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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

DARCEL STONER and PETER WHITE,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

vs.

CONTRACT SWEEPING SERVICES,
LLC, a California limited liability
company F/K/A CONTRACT SWEEPING
SERVICES, INC., and SCA OF CA, LLC,
a Delaware limited liability company,

Defendants.

Case No. **23CV410973**

COMPLEX CASE (CLASS ACTION)

COMPLAINT FOR:

- 1. FAILURE TO PAY PREVAILING
WAGES, LAB. CODE §§ 1720 *et seq.*
and**
- 2. UNFAIR COMPETITION, BUSINESS &
PROFESSIONS CODE §§ 17200-09**

JURY TRIAL DEMANDED

Plaintiffs Darcel Stoner and Peter White (collectively, the “Plaintiffs”), on behalf of themselves and all others similarly situated, allege as follows:

I. INTRODUCTION

1. Pursuant to California Code of Civil Procedure § 382, Plaintiffs bring this class action for wage and hour violations on behalf of themselves and all other street sweeper operators who performed work for Defendant CONTRACT SWEEPING SERVICES, INC. (“Contract Sweeping”) or its successor SCA of CA, LLC (“SCA” and together with Contract Sweeping, the “Defendants”) on public works projects in the State of California.

1 2. Plaintiffs seek to recover unpaid prevailing wages, and unpaid employee benefits or
2 their value included in per diem wages mandated by California law, which they and members of the
3 proposed class are entitled to receive but did not receive for work they performed on the public works
4 projects.

5 3. The California Prevailing Wage Law, Lab. Code §§ 1720 *et seq.* (“CPWL”), requires
6 that employers with public contracts pay their laborers, workers, and mechanics on public works
7 projects the general prevailing rate of per diem wages, including overtime at least at the rate of one
8 and one-half times the basic rate of pay, as determined by the Director of Industrial Relations. Lab.
9 Code §§ 1773, 1815; *see id.* § 510. Per diem wages include, among other things, employer payment
10 for health and welfare, pension, vacation, travel, and subsistence. *Id.* § 1773.1.

11 4. Workers who must be paid the prevailing rate of wages for public work include all
12 laborers, workers, or mechanics employed by contractors or subcontractors in the execution of any
13 contract for public work. *Id.* §§ 1723, 1772, 1774.

14 5. Plaintiffs and the putative class members worked for Defendants as “street sweeper
15 operators” responsible for providing street sweeping maintenance services on public roadways and
16 facilities to alleviate dangerous road conditions for the protection and safety of the public as a whole.

17 6. For their work on public works projects, Defendants have paid Plaintiffs and the
18 putative class members substantially lower than the prevailing rate of per diem wages applicable to
19 their work, in violation of the California Prevailing Wage Law.

20 7. In particular, throughout the relevant time period, commencing at least four (4) years
21 prior to the filing of this action and continuing through the present, Defendants have failed to pay
22 Plaintiffs and class members prevailing wages for their work performing street sweeping pursuant to
23 contracts entered into between Contract Sweeping and/or SCA with various city governments and
24 municipalities throughout Northern California.

25 8. This class action asserts violations of California’s Labor Code and Business and
26 Professions Code arising from Defendants’ unlawful conduct in operating their street sweeping
27 business. For these violations, Plaintiffs, on behalf of themselves and all others similarly situated,
28 seek back wages, restitution, interest, injunctive and declaratory relief, and attorneys’ fees and costs.

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1 17. White has been employed by Defendants as a street sweeper operator from
2 approximately 2015 through the present.

3 18. Throughout the time period of White's employment with Defendants relevant to this
4 Complaint, White has been paid on an hourly basis at the following rates: \$28.00 per hour from
5 approximately 2019 through 2020; and \$29.00 per hour from approximately 2021 through mid-2022;
6 and \$30.00 from approximately mid-2022 through the present.

7 19. Throughout White's employment with Defendants, White has performed street
8 sweeping work for Defendants pursuant to Defendants' contracts with the following cities or
9 municipalities in California: El Cerrito, Foster City, Emeryville, San Pablo, Dublin, San Ramon,
10 Pleasant Hill, Danville, Palo Alto, Cupertino, and Santa Clara.

