

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
9/14/2026 10:33:23 AM

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Clerk of the Superior Court
By G. Rodriguez ,Deputy Clerk

Attorneys for Plaintiff Mark Carrick, individually,
and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

MARK CARRICK, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

SMS ASSIST, L.L.C.; LESSEN LLC; and DOES
1 through 50, inclusive,

Defendants.

Case No.: 26CU037027C

*Assigned for All Purposes to:
Hon. Marcella O. McLaughlin, Dept. C-72*

FIRST AMENDED COMPLAINT:

1. Failure to Pay Vested Vacation Wages;
2. Failure to Pay All Wages Upon Separation of Employment;
3. Unfair and Unlawful Business Practices; and
4. Enforcement of the Private Attorneys General Act, Labor Code §§ 2698, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Mark Carrick (“Plaintiff”), individually and on behalf of all others similarly
2 situated, alleges as follows:

3 INTRODUCTION

4 1. Plaintiff brings this putative class and representative action against Defendants SMS
5 Assist, L.L.C., Lessen LLC, and DOES 1 through 50, inclusive (collectively, “Defendants”), on
6 Plaintiff’s own behalf and on behalf of a class of individuals who are and were employed by
7 Defendants throughout California.

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

11 3. Plaintiff is informed and believes, and thereon alleges, that Defendants have
12 increased their profits by violating state wage and hour laws by, among other things:

13 (a) failing to pay all vested vacation wages; and

14 (b) failing to pay all wages upon separation of employment.

15 4. Plaintiff seeks monetary relief against Defendants on behalf of himself and all other
16 similarly situated in California to recover, among other things, unpaid wages, statutory penalties,
17 benefits, interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§ 201,
18 202, 203, 218.5, 227.3, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

19 JURISDICTION AND VENUE

20 5. This is a class action brought pursuant to Code of Civil Procedure § 382.

21 6. The monetary damages, restitution, penalties, and other legal and equitable relief
22 sought by Plaintiff exceed the minimal jurisdictional limits of this Court and will be established
23 according to proof at trial.

24 7. This Court has jurisdiction over this action pursuant to Article VI, § 10 of the
25 California Constitution, which grants the superior court “original jurisdiction in all other causes”
26 except those given by statute to other courts. The statutes under which this action is brought do not
27 specify any other basis for jurisdiction.

28 8. This Court has jurisdiction over all Defendants because, upon information and

1 belief, Defendants are citizens of California, have sufficient minimum contacts in California,
2 and/or otherwise intentionally avail themselves of the California market so as to render the exercise
3 of jurisdiction over them by the California courts consistent with traditional notions of fair play
4 and substantial justice.

5 9. Venue is proper in this court because Defendants maintain offices, have agents,
6 employ individuals, and/or transact business in this county.

7 **THE PARTIES**

8 10. Plaintiff is a California resident and was employed by Defendants in Chula Vista,
9 California as a facilities manager from approximately September 2020 to approximately July 2025.

10 11. Defendants were and are subject to the Labor Code and IWC Wage Orders as
11 employers whose employees were and are engaged to work throughout this county and the State
12 of California.

13 12. Plaintiff is unaware of the true names or capacities of the Defendant sued herein
14 under the fictitious names DOES 1 through 50 but will amend the complaint and serve such
15 fictitiously named Defendants once their names and capacities become known.

16 13. Plaintiff is informed and believes and thereon alleges that each and all of the acts
17 and omissions alleged herein were performed by, or are attributable, to each Defendant acting as
18 the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
19 other co-Defendants and within the course and scope of such agency, employment, joint venture,
20 or concerted activity with legal authority to act on the others' behalf.

