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10 Attorneys for Plaintiff Richard M Wiseman, individually,
11 and on behalf of all others similarly situated.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ALAMEDA**

14 RICHARD M WISEMAN, individually and
15 on behalf of all others similarly situated,

16 Plaintiffs,

17 v.

18 WASTEXPERTS, INC.; and DOES 1
19 through 20, inclusive,

20 Defendants.

Case No. 23CV026411

*Assigned for All Purposes to:
Judge Evelio Grillo; Dept. 21*

**[Amended as a matter of right, pursuant to
Labor Code section 2699.3(a)(2)(C)]**

FIRST AMENDED COMPLAINT FOR:

1. Enforcement of Labor Code § 2698 *et seq.*
("PAGA")

1 Plaintiff Richard M Wiseman, individually and on behalf of others similarly situated,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Richard M Wiseman (“Plaintiff”) brings this representative action
5 pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*, against
6 defendants WasteXperts, Inc., and DOES 1 through 20, inclusive (collectively, “Defendants”), on
7 behalf of Defendants’ non-exempt employees throughout California.

8 2. Defendants provide services or goods throughout California.

9 3. Through this action, Plaintiff alleges that Defendants engaged in a systematic
10 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
11 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair
12 competition.

13 4. Plaintiff is informed and believe, and thereon alleges, that Defendants have
14 increased their profits by violating state wage and hour laws by, among other things:

- 15 (a) failing to pay all wages (including minimum wages and overtime wages);
- 16 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 17 (c) failing to authorize or permit lawful rest breaks or provide compensation in
18 lieu thereof;
- 19 (d) failing to reimburse necessary business-related costs;
- 20 (e) failing to provide accurate itemized wage statements;
- 21 (f) failing to pay wages timely during employment; and
- 22 (g) failing to pay all wages due upon separation of employment.

23 5. Plaintiff seeks civil penalties, attorneys’ fees, and costs, pursuant to Labor Code §§
24 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2,
25 1197, 1197.1, 1198, 2800, 2802, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

26 **JURISDICTION AND VENUE**

27 6. The monetary damages and restitution sought by Plaintiff exceed the minimal
28 jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff is a resident of California and worked for Defendants during the relevant time periods as alleged herein.

11. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all relevant times.

14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme,

1 business plan, or policy in all respects pertinent hereto, and the acts of each defendant are legally
2 attributable to the other defendant. Furthermore, defendants in all respects acted as the employer
3 and/or joint employer of Plaintiff and the aggrieved employees.

4 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
5 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES
6 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's
7 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
8 policy of Defendants.

9 16. At all relevant times, Defendants, and each of them, acted within the scope of such
10 agency or employment, or ratified each and every act or omission complained of herein. At all
11 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each
12 and all the other Defendants in proximately causing the damages herein alleged.

13 17. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants
14 is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
15 occurrences, and transactions alleged herein.

16 **GENERAL ALLEGATIONS**

17 18. At all relevant times mentioned herein, Defendants employed Plaintiff and other
18 California residents as non-exempt employees throughout California at Defendants' California
19 business location(s).

20 19. Defendants continue to employ non-exempt employees within California.

21 20. Plaintiff is informed and believes, and thereon alleges, that at all times herein
22 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who
23 were knowledgeable about California's wage and hour laws, employment and personnel practices,
24 and the requirements of California law.

25 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and Aggrieved employees were entitled to receive wages for all
27 time worked (including minimum wages and overtime wages) and that they were not receiving all
28 wages earned for work that was required to be performed. In violation of the Labor Code and IWC

1 Wage Orders, Plaintiff and Aggrieved employees were not paid all wages (including minimum
2 wages and overtime wages) for all hours worked at the correct rate and within the correct time.

3 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and Aggrieved employees were entitled to receive all required
5 meal periods or payment of one (1) additional hour of pay at Plaintiff's and Aggrieved employees'
6 regular rate of pay when they did not receive a timely, uninterrupted meal period. In violation of
7 the Labor Code and IWC Wage Orders, Plaintiff and Aggrieved employees did not receive all meal
8 periods or payment of one (1) additional hour of pay at Plaintiff's and Aggrieved employees'
9 regular rate of pay when they did not receive a timely, uninterrupted meal period.

10 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and Aggrieved employees were entitled to receive all rest breaks
12 or payment of one (1) additional hour of pay at Plaintiff's and Aggrieved employees' regular rate
13 of pay when a rest break was late, missed, or interrupted. In violation of the Labor Code and IWC
14 Wage Orders, Plaintiff and Aggrieved employees did not receive all rest breaks or payment of one
15 (1) additional hour of pay at Plaintiff's and Aggrieved employees' regular rate of pay when a rest
16 break was missed, late, or interrupted.