11 20. During White's employment with Defendants, White has only received prevailing
12 wages for street sweeping work performed pursuant to Defendants' contract with the City of
13 Emeryville, for which he has received approximately \$64.67 per hour. For all other street sweeping
14 work White performed for Defendants, as detailed in paragraph 19 above, he did not receive the
15 applicable prevailing rate of per diem wages owed to him for such work.

16 21. Plaintiffs and members of the proposed class typically worked a full-time schedule of
17 approximately forty (40) hours per week and were assigned to work at one city or municipality for
18 the entire week or would be assigned to more than one city or municipality in a single week.

19 22. Plaintiffs and members of the proposed class are "Workers", as defined by Cal. Lab.
20 Code § 1723, who were "employed by a contractor or subcontractor in the execution of any contract
21 for public work," as defined by Cal. Lab. Code § 1772.

22 **Defendants**

23 23. Defendant Contract Sweeping Services, LLC, formerly known as Contract Sweeping
24 Services, Inc. ("Contract Sweeping"), is a limited liability company organized and existing under the
25 laws of the State of California, with a principal office located at 760 E. Capitol Avenue, Milpitas, CA
26 95035.

27 24. Contract Sweeping Services, Inc. was incorporated with the California Secretary of
28 State on October 3, 2003 and converted to Contract Sweeping Services, LLC on October 22, 2020.

1 25. During the relevant time period, Contract Sweeping has also maintained office
2 locations at 1113 Shaw Road, Stockton, CA 95215 and 3174 Luyung Dr., #3, Rancho Cordova, CA
3 95742.

4 26. According to an article published in the California Business Journal, as of 2021,
5 Contract Sweeping had “3–10-year contracts with nearly 50 Northern California municipalities,
6 including Palo Alto, Menlo Park, Stockton, San Ramon, and Napa, making it the dominant player in
7 the region.” (White, *Swept Away*, California Business Journal, February 2021, at 2,
8 <https://calbizjournal.com/wp-content/uploads/2021/02/manny-saxena11.pdf>).

9 27. Upon information and belief, in or around January 2021, private equity firm Broadtree
10 Partners LLC, through its holding company, West Sweeping Services Holdings, LLC, acquired
11 Contract Sweeping Services, LLC.

12 28. Defendant SCA of CA, LLC (“SCA”) is a limited liability corporation organized and
13 existing under the laws of the State of Delaware, with a principal office located at 4141 Rockside
14 Road, Ste 100, Seven Hills, OH 44131.

15 29. SCA of CA, LLC is a subsidiary of Sweeping Corporation of America, the largest
16 power sweeping company in the United States. (See <http://www.sweepingcorp.com>).

17 30. SCA of CA, LLC was formed in Delaware on February 1, 2021, and registered with
18 the California Secretary of State on May 7, 2021.

19 31. In or around February 2022, SCA of CA, LLC acquired all of the assets of Contract
20 Sweeping from Broadtree Partners LLC.

21 32. Upon information and belief, following its acquisition of Contract Sweeping, SCA
22 retained all of Contract Sweeping’s street sweeper employees and assumed Contract Sweeping’s
23 street sweeping maintenance municipal contracts.

24 33. At all relevant times, Defendants contracted and entered into contracts, to perform
25 public work in California covered by the CPWL.

26 34. Defendants are, and at all times relevant to this Complaint were, employers covered
27 by the California Labor Code.

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1 **IV. CLASS ACTION ALLEGATIONS**

2 35. Pursuant to § 382 of the Code of Civil Procedure, Plaintiffs bring their claims on behalf
3 of themselves and the following class:

4 All individuals employed by Defendants at any time within the four (4)
5 years prior to the filing of this Complaint through the date of the final
6 disposition of this action (“Class Period”) who have performed street
7 sweeping work in California pursuant to Defendants’ contracts with
8 public entities, municipalities and/or cities (the “Class” or “Class
9 Members”).

10 36. Plaintiffs’ claims are brought and may properly be maintained as a class action because
11 there is a well-defined community of interest among the Class with respect to the claims asserted and
12 the Class are easily ascertainable.

13 37. The Class Members are readily ascertainable. The number and identity of the Class
14 Members are determinable from the records of Defendants. For purposes of notice and other purposes
15 related to this action, their names and addresses are readily available from Defendants. Notice can be
16 provided by any means permissible under the rules of civil procedure and local rules.

