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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

SAMUEL A. FLOREZ, on behalf of himself and all others similarly situated, Plaintiffs, v. COLLETTA CARPET CLEANING AND JANITORIAL SERVICE, INC., a California corporation; SERVPRO INDUSTRIES, LLC, a Nevada limited liability company; and DOES 1 to 10, inclusive, Defendants.	**<u>CLASS ACTION</u>** Case No. 37-2023-00025666-CU-OE-CTL **FIRST AMENDED COMPLAINT (AMENDED AS A MATTER OF RIGHT UNDER LABOR CODE § 2699.3(a)(2)(C)) FOR:** **1. FAILURE TO PAY ALL WAGES DUE TO ILLEGAL ROUNDING;** **2. FAILURE TO PAY ALL OVERTIME WAGES;** **3. FAILURE TO PAY ALL OVERTIME WAGES AT THE LEGAL OVERTIME PAY RATE;** **4. FAILURE TO PAY REPORTING TIME PAY;** **5. FAILURE TO PROVIDE ALL MEAL PERIODS;** **6. FAILURE TO AUTHORIZE AND PERMIT ALL PAID THIRD REST PERIODS;** **7. FAILURE TO FULLY REIMBURSE WORK EXPENSES;** **8. DERIVATIVE VIOLATIONS OF LABOR CODE §§ 201-202;** **9. INDEPENDENT VIOLATIONS OF LABOR CODE §§ 201-202;** **10. PENALTIES UNDER LABOR CODE § 2699; AND** **11. UNFAIR BUSINESS PRACTICES** **DEMAND FOR JURY TRIAL** Action filed: June 6, 2023 Trial date: None Set

Plaintiff SAMUEL A. FLOREZ, an individual on behalf of himself and all others similarly situated (collectively referred to as "Plaintiffs"), hereby files this First Amended Complaint (amended as a matter of right under Labor Code § 2699.3(a)(2)(C)) against Defendant COLLETTA CARPET CLEANING AND JANITORIAL SERVICE, INC. and SERVPRO INDUSTRIES, LLC and DOES 1 to 10 (collectively referred to as "Defendants"). Plaintiffs are informed and believe, and on the basis of that information and belief, allege as follows:

I.

INTRODUCTION

1. This is a civil action seeking recovery for Defendants' violations of the California Labor Code, California Business and Professions Code, the applicable Wage Orders issued by the California Industrial Welfare Commission (the "IWC Wage Orders") and related common law principles.

2. Plaintiffs' action seeks monetary damages, including full restitution from Defendants as a result of Defendants' unlawful, fraudulent and/or unfair business practices.

3. The acts complained of herein occurred, occur and will occur, at least in part, within the time period from four years preceding the filing of the original Complaint herein, plus 179 days under Cal. Rules of Court, Appendix I, Emergency Rule No. 9, up to and through the time of trial for this matter although this should not automatically be considered the statute of limitations for any cause of action herein.

<u>RELEVANT JOB TITLES</u>

4. For introductory and general information only (and not to be considered a proposed class definition), the relevant individuals in this action are Defendants' non-exempt employees who were subjected to Defendants' policies and practices as described herein. Any differences in job activities between the different individuals in these positions were and are legally insignificant to the issues presented by this action.

<u>SUMMARY OF CLAIMS</u>

5. With regard to Defendants' non-exempt employees, Defendants have:

a. Failed to pay all wages due to illegal time rounding;

b. Failed to pay all state-mandated overtime wages for all overtime hours worked;

c. Failed to pay all overtime wages at the legal overtime pay rate;

d. Failed to pay the appropriate reporting time pay;

e. Failed to provide all legally-required meal periods;

f. Failed to authorize and permit all paid third rest periods;

g. Failed to reimburse for all work-related expenses;

h. Derivative Violations of Labor Code §§ 201-202;

i. Independent Violations of Labor Code §§ 201-202;

j. Incurred penalties under Labor Code §§ 2698, et seq.; and

k. Conducted unfair business practices.

II.

PARTIES

PLAINTIFF SAMUEL A. FLOREZ

6. Plaintiff SAMUEL A. FLOREZ is an individual over the age of 18 and is now and/or at all times mentioned in this Complaint was a citizen of the State of California.

7. Plaintiff SAMUEL A. FLOREZ worked for Defendants as a non-exempt employee from approximately July 2019 to May 2, 2022, in San Marcos, California, which is in San Diego County, California.

8. Plaintiff SAMUEL A. FLOREZ seeks recovery herein from Defendants because with regard to Plaintiff SAMUEL A. FLOREZ, while acting for Defendants in his capacity as a non-exempt employee, Defendants have:

a. Failed to pay all wages due to illegal time rounding;

b. Failed to pay all state-mandated overtime wages for all overtime hours worked;

c. Failed to pay all overtime wages at the legal overtime pay rate;

d. Failed to pay the appropriate reporting time pay;

e. Failed to provide all legally-required meal periods;

f. Failed to authorize and permit all paid third rest periods;

g. Failed to reimburse for all work-related expenses;

h. Derivative Violations of Labor Code §§ 201-202;

i. Independent Violations of Labor Code §§ 201-202;

j. Incurred penalties under Labor Code §§ 2698, et seq.; and

k. Conducted unfair business practices.

DEFENDANTS COLLETTA CARPET CLEANING AND JANITORIAL SERVICE, INC. AND SERVPRO INDUSTRIES, LLC

9. Defendants COLLETTA CARPET CLEANING AND JANITORIAL SERVICE, INC. and SERVPRO INDUSTRIES, LLC, is now and/or at all times mentioned in this Complaint was a California corporation, Nevada limited liability company, the owner and operator of an industry, business and/or facility licensed to do business and actually doing business in the State of California.

ALTER EGO BETWEEN DEFENDANTS COLLETTA CARPET CLEANING AND JANITORIAL SERVICE, INC. AND SERVPRO INDUSTRIES, LLC

10. Plaintiff is informed and believes and, on that basis, alleges that there exists, and at all relevant times there has existed, a unity of interest and ownership between Defendants COLLETTA CARPET CLEANING AND JANITORIAL SERVICE, INC. and SERVPRO INDUSTRIES, LLC such that any separateness and individuality between them have ceased. Adherence to the fiction of Defendants COLLETTA CARPET CLEANING AND JANITORIAL SERVICE, INC. and SERVPRO INDUSTRIES, LLC being separate business entities would permit abuse of any corporate privilege, sanction fraud, and promote injustice.

11. DOES 1 to 10, inclusive, are now and/or at all times mentioned in this Complaint were licensed to do business and/or actually doing business in California.

12. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of DOES 1 to 10, inclusive and for that reason, DOES 1 to 10 are sued under such fictitious names under California Code of Civil Procedure § 474.

