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Case #21CV383425
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11 Attorneys for Plaintiff Javier Diaz and George Mendez,
12 individually, and on behalf of all others similarly situated

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SANTA CLARA**

15 JAVIER DIAZ and GEORGE MENDEZ,
16 individually and on behalf of all others
17 similarly situated,

18 Plaintiff,

19 vs.

20 BGIS GLOBAL INTEGRATED
21 SOLUTIONS US, LLC; and DOES 1
22 through 20, inclusive,

23 Defendants.

Case No. 21CV383425

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Pay All Wages Due Upon Separation of Employment;
7. Failure to Reimburse Necessary Business Expenses; and
8. Violation of Business and Professions Code §§ 17200, *et seq.*; and
9. Enforcement of Labor Code §§ 2698, *et seq.* (“PAGA”)

DEMAND FOR JURY TRIAL

1 Plaintiffs Javier Diaz and George Mendez, individually, and on behalf of others
2 similarly situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Javier Diaz and George Mendez (“Plaintiffs”) bring this putative class
5 and representative action against defendants BGIS Global Integrated Solutions US, LLC, and
6 DOES 1 through 20, inclusive (collectively, “Defendants”), on behalf of themselves
7 individually, other aggrieved employees, and a putative class of California citizens who are and
8 were employed by Defendants as non-exempt employees throughout California.

9 2. Defendants are in the business of operating and providing a global Data Center
10 and IT Infrastructure Management software.

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

15 4. Plaintiffs are informed and believe, and thereon allege, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) Failing to pay overtime wages at the proper rates;
- 18 (b) Failing to pay all wages (including minimum wages and overtime
19 wages);
- 20 (c) Failing to provide lawful meal periods or compensation in lieu thereof;
- 21 (d) Failing to authorize or permit lawful rest breaks or provide compensation
22 in lieu thereof;
- 23 (e) Failing to provide accurate itemized wage statements;
- 24 (f) Failing to pay all wages due upon separation of employment; and
- 25 (g) Failing to reimburse all business expenses incurred by the employee in
26 direct consequence of the discharge of his or her duties.

27 5. Plaintiffs seek monetary relief against Defendants on behalf of themselves and
28 all others similarly situated in California to recover, among other things, unpaid wages and

1 benefits, interest, attorneys' fees, costs and expenses, and penalties pursuant to Labor Code §§
2 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 511, 512, 558, 1174, 1174.5, 1182.12,
3 1194, 1194.2, 1197, 1197.1, 1198, 2698, *et seq.*, 2800, 2802, and Code of California Civil
4 Procedure § 1021.5.

5 **JURISDICTION AND VENUE**

6 6. This is a class action pursuant to California Code of Civil Procedure § 382. The
7 monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdictional limits
8 of the Superior Court and will be established according to proof at trial.

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

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

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

21 **THE PARTIES**

22 10. Plaintiffs are citizens of California. Plaintiffs were employed by Defendants
23 during the Class Period in California.

24 11. Plaintiffs are informed and believe, and thereon allege that at all times
25 hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage
26 Orders as employers, whose employees were and are engaged throughout this county and the
27 State of California.

28 12. Plaintiffs are unaware of the true names or capacities of the defendants sued

1 herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to
2 amend this Complaint and serve such fictitiously named defendants once their names and
3 capacities become known.

4 13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 20
5 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
6 at all relevant times.

7 14. Plaintiffs are informed and believe, and thereon allege, that each defendant acted
8 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
9 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
10 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
11 the employer and/or joint employer of Plaintiffs and the class members.

12 15. Plaintiffs are informed and believe, and thereon allege, that each and all of the
13 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
14 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
15 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
16 the official policy of Defendants.

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

21 17. Plaintiffs are informed and believe, and thereon allege, that each of said
22 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
23 omissions, occurrences, and transactions alleged herein.