21 14. Plaintiff is informed and believes and thereon alleges that during the relevant time
22 period, DOES 1 through 50 were the employers of Plaintiff and the other members of the class
23 within the meaning of all applicable state laws and statutes. Plaintiff is informed and believes and
24 thereon alleges that DOES 1 through 50 directly or indirectly controlled or affected the working
25 conditions, working hours, and conditions of employment of Plaintiff and the other members of
26 the class so as to make each Defendant an employer liable under the statutory provision set forth
27 herein.

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15. Plaintiff is informed and believes and thereon alleges that DOES 1 through 50 had the authority to hire and terminate Plaintiff and the other members of the class, to set work rules and conditions governing Plaintiff and the other members of the class's employment, and to supervise their daily employment activities.

16. Plaintiff is informed and believes and thereon alleges that DOES 1 through 50 exercise sufficient authority over the terms and conditions of Plaintiff's and the other members of the class's employment for them to be joint employers of Plaintiff and the other members of the class.

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action under Code of Civil Procedure § 382 on Plaintiff's own behalf and on behalf of all others similarly situated who were affected by Defendants' Labor Code Business and Professions Code, and IWC Wage Order Violations.

18. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

19. Plaintiff's proposed class consists of and is defined as follows:

All individuals currently or formerly employed by Defendants in the State of California at any time between four years prior to the filing of this action and the date of class certification (“Class”).

20. Members of the Class described above will be collectively referred to as “Class Members.”

21. Plaintiff reserves the right to modify or re-define the Class, establish subclasses, or modify or re-define any class definition as appropriate based on investigation, discovery, and specific theories of liability.

22. There are common questions of law and fact as to the Class Members that predominate over any questions affecting only individual members including, but not limited to the following:

(a) Whether Defendants failed to pay Plaintiff and Class Members all vested vacation wages for all hours worked by Plaintiff and Class Members;

- (b) Whether Defendants failed to pay Plaintiff and Class Members all wages timely upon termination of employment;
- (c) Whether Defendants' conduct was willful, reckless, intentional, and/or knowing; and
- (d) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code §§ 17200, *et seq.*

23. There is a well-defined community of interest in this litigation and the proposed Class and subclasses are readily ascertainable:

- (a) Numerosity: The Class Members are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than 1,000 individuals. The identities of the Class Members are readily ascertainable by inspection of Defendants' employment and payroll records.
- (b) Typicality: Plaintiff's claims (or defenses, if any) are typical of the claims (or defenses, if any) of the Class Members because Defendants' failure to comply with the provisions of California's wage and hour laws entitled each Class Member to similar pay, benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by the Class Members, because they arise out of and are caused by Defendants' common course of conduct as alleged herein.
- (c) Adequacy: Plaintiff will fairly and adequately represent and protect the interests of all Class Members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain full compensation and penalties due. Plaintiff's attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred and, throughout the duration of this action, will continue to

1 incur attorneys' fees and costs that have been and will be necessarily
2 expended for the prosecution of this action for the substantial benefit of the
3 Class Members.

4 (d) Superiority: The nature of this action makes use of class action adjudication
5 superior to other methods. A class action will achieve economies of time,
6 effort, and expense as compared with separate lawsuits and will avoid
7 inconsistent outcomes because the same issues can be adjudicated in the
8 same manner for the entire Class at the same time. If appropriate, this Court
9 can, and is empowered to, fashion methods to efficiently manage this case
10 as a class action.

11 **GENERAL ALLEGATIONS**

12 24. During the relevant time period, Defendants employed Plaintiff and Class Members
13 throughout California at Defendants' California business location(s).

14 25. During the relevant time period, Defendants knew that Plaintiff and Class Members
15 were entitled to receive all vested vacation time upon termination of employment. However,
16 Defendants failed to pay vested vacation time upon termination of Plaintiff's and Class Members'
17 employment in violation of the Labor Code. Specifically, when Defendant SMS Assist, L.L.C. was
18 acquired by Defendant Lessen LLC in or around September 2023, Plaintiff and Class Members
19 had vested but unused vacation time that Defendants did not pay out at all. For example, Plaintiff
20 had 280.16 hours of vested but unused vacation wages at the time his employment with Defendant
21 SMS Assist, L.L.C. ended. Once Plaintiff and Class Members began employment with Defendant
22 Lessen LLC, Defendant Lessen LLC capped vested vacation wages at 200 hours and deducted any
23 paid time off used while working at Defendant Lessen LLC from the vested vacation wages
24 previously earned during employment with Defendant SMS Assist, L.L.C.