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13. Plaintiffs will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained.

ALL DEFENDANTS

14. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were in some manner legally responsible for the events, happenings, and circumstances alleged in this Complaint.

15. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this Complaint.

16. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were the agents, servants, and/or employees of some or all other Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude, and/or employment.

17. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership, and common enterprise, and were acting within the course and scope and in pursuance of said joint venture, partnership, and common enterprise.

18. Defendants, and each of them, at all times mentioned in this Complaint concurred and contributed to the various acts and omissions of each and every one of the other Defendants in proximately causing the complaints, injuries, and/or damages alleged in this Complaint.

19. Defendants, and each of them, at all times mentioned in this Complaint approved of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this Complaint.

20. Defendants, and each of them, at all times mentioned in this Complaint aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages alleged in this Complaint.

21. The California Superior Court has jurisdiction in this matter due to Defendants' aforementioned violations of California statutory law and/or related common law principles.

22. The California Superior Court also has jurisdiction in this matter because both the individual and aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

23. The California Superior Court also has jurisdiction in this matter because during their employment with Defendants, Plaintiff SAMUEL A. FLOREZ and the members of the putative Classes herein were all California citizens, Defendant COLLETTA CARPET CLEANING AND JANITORIAL SERVICE, INC. is a California corporation, and Defendant SERVPRO INDUSTRIES, LLC, is a Nevada limited liability company. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law.

24. Venue is proper in San Diego County under Code of Civil Procedure § 395(a) and Code of Civil Procedure § 395.5 in that liability arose there because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each Defendant either is found, maintains offices, transacts business, and/or has an agent therein.

IV.

CLASS ACTION ALLEGATIONS

25. Code of Civil Procedure § 382 provides in pertinent part: "[W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." Plaintiffs bring this suit as a class action under Code of Civil Procedure § 382.

26. The putative classes Plaintiffs will seek to certify are currently composed of and defined as follows:

a. All California citizens employed by Defendants as non-exempt employees during the appropriate time period to whom Defendants applied a time rounding policy and practice as specifically described herein (hereinafter, the "Rounding Class");

a. All California citizens employed by Defendants as non-exempt employees during the appropriate time period who were subjected to Defendants' policies and practices regarding the payment of overtime wages as specifically described herein (hereinafter, the “Overtime Class”);

b. All California citizens employed by Defendants as non-exempt employees during the appropriate time period who were subjected to Defendants’ policies and practices regarding the calculation of overtime pay as specifically described herein (hereinafter, the “Overtime Rate Class”);

c. All California citizens employed by Defendants as non-exempt employees during the appropriate time period who were subjected to Defendants’ policies and practices regarding the payment of reporting time pay as specifically described herein (hereinafter, the “Reporting Time Class”);

d. All California citizens employed by Defendants as non-exempt employees during the appropriate time period who were subjected to Defendants’ policies and practices regarding meal periods as specifically described herein (hereinafter, the “Meal Period Class”);

e. All California citizens employed by Defendants non-exempt employees during the appropriate time period who were subjected to Defendants’ policies and practices regarding paid third rest periods as specifically described herein (hereinafter, the “Third Rest Period Class”);

f. All California citizens employed by Defendants non-exempt employees as during the appropriate time period who were subjected to Defendants’ policies and practices regarding business expense reimbursement as specifically described herein (hereinafter, the “Reimbursements Class”);

g. All formerly-employed California citizens employed by Defendants as non-exempt employees during the appropriate time period who were derivatively subjected to Defendants’ policies and practices regarding Labor Code § 203 and the payment of final wages as specifically described herein (hereinafter, the “Derivative LC 203 Class”);

h. All formerly-employed California citizens employed by Defendants as non-exempt employees during the appropriate time period who were independently subjected to Defendants' policies and practices regarding Labor Code § 203 and the payment of final wages as specifically described herein (hereinafter, the "Independent LC 203 Class");

i. All California citizens employed by Defendants as non-exempt employees during the appropriate time period regarding whom Defendants have engaged in unlawful, unfair and/or fraudulent business acts or practices prohibited by Business & Professions Code §§ 17200, et seq. as specifically described herein (hereinafter, the "17200 Class").

27. The Rounding Class, Overtime Class, Overtime Rate Class, Reporting Time Class, Meal Period Class, Third Rest Period Class, Reimbursements Class, Derivative LC 203 Class, Independent LC 203 Class and 17200 Class are herein collectively referred to as the "Classes."

28. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or necessary to amend the definition of the Classes. Plaintiffs will formally define and designate a class definition at such time when Plaintiffs seek to certify the Classes alleged herein.

29. Numerosity (Code of Civil Procedure § 382):

a. The potential quantity of members of the Classes as defined is so numerous that joinder of all members is unfeasible and impractical;

b. The disposition of the claims of the members of the Classes through this class action will benefit both the parties and this Court;

c. The quantity of members of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the membership of the Classes numbers greater than 100 individuals; and

d. The quantity and identity of such membership is readily ascertainable via inspection of Defendants' records.

30. Superiority (Code of Civil Procedure § 382): The nature of this action and the nature of the laws available to Plaintiffs make the use of the class action format particularly efficient and the appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein,

as follows:

a. California has a public policy that encourages the use of the class action device;

b. By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation;

c. This case involves large corporate Defendants and a large number of individual Class members with many relatively small claims and common issues of law and fact;

d. If each individual member of the Classes was required to file an individual lawsuit, the large corporate Defendants would necessarily gain an unconscionable advantage because Defendants would be able to exploit and overwhelm the limited resources of each individual member of the Classes with Defendants' vastly superior financial and legal resources;

e. Requiring each individual member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by the members of the Classes who would be disinclined to pursue an action against Defendants because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers, and well-being;

f. Proof of a common business practice or factual pattern, of which the members of the Classes experienced, is representative of the Classes herein and will establish the right of each of the members of the Classes to recover on the causes of action alleged herein;

g. Absent class treatment, the prosecution of separate actions by the individual members of the Classes, even if possible, would likely create:

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i) a substantial risk of each individual plaintiff presenting in separate, duplicative proceedings the same or essentially similar arguments and evidence, including expert testimony;

ii) a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants;

iii) inconsistent or varying verdicts or adjudications with respect to the individual members of the Classes against Defendants;

iv) potentially incompatible standards of conduct for Defendants; and

v) potentially incompatible legal determinations with respect to individual members of the Classes which would, as a practical matter, be dispositive of the interest of the other members of the Classes who are not parties to the adjudications or which would substantially impair or impede the ability of the members of the Classes to protect their interests.

h. The claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attendant thereto;

i. Courts seeking to preserve efficiency and other benefits of class actions routinely fashion methods to manage any individual questions; and

j. The Supreme Court of California urges trial courts, which have an obligation to consider the use of innovative procedural tools to certify a manageable class, to be procedurally innovative in managing class actions.