24 **CLASS ACTION ALLEGATIONS**

25 18. Plaintiffs bring this action under Code of Civil Procedure § 382 on behalf of
26 himself and all others similarly situated who were affected by Defendants' Labor Code,
27 Business and Professions Code §§ 17200, *et. seq.*, and IWC Wage Order violations.

28 19. All claims alleged herein arise under California law for which Plaintiffs seek

1 relief authorized by California law.

2 20. Plaintiffs' proposed class consists of and is defined as follows:

3 Class

4 All California citizens currently or formerly employed by Defendants as non-
5 exempt employees in the State of California at any time between August 17,
6 2016¹ and the date of class certification ("Class").

7 21. Plaintiffs also seek to certify the following subclasses of employees:

8 Waiting Time Subclass

9 All Class Members who separated their employment with Defendants at any time
10 between August 17, 2017 and the date of class certification ("Waiting Time
11 Subclass").

12 AWS Subclass

13 All Class Members who worked an alternative workweek schedule, except for
14 those who were paid daily overtime for all hours over eight (8) in a day ("AWS
15 Subclass").

16 22. Plaintiffs reserve the right to establish other or additional subclasses, or modify
17 or re-define the Class, or any class or subclass definition as appropriate based on investigation,
18 discovery, and specific theories of liability.

19 23. Members of the Class and the Subclasses described above will be collectively
20 referred to as "Class Members."

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

- 24 (a) Whether Defendants paid Plaintiffs and Class Members overtime
25 compensation at the proper rates;

26 _____
27 ¹ The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020
28 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

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- (b) Whether Defendants failed to implement a valid alternative workweek schedule and thus failed to pay Plaintiffs and Class Members proper overtime compensation or failed to pay properly under a valid alternative workweek schedule;
- (c) Whether Defendants paid Plaintiffs and Class Members all wages (including minimum and overtime wages) for all hours worked by Plaintiff and Class Members;
- (d) Whether Defendants required Plaintiffs and Class Members to work over 8 hours per day, over twelve (12) hours per day, and/or over forty (40) hours per week and failed to pay them overtime compensation at the proper rate;
- (e) Whether Defendants deprived Plaintiffs and Class Members of timely meal periods or required Plaintiffs and Class Members to work through meal periods without compensation;
- (f) Whether Defendants deprived Plaintiffs and Class Members of rest breaks or required Plaintiffs and Class Members to work through rest breaks without compensation;
- (g) Whether Defendants failed to provide Plaintiffs and Class Members accurate itemized wage statements;
- (h) Whether Defendants failed to timely pay Plaintiffs and the Subclass all wages due upon termination or within seventy-two (72) hours of resignation;
- (i) Whether Defendants required Plaintiffs and class members to incur expenses for work and then failed to adequately reimburse Plaintiffs and Class Members for such expenses;
- (j) Whether Defendants failed to pay Plaintiffs and class members' vacation pay at the regular rate of pay;
- (k) Whether Defendants' conduct was willful or reckless; and

1 (l) Whether Defendants engaged in unfair business practices in violation of
2 Business and Professions Code §§ 17200, *et seq.*

3 25. There is a well-defined community of interest in this litigation and the proposed
4 Class and Subclass are readily ascertainable:

5 (a) Numerosity: The Class Members are so numerous that joinder of all
6 members is impractical. Although the members of the entire Class and Subclasses are unknown
7 to Plaintiffs at this time, on information and belief, the class is estimated to be greater than one
8 100 individuals. The identities of the Class Members are readily ascertainable by inspection of
9 Defendants' employment and payroll records.

10 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
11 claims (or defenses, if any) of the Class Members because Defendants' failure to comply with
12 the provisions of California's wage and hour laws entitled each Class Member to similar pay,
13 benefits, and other relief. The injuries sustained by Plaintiffs are also typical of the injuries
14 sustained by the Class Members, because they arise out of and are caused by Defendants'
15 common course of conduct as alleged herein.

