

JUN 18 2025

FILED
2025 JUN 20 PM 1:57
STEPHANIE BOHRER, CLERK
BY TRACY HOFFMASTER
DEPUTY

Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Mai Tulyathan (State Bar No. 316704)
ktulyathan@diversitylaw.com
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder (SBN 170131)
bill@polarislawgroup.com
POLARIS LAW GROUP
501 San Benito Street, Suite 200
Hollister, CA 95023
Telephone: (831) 531-4214
Facsimile: (831) 634-0333

Attorneys for Plaintiff Ramiro Penaloza Jr.

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

RAMIRO PENALOZA JR., as an individual
and on behalf of all others similarly situated,

Plaintiff,

v.

WWS ACQUISITION LLC., a Missouri
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No.: STK-CV-UOE-2024-0004594

(Assigned to the Hon. Esmeralda Zendejas, Dept.
11A)

**JOINT STIPULATION TO FILE SECOND
AMENDED CONSOLIDATED COMPLAINT;
AND [PROPOSED] ORDER**

Action Filed: April 15, 2024

Trial Date: Not Set

Plaintiff Ramiro Penaloza Jr. ("Plaintiff") and Defendant WWS Acquisition LLC
("Defendant") (collectively with Plaintiff, the "Parties"), by and through their respective counsel
of record, hereby stipulate as follows with reference to the following facts:

WHEREAS, on April 15, 2024, Plaintiff filed a class action complaint against Defendant,
asserting a cause of action for violation of Labor Code § 226 (the "Action");

WHEREAS, on June 7, 2024, Plaintiff filed a First Amended Representative Action

BY FAX

1 Complaint in the Action, alleging a single cause of action for violation of the Private Attorneys
2 General Act of 2004 ("PAGA"), Labor Code § 2698, *et seq.*;

3 WHEREAS, on April 18, 2025, the Parties attended mediation with the Honorable Aray
4 D. Hogue (Ret.) in an effort to resolve Plaintiff's claims in this litigation;

5 WHEREAS, as a result of this mediation, the Parties reached an agreement-in-principle
6 to resolve all claims in the Action and a related action entitled *Peter Ferry v. Western Window*
7 *Holding LLC*, Superior Court of California, County of Fresno, Case No. 24CECG04454 (the
8 "Ferry Action");

9 WHEREAS, the Parties have executed a Memorandum of Understanding, memorializing
10 the settlement terms;

11 WHEREAS, as part of the Parties' settlement agreement, they have agreed to the filing of
12 a Second Amended Consolidated Complaint (the "SACC"), a true and correct copy of which is
13 attached hereto as Exhibit A;

14 WHEREAS, the SACC adds plaintiff Peter Ferry and the claims asserted in the Ferry
15 Action.

16 WHEREAS, Defendant expressly disputes Plaintiffs' claims and allegations in the SACC
17 and does not waive any rights or defenses thereto by consenting to the filing of the SACC for
18 settlement purposes only.

19 WHEREAS, within 10 days of the granting of the order on this stipulation, Plaintiff Ferry
20 will dismiss the Ferry Action without prejudice.

21 NOW, THEREFORE, the Parties hereby stipulate as follows:

22 1. That Plaintiff be granted leave to file the SACC, a copy of which is attached
23 hereto as Exhibit A;

24 2. That the SACC be deemed filed and served as of the date of execution of the
25 [Proposed] Order filed herewith; and

26 3. That Defendant shall have thirty (30) days from the date of its receipt of the Order
27 executed by the Court to file a responsive pleading to the SACC.

28 **IT IS SO STIPULATED.**

1
2 DATED: June 17, 2025

DIVERSITY LAW GROUP, P.C.

3 By: /s/ Mai Tulyathan

4 Larry W. Lee

Mai Tulyathan

5 Attorneys for Plaintiff Ramiro Penaloza Jr.

6 DATED: June 17, 2025

LITTLER MENDELSON, P.C.

7 By: /s/ P. Dustin Bodaghi

8 Daniel L. Gonzalez

9 P. Dustin Bodaghi

Gayle Lynne Gonda

10 Attorneys for Defendant WWS Acquisition LLC
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[PROPOSED] ORDER

Having received and reviewed the Parties' Stipulation for Leave to File Second Amended Consolidated Complaint, and GOOD CAUSE appearing, the Court ORDERS as follows:

1. Plaintiff is granted leave to file the Second Amended Consolidated Complaint ("SACC"), a copy of which is attached hereto as Exhibit A;
2. The SACC is deemed filed and served as of the date the Court signs this Order; and
3. Defendant shall have thirty (30) days from the date of its receipt of this executed Order to file a responsive pleading to the SACC.

