wages and amounts deducted from wages to state and
9 federal government agencies. As a result, PLAINTIFFS and the Class Members are required to
10 participate in this lawsuit and create more difficulty and expense for PLAINTIFFS and the Class
11 Members from having to reconstruct time and pay records than if DEFENDANTS had complied
12 with its legal obligations.

13 61. Pursuant to California Labor Code section 226(e), PLAINTIFFS and the Class
14 Members are entitled to recover fifty dollars per employee for the initial pay period in which a
15 Section 226 violation occurred and one hundred dollars per employee per violation for each
16 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

17 62. Pursuant to California Labor Code section 226(h), PLAINTIFFS and the Class
18 Members are entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance
19 with California Labor Code section 226(a). Injunctive relief is warranted because DEFENDANTS
20 continue to provide currently employed Class Members with inaccurate wage statements or no wage
21 statements at all in violation of California Labor Code section 226(a). Currently employed Class
22 Members have no adequate legal remedy for the continuing injuries that will be suffered as a result
23 of DEFENDANTS' ongoing unlawful conduct. Injunctive relief is the only remedy available for
24 ensuring DEFENDANTS' compliance with California Labor Code section 226(a).

25 63. Pursuant to California Labor Code sections 226(e) and 226(h), PLAINTIFFS and the
26 Class Members are entitled to recover the full amount of penalties due under Section 226(e),
27 reasonable attorneys' fees, and costs of suit.

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SIXTH CAUSE OF ACTION
Failure to Timely Pay All Wages Due Upon Separation of Employment
(Against All Defendants)

64. PLAINTIFFS incorporate all preceding paragraphs as if fully set forth herein. California Labor Code section 201(a) provides, in relevant part, that “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

65. California Labor Code section 202(a) provides, in relevant part, that “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

66. DEFENDANTS failed to timely pay PLAINTIFFS and the Class Members all wages that were due and owing upon termination or resignation, as described herein. Upon separation of employment, DEFENDANTS failed to timely furnish PLAINTIFFS and the Class Members with their final paychecks containing all earned and unpaid minimum wages, overtime wages, vacation pay, and all accrued paid time off. Based on information and belief, the final paychecks were not provided upon separation of employment within the time limits prescribed by California law, including but not limited to, Labor Code sections 201 and 202, and any final paychecks provided were devoid of all earned and unpaid wages, including but not limited to, all earned and unpaid minimum wages, overtime wages, vacation pay, and all accrued paid time off.

67. DEFENDANTS willfully failed to timely pay all wages upon separation of employment due to, including but not limited to, not paying sick leave or all accrued paid time off provided in lieu of sick leave at the properly accrued rates as required under California law.

68. Under Labor Code section 203, PLAINTIFFS and the Class Members who no longer are employed with DEFENDANTS are entitled to recover waiting time penalties of up to 30 days’ pay, plus attorney’s fees and costs, in an amount to be proved at trial.

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SEVENTH CAUSE OF ACTION
Unfair Competition
(Against all DEFENDANTS)

69. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

70. The unlawful conduct of DEFENDANTS alleged herein constitutes unfair competition within the meaning of California Business and Professions Code section 17200. This unfair conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS' failure to pay minimum and overtime wages by virtue of its illegal policies and practices; DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized wage statements; DEFENDANTS' failure to provide paid sick leave /all paid time off provided in lieu thereof at the properly accrued rates due to, including but not limited to, DEFENDANTS' failure to base the accrued sick leave on the correct number of hours worked and failure to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay and/or other non-discretionary compensation into the sick pay calculation; and DEFENDANTS' failure to timely pay all wages due during and upon separation of employment.

71. Due to DEFENDANTS' unfair and unlawful business practices in violation of the California Labor Code, DEFENDANTS have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to authorize or permit rest and meal periods or pay proper meal and rest period premiums in lieu thereof, to provide proper notice and properly accrue and pay sick time benefits/paid time off in lieu thereof, to provide complete and accurate itemized wage statements, to reimburse employees for all business expenses, to pay all owed minimum and overtime wages, and to pay all wages due during and upon separation of employment of their employees.

72. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFFS and the Class Members have suffered injury in fact and lost money or property, as described in more detail above. Pursuant to California Business and Professions Code section 17200, et seq., PLAINTIFFS and Class Members are entitled to restitution of all wages and other monies rightfully

1 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of its
2 unlawful and unfair business practices.

3 73. PLAINTIFFS also seek an injunction against DEFENDANTS on behalf of the Class
4 Members, enjoining DEFENDANTS and any and all persons acting in concert with it from engaging
5 in each of the unlawful practices and policies set forth herein.

6 **EIGHTH CAUSE OF ACTION**
7 **Violation of the Private Attorneys General Act of 2004**
8 **(By PLAINTIFFS and the Aggrieved Employees Against All DEFENDANTS)**

9 74. PLAINTIFFS incorporate all preceding paragraphs as if full alleged herein.

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

14 All current and former non-exempt employees that worked either directly or via a
15 staffing agency for DEFENDANTS at any location in California at any time from
16 one year plus 65 days from the filing of the initial Complaint through the present
17 ("PAGA Period").

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

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

80. As set forth above, DEFENDANTS have committed numerous violations of the California Labor Code due to including but not limited to their failure to pay all owed minimum wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses, and failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties are in addition to any other relief available under the Labor Code.