16 (c) Adequacy: Plaintiffs will fairly and adequately represent and protect the
17 interests of all Class Members because it is in their best interest to prosecute the claims alleged
18 herein to obtain full compensation and penalties due to them and the Class Members. Plaintiffs'
19 attorneys, as proposed class counsel, are competent and experienced in litigating large
20 employment class actions and versed in the rules governing class action discovery,
21 certification, and settlement. Plaintiffs have incurred and, throughout the duration of this action,
22 will continue to incur attorneys' fees and costs that have been and will be necessarily expended
23 for the prosecution of this action for the substantial benefit of the Class Members.

24 (d) Superiority: The nature of this action makes use of class action
25 adjudication superior to other methods. A class action will achieve economies of time, effort,
26 and expense as compared with separate lawsuits and will avoid inconsistent outcomes because
27 the same issues can be adjudicated in the same manner for the entire Class and Subclasses at
28 the same time. If appropriate, this Court can, and is empowered to, fashion methods to

1 efficiently manage this case as a class action.

2 (e) Public Policy Considerations: Employers in the State of California
3 violate employment and labor laws every day. Current employees are often afraid to assert their
4 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing
5 actions because they believe their former employers might damage their future endeavors
6 through negative references and/or other means. Class actions provide class members who are
7 not named in the complaint with a type of anonymity that allows for the vindication of their
8 rights while affording them privacy protections.

9 **GENERAL ALLEGATIONS**

10 26. At all relevant times mentioned herein, Defendants employed Plaintiffs and
11 other California residents as non-exempt employees at Defendants' California business
12 location(s).

13 27. Defendants continue to employ non-exempt employees within California.

14 28. Plaintiffs are informed and believe, and thereon allege, that at all times herein
15 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals
16 who were knowledgeable about California's wage and hour laws, employment and personnel
17 practices, and the requirements of California law.

18 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and Class Members were entitled to receive wages for all
20 time worked (including minimum and overtime wages) and that they were not receiving all
21 wages earned for work that was required to be performed due to rounding practices, on-call
22 time paid at less than minimum wage, and other practices. In violation of the Labor Code and
23 IWC Wage Orders, Plaintiffs and Class Members were not paid all wages (including minimum
24 and overtime wages) for all hours worked at the proper rates of pay.

25 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
26 should have known that Plaintiffs and Class Members were entitled to receive overtime wages
27 and that they were not receiving all wages earned for work under Defendants' Alternative
28 Workweek Schedule. Plaintiffs believe Defendant either failed to implement a proper

1 alternative workweek or failed to properly pay overtime under a valid Alternative Workweek
2 Schedule and thus owe Plaintiffs and Class Members unpaid overtime.

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

10 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that Plaintiffs and Class Members were entitled to receive all rest breaks or
12 payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of pay
13 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiffs
14 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
15 at Plaintiffs' and Class Members' regular rate of pay when a rest break was missed.

16 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that Plaintiffs and class members were entitled to reimbursement for
18 necessary expenditures incurred in connection with the performance and execution of their job
19 duties. In violation of the California Labor Code, Plaintiffs and class members did not receive
20 adequate reimbursement for necessary business expenses, including, but not limited to,
21 reimbursement for cell phone and home internet use.

22 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known that the Class Members were entitled to receive itemized wage statements
24 that accurately showed the gross and net wages earned, total hours worked, all applicable
25 hourly rates in effect, and the number of hours worked at each hourly rate in accordance with
26 California law. In violation of the Labor Code, the Class Members were not provided with
27 accurate itemized wage statements.

28 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or

1 should have known that the Waiting Time Subclass members were entitled to timely payment
2 of wages due upon separation of employment. In violation of the Labor Code, the Waiting
3 Time Subclass did not receive payment of all wages within permissible time periods, including
4 but not limited to vacation pay at the regular rate.

5 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known they had a duty to compensate Plaintiffs and Class Members, and
7 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
8 intentionally failed to do so in order to increase Defendants' profits.