IT IS SO ORDERED.

DATED: JUN 20 2025

ESMERALDA ZENDEJAS

HONORABLE ESMERALDA ZENDEJAS
SUPERIOR COURT OF CALIFORNIA

EXHIBIT A

1 Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com

2 Mai Tulyathan (State Bar No. 516704)
ktulyathan@diversitylaw.com

3 **DIVERSITY LAW GROUP, P.C.**

4 515 S. Figueroa St., Suite 1250

5 Los Angeles, California 90071

(213) 488-6555

(213) 488-6554 facsimile

6 William L. Marder (SBN 170131)

7 bill@polarislawgroup.com

POLARIS LAW GROUP

8 501 San Benito Street, Suite 200

Hollister, CA 95023

9 Telephone: (831) 531-4214

Facsimile: (831) 634-0333

10 Attorneys for Plaintiff Ramiro Penaloza Jr.

11 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

12 Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

13 Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

14 Piya Mukhejee (State Bar #274217)

piya@bamlawca.com

15 2255 Calle Clara

La Jolla, CA 92037

16 Telephone: (858) 551-1223

Facsimile: (858) 551-1232

17 Attorneys for Plaintiff Peter Ferry

18
19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

20 **FOR THE COUNTY OF SAN JOAQUIN**

21 RAMIRO PENALOZA JR. and PETER
22 FERRY, individually and on behalf of all
23 others similarly situated,

24 Plaintiffs,

25 v.

26 WWS ACQUISITION LLC., a Missouri
27 Limited Liability Company; and DOES 1
28 through 50, inclusive,

Defendants.

Case No.: STK-CV-UOE-2024-0004594

(Assigned to the Honorable Esmeralda Zendejas,
Dept. 11A)

**SECOND AMENDED CONSOLIDATED
COMPLAINT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

DEMAND OVER \$25,000.00

Action Filed: April 15, 2024

Trial Date: None Set

1 Plaintiffs Ramiro Penaloza Jr. and Peter Ferry (together, "Plaintiffs") hereby submit this
2 Second Amended Consolidated Complaint ("Complaint") against Defendant VWS Acquisition
3 LLC ("Defendant") and Does 1 through 50 (collectively, "Defendants") on behalf of the State of
4 California and all aggrieved employees of Defendant, for penalties for violations of the
5 California Labor Code as follows:

6 **INTRODUCTION**

7 1. This representative action is within the Court's jurisdiction under California
8 Labor Code sections 201, 202, 203, 204, 210, 218, 221, 226, 226.7, 227.3, 246, 510, 512,
9 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100, 2802, and 2698, *et seq.*

10 2. This Complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against individuals who worked for Defendant.

12 **JURISDICTION AND VENUE**

13 3. The Court has jurisdiction over the violations of the California Labor Code
14 sections 201, 202, 203, 204, 210, 218, 221, 226, 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194,
15 1197, 1197.1, 1198, 2100, 2802, and 2698, *et seq.*

16 4. Venue is proper in San Joaquin County because Defendant conducted business in
17 San Joaquin County.

18 **PARTIES**

19 5. Plaintiff Ramiro Penaloza Jr. ("Penaloza") was hired by Defendant as a
20 Fabricator, in or around June 26, 2023. On or about April 5, 2024, Penaloza's employment with
21 Defendant ended. Throughout Penaloza's employment, he has been an hourly, non-exempt
22 employee.

23 6. Plaintiff Peter Ferry ("Ferry") was employed by Defendant in California from
24 September of 2021 to October of 2023 and was at all times classified by Defendant as a non-
25 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
26 periods and payment of minimum and overtime wages due for all time worked.

27 7. Plaintiffs were and are the victims of the policies, practices, and customs of
28 Defendant complained of in this action in ways that have deprived them of the rights guaranteed

by California Labor Code sections 201, 202, 203, 204, 210, 218, 221, 226, 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.5, 1198, 2100, 2802, and 2698, *et seq.*

8. Plaintiffs are informed and believe and based thereon allege that Defendant WWS Acquisition LLC was and is a limited liability company which operates as a manufacturer and supplier throughout the State of California, including in San Joaquin County.