31. <u>Well-defined Community of Interest:</u> Plaintiffs also meet the established standards for class certification, as follows:

a. <u>Typicality</u>: The claims of Plaintiff SAMUEL A. FLOREZ are typical of the claims of all members of the Classes he seeks to represent because all members of the Classes sustained injuries and damages arising out of Defendants' common course of conduct in violation of law and the injuries and damages of all members of the Classes were caused by Defendants' wrongful conduct in violation of law, as alleged herein.

b. Adequacy: Plaintiff SAMUEL A. FLOREZ:

i) is an adequate representative of the Classes he seeks to represent;

ii) will fairly protect the interests of the members of the Classes;

iii) has no interests antagonistic to the members of the Classes; and

iv) will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.

c. Predominant Common Questions of Law or Fact: There are common questions of law and/or fact as to the members of the Classes which predominate over questions affecting only individual members of the Classes, including, without limitation:

ii) Whether Defendants' time rounding policies and practices are illegal with regard to the members of the Rounding Class;

iii) Whether Defendants paid the appropriate overtime wages to the members of the Overtime Class;

iv) Whether Defendants paid all overtime wages owed to the members of the Overtime Rate Class at the appropriate overtime pay rate;

v) Whether Defendants paid the appropriate minimum reporting time to the members of the Reporting Time Class;

vi) Whether Defendants failed and continue to fail to provide legally-required meal periods to the members of the Meal Period Class in violation of the Labor Code and Section 11 of the IWC Wage Orders;

vii) Whether Defendants failed and continue to fail to authorize and permit paid legally-required third rest periods to the members of the Third Rest Period Class in violation of the Labor Code and Section 12 of the IWC Wage Orders;

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viii) Whether Defendants failed to fully reimburse for all work-related expenses incurred by the members of the Reimbursements Class;

ix) Whether Defendants are derivatively liable under Labor Code § 203 to the members of the Derivative LC 203 Class;

x) Whether Defendants are independently liable under Labor Code § 203 to the members of the Independent LC 203 Class;

xi) Whether Defendants' conduct constitutes unfair business practices within the meaning of Business & Professions Code §§ 17200, et seq.;

xii) Whether the members of the Classes are entitled to compensatory damages, and if so, the means of measuring such damages;

xiii) Whether the members of the Classes are entitled to injunctive relief;

xiv) Whether the members of the Classes are entitled to restitution; and

xv) Whether Defendants are liable for attorneys' fees and costs.

32. Whether each member of the Classes might be required to ultimately justify an individual claim does not preclude maintenance of a class action.

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE TO ILLEGAL ROUNDING

(On Behalf of the Rounding Class)

(Against All Defendants)

33. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

34. Labor Code § 204 establishes the fundamental right of all employees in the State of California to be paid wages, including straight time and overtime, in a timely fashion for their work.

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35. Labor Code § 510(a) states in pertinent part: "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek … shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee."

36. Labor Code § 1182.12, effective July 1, 2014, states: "Notwithstanding any other provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars ($9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars ($10) per hour." Further, under Labor Code § 1182.12(b)(1)(A), for any employer who employs 26 or more employees, the minimum wage shall be as follows: "From January 1, 2017, to December 31, 2017, inclusive, - ten dollars and fifty cents ($10.50) per hour." Under Labor Code § 1182.12(b)(1)(B), for any employer who employs 26 or more employees, the minimum wage shall be as follows: "From January 1, 2018, to December 31, 2018, inclusive, - eleven dollars ($11) per hour." Under Labor Code § 1182.12(b)(1)(C), for any employer who employs 26 or more employees, the minimum wage shall be as follows: "From January 1, 2019, to December 31, 2019, inclusive, - twelve dollars ($12) per hour." Under Labor Code § 1182.12(b)(1)(D), for any employer who employs 26 or more employees, the minimum wage shall be as follows: "From January 1, 2020, to December 31, 2020, inclusive, - thirteen dollars ($13) per hour." Under Labor Code § 1182.12(b)(1)(E), for any employer who employs 26 or more employees, the minimum wage shall be as follows: "From January 1, 2021, to December 31, 2021, inclusive, - fourteen dollars ($14) per hour." Finally, under to Labor Code § 1182.12(b)(1)(F), for any employer who employs 26 or more employees, the minimum wage shall be as follows: "From January 1, 2022, and until adjusted by subdivision (c) - fifteen dollars ($15) per hour."

37. Labor Code § 1194(a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

38. Further, under to Labor Code § 1197, payment of less than the minimum wage fixed by the Labor Commission is unlawful.

39. Under Labor Code § 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

40. Under the IWC Wage Order(s), Defendants are required to pay the members of the Rounding Class for all hours worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work, whether or not required to do so.

41. Defendants, as a matter of established company policy and procedure, at each and every one of the individual facilities owned and/or operated by Defendants, consistently:

a. Administered a uniform company policy and practice as to the rounding policies regarding the members of the Rounding Class; and

b. Used a timekeeping system that could track the exact amount of time worked; and

c. Rounded the actual time worked and recorded by the members of the Rounding Class, usually down, so that during the course of their employment, the members of the Rounding Class were paid far less than they would have been paid had they been paid for actual time rather than "rounded" time.

42. Because Defendants required the members of the Rounding Class to remain under Defendants' control without paying therefore, this resulted in the members of the Rounding Class earning less than the legal minimum wage in the State of California.

43. Defendants' pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, under Labor Code § 218, to recovery by Plaintiffs and the members of the Rounding Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the appropriate rate.

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44. Further, Defendants' pattern and practice in uniform administration of corporate policy regarding Defendants' failure to pay the legal minimum wage to the members of the Rounding Class as described herein is unlawful and entitles them, under Labor Code § 1194(a), to recovery of the unpaid balance of the full amount of the unpaid minimum wages owed, calculated as the difference between the straight time compensation paid and the applicable minimum wage (and/or the full amount of unpaid overtime compensation, which includes any unpaid straight time and unpaid overtime premium for overtime hours worked), including interest thereon.

45. Under Labor Code § 1194.2(a) (which provides that in any action under Labor Code § 1194, an employee shall be entitled to recover liquidated damages), the members of the Rounding Class seek recovery of liquidated damages on the straight-time portion of uncompensated hours of work (not including the overtime portion thereof) in an amount equal to the wages unlawfully unpaid and interest thereon.

46. That calculation of individual damages for the members of the Rounding Class may at some point be required does not foreclose the possibility of taking common evidence on questions regarding their entitlement to overtime compensation.

47. Under Labor Code §§ 218.6 and 1194(a) and Civil Code §3287, the members of the Rounding Class seek recovery of pre-judgment interest on all amounts recovered herein.