17 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and Aggrieved employees were entitled to reimbursement and/or
19 indemnification for all necessary business expenditures or losses as a direct consequence of the
20 discharge of their duties, or of their obedience to the directions of Defendants. In violation of the
21 Labor Code and IWC Wage Orders, Plaintiff and Aggrieved employees incurred necessary
22 business expenses or losses, but were not reimbursed nor indemnified of such expenses or losses
23 that were incurred as a direct consequence of the discharge of their duties, or of their obedience to
24 the directions of Defendants.

25 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and Aggrieved employees were entitled to receive itemized wage
27 statements that accurately showed the following information pursuant to the Labor Code: (1) gross
28 wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned

1 and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions,
2 provided that all deductions made on written orders of the employee may be aggregated and shown
3 as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is
4 paid; (7) the name of the employee and only the last four digits of his or her social security number
5 or an employee identification number other than a social security number; (8) the name and address
6 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
7 period and the corresponding number of hours worked at each hourly rate by the employee. In
8 violation of the Labor Code, Plaintiff and Aggrieved employees were not provided with accurate
9 itemized wage statements.

10 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that the aggrieved employees were entitled to timely payment of wages due
12 upon separation of employment. In violation of the Labor Code, the aggrieved employees did not
13 receive payment of all wages within the permissible time periods.

14 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known they had a duty to compensate Plaintiff and Aggrieved employees, and
16 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
17 intentionally failed to do so in order to increase Defendants' profits.

18 28. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
19 against Defendants on Plaintiff's own behalf and on behalf of all Aggrieved employees to recover,
20 among other things, unpaid wages (including minimum wages and overtime wages), unpaid meal
21 period premium payments, unpaid rest period premium payments, unreimbursed business
22 expenditures, interest, attorneys' fees, penalties, costs, and expenses.

23 **FIRST CAUSE OF ACTION**

24 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

25 29. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as
26 though fully set forth herein.

27 30. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
28 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency

1 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for
2 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
3 an aggrieved employee on behalf of himself or herself and other current or former employees
4 pursuant to the procedures specified in Labor Code § 2699.3.

5 31. For all provisions of the Labor Code except those for which a civil penalty is
6 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
7 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
8 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
9 period in which Defendants violated these provisions of the Labor Code.

10 32. Defendants’ conduct violates numerous Wage Order and Labor Code sections,
11 including, but not limited to, the following:

- 12 a. violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 1182.12, 1194,
13 1197, and 1198 for failure to timely pay all earned wages (including
14 minimum wage and overtime wages) owed to Plaintiff and other aggrieved
15 employees during employment and upon separation of employment as
16 herein alleged;
- 17 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
18 periods to Plaintiff and other aggrieved employees and failure to pay
19 premium wages for missed meal periods as herein alleged;
- 20 c. violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff
21 and other aggrieved employees and failure to pay premium wages for
22 missed rest periods as herein alleged;
- 23 d. violation of Labor Code § 226 for failure to provide accurate itemized
24 wage statements to Plaintiff and other aggrieved employees as herein
25 alleged;
- 26 e. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
27 accurate and complete records showing, among other things, the hours
28 worked daily by and the wages paid to aggrieved employees; and

1 f. violation of Labor Code §§ 2800 and 2802 for failure to reimburse Plaintiff
2 and other aggrieved employees for necessary business expenses as herein
3 alleged.

4 33. Plaintiff is an “aggrieved employee” because he was employed by the alleged
5 violator and had one or more of the violations committed against him, and therefore is properly
6 suited to represent the interests of all other aggrieved employees.

7 34. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as
8 to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all
9 other aggrieved employees under PAGA.

10 35. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
11 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
12 cited above.

13 36. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
14 herein.

15 **PRAYER FOR RELIEF**

16 On Plaintiff’s own behalf and on behalf of all others similarly situated, Plaintiff prays for
17 relief and judgment against Defendants, jointly and severally, as follows:

18 1. For civil penalties;

19 2. For reasonable attorneys’ fees, costs of suit, and interest to the extent permitted by
20 law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§ 2698 *et*
21 *seq.*; and

22 3. For such other relief as the Court deems just and proper.

23
24 Dated: May 23, 2023

AEGIS LAW FIRM, PC

25
26 By: 

Jessica L. Campbell

Attorneys for Plaintiff Richard M Wiseman

CERTIFICATE OF SERVICE

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

On May 23, 2023, I served the foregoing document(s) entitled:

• **First Amended Complaint**

on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true copy thereof on the party(ies) addressed below as follows:

Mel M.C. Cole
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Attorneys for Defendants:
WasteXperts, Inc.

☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed. R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business practice of Aegis Law Firm PC for collection and processing correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal Code Civ. Proc.* § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via electronic transmission via the above listed email addresses on the date below. (*Cal. Code Civ. Proc.* § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.* 5(b)(2)(A).)
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 23, 2023, at Irvine, California.



Jacquelyn Enciso