9. Plaintiffs are informed and believe, and based thereon allege, that at all times herein mentioned Does 1 through 50, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such, and based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to the California Labor Code.

10. Plaintiffs do not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this complaint when the true names and capacities are known. Plaintiffs are informed and believe, and based thereon allege, that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiffs and members of the general public and aggrieved employees to be subject to the illegal employment practices, wrongs, and injuries complained of herein.

11. At all times herein mentioned, each defendant participated in the doing of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants, and each of them, were the agents, servants, and employees of each of the other defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

12. Plaintiffs are informed and believe, and based thereon allege, that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or joint venturer of, or working in concert with each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the

1 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
2 Defendants.

3 ~~13.~~ At all times herein mentioned, Defendants, and each of them, were members of,
4 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course
5 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

6 14. At all times herein mentioned, the acts and omissions of various Defendants, and
7 each of them, concurred and contributed to the various acts and omissions of each and all of the
8 other Defendants in proximately causing the violations as herein alleged. At all times herein
9 mentioned, Defendants, and each of them, ratified each and every act or omission complained of
10 herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts
11 and omissions of each and all of the other Defendants in proximately causing the violations as
12 herein alleged.

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

15 **(BY PLAINTIFFS AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

16 15. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
17 though fully set forth herein.

18 16. Plaintiffs bring this cause of action as a proxy for the State of California and in
19 this capacity, seek penalties on behalf of all Aggrieved Employees from April 12, 2023, through
20 the present, for Defendants' violations of Labor Code sections 226 and 2698, *et seq.*, as
21 identified above, for failing to provide accurate and complete wage statements. Specifically,
22 Defendants failed to identify the applicable hourly rate of pay for overtime pay on wage
23 statements.

24 17. Plaintiffs also seek penalties on behalf of all Aggrieved Employees from April 12,
25 2023, through the present, for Defendants' violations of Labor Code sections 201, 202, 203, 204,
26 210, 218, 221, 226, 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100,
27 2802, and 2698, *et seq.*, as identified above, for: (a) failing to provide accurate itemized wage
28 statements; (b) failing to properly record and provide legally required meal and rest periods; (c)

1 failing to pay minimum wages; (d) failing to pay overtime wages and sick pay wages; (e) failing
2 to reimburse employees for required expenses; (f) failing to provide wages when due; (g) failing
3 to provide suitable seating; (h) failing to pay vacation pay; (i) unlawful deductions; and (j) failing
4 to pay reporting time pay. Specifically, Defendant was required to pay Plaintiffs and the
5 Aggrieved Employees for all their time worked, meaning the time during which an employee is
6 subject to the control of an employer, including all the time the employee is suffered or permitted
7 to work. Defendant requires Plaintiffs and the Aggrieved Employees to work without paying
8 them for all the time they are under Defendant's control. Among other things, Defendant
9 required Plaintiffs and the Aggrieved Employees to work while clocked out during what is
10 supposed to be their off-duty meal break. Plaintiffs and the Aggrieved Employees were from
11 time to time interrupted by work assignments while clocked out for what should have been their
12 off-duty meal break. Defendant, as a matter of established company policy and procedure,
13 administers a uniform practice of rounding the actual time worked and recorded by Plaintiffs and
14 the Aggrieved Employees, always to the benefit of Defendant, so that during the course of their
15 employment, Plaintiffs and the Aggrieved Employees are paid less than they would have been
16 paid had they been paid for actual recorded time rather than "rounded" time. Additionally,
17 Defendant engages in the practice of requiring Plaintiffs and the Aggrieved Employees to
18 perform work off the clock in that Defendant, as a condition of employment, required these
19 employees to submit to mandatory temperature checks and symptom questionnaires for COVID-
20 19 screening prior to clocking into Defendant's timekeeping system for the workday. In addition,
21 when Defendant required Plaintiffs and Aggrieved Employees to report for work, but "furnished
22 less than half said employee's usual or scheduled day's work," Defendant violated Cal. Code
23 Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiffs and the Aggrieved Employees for at
24 least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendant
25 required Plaintiffs and the Aggrieved Employees to respond to and engage in additional work,
26 this resulted in a second reporting for work in a single workday, and Defendant failed to pay
27 these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B).
28 As a result, Plaintiffs and the Aggrieved Employees forfeit minimum wage, overtime wage

1 compensation, and off-duty meal breaks by working without their time being correctly recorded
2 and without compensation at the applicable rates. Defendant's policy and practice not to pay
3 Plaintiffs and the Aggrieved Employees for all time worked, is evidenced by Defendant's
4 business records.