17 38. The Class Members are so numerous that joinder of all members is impracticable.
18 Upon information and belief, there are in excess of one hundred (100) Class Members.

19 39. Common questions of law and fact exist as to all Class Members that are answerable
20 on a common basis and such questions predominate over any questions solely affecting individual
21 Class Members. Such common questions will generate common answers and will determine
22 Defendants’ liability to all (or nearly all) Class Members. The common questions include:

- 23 a. Whether Defendants employed Class Members within the meaning of the
24 California Labor Code;
- 25 b. Whether Defendants failed to create and implement a reliable system ensuring the
26 payment of prevailing wages for covered work performed by Plaintiffs and Class
27 Members when due;
- 28 c. Whether the work performed by Plaintiffs and the Class Members on public works

1 projects, or any part thereof, requires payment of prevailing wages under Labor
2 Code § 1720 *et seq.*;

3 d. Whether Defendants failed and/or refused to pay Plaintiffs and the Class Members
4 the prevailing rate of per diem wages on public works projects as required by the
5 CPWL;

6 e. Whether Defendants failed and/or refused to pay Plaintiffs and the Class Members
7 the prevailing wage overtime premiums for work performed on public works
8 projects as required by the CPLW;

9 f. Whether the failure of Defendants to pay Plaintiffs and Class Members the
10 minimum required wage under the CPLW for work on public projects has resulted
11 in Plaintiffs and Class Members not being paid all wages due at the applicable
12 rates; and

13 g. Whether Plaintiffs and Class Members have lost money or property as a result of
14 Defendants' violations of Business and Professions Code §§ 17200 *et seq.*

15 40. Plaintiffs' claims are typical of the Class Members' claims. Plaintiffs, like all Class
16 Members, are or were employed by Defendants as street sweeping employees who worked for
17 Defendants on public works projects pursuant to their corporate policies and practices. Plaintiffs, like
18 all Class Members, were, *inter alia*, not paid the prevailing rate of per diem wages for work performed
19 on public works projects. If Defendants are liable to Plaintiffs for the claims enumerated in this
20 Complaint, they are also liable to all Class Members.

21 41. Plaintiffs and their Counsel will fairly and adequately represent the Class Members.
22 There are no conflicts between Plaintiffs and the Class Members, and Plaintiffs bring this lawsuit out
23 of a desire to help all Class Members, not merely out of a desire to recover their own damages.

24 42. Plaintiffs' counsel are experienced class action litigators who are well-prepared to
25 represent the interests of the Class Members.

26 43. A class action is superior to other available methods for the fair and efficient
27 adjudication of this litigation. Requiring each Class Member to pursue her or his claims individually
28 would entail needless duplication, might result in inconsistent judgments, and would waste the

resources of both the parties and the judiciary. Moreover, the financial burden of proving that Defendants violated the law as alleged herein also would make the prosecution of individual actions virtually impossible for most, if not all members of the classes.

V. ADDITIONAL FACTUAL ALLEGATIONS

Defendants' Municipal Street Sweeping Maintenance Contracts Are Public Work.

44. Throughout the relevant time period, Defendants entered into contracts and/or master agreements, to perform street sweeping maintenance work for various cities, counties and municipalities funded in whole or in part by public funds and covered by the CPWL (the "Public Contracts").

45. At all times relevant, Defendants were or should have been aware that the street sweeping work performed by Plaintiffs and Class Members pursuant to Defendants' Public Contracts should have been paid at the applicable prevailing wage rates.

46. While the most common definition of "public works" is construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds (Lab. Code § 1720, subd. (a)(1)), the CPWL also expressly applies to "contracts let for maintenance work." (Lab. Code § 1771; *Reliable Tree Experts v. Baker*, 200 Cal. App. 4th 785, 795-796 [2011]).

47. The applicable public works regulation defines "maintenance" to include:

- (1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

(Cal. Code Regs., tit. 8, § 16000).

48. Upon information and belief, all of the Public Contracts entered into by Defendants required routine and recurring street sweeping maintenance work over the course of many months or years.