25 26. During the relevant time period, Defendants knew that Plaintiff and Class Members
26 were entitled to timely payment of wages upon separation of employment. In violation of the Labor
27 Code, Plaintiff and Class Members did not receive payment of all wages within the required time
28 periods.

1 27. During the relevant time period, Defendants knew they had a duty to compensate
2 Plaintiff and Class Members, and Defendants had the financial ability to pay such compensation
3 but willfully, knowingly, and/or intentionally failed to do so in order to increase Defendants'
4 profits.

5 28. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
6 against Defendants on Plaintiff's own behalf and on behalf of all Class Members to recover, among
7 other things, unpaid wages, interest, attorneys' fees, penalties, costs, and expenses.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY VESTED VACATION WAGES**

10 (Violation of Labor Code § 227.3)

11 29. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
12 though fully set forth herein.

13 30. Labor Code § 227.3 provides that where an employer provides for paid vacations
14 and an employee is terminated without having taken all vested vacation time, all vest vacation must
15 be paid to the employee at his or her final rate.

16 31. During the relevant time period, Defendants provided paid vacation time to Plaintiff
17 and Class Members. However, Defendants paid Plaintiff and Class Members vested vacation time
18 upon termination at their base hourly rate rather than their final rate in violation of Labor Code §
19 227.3.

20 32. As a result of Defendants' failure to pay Plaintiff and Class Members their vested
21 vacation time at termination of their employment, Plaintiff and Class Members suffered and
22 continue to suffer a loss of wages and compensation.

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY ALL WAGES DUE DURING EMPLOYMENT AND UPON**
25 **SEPARATION OF EMPLOYMENT**

26 (Violation of Labor Code §§ 201, 202, and 203)

27 33. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

34. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of an intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

35. Labor Code § 203 provides that if an employer willfully fails to pay wages in accordance with Labor Code §§ 201 and 202 to any employee who is discharged or quit, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced, but not for more than 30 days.

36. During the relevant time period, Defendants failed to timely pay Plaintiff and Class Members wages earned during the pay period within the required time limits.

37. During the relevant time period, Defendants willfully failed to pay Plaintiff and Class Members their earned wages upon termination, either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

38. Defendants' failure to pay Plaintiff and Class Members all their earned wages within the required time limits during employment and at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in violation of Labor Code §§ 201, 202, and 203.

39. Plaintiff and other Class Members are entitled to recover from Defendants the statutory penalties set forth in Labor Code § 203.

THIRD CAUSE OF ACTION

UNFAIR AND UNLAWFUL BUSINESS PRACTICES

(Violation of Business and Professions Code §§ 17200, *et seq.*)

40. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

41. California Business and Professions Code §§ 17200, *et seq.* prohibits acts of unfair competition, which includes any “unlawful, unfair, or fraudulent business act or practice . . .”

42. A violation of California Business and Professions Code §§ 17200, *et seq.* may be

1 predicated on a violation of any state or federal law. Defendants' policies and practices violated
2 California law, causing Plaintiff and Class Members to suffer and continue to suffer injuries-in-
3 fact.

4 43. Defendants' policies and practices violated state law in at least the following
5 respects:

6 (a) Failing to pay all vested vacation wages owed to Plaintiff and Class
7 Members in violation of Labor Code § 227.3.

8 44. As alleged herein, Defendant engaged in unlawful conduct in violation of the
9 California Labor Code and IWC Wage Orders, such as failing to pay vested vacation wages, all in
10 order to decrease their costs of doing business and increase their profits.