5 18. State law provides that employees must be paid overtime and meal and rest break
6 premiums at one-and-one-half times their "regular rate of pay." Plaintiffs and the Aggrieved
7 Employees are compensated at an hourly rate plus incentive pay that is tied to specific elements
8 of an employee's performance.

9 19. The second component of Plaintiffs' and the Aggrieved Employees'
10 compensation is Defendant's non-discretionary incentive program that paid Plaintiffs and the
11 Aggrieved Employees incentive wages based on their performance for Defendant. The non-
12 discretionary incentive program provided all employees paid on an hourly basis with incentive
13 compensation when the employees met the various performance goals set by Defendant.
14 However, when calculating the regular rate of pay in order to pay overtime and meal and rest
15 break premiums to Plaintiffs and the Aggrieved Employees, Defendant failed to include the
16 incentive compensation as part of the employees' "regular rate of pay" for purposes of
17 calculating overtime pay and meal and rest break premium pay. Management and supervisors
18 described the incentive program to potential and new employees as part of the compensation
19 package. As a matter of law, the incentive compensation received by Plaintiffs and the
20 Aggrieved Employees must be included in the "regular rate of pay." The failure to do so has
21 resulted in a underpayment of overtime compensation and meal and rest break premiums to
22 Plaintiffs and the Aggrieved Employees by Defendant.

23 20. As a result of their rigorous work schedules, Plaintiffs and the Aggrieved
24 Employees were from time to time unable to take thirty (30) minute off duty meal breaks and
25 were not fully relieved of duty for their meal periods. Plaintiffs and the Aggrieved Employees
26 were required from time to time to perform work as ordered by Defendant for more than five (5)
27 hours during some shifts without receiving a meal break. Further, Defendant from time to time
28 failed to provide Plaintiffs and the Aggrieved Employees with a second off-duty meal period for

1 some workdays in which these employees were required by Defendant to work ten (10) hours of
2 work. Defendant also engaged in the practice of rounding the meal period times to avoid paying
3 penalties to Plaintiffs and the Aggrieved Employees. Plaintiffs and the Aggrieved Employees
4 therefore forfeit meal breaks without additional compensation and in accordance with
5 Defendant's corporate policy and practice.

6 21. During the PAGA Period, Plaintiffs and the Aggrieved Employees were also
7 required from time to time to work in excess of four (4) hours without being provided ten (10)
8 minute rest periods. Further, these employees were denied their first rest periods of at least ten
9 (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first
10 and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
11 eight (8) hours from time to time, and a first, second and third rest period of at least ten (10)
12 minutes for some shifts worked of ten (10) hours or more from time to time. Plaintiffs and the
13 Aggrieved Employees were also not provided with one hour of wages in lieu thereof.
14 Additionally, the applicable California Wage Order requires employers to provide employees
15 with off-duty rest periods, which the California Supreme Court defined as time during which an
16 employee is relieved from all work-related duties and free from employer control. In so doing,
17 the Court held that the requirement under California law that employers authorize and permit all
18 employees to take rest period means that employers must relieve employees of all duties and
19 relinquish control over how employees spend their time which includes control over the
20 locations where employees may take their rest period. Employers cannot impose controls that
21 prohibit an employee from taking a brief walk – five minutes out, five minutes back. Here,
22 Defendant's policy restricted Plaintiffs and the Aggrieved Employees from unconstrained walks
23 and is unlawful based on Defendant's rule which states Plaintiffs and the Aggrieved Employees
24 cannot leave the work premises during their rest period.