1 49. The California Department of Industrial Relations (“DIR”) has determined that the
2 type of street sweeping work performed by Plaintiffs and Class Members is covered by the CPWL
3 and should be compensated at prevailing wage. *E.g.*, Public Works Case No. 2020-05, Street
4 Sweeping Maintenance Services, City of Elk Grove (“Street Sweeping is Routine and Recurring
5 Work that Keeps Public Streets and Facilities in a Safe and Continually Usable Condition for Public
6 Use.”); Public Works Case No. 1999-028, County of San Diego Road Maintenance (Finding that
7 “roadway cleaning” fit within the definition of public works maintenance work); Public Works Case
8 No. 2000-021, City of Santee/California Street Maintenance Street Sweeping (same); Public Works
9 Case No. 2001-061, City Street Sweeping (same); Public Works Case No. 2002-067, City of Rohnert
10 Park – Street Sweeping (same).

11 **Plaintiffs and Class Members Are Entitled to Prevailing Wages for all Street Sweeping Work**
12 **Performed Pursuant to Public Contracts.**

13 50. Since the work performed by Plaintiffs and Class Members is considered “public
14 work” covered by the CPWL, Plaintiffs and Class Members should have been paid prevailing wages
15 for their work pursuant to all Public Contracts, even if the Public Contracts did not require payment
16 of prevailing wages. *See Rd. Sprinkler Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc.*,
17 102 Cal.App.4th 765, 779 (2002) (The “duty to pay prevailing wages is mandated by statute and is
18 enforceable independent of an express contractual agreement.”); *Lusardi Construction Co. v. Aubry*
19 (1992) 1 Cal. 4th 976 [4 Cal. Rptr. 2d 837, 824 P.2d 643] (same).

20 51. Upon information and belief, Defendants only paid Plaintiffs and Class Members
21 prevailing wages when their Public Contracts explicitly required payment of prevailing wages and,
22 even then, did not always pay prevailing wages for the work, despite such requirements.

23 52. Regardless of which Public Contract pursuant to which Plaintiffs and Class Members
24 worked, Plaintiffs and Class Members performed the same type of street sweeping maintenance tasks
25 on public property, paid for by public funds.

26 53. Upon information and belief, at all times relevant to this Complaint, Defendants did
27 not inquire with the DIR regarding the applicability of prevailing wages to the work required by the
28 Public Contracts but instead relied upon the representations of the awarding bodies (i.e., cities,

1 municipalities, and/or counties) with whom they contracted regarding prevailing wage requirements,
2 in violation of the CPWL. *See Lusardi* 1 Cal. 4th at 986-88.

3 54. The DIR determines the prevailing rate of pay for a given “craft, classification, or type
4 of work” and publishes these rates such that contractors and subcontractors are deemed to have
5 constructive notice of the applicable prevailing wage rates. Lab. Code § 1773; *Division of Labor*
6 *Standards Enforcement v. Ericsson Information Systems*, 221 Cal.App.3d 114, 125 (1990).

7 55. Throughout the relevant time period, the applicable prevailing wage rates for their
8 work performed by Plaintiffs and Class Members ranged from approximately \$60.77 per hour in 2019
9 to approximately \$69.42 per hour at present, including benefits.¹

10 **VI. CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY PREVAILING WAGES**

13 **IN VIOLATION OF LABOR CODE §§ 1720 et seq.**

14 **(Brought On Behalf of Plaintiffs and Class Members)**

15 56. Plaintiffs, on behalf of themselves and the Class Members, repeat and reallege each
16 and every allegation of the preceding paragraphs hereof with the same force and effect as though fully
17 set forth herein.

18 57. Defendants contracted to perform public work in the State of California on public
19 works projects covered by the California Prevailing Wage Law.

20 58. Plaintiffs and Class Members were workers employed by Defendants to perform work
21 in the execution of such public work.

22 59. During the Class Period, Defendants have failed and refused to pay Plaintiffs and Class
23 Members the prevailing rate of per diem wages, including overtime and the value of employee
24 benefits included in the per diem wages, as required by the California Prevailing Wage Law.

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28 ¹ The prevailing wage rates applicable to each craft in each county for each year during the relevant
time period are available on the Department of Industrial Relations website at:
<https://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

60. Defendants knew or should have known that Plaintiffs and Class Members were at all times performed work for which they should have been paid at the prevailing rate of per diem wages.