9 37. Therefore, Plaintiffs bring this lawsuit seeking monetary and injunctive relief
10 against Defendants on behalf of himself and all Class Members to recover, among other things,
11 unpaid wages (including minimum and overtime wages), meal period premium payments, rest
12 period premium payments, interest, attorneys' fees, penalties, costs, and expenses.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY MINIMUM WAGES**

15 (Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197; Violation of IWC Wage Order §§3-4)

16 38. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as
17 though fully set forth herein.

18 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
19 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
20 wage than the minimum so fixed is unlawful.

21 40. During the relevant time period, Defendants paid Plaintiffs and Class Members
22 less than the minimum wage when they failed to pay proper compensation for all hours worked.
23 To the extent these hours do not qualify for the payment of overtime, Plaintiffs and Class
24 Members were not being paid at least the minimum wage for their work.

25 41. During the relevant time period, Defendants regularly failed to pay at least the
26 minimum wage to Plaintiffs and Class Members for all hours worked pursuant to Labor Code
27 §§ 1194 and 1197, as alleged herein.

28 42. Defendants' failure to pay Plaintiffs and Class Members the required minimum

1 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiffs and Class
2 Members are entitled to recover the unpaid balance of their minimum wage compensation as
3 well as interest, costs, and attorneys' fees.

4 43. Pursuant to Labor Code § 1194.2, Plaintiffs and Class Members are entitled to
5 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
6 interest thereon.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY OVERTIME WAGES**

9 (Violation of Labor Code §§ 510, 511, 1194, and 1198; Violation of IWC Wage Order § 3)

10 44. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
11 though fully set forth herein.

12 45. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
13 unlawful to employ persons without compensating them at a rate of pay either one and one-half
14 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
15 worked by the person on a daily or weekly basis.

16 46. Specifically, the applicable IWC Wage Orders provide that Defendants are and
17 were required to pay overtime compensation to Plaintiffs and Class Members at the rate of one
18 and one-half times (1½) their regular rate of pay when working and for all hours worked in
19 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
20 eight (8) hours of work on the seventh day of work in a workweek.

21 47. The applicable IWC Wage Orders further provide that Defendants are and were
22 required to pay overtime compensation to Plaintiffs and Class Members at a rate of two times
23 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours
24 in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

25 48. California Labor Code § 510 codifies the right to overtime compensation at one
26 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in
27 a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
28 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours

1 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
2 seventh day of work in a workweek.

3 49. Labor Code § 510 and the applicable IWC Wage Orders provide that
4 employment of more than six days in a workweek is only permissible if the employer pays
5 proper overtime compensation as set forth herein.

6 50. Plaintiffs and Class Members were non-exempt employees entitled to the
7 protections of California Labor Code §§ 510 and 1194.

8 51. During the relevant time period, Defendants failed to pay Plaintiffs and Class
9 Members overtime wages for all overtime hours worked when Plaintiffs and Class Members
10 worked in excess of eight (8) hours in a day and/or forty (40) hours in a week or for a seventh
11 day of work in a workweek, or when Plaintiffs and Class Members worked in excess of twelve
12 (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a work
13 week. To the extent these hours qualify for the payment of overtime, Plaintiffs and Class
14 Members worked shifts of eight (8) hours or more without being paid proper overtime wages.

15 52. During the relevant time period, Defendants failed to pay Plaintiffs and Class
16 Members all wages owed when Defendants failed to properly implement an alternative
17 workweek election or failed to properly pay overtime wages under a valid alternative
18 workweek election.

19 53. In violation of state law, Defendants knowingly and willfully refused to perform
20 their obligations and compensate Plaintiffs and Class Members for all wages earned and all
21 hours worked, as alleged herein.

22 54. Defendants' failure to pay Plaintiffs and Class Members the unpaid balance of
23 overtime and double time compensation, as required by California law, violates the provisions
24 of Labor Code §§ 510 and 1198, and is therefore unlawful.

25 55. Pursuant to Labor Code § 1194, Plaintiffs and Class Members are entitled to
26 recover their unpaid overtime and double time compensation as well as interest, costs, and
27 attorneys' fees.