48. Under Labor Code §§ 218.5 and/or 1194, the members of the Rounding Class request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(On Behalf of the Overtime Class)

(Against All Defendants)

49. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

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50. Labor Code § 204 establishes the fundamental right of all employees in the State of California to be paid wages, including straight time and overtime, in a timely fashion for their work.

51. Labor Code § 510(a) states in pertinent part: "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek … shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee."

52. Labor Code §§ 1194(a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

53. Under Labor Code § 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

54. Defendants, as a matter of established company policy and procedure, at each and every one of the individual facilities owned and/or operated by Defendants, consistently:

a. Administered a uniform company policy and practice as to the pay policies regarding Plaintiff and the members of the Overtime Class;

b. Scheduled to work and in fact required Plaintiff and the members of the Overtime Class to work in excess of eight hours per workday and/or in excess of 40 hours per workweek without paying overtime compensation for all hours they were under Defendants' control; and

c. Failed to pay Plaintiff and the members of the Overtime Class overtime compensation for all work accomplished in excess of eight hours per day and/or 40 hours per week.

55. Defendants' pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an

entitlement, under Labor Code § 218 and Labor Code § 1194(a), to recovery by the members of the Overtime Class, in a civil action, for the unpaid balance of the full amount of the overtime premiums owing.

56. That calculation of individual damages for the members of the Overtime Class may at some point be required does not foreclose the possibility of taking common evidence on questions regarding their entitlement to overtime compensation.

57. Under Labor Code § 218.6, Labor Code § 1194(a) and Civil Code § 3287, the members of the Overtime Class seek recovery of pre-judgment interest on all amounts recovered herein.

58. Under Labor Code § 218.5 and/or Labor Code § 1194, the members of the Overtime Class request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

THIRD CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME

WAGES AT THE LEGAL OVERTIME PAY RATE

(On Behalf of the Overtime Rate Class)

(Against All Defendants)

59. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

60. Labor Code § 204 establishes the fundamental right of all employees in the State of California to be paid wages, including straight time and overtime, in a timely fashion for their work.

61. Labor Code § 510(a) states in pertinent part, "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek … shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee."

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62. The "regular rate of pay" includes "all [applicable] remuneration paid to, or on behalf of the employee." (29 U.S.C. § 207(3).) The California Industrial Welfare Commission applies this standard for determining an employee's regular rate of pay for overtime calculation purposes.

63. Labor Code § 1194(a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

64. Labor Code § 204 establishes the fundamental right of all employees in the State of California to be paid wages, including straight time and overtime, in a timely fashion for their work.

65. Defendants, as a matter of established company policy and procedure, at each and every one of the individual facilities owned and/or operated by Defendants, consistently:

a. Administered a uniform company policy and practice regarding the payment of wages, including overtime and bonuses, to the members of the Overtime Rate Class;

b. Scheduled and/or required the members of the Overtime Rate Class to work in excess of eight hours per workday and/or in excess of forty hours per workweek;

c. Paid the members of the Overtime Rate Class nondiscretionary bonuses; and

d. Failed to pay the members of the Overtime Rate Class for all work accomplished in excess of forty hours per week at the appropriate overtime rate, reflecting all applicable forms of remuneration, including but not limited to said bonuses, as required by law.

66. Defendants' pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, under Labor Code §§ 218 and 1194(a), to recovery by the members of the Overtime

Rate Class, in a civil action, for the unpaid balance of the full amount of the overtime premiums owing.

67. That calculation of individual damages for the members of the Overtime Rate Class may at some point be required does not foreclose the possibility of taking common evidence on questions regarding their entitlement to overtime compensation.

68. Under Labor Code §§ 218.6 and 1194(a), and Civil Code § 3287, the members of the Overtime Rate Class seek recovery of pre-judgment interest on all amounts recovered herein.

69. Under Labor Code §§ 218.5 and/or 1194, the members of the Overtime Rate Class request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

FOURTH CAUSE OF ACTION

FAILURE TO PAY REPORTING TIME PAY

(On Behalf of the Reporting Time Class)

(Against All Defendants)

70. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

71. Labor Code § 204 establishes the fundamental right of all employees in the State of California to be paid wages, including straight time and overtime, in a timely fashion for their work.

72. Under the IWC Wage Order(s), Defendants are required to pay the members of the Reporting Time Class for all hours worked, meaning the time during which an employee is subject to the control of an employer.

73. The IWC Wage Order(s) § 5(A) state: "Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage."

74. The IWC Wage Order(s) § 5(B) state: “If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee’s regular rate of pay, which shall not be less than the minimum wage.”

75. Defendants regularly required the members of the Reporting Time Class to report for work at their scheduled reporting time and then did not put them to work and/or furnished less than half said Class Members’ usual or scheduled day’s work, without paying for half the usual or scheduled day’s work (at least two hours) at each respective Class Members’ regular rate of pay.

76. At no time when Defendants did not pay the legally requisite Reporting Time Pay were the provisions of the IWC Wage Orders § 5(C) or (D) applicable, in that Defendants’ acts were not the cause of threats to employees or property, public utility failures, Acts of God or other causes not within Defendants’ control or employees on paid standby status.

77. The pattern and practice in uniform administration of corporate policy regarding Defendants’ failure to pay the legal reporting time pay to the members of the Reporting Time Class as described herein is unlawful and creates entitlement to recovery by the members of the Reporting Time Class, in a civil action, for the unpaid balance of the full amount of the unpaid wages owed, including interest thereon.

78. Under Labor Code § 218.6 and Civil Code § 3287, the members of the Reporting Time Class seek recovery of pre-judgment interest on all amounts recovered herein.

79. Under Labor Code § 218.5, the members of the Reporting Time Class request that the Court award reasonable attorneys’ fees and costs incurred by them in this action.

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FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ALL MEAL PERIODS

(On Behalf of the Meal Period Class)

(Against All Defendants)

80. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

81. Labor Code § 226.7(b) provides that "An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health."

82. Labor Code § 512 provides that "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

83. Labor Code § 516 provides that the Industrial Welfare Commission "may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers."

84. Section 11(C) of the IWC Wage Orders provides "Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written

agreement shall state that the employee may, in writing, revoke the agreement at any time."

85. Section 11(D) of the IWC Wage Order(s) provides "If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee 1 hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided."

86. On one or more occasions, the members of the Meal Period Class worked over five hours per shift and therefore were entitled to an uninterrupted meal period of not less than 30 minutes prior to exceeding five hours of employment.

87. Further, on one or more occasions, some members of the Meal Period Class worked over 10 hours per shift and therefore were entitled to an uninterrupted second meal period of not less than 30 minutes prior to exceeding 10 hours of employment.