61. Defendants' acts and omissions in this regard are willful and not in good faith, and are without reasonable grounds for believing that the alleged acts and omissions are in compliance with the California Prevailing Wage Law.

62. As a result of Defendants' acts and omissions in violation of the California Prevailing Wage Law, Plaintiffs and Class Members have suffered, and continue to suffer, monetary injury.

63. Declaratory and injunctive relief is necessary and appropriate to ensure that Defendants cease violating the California Prevailing Wage Law.

64. Plaintiffs and Class Members are entitled to recover the unpaid balance of the prevailing rate of per diem wages earned, plus interest and reasonable attorneys' fees and costs of this action, pursuant to Cal. Lab. Code § 1194(a).

SECOND CAUSE OF ACTION

UNFAIR COMPETITION AND BUSINESS PRACTICES

IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 et seq.

(Brought On Behalf of Plaintiffs and Class Members)

65. Plaintiffs, on behalf of themselves and the Class Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

66. Throughout the relevant time period, through Defendants' acts and omissions alleged herein, Defendants committed and continue to commit unlawful acts that violated and continue to violate Business and Professions Code §§ 17200 *et seq.*

67. Defendants' unlawful acts include violating the California Labor Code, as alleged herein.

68. Defendants' violations of this statute and wage and hour law constitute a business practice because Defendants' aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systemic manner, to the detriment of Plaintiffs and Class Members.

69. As a result of Defendants' unfair and unlawful business practices, Defendants have reaped unfair and illegal profits during the Class Period at the expense of Plaintiffs, Class Members, and members of the public. Defendants should be made to disgorge their ill-gotten gains to restore them to Plaintiffs and Class Members.

70. As a result of the aforementioned acts, Plaintiffs and Class have lost and continue to lose money or property, and have suffered and continue to suffer injury in fact. Defendants continue to hold unpaid wages and other funds legally belonging to Plaintiffs and the Class.

71. Plaintiffs and the Class are entitled to restitution pursuant to Business and Professions Code §§ 17203 and 17208 for, among other things, all unpaid prevailing wages, including overtime and fringe benefits, and interest since four (4) years prior to the filing of the Complaint.

72. Pursuant to Business and Professions Code § 17203, Plaintiffs and similarly situated aggrieved employees and entitled to and seek injunctive relief against Defendants' continuation of the unlawful and unfair business practices described herein.

73. Plaintiffs and the Class are entitled to restitution in the amounts unlawfully withheld by Defendants, with interest, injunctive relief, and an award of attorneys' fees and costs. *See Cortez v. Purolator Air Filtration Products Co.*, (2000) 23 Cal.4th 163, 177 (UCL authorizes, as restitution, order for payment of unlawfully withheld wages).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class and Subclass Members, respectfully request that the Court grant the following relief:

- A. Certification of this action as a class action pursuant to § 382 of the Code of Civil Procedure on behalf of the proposed Class, appointing Plaintiffs and their Counsel to represent the Class;
- B. An award of unpaid prevailing wages owed to Plaintiffs and the Class Members, in an amount to be determined at trial;
- C. An award of restitution of all monies due to Plaintiffs and Class and Subclass Members, as well as disgorged profits from the unfair and unlawful business practices of Defendants;

1 D. Pre-judgment interest;

2 E. Declaratory relief;

3 F. Reasonable attorneys' fees and costs; and

4 G. For such further relief that the Court may deem just and proper.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiffs hereby demand a jury trial with respect to all issues triable of right to a jury.

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8 DATED: February 8, 2023

9 Respectfully submitted,

10 **PELTON GRAHAM LLP**

11
12 By: 

13 Taylor B. Graham
14 Brent E. Pelton

15 *Attorneys for Plaintiffs and the*
16 *Proposed Class*
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VERIFICATION

I, Darcel Stoner, am a plaintiff in this action. I have read the foregoing Class Action Complaint and know its contents. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

Executed on 2/7/2023 at Oakland, California.

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

Darcel Stoner

[typed name]

DocuSigned by:

Darcel Stoner
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Signature

VERIFICATION

I, Peter white, am a plaintiff in this action. I have read the foregoing Class Action Complaint and know its contents. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

Executed on 2/7/2023 at Stockton, California.

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

Peter White

[typed name]

DocuSigned by:

Peto White

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Signature