28 ///

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

4 56. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein

6 57. Labor Code § 226.7 provides that no employer shall require an employee to work
7 during any meal period mandated by the IWC Wage Orders.

8 58. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall
9 employ any person for a work period of more than five (5) hours without a meal period of not
10 less than 30 minutes, except that when a work period of not more than six (6) hours will
11 complete the day’s work the meal period may be waived by mutual consent of the employer and
12 the employee.”

13 59. Labor Code § 512(a) provides that an employer may not require, cause, or permit
14 an employee to work for a period of more than five (5) hours per day without providing the
15 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
16 the total work period per day of the employee is not more than six (6) hours, the meal period
17 may be waived by mutual consent of both the employer and the employee.

18 60. Labor Code § 512(a) also provides that an employer may not employ an
19 employee for a work period of more than ten (10) hours per day without providing the employee
20 with a second meal period of not less than thirty (30) minutes, except that if the total hours
21 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
22 consent of the employer and the employee only if the first meal period was not waived.

23 61. During the relevant time period, Plaintiffs and Class Members did not receive
24 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
25 their meal periods were missed, late, short, and/or they were not permitted to take meal periods.

26 62. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
27 an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of
28 compensation for each work day that a compliant meal period is not provided.

1 63. At all relevant times, Defendants failed to pay Plaintiffs and Class Members
2 meal period premiums for missed, late, and/or short meal periods pursuant to Labor Code §
3 226.7(b) and section 11 of the applicable IWC Wage Order.

4 64. As a result of Defendants’ failure to pay Plaintiffs and Class Members an
5 additional hour of pay for each day a compliant meal period was not provided, Plaintiffs and
6 Class Members suffered and continue to suffer a loss of wages and compensation.

7
8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO PERMIT REST BREAKS**

10 (Violation of Labor Code § 226.7; Violation of IWC Wage Order § 12)

11 65. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
12 though fully set forth herein.

13 66. Labor Code § 226.7(a) provides that no employer shall require an employee to
14 work during any rest period mandated by the IWC Wage Orders.

15 67. Section 12 of the applicable IWC Wage Order states “[e]very employer shall
16 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
17 the middle of each work period[,]” and the “[a]uthorized rest period time shall be based on the
18 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
19 fraction thereof[,]” unless the total daily work time is less than three and one-half (3½) hours.

20 68. During the relevant time period, Plaintiffs and Class Members did not receive a
21 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because
22 they were required to work through their daily rest periods and/or were not authorized to take
23 their rest periods.

24 69. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
25 requires an employer to pay an employee one (1) additional hour of pay at the employee’s
26 regular rate of compensation for each work day that a compliant rest period is not provided.

27 70. At all relevant times, Defendants failed to pay Plaintiffs and Class Members rest
28 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §

1 226.7(b) and section 12 of the applicable IWC Wage Order.

2 71. As a result of Defendants' failure to pay Plaintiffs and Class Members an
3 additional hour of pay for each day a compliant rest period was not provided, Plaintiffs and
4 Class Members suffered and continue to suffer a loss of wages and compensation.

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

7 (Violation of Labor Code § 226)

8 72. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
9 though fully set forth herein.

10 73. Labor Code § 226(a) requires Defendants to provide each employee with an
11 accurate wage statement in writing showing nine pieces of information, including, the
12 following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
13 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
14 basis, (4) all deductions, provided that all deductions made on written orders of the employee
15 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
16 period for which the employee is paid, (7) the name of the employee and the last four digits of
17 his or her social security number or an employee identification number other than a social
18 security number, (8) the name and address of the legal entity that is the employer, and (9) all
19 applicable hourly rates in effect during the pay period and the corresponding number of hours
20 worked at each hourly rate by the employee.

21 74. During the relevant time period, Defendants have knowingly and intentionally
22 failed to comply with Labor Code § 226(a) on wage statements that were provided to the Class
23 Members. The deficiencies include, among other things, the failure to correctly state the gross
24 and net wages earned, total hours worked, all applicable hourly rates in effect, and the number
25 of hours worked at each hourly rate by the Class Members.