25 22. During the PAGA Period, Defendant failed to accurately record and pay Plaintiffs
26 and the Aggrieved Employees for the actual amount of time these employees worked. Pursuant
27 to the Industrial Welfare Commission Wage Orders, Defendant was required to pay Plaintiffs
28 and the Aggrieved Employees for all time worked, meaning the time during which an employee

1 was subject to the control of an employer, including all the time the employee was permitted or
2 suffered to permit this work. Defendant required these employees to work off the clock without
3 paying them for all the time they were under Defendant's control. As such, Defendant knew or
4 should have known that Plaintiffs and the Aggrieved Employees were under compensation for all
5 time worked. As a result, Plaintiffs and the Aggrieved Employees forfeited time worked by
6 working without their time being accurately recorded and without compensation at the applicable
7 minimum wage and overtime wage rates. To the extent that the time worked off the clock does
8 not qualify for overtime premium payment, Defendant failed to pay minimum wages for the time
9 worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

10 23. From time to time, Defendant also failed to provide Plaintiffs and the Aggrieved
11 Employees with complete and accurate wage statements which failed to show, among other
12 things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
13 employer shall furnish each of his or her employees with an accurate itemized wage statement in
14 writing showing, among other things, gross wages earned and all applicable hourly rates in effect
15 during the pay period and the corresponding amount of time worked at each hourly rate.
16 Plaintiffs and the Aggrieved Employees were paid on an hourly basis. As such, the wage
17 statements should reflect all applicable hourly rates during the pay period and the total hours
18 worked, and the applicable pay period in which the wages were earned pursuant to California
19 Labor Code Section 226(a). The wage statements Defendant provided to Plaintiffs and the
20 Aggrieved Employees failed to identify such information. More specifically, the wage statements
21 failed to identify the accurate total hours worked each pay period. When the hours shown on the
22 wage statements were added up, they did not equal the actual total hours worked during the pay
23 period in violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this
24 paragraph, Defendant failed to issue to Plaintiffs an itemized wage statement that lists all the
25 requirements under California Labor Code 226. As a result, Defendant from time to time
26 provided Plaintiffs and the Aggrieved Employees with wage statements which violated Cal. Lab.
27 Code § 226.

28 24. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be

1 deemed satisfied by the payment of wages for weekly, biweekly, or semi-monthly payroll if the
2 wages are paid not more than seven (7) calendar days following the close of the payroll period.
3 Cal. Lab. Code § 210 provides:

4
5 [I]n addition to, and entirely independent and apart from, any other
6 penalty provided in this article, every person who fails to pay the
7 wages of each employee as provided in Sections...204...shall be
8 subject to a civil penalty as follows: (1) For any initial violation, one
9 hundred dollars (\$100) for each failure to pay each employee; (2)
For each subsequent violation, or any willful or intentional
violation, two hundred dollars (\$200) for each failure to pay each
employee, plus 25 percent of the amount unlawfully withheld.

10 25. Defendant from time to time failed to pay Plaintiffs and the Aggrieved Employees
11 within seven (7) days of the close of the payroll period in accordance with Cal. Lab. Code §
12 204(d), including but not limited to the "Hourly" regular wage payments.

13 26. Defendant underpaid sick pay wages to Plaintiffs and the Aggrieved Employees
14 by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code Section 246.
15 Specifically, Plaintiffs and other non-exempt employees earn non-discretionary remuneration,
16 including, but not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick
17 pay at the regular rate of pay, Defendant underpays sick pay to Plaintiffs and the Aggrieved
18 Employees at their base rates of pay.

19 27. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
20 employees be calculated by dividing the employee's total wages, not including overtime
21 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
22 of employment.

23 28. Defendant violated Cal. Lab. Code Section 246 by failing to pay sick pay at the
24 regular rate of pay. Plaintiffs and the Aggrieved Employees routinely earned non-discretionary
25 incentive wages which increased their regular rate of pay. However, when sick pay was paid, it
26 was paid at the base rate of pay for Plaintiffs and the Aggrieved Employees, as opposed to the
27 correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

28 29. As a pattern and practice, Defendant regularly failed to pay Plaintiffs and the

1 Aggrieved Employees their correct wages and accordingly owe waiting time penalties pursuant
2 to Cal. Lab. Code Section 203. Further, Plaintiffs are informed and believe and based thereon
3 alleges that such failure to pay sick pay at regular rate was willful, such that the Aggrieved
4 Employees whose employment has separated are entitled to waiting time penalties pursuant to
5 Cal. Lab. Code Sections 201-203.

6 30. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to
7 collect or receive from an employee any part of wages theretofore paid by said employer to said
8 employee." Defendant failed to pay all compensation due to Plaintiffs and the Aggrieved
9 Employees, made unlawful deductions from compensation payable to Plaintiffs and the
10 Aggrieved Employees, failed to disclose all aspects of the deductions from compensation
11 payable to Plaintiffs and the Aggrieved Employees, and thereby failed to pay these employees all
12 wages due at each applicable pay period and upon termination.