88. The members of the Meal Period Class did not validly or legally waive their meal periods, by mutual consent with Defendants or otherwise.

89. The members of the Meal Period Class did not enter into any written agreement with Defendants agreeing to an on-duty paid meal period.

90. As a matter of Defendants' established company policy, Defendants failed to always comply with the meal period requirements established by Labor Code §§ 226.7, 512, and 516, and Section 11 of the IWC Wage Order(s) by failing to always provide the members of the Meal Period Class with a first and in some cases a second legally compliant meal period.

91. Under Section 11(D) of the IWC Wage Order(s) and Labor Code § 226.7(c) which states "If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.," the members of the Meal Period Class are entitled to damages in an amount equal to one (1) additional hour of pay at each employee's regular rate of compensation for each work day that the meal period was not

provided, in a sum to be proven at trial.

92. Under Labor Code § 218.6 and Civil Code § 3287, the members of the Meal Period Class seek recovery of pre-judgment interest on all amounts recovered herein.

SIXTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT ALL THIRD PAID REST PERIODS

(On Behalf of the Rest Period Class)

(Against All Defendants)

93. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

94. Labor Code § 226.7(b) provides, "An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health."

95. Labor Code § 516 provides that the Industrial Welfare Commission "may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers."

96. Section 12(A) of the IWC Wage Order(s) states, "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of 10 minutes net rest time per 4 hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than 3 ½ hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

97. Section 12(B) of the IWC Wage Order(s) states, "If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

98. The members of the Third Rest Period Class sometimes worked over four hours per shift. Further, the members of the Third Rest Period Class sometimes worked over six hours per shift, and in some cases over 10 hours per shift.

99. The members of the Third Rest Period Class were entitled to a rest period of not less than 10 minutes for every four hours of work, or major fraction thereof.

100. As a matter of Defendants' established company policy, Defendants failed to always authorize and permit all required third rest periods established by Labor Code §§ 226.7 and 516, and Section 12 of the IWC Wage Order(s).

101. Under Section 12 of the IWC Wage Order(s) and Labor Code § 226.7(b) which states, "If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided," the members of the Third Rest Period Class are entitled to damages in an amount equal to one additional hour of pay at each employee's regular rate of compensation for each work day that one or more rest periods were not so provided.

102. Under Labor Code § 218.6 and Civil Code § 3287, the members of the Third Rest Period Class seek recovery of pre-judgment interest on all amounts recovered herein.

SEVENTH CAUSE OF ACTION

FAILURE TO FULLY REIMBURSE WORK EXPENSES

(On Behalf of the Reimbursements Class)

(Against All Defendants)

103. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

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104. Under Labor Code § 2802(a), "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

105. Labor Code § 2804 states in pertinent part, "Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

106. As a matter of Defendants' established company policy, the members of the Reimbursements Class were and are required by Defendants to personally incur necessary expenditures in direct consequence of the discharge of their duties, including but not limited to usage of personal mobile device for work-related activities and uniform maintenance.

107. Defendants are legally required to reimburse the members of the Reimbursements Class for all necessary expenditures.

108. Defendants failed to fully and reasonably reimburse the members of the Reimbursements Class for all necessary expenditures, including but not limited to the aforementioned expenditures.

109. As a proximate result of the aforementioned violations of Labor Code § 2802(a), the members of the Reimbursements Class are entitled to recovery from Defendants of the unpaid balance for all necessary expenditures, including but not limited to the aforementioned expenditures.

110. As a proximate result of the aforementioned violations of Labor Code § 450(a) and § 2802(a), the members of the Reimbursements Class have been damaged in an amount according to proof at the time of trial.

111. Under Labor Code § 2802(b), the members of the Reimbursements Class request that the Court award interest at the same rate as judgments in civil actions, accruing from the date on which each member of the Reimbursements Class incurred the necessary expenditure or loss.

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112. Under Labor Code § 2802(c), the members of the Reimbursements Class request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

EIGHTH CAUSE OF ACTION

DERIVATIVE VIOLATIONS OF LABOR CODE §§ 201-202

(On Behalf of the Derivative LC 203 Class)

(Against All Defendants)

113. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

114. Labor Code § 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty days from the due date thereof, until paid or until an action therefore is commenced.

115. The members of the Derivative LC 203 Class are no longer employed by Defendants as they were either discharged from or quit Defendants' employ.

116. Defendants had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned wages of Defendants' former employees, as set forth above, according to amendment or proof.

117. As set forth above, Defendants willfully failed to pay the members of the Derivative LC 203 Class their entire wages due and owing at the time of their termination or within seventy-two hours of their resignation and failed to pay those sums for up to thirty days thereafter.

118. Defendants' willful failure to pay wages to the members of the Derivative LC 203 Class violates Labor Code § 203 because Defendants knew or should have known wages were due to the members of the Derivative LC 203 Class, as set forth above, but Defendants failed to pay them.

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119. Thus, the members of the Derivative LC 203 Class are entitled to recovery under Labor Code § 203.

NINTH CAUSE OF ACTION

INDEPENDENT VIOLATIONS OF LABOR CODE §§ 201-202

(On Behalf of the Independent LC 203 Class)

(Against All Defendants)

120. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

121. Labor Code § 201(a) states in pertinent part: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

122. Labor Code § 202(a) states in pertinent part: "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting."

123. Labor Code § 203 provides that if an employer willfully fails to timely pay, without abatement or reduction, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

124. The members of the Independent LC 203 Class are no longer employed by Defendants as they were either discharged from or quit Defendants' employ.

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125. Defendants had a consistent and uniform policy, practice and procedure of willfully failing to timely pay the earned wages of Defendants' former employees, according to amendment or proof.

126. For example, Plaintiff, SAMUEL A. FLOREZ resigned on May 2, 2022. However, thereafter he did not receive his final wages until May 11, 2022, nine days later, i.e., more than 72 hours after his resignation. This check did not include waiting time penalties.

127. Defendants willfully failed to pay the members of the Independent LC 203 Class all wages due and owing at the time of their termination or within seventy-two hours of their resignation.

128. Defendants' willful failure to timely pay final wages to the members of the Independent LC 203 Class violates Labor Code §201-202 because Defendants knew or should have known final wages were due to the members of the Independent LC 203 Class by a date certain, but Defendants failed to pay them on a timely basis on or before that deadline.