- a. All statutorily-specified penalties recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed herein only if permitted by the PAGA statute, pursuant to Labor Code section 2699(a); and
- b. Default PAGA penalties for any violation of the enumerated list of Labor Code violations without a civil penalty recoverable under the PAGA, all in the default

1 amounts provided by Labor Code section 2699(f).

2 c. The proper measure of penalties under PAGA is the number of violations,
3 whether those violations were committed as against PLAINTIFFS or any
4 Aggrieved Employee, whether a party to this action or not.

5 82. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
6 PLAINTIFFS are entitled to recover civil penalties, costs, and attorney's fees.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFFS pray for relief and judgment, on behalf of PLAINTIFFS and
9 the Class Members:

- 10 1. For an order that the action be certified as a class action;
- 11 2. For an order that PLAINTIFFS be appointed class representatives;
- 12 3. For an order that counsel for PLAINTIFFS be appointed class counsel;
- 13 4. For compensatory damages according to proof;
- 14 5. For liquidated damages according to proof;
- 15 6. For penalties according to proof;
- 16 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
17 withheld from PLAINTIFFS and the Class Members;
- 18 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
19 section 17200, et seq. of the California Business and Professions Code;
- 20 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
- 21 10. For pre-judgment interest as permitted by law;
- 22 11. For attorney's fees and costs reasonably incurred;
- 23 12. For civil penalties according to proof, including PAGA penalties (75% payable to the
24 LWDA and 25% payable to Aggrieved Employees); and

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1 13. For such other and further relief that the Court deems just and proper.

2 Dated: February 14, 2023

CROSNER LEGAL, PC

3 By: Zachary Crosner
4 Zachary M. Crosner

Jamie Serb

Nikki Trenner

5 Attorneys for Plaintiffs TUAN Q LE and
6 ALEXANDER MEDINA LOPEZ

7
8 **DEMAND FOR JURY TRIAL**

9 PLAINTIFFS demand a trial by jury on all claims so triable.

10 Dated: February 14, 2023

CROSNER LEGAL, PC

11 By: Zachary Crosner
12 Zachary M. Crosner

Jamie Serb

Nikki Trenner

13 Attorneys for Plaintiffs TUAN Q LE and
14 ALEXANDER MEDINA LOPEZ
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1 PROOF OF SERVICE
2 *TUAN Q. LE V. FUTURE TECH METALS et al.*
3 *Riverside County Superior Court Case No. CVRI2105851*

4 At the time of service, I was over 18 years of age and not a party to this action. I am
5 employed in the County of Los Angeles, State of California. My business address is 9440 Santa
6 Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

7 On April 20, 2023, I served true copies of the following document(s) described as follows:

8 **FIRST AMENDED CLASS ACTION COMPLAINT**

9 on the interested parties in this action as follows:

10 SEE ATTACHED SERVICE LIST

11 ☒ BY ELECTRONIC TRANSMISSION. I transmitted copies of the above-referenced
12 document(s) on the interested parties in this action by electronic transmission. Said electronic
13 transmission was reported as complete and without error.

14 ☐ BY FACSIMILE TRANSMISSION. I transmitted copies of the above-referenced
15 document(s) on the interested parties in this action by facsimile transmission from (310) 510-6429.
16 A transmission report was properly issued by the transmitting facsimile machine and the
17 transmission was reported as complete and without error.

18 ☐ BY UNITED STATES POSTAL SERVICE. I enclosed the documents in electronic pdf
19 format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail
20 portal (letterstream.com) to be mailed addressed to the entities and/or persons listed in the Service
21 List as set forth herein. I caused an envelope containing the documents to be placed for collection
22 and mailing and to be mailed by First Class Mail, following our law firm and Letterstream, Inc.'s
23 ordinary business practices. I am readily familiar with our business practices and the business
24 practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the
25 same day that correspondence is placed for collection and mailing, it is deposited in the ordinary
26 course of business with the United States Postal Service, in a sealed envelope with postage fully
27 prepaid. Pursuant to that practice, the above-referenced document(s) were sealed in an envelope,
with postage paid, and deposited with a post office, mail box, sub-post office, substation, mail
chute, or other facility or postal pick up/drop off regularly maintained by the United States Postal
Service or an affiliate thereof, at or near Phoenix, Arizona.

28 ☐ BY OVERNIGHT MAIL SERVICE. I enclosed the documents in electronic pdf format and
submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal
(letterstream.com) addressed to the entities and/or persons listed in the Service List as set forth
herein. I caused an envelope containing the documents to be placed for collection and mailing and
to be mailed by Overnight Mail via Federal Express, following our law firm and Letterstream, Inc.'s
ordinary business practices. I am readily familiar with our business practices and the business
practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the
same day that correspondence is placed for collection and mailing, it is deposited in the ordinary
course of business with Federal Express, an express carrier, in Phoenix, Arizona, or delivered with
any and all delivery fees to an authorized courier or driver authorized by the express service carrier

to receive documents.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on April 20, 2023, at Los Angeles, California.



Jessica Ball

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SERVICE LIST
TUAN Q. LE V. FUTURE TECH METALS et al.
Riverside County Superior Court Case No. CVRI2105851

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