13 31. Defendant intentionally and knowingly failed to reimburse and indemnify
14 Plaintiffs and the Aggrieved Employees for required business expenses incurred by the Plaintiffs
15 and the Aggrieved Employees in direct consequence of discharging their duties on behalf of
16 Defendant. Under California Labor Code Section 2802, employers are required to indemnify
17 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code
18 § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
19 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
20 her duties, or of his or her obedience to the directions of the employer, even though unlawful,
21 unless the employee, at the time of obeying the directions, believed them to be unlawful."

22 32. In the course of their employment Plaintiffs and the Aggrieved Employees as a
23 business expense, were required by Defendant to use their own personal cellular phones and
24 home offices as a result of and in furtherance of their job duties as employees for Defendant but
25 are not reimbursed or indemnified by Defendant for the cost associated with the use of their
26 personal cellular phones and home offices for Defendant's benefit. Specifically, Plaintiffs and
27 the Aggrieved Employees were required by Defendant to use their personal cellular phones and
28 home offices. As a result, in the course of their employment with Defendant, Plaintiffs and the

1 Aggrieved Employees incurred unreimbursed business expenses which included, but were not
2 limited to, costs related to the use of their personal cellular phones and home offices all on behalf
3 of and for the benefit of Defendant.

4 33. In violation of the applicable sections of the California Labor Code and the
5 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order, Defendant
6 as a matter of company policy, practice and procedure, intentionally, knowingly and
7 systematically failed to provide Plaintiffs and the other Aggrieved Employees suitable seating
8 when the nature of these employees' work reasonably permitted sitting.

9 34. Defendant knew or should have known that Plaintiffs and other Aggrieved
10 Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere
11 with the performance of their duties, and that Defendant did not provide suitable seating and/or
12 did not allow them to sit when it did not interfere with the performance of their duties.

13 35. By reason of this conduct applicable to Plaintiffs and all Aggrieved Employees,
14 Defendant violated California Labor Code Section 1198 and Wage Order 4-2001, Section 14 by
15 failing to provide suitable seats. Plaintiffs seek penalties on behalf of Plaintiffs and other
16 Aggrieved Employees as provided herein. Providing suitable seating is the Defendant's burden.
17 As a result of Defendant's intentional disregard of the obligation to meet this burden, Defendant
18 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

19 36. The employment of Plaintiffs and other Aggrieved Employees has terminated and
20 Defendant has not tendered payment of all wages owed as required by law. Additionally, at all
21 times during the term of Plaintiffs' employment with Defendant, Plaintiffs and other Aggrieved
22 Employees earned and accrued vested vacation and holiday time on the date of their termination
23 pursuant to Defendant's uniform vacation policies and applicable California law. The amount of
24 vacation pay Plaintiffs and the other Aggrieved Employees earned and accumulated is evidenced
25 by Defendant's business records. Additionally, Defendant also underpaid accrued vested
26 vacation wages to Plaintiffs and other Aggrieved Employees by failing to pay such wages at the
27 regular rate of pay and more specifically the final rate of pay that included all non-discretionary
28 incentive compensation. Rather than pay vacation wages at the regular rate of pay, Defendant

1 underpaid vacation wages to Plaintiffs and other Aggrieved Employees at their base rates of pay,
2 instead of including all of the Plaintiffs' and other Aggrieved Employees' non-discretionary
3 incentive compensation into the vacation wage payment calculations. Defendant failed to specify
4 in Defendant's written vacation policy the rate at which Plaintiffs and other Aggrieved
5 Employees would be paid vacation upon leaving employment with Defendant. As a result of
6 Defendant's unlawful practice, policy, and procedure to deny paying the Plaintiffs and other
7 Aggrieved Employees all of their vested vacation and holiday time, Defendant failed to pay
8 Plaintiffs and other Aggrieved Employees all vested vacation time as wages due upon
9 employment termination, in violation of the California Labor Code, Sections 201, 202, 203 and
10 227.3. Similarly, Defendant underpaid waiting time penalties to Plaintiffs and other Aggrieved
11 Employees at their base rates of pay, instead of including all of the Aggrieved Employees' non-
12 discretionary compensation into the waiting time penalty calculations. This failure by Defendant
13 is believed to be the result of Defendant's unlawful, unfair, and deceptive refusal to provide
14 compensation for earned, accrued, and vested vacation and holiday time, as well as the
15 corresponding waiting time penalties that were paid. Defendant perpetrated this unlawful, unfair,
16 and deceptive practice to the detriment of Plaintiffs and other Aggrieved Employees.
17 Defendant's uniform practice and policy of failing to pay Plaintiffs and other Aggrieved
18 Employees for all vested vacation and holiday time accumulated at employment termination
19 violated and continues to violate Section 227.3 of the California Labor Code.