129. Thus, the members of the Independent LC 203 Class are entitled to recovery under Labor Code § 203.

TENTH CAUSE OF ACTION

PENALTIES UNDER LABOR CODE § 2699

(On Behalf of the Aggrieved Employees)

(Against All Defendants)

130. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

131. In addition to seeking civil penalties for the substantive Labor Code violations as alleged above, Plaintiffs allege as follows:

132. Under Labor Code § 2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, board agencies or employees, such civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf

of himself or herself and other current or former employees) and Labor Code § 2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those for which a civil penalty is specifically provided), the aggrieved employees seek recovery of all applicable civil penalties, as follows:

a. As applicable, for civil penalties under Labor Code § 2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount of $100 for each aggrieved employee per pay period for the initial violation; and $200 for each aggrieved employee per pay period for each subsequent violation;

b. As applicable, civil penalties under Labor Code § 558 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for violations of Labor Code §§ 500-556, in the amount of $50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid, and $100 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid;

c. As applicable, for civil penalties under Labor Code § 1197.1 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for violations of Labor Code §§ 1194 and 1197, in the amount of $100 for each underpaid aggrieved employee for each pay period the aggrieved employee was intentionally underpaid, and $250 for each subsequent violation for each underpaid aggrieved employees regardless of whether the initial violation was intentionally committed;

d. As applicable, for civil penalties under Labor Code § 210 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each employee who is/was not paid wages in accordance with Labor Code §§ 204 and 204b in the amount of a civil penalty of $100 for each aggrieved employee per pay period for each initial violation, and $200 for each aggrieved employee per pay period for each subsequent violation; and

e. As applicable, for any and all additional civil penalties and sums as provided by the Labor Code and/or other relevant statutes.

133. In addition, Plaintiff seeks and is entitled to 65% of all penalties obtained under Labor Code § 2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and 35% to Plaintiff and all other similarly situated aggrieved employees.

134. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs under Labor Code § 2699(k)(1) and any other applicable statute.

135. Labor Code § 2699.3(a) states in pertinent part: "A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met: (1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation."

136. Labor Code § 2699.3(c)(1) states in pertinent part: "A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met: (1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation."

137. Here, Plaintiffs' civil action alleges violations of provisions listed in Labor Code § 2699.5 and violations of provisions other than those listed in Labor Code § 2699.5. As such, Labor Code §§ 2699.3(a) and 2699.3(c) apply to this action.

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138. On December 11, 2024, Plaintiffs complied with Labor Code §§ 2699.3(a) and 2699.3(c) in that Plaintiffs gave written notice by online filing with the LWDA and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Attached hereto as Exhibit 1 is Plaintiffs' LWDA letter.

139. Labor Code § 2699.3(a) further states in pertinent part: "(2)(A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699."

140. As of February 14, 2025 (65 calendar days after Plaintiffs' December 11, 2024 LWDA letter was filed online), Plaintiffs had not received any notification that the LWDA intended to investigate the alleged violations. As such, Plaintiffs have complied with Labor Code § 2699.3(a) and are authorized to commence a civil action that includes a cause of action under Labor Code § 2699.

141. Further, as of January 13, 2025 (33 calendar days after Plaintiffs' December 11, 2024 LWDA letter was mailed to Defendants via certified mail), Plaintiffs have not received from Defendants written notice by certified mail that the alleged violations have been cured, including a description of actions taken. As such, Plaintiffs have complied with Labor Code § 2699.3(c) and are authorized to commence a civil action that includes a cause of action under Labor Code § 2699.

ELEVENTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

(On Behalf of the 17200 Class)

(Against All Defendants)

142. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set

forth herein.

143. Business & Professions Code § 17200 provides, in pertinent part, "[U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act."

144. Business & Professions Code § 17205 provides that unless otherwise expressly provided, the remedies or penalties provided for unfair competition "are cumulative to each other and to the remedies or penalties available under all other laws of this state."

145. Business & Professions Code § 17204 provides that an action for any relief from unfair competition may be prosecuted by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition.

146. Defendants have engaged in unlawful, unfair and fraudulent business acts or practices prohibited by Business & Professions Code § 17200, including those set forth in the preceding and foregoing paragraphs of the complaint, thereby depriving the members of the 17200 Class of the minimum working standards and conditions due to them under the Labor Code and/or the IWC Wage Orders, as specifically described herein.

147. Defendants have engaged in unfair business practices in California by practicing, employing and utilizing the employment practices outlined in the preceding paragraphs, specifically, by requiring employees to perform the labor services complained of herein without the requisite compensation.

148. Defendants' use of such practices constitutes an unfair business practice and unfair competition and provides an unfair advantage over Defendants' competitors.

149. Plaintiffs have suffered injury in fact and have lost money or property as a result of such unfair competition.

150. Plaintiffs seek full restitution from Defendants, as necessary and according to proof, to restore any and all monies withheld, acquired, and/or converted by Defendants by means of the unfair practices complained of herein.

151. Further, if Defendants are not enjoined from the conduct set forth above, Defendants will continue to practice, employ, and utilize the employment practices outlined in the preceding paragraphs.

152. Therefore, Plaintiffs request that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

153. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendants.

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

a. That the Court issue an Order certifying the Classes herein, appointing all named Plaintiffs as representative of all others similarly situated, and appointing all law firms representing all named Plaintiffs as counsel for the members of the Classes;

As to the First Cause of Action for Failure to Pay All Wages Due To Illegal Rounding:

b. For recovery of the unpaid balance of the full amount of the straight time compensation due and owing, according to proof;

c. For liquidated damages on the straight-time portion of uncompensated hours of work (not including the overtime portion thereof), as authorized by Labor Code § 1194.2(a);

d. For recovery of the unpaid balance of the full amount of overtime compensation due and owing, calculated at the appropriate rate and according to proof;

e. For pre-judgment interest as allowed by Labor Code §§ 218.6 and 1194(a) and Civil Code § 3287;

f. For an award of reasonable attorneys' fees and costs under Labor Code §§ 218.5 and/or 1194(a);

As to the Second Cause of Action for Failure to Pay Overtime Wages:

g. For damages, as set forth in Labor Code § 1194(a) and the IWC Wage Order(s) regarding wages due and owing, according to proof;

h. For pre-judgment interest as allowed by Labor Code § 218.6, Labor Code § 1194(a) and Civil Code § 3287;

i. For an award of reasonable attorneys' fees and costs under Labor Code § 218.5 and/or Labor Code § 1194(a);

As to the Third Cause of Action for Failure to Pay All Overtime Wages at the Legal Overtime Pay Rate:

j. For damages, as set forth in Labor Code § 1194(a) and the IWC Wage Order(s) regarding wages due and owing, according to proof;

k. For pre-judgment interest as allowed by Labor Code §§ 218.6 and 1194(a), and Civil Code § 3287;

l. For an award of reasonable attorneys' fees and costs under Labor Code §§ 218.5 and/or 1194(a);

As to the Fourth Cause of Action for Failure to Pay Reporting Time Pay:

m. For recovery of the unpaid balance of the full amount of the unpaid reporting time pay due and owing, according to proof;

n. For pre-judgment interest as allowed by Labor Code § 218.6 and Civil Code § 3287;

o. For an award of reasonable attorneys' fees and costs under Labor Code § 218.5;