11 45. Plaintiff is informed and believes and thereon alleges that during the relevant time
12 period, Defendants were knowledgeable concerning the wage and hour laws of California.

13 46. During the relevant time period, Defendants intentionally avoided paying Plaintiff
14 and Class Members wages and monies owed, thereby creating an artificially lower cost of doing
15 business in order to undercut Defendants' competitors and gain a greater foothold in the
16 marketplace.

17 47. By violating the foregoing statutes and regulations as herein alleged, Defendants'
18 acts constitute unfair and unlawful business practices under California Business and Professions
19 Code §§ 17200, *et seq.*

20 48. As a result of the unfair and unlawful business practices of Defendants as alleged
21 herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and restitution
22 in an amount to be shown according to proof at trial.

23 49. Plaintiff seeks to enforce important rights affecting the public interest within the
24 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein,
25 has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members, and the
26 general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class Members are
27 entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

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1 **FOURTH CAUSE OF ACTION**

2 **ENFORCEMENT OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

3 (Violation of Labor Code §§ 2698, *et seq.*)

4 50. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 51. Labor Code § 2699(a) provides that notwithstanding any other provision of law, any
7 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
8 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
9 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
10 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
11 former employees against whom a violation of the same code provision was committed pursuant
12 to the procedures specified in Section 2699.3.

13 52. Labor Code § 2699(m) provides that civil penalties recovered by aggrieved
14 employees shall be distributed as follows: 65% to the Labor and Workforce Development Agency
15 for enforcement of labor laws, including the administration of this part, and for education of
16 employers and employees about their rights and responsibilities under this code, to be continuously
17 appropriated to supplement and not supplant the funding to the agency for those purposes; and
18 35% to the aggrieved employees.

19 53. Plaintiff and all other individuals currently or formerly employed by Defendants in
20 California at any time from July 9, 2025 to the present are “aggrieved employees” as defined in
21 Labor Code § 2699(c).

22 54. Defendants’ conduct, as alleged herein, violates numerous Labor Code sections,
23 including the following:

- 24 (a) Failing to pay vested vacation wages in violation of Labor Code § 227.3;
25 and
26 (b) Failing to timely pay all wages due at the end of Plaintiff’s and other
27 aggrieved employees’ employment in violation of Labor Code §§ 201, 202,
28 203.

55. Plaintiff personally suffered each of the Labor Code violations alleged in this lawsuit within the one-year period prior to his Private Attorneys General Act of 2004 (“PAGA”) notice.

56. Plaintiff has exhausted the administrative requirements provided in Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on Plaintiff's own behalf and on behalf of all other aggrieved employees under PAGA.

57. Plaintiff is entitled to recover civil penalties pursuant to Labor Code §§ 2699, 2699.3, and 2699.5 for the Labor Code violations alleged herein.

Plaintiff is entitled to recover attorneys' fees pursuant to Labor Code §§ 218.5 and 2699(k)(1).

PRAYER FOR RELIEF

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

1. For certification under California Code of Civil Procedure § 382 of the proposed Class;
2. For appointment of Plaintiff as class representative;
3. For appointment of Abramson Labor Group as class counsel;
4. For compensatory damages in an amount according to proof at trial;
5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties;
6. For economic and/or special damages in an amount according to proof at trial;
7. For civil penalties pursuant to PAGA;
8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code;
9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;
10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent

1 and, thereof, constituting unfair competition under Business and Professions Code §§ 17200, *et*
2 *seq.*;

3 12. For pre-judgment interest;

4 13. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
5 law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§ 218.5 and
6 2699(k)(1); and

7 14. For such other relief as the Court deems just and proper.
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9 Dated: September 14, 2026

ABRAMSON LABOR GROUP

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11 By: 

12 Fawn F. Bekam
13 Attorneys for Plaintiff Mark Carrick
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