20 37. On or about April 12, 2024, Penaloza sent written notice to the California Labor
21 & Workforce Development Agency (the "LWDA") of Defendants' violation of Labor Code
22 section 226, pursuant to Labor Code section 2698, *et seq.*, the Private Attorneys General Act
23 ("PAGA"). Plaintiffs also sent written notice of said Labor Code violations to Defendant via
24 certified mail pursuant to Labor Code section 2699.3. As of the date of the filing of this
25 Complaint, the LWDA has not provided written notice regarding whether it intends to investigate
26 the Labor Code violations set forth in Penaloza's written notice.

27 38. On or about August 7, 2024 and June 5, 2025, Ferry sent written notices to the
28 LWDA of Defendants' violations of Labor Code sections 201, 202, 203, 204, 210, 218, 221, 226,

1 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100, and 2802, pursuant to
2 the PAGA. ~~Ferry also sent written notices of said Labor Code violations to Defendant via~~
3 ~~certified mail pursuant to Labor Code section 2699.~~ As of the date of the filing of this
4 Complaint, the LWDA has not provided written notice regarding whether it intends to investigate
5 the Labor Code violations set forth in Ferry's written notices.

6 39. As such, pursuant to Labor Code section 2699(a), Plaintiffs seek recovery of any
7 and all applicable civil penalties for Defendants' violations of Labor Code sections 201, 202,
8 203, 204, 210, 218, 221, 226, 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
9 1198, 2100, 2802, and 2698, *et seq.*, for the time periods described above, on behalf of
10 themselves and other Aggrieved Employees.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs pray for judgment individually and all others on whose behalf
13 this suit is brought against Defendants, jointly and severally, as follows:

- 14 1. Upon the First Cause of Action, for civil penalties according to proof pursuant to
15 the PAGA, and for costs and attorneys' fees;
16 2. On all causes of action for attorneys' fees and costs as provided by Labor Code
17 section 2699 and California Code of Civil Procedure section 1021.5; and
18 3. For such other and further relief as the Court may deem just and proper.
19

20 DATED: June 17, 2025

DIVERSITY LAW GROUP, P.C.
BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

21
22
23 By: 

Larry W. Lee
Mai Tulyathan
Norman B. Blumenthal
Kyle R. Nordrehaug
Attorneys for Plaintiffs and Aggrieved Employees

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

(Code of Civil Procedure Section 1013a, 2015.5)

STATE OF CALIFORNIA

ss.

COUNTY OF LOS ANGELES

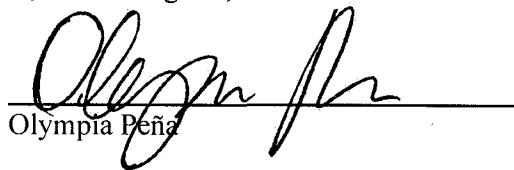
I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On June 17, 2025, I served the following document(s) described as: **JOINT STIPULATION TO FILE SECOND AMENDED CONSOLIDATED COMPLAINT; AND [PROPOSED] ORDER** on the interested parties in this action as follows:

P. Dustin Bodaghi Gayle Gonda Daniel Gonzalez Heather Hauck Littler Mendelson, P.C. 18565 Jamboree Road, Suite 800 Irvine, California 92612	<i>Attorneys for Defendant WWS Acquisition LLC</i> dbodaghi@littler.com GGonda@littler.com DLGonzalez@littler.com HHauck@littler.com
---	--

 X BY ELECTRONIC MAIL: by personally sending a true and correct copy of the above-described document(s) to the party(ies) listed above or on the attached mailing list from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s) indicated above or on the attached mailing list. I certify that said electronic transmission was completed and that all pages were received by the party(ies) identified herein or on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 17, 2025, at Los Angeles, California.


Olympia Peña

PROOF OF SERVICE