As to the Fifth Cause of Action for Failure to Provide Meal Periods:

p. For one hour of pay at the regular rate of compensation for each member of the Meal Period Class for each workday that a meal period was not provided;

q. For pre-judgment interest as authorized by Labor Code § 218.6 and Civil Code § 3287;

As to the Sixth Cause of Action for Failure to Authorize and Permit Third Paid Rest Periods:

r. For one hour of pay at the regular rate of compensation for each member of the Third Rest Period Class for each workday that a rest period was not provided;

s. For pre-judgment interest as authorized by Labor Code § 218.6 and Civil Code § 3287;

As to the Seventh Cause of Action for Unpaid Reimbursements for Work Expenses:

t. For recovery of the unpaid balance for all necessary expenditures and losses incurred in direct consequence of the discharge of Defendants' duties;

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u. For interest thereon at the same rate as judgments in civil actions, accruing from the date on which each member of the Reimbursements Class incurred the necessary expenditure or loss, under Labor Code § 2802(b);

v. For reasonable attorneys' fees and costs under Labor Code § 2802(c);

<u>As to the Eighth Cause of Action for Derivative Violations of Labor Code §§ 201-202:</u>

w. For recovery as authorized by Labor Code § 203;

<u>As to the Ninth Cause of Action for Independent Violations of Labor Code §§ 201-202:</u>

x. For recovery as authorized by Labor Code § 203;

<u>As to the Tenth Cause of Action for Penalties Under Labor Code § 2699:</u>

y. As applicable, for civil penalties under Labor Code § 2699(f), in addition to and entirely independent and apart from other penalties in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of $100 for each aggrieved employee per pay period for each violation, and $200 for each aggrieved employee per pay period for each subsequent violation;

z. As applicable, for civil penalties under Labor Code § 558, in addition to and entirely independent and apart from other penalties in the Labor Code, as follows:

i) For any initial violation, fifty dollars ($50) for each aggrieved underpaid employee for each pay period for which the employee was underpaid; and

ii) For each subsequent violation, one hundred dollars ($100) for each aggrieved underpaid employee for each pay period for which the employee was underpaid;

aa. As applicable, for civil penalties under Labor Code § 1197.1, in addition to and entirely independent and apart from other penalties in the Labor Code, as follows:

i) For any initial violation that is intentionally committed, $100 for each aggrieved underpaid employee for each pay period for which the employee was underpaid; and

ii) For each subsequent violation, regardless of whether the initial violation is intentionally committed, $250 for each aggrieved underpaid employee for each pay period for which the employee was underpaid;

bb. As applicable, for civil penalties under Labor Code § 210, in addition to and entirely independent and apart from other penalties in the Labor Code, in the amount of $100 for each aggrieved employee per pay period for each violation, and $200 for each aggrieved employee per pay period for each subsequent violation; and

cc. For such relief as this Court may deem just and proper.

<u>As to the Eleventh Cause of Action for Unfair Business Practices</u>:

dd. For an accounting, under administration of Plaintiffs and/or the receiver and subject to Court review, to determine the amount to be returned by Defendants, and the amounts to be refunded to members of the Classes who are owed monies by Defendants;

ee. For an Order requiring Defendants to identify each of the members of the Classes by name, home address, home telephone number and, if available, email address;

ff. For an Order requiring Defendants to make full restitution and payment under California law;

gg. For an Order for a preliminary and/or permanent injunction prohibiting Defendants from engaging in the acts complained of herein;

hh. For the creation of an administrative process wherein each injured member of the Classes may submit a claim in order to receive his/her money;

ii. For all other appropriate injunctive, declaratory and equitable relief;

jj. For interest to the extent permitted by law;

kk. For an award of attorneys' fees and costs incurred in the investigation, filing and prosecution of this action under Code of Civil Procedure § 1021.5, Business & Professions Code §§ 17200, et seq., Labor Code § 1194 and/or any other applicable provision of law;

<u>As to All Causes of Action:</u>

ll. For such relief as this Court may deem just and proper, including reasonable attorneys' fees and costs incurred.

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VII.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law

Dated: February 21, 2025

D.LAW, INC.

By: Gregg Lander

Emil Davtyan, Esq.
Gregg Lander, Esq.
Vanessa M. Ruggles, Esq.
Taylor Keaster, Esq.

EXHIBIT 1

D.Law
1635 Pontius Ave, 2nd Floor
Los Angeles, California 90025
(424) 320-6420
(424) 320-6454

December 11, 2024

Submitted at https://www.dir.ca.gov with $75 filing fee

PAGA Administrator
California Labor and Workforce Development Agency
PAGAfilings@dir.ca.gov

Re: Colletta Carpet Cleaning and Janitorial Service, Inc., and Araya Construction, Inc. (collectively, the "Employer")

NOTICE OF LABOR CODE VIOLATIONS UNDER LABOR CODE § 2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency, and the Employer

From: Samuel A. Florez (the "Employee"), who was subjected to the wage and hour practices set forth below

The Employee, by way of the above-named counsel, submits this Notice, under and in compliance with the requirements of California Labor Code § 2699.3(a)/(c), and alleges the facts and theories to support the alleged violations as follows:

During the applicable time period each Employer was and is a member of and/or engaged in a joint venture, partnership and common enterprise, and was acting within the course and scope of, and in pursuance of said joint venture, partnership and common enterprise. Further, during this time period, each Employer employed the Employee and all other similarly situated aggrieved employees as non-exempt employees and utilized consistent policies and procedures regarding the Employee and all such other aggrieved employees, as follows:

First, the Employer failed to pay all wages to the Employee and other aggrieved employees due to the Employer's time rounding policy. The Employer could and did capture actual time worked but ignored employees' actual time punches and instead rounded their time. This time-rounding policy (combined with the fact that employees often arrived early and/or worked late) resulted in a disproportionate impact that does not average out over a period of time. This policy results in the failure to compensate for all time actually worked by the Employee and other aggrieved employees. Accordingly, the Employer failed to pay all straight time, minimum, and/or overtime wages due for the time the Employee and other aggrieved employees were subject to the Employer's control, in violation of Labor Code §§ 510, 1194, 1197, and 1198 and the applicable Industrial Wage Order, and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Second, the Employee and other aggrieved employees performed work for the Employer and sometimes worked over eight hours in a day and/or 40 hours in a week. However, the Employer failed to always pay the Employee and other aggrieved employees for all overtime hours worked at the appropriate overtime pay rate. As such, the Employer violated Labor Code §§ 510, 1194, 1197, and/or 1198 and the applicable Industrial Wage Order and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Third, the Employer paid the Employee and other aggrieved employees certain forms of non-discretionary pay, including but not limited to bonuses. However, the Employer did not include all forms of remuneration in the overtime pay rate when the Employee and other aggrieved employees worked overtime. As such, the Employer violated Labor Code §§ 510, 1194, 1197, 1198 and the applicable Industrial Wage Order and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Fourth, the Employee and other aggrieved employees were sometimes required to report to work for early morning company meetings and then sent home, but when doing so, were sometimes paid for less than half the usual or scheduled day's work at each such employee's regular rate of pay, in violation of the applicable Industrial Wage Order § 5(A)/(B) and Labor Code § 1198. As such, the Employer owes penalties under Labor Code §§ 2699(a)/(f), 1197.1, and/or 558.

Fifth, the Employer failed to timely provide all legally compliant meal breaks (including second meal breaks) to the Employee and other aggrieved employees, because the Employer failed to relinquish all control and/or because meal breaks were missed, interrupted, short and/or late. The Employee and other aggrieved employees routinely worked over five hours but did not always get lawful full thirty-minute uninterrupted meal breaks within the first five hours of their shifts. Further, they sometimes worked over ten and/or twelve hours but were not timely provided a legally compliant second meal break. The Employer did not always pay a meal period penalty for these violations. As such, the Employer violated Labor Code §§ 226.7, 512 and 516 and the applicable Industrial Wage Order ¶ 11 and owes penalties under Labor Code §§ 2699(f) and/or 558.

Additionally, as stated above, regarding the Employee and other aggrieved employees, the Employer utilized a time rounding policy, including for meal periods, that ignored said employees' actual meal period time punches and instead rounded their meal period time. However, under *Donahue v. AMN Services, LLC* (2021) No. S253677, with respect to recording the time for meal periods, "employers cannot engage in the practice of rounding time punches." In addition, because the Employer rounded meal period time for the Employee and other aggrieved employees, the Employer failed to pay all straight time wages, minimum wages and/or overtime wages due for the meal period time that was stolen due to the Employer's meal-period-time-rounding-policies. Because the Employer did in fact engage in the practice of rounding time punches with regard to the Employee and other aggrieved employees, the Employer violated Labor Code §§ 204, 226.7, 510, 512, 516, 1194, 1197, 1198 and the applicable Industrial Wage Order and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Sixth, the Employer failed to always authorize and permit the Employee and other aggrieved employees with paid third rest breaks, as the Employee and other aggrieved employees did not always get their full ten-minute uninterrupted third rest breaks for the third four hour period worked or major fraction thereof, and as such, were not always authorized and permitted legally compliant third rest breaks. The Employer did not pay a rest period penalty for these third rest break violations. As such, the Employer violated Labor Code §§ 226.7 and 516 and the applicable Industrial Wage Order ¶ 12(A)/(B) and owes rest period wages and penalties under Labor Code §§ 2699(f) and/or 558.

Seventh, the Employee and other aggrieved employees incurred expenses while performing reasonable and necessary work-related duties, including but not limited to the use of their personal mobile devices. The Employer failed to reimburse for these work-related expenses. As such, the Employer violated Labor Code § 2802 by failing to reimburse the Employee and other aggrieved employees for all business expenses reasonably incurred in the course of their required work duties and owes penalties under Labor Code § 2699(f).

Eighth, also regarding waiting time penalties, because the Employer failed to pay all wages as set forth above, formerly-employed aggrieved employees are entitled to thirty days of wages at their regular rate of pay for the Employer's failure to pay all wages due upon separation of employment. The Employer's failure to timely pay final wages to formerly-employed aggrieved employees was willful in that the Employer adopted policies and/or practices that were incompatible with the Labor Code. Because the Employer failed to pay all wages as set forth above, the Employer derivatively violated Labor Code §§ 201-202 and owes penalties under Labor Code §§ 2699(f) and/or 201-203.

Ninth, and finally, also regarding waiting time penalties, in addition to the derivative violations of Labor Code § 203 set forth above, the Employer did not timely pay the Employee and other separated aggrieved employees all wages due and owing in a timely manner. For example, the Employee resigned on May 2, 2024, so his final wages were immediately due and owing. However, the Employer willfully failed to pay the Employee his final wages until May 11, 2022. Therefore, the Employer violated Labor Code §§ 201-203 and owes penalties under Labor Code §§ 2699(f) and/or 201-203.

Under Labor Code § 2699.3(a)(2)(A), please advise within 65 calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations.

Further, under Labor Code § 2699.3(c)(2)(A), the Employer may cure the alleged violations within 33 calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

In addition, this letter clearly sets forth the Employee's grievances and proposed remedies, under the Labor Code, PAGA, and otherwise, as set forth above. The Employee would like to engage in reasonable efforts to settle this dispute before filing a civil action against the Employer. The Employee gives the Employer the opportunity, prior to the expiration of the deadline for the LWDA to investigate, to meet the Employee's demands and settle this dispute.

We understand that if we do not receive a response within 65 calendar days of the postmark and filing date of this notice that the LWDA intends to investigate these allegations and/or a notice from the Employer that the alleged violations are cured, and/or if the alleged violations are not cured, then the Employee may immediately thereafter commence a civil action against the Employer under Labor Code § 2699.

Thank you for your consideration.

Regards,

Gregg Lander

Emil Davtyan
Gregg Lander
Vanessa M. Ruggles

cc: (via Certified Mail)

Colletta Carpet Cleaning and Janitorial Service, Inc.
111 Melrose Ave.
Monrovia, CA 91016

Araya Construction, Inc.
2870 South Santa Fe Ave.
San Marcos, CA 92069

cc: (via Regular Mail)

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c/o Katherine C. Den Bleyker, Esq.
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550 S. Hope Street, Suite 2400
Los Angeles, CA 90071

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, am over the age of 18 years and not a party to this action. My business address is 1635 Pontius Avenue, Second Floor, Los Angeles, CA 90025-3361, which is located in Los Angeles County, where the service herein occurred.

On the date of execution hereof, I caused to be served the following attached document/s:

FIRST AMENDED COMPLAINT (AMENDED AS A MATTER OF RIGHT UNDER LABOR CODE § 2699.3(a)(2)(C))

on the interested parties in this action, addressed as follows:

Attorneys for Defendant Colletta Carpet Cleaning and Janitorial Service, Inc.:

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using the following service method:

__X__ **VIA ELECTRONIC MAIL:** Service by electronic mail to parties who have already appeared in this post-January 1, 2019 proceeding was made under the procedures specified in California Code of Civil Procedure §1010.6(b). The electronic mail was sent to electronic service address(es) that has/have been previously confirmed by email.

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

Executed on **February 21, 2025**, at Los Angeles, California.

Cindy Rivas