26 75. As a result of Defendants' knowing and intentional failure to comply with Labor
27 Code § 226(a), the Class Members suffered injury and damage to their statutorily-protected
28 rights. Specifically, the Class Members are deemed to suffer an injury pursuant to Labor Code

1 § 226(e) where, as here, Defendants intentionally violated Labor Code § 226(a). The Class
2 Members were denied both their legal right to receive, and their protected interest in receiving,
3 accurate itemized wage statements under Labor Code § 226(a). Plaintiffs have had to file this
4 lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiffs to incur
5 expenses and lost time. Plaintiffs would not have had to engage in these efforts and incur these
6 costs had Defendants provided the accurate hours worked, wages earned, and rates of pay. This
7 has also delayed Plaintiffs' ability to demand and recover the underpayment of wages from
8 Defendants.

9 76. The Class Members are entitled to recover from Defendants the greater of all
10 actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
11 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
12 (\$100.00) per employee for each violation in subsequent pay periods in an amount not
13 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

14 77. Defendants' violations of California Labor Code § 226(a) prevented the Class
15 Members from knowing, understanding, and disputing the wages paid to them and resulted in
16 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
17 intentional failure to comply with California Labor Code § 226(a), the Class Members have
18 suffered an injury, in the exact amount of damages and/or penalties to be shown according to
19 proof at trial.

20 78. The Class Members are also entitled to injunctive relief under California Labor
21 Code § 226(h), compelling Defendants to comply with California Labor Code § 226.
22 Accordingly, the Class Members seek the recovery of attorneys' fees and costs incurred in
23 obtaining this injunctive relief.

24 **SIXTH CAUSE OF ACTION**

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

26 (Violation of Labor Code §§ 201, 202, 203, 227.3)

27 79. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
28 though fully set forth herein.

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

7 81. Labor Code § 227.3 provides all accrued vacation pay is due upon termination
8 of employment.

9 82. During the relevant time period, Defendants willfully failed to pay the Waiting
10 Time Subclass all their earned wages upon termination, including, but not limited to, proper
11 minimum wage and overtime compensation, vacation pay at the regular rate, meal period
12 premiums, and rest period premiums either at the time of discharge or within seventy-two (72)
13 hours of their leaving Defendants' employ.

14 83. Defendants' failure to pay the Waiting Time Subclass all their earned wages at
15 the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is
16 in violation of Labor Code §§ 201 and 202.

17 84. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
18 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202,
19 then the wages of the employee shall continue as a penalty from the due date at the same rate
20 until paid or until an action is commenced; but the wages shall not continue for more than thirty
21 (30) days.

22 85. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover
23 from Defendants the statutory penalty, which is defined as the Waiting Time Subclass
24 members' regular daily wages at their regular hourly rate of pay for each day they were not
25 paid, up to a maximum of thirty (30) days.

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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

3 (Violation of Labor Code §§ 2800, 2802)

4 86. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein.

6 87. Labor Code § 2800 states that an employer shall in all cases indemnify his
7 employee for losses.

8 88. Labor Code § 2802 requires employers to indemnify their employees for all
9 necessary expenditures or losses incurred by employees in direct consequence of the discharge of
10 their duties.

11 89. Section 9 of the applicable IWC Wage Order states that when tools or equipment
12 are required by the employer or are necessary to the performance of a job, such tools and
13 equipment shall be provided and maintained by the employer.

14 90. During the relevant time period, Defendants required Plaintiffs and class members
15 to incur cell phone and home internet expenses without properly compensating them for such
16 expenses.

17 91. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify
18 Plaintiff and class members for these expenses.

19 92. In committing the violations as herein alleged, Defendants have intentionally and
20 willfully failed to fully reimburse Plaintiffs and class members for necessary business-related
21 costs and expenses. As a direct result, Plaintiffs and class members have suffered and continue to
22 suffer substantial losses relating to the use and enjoyment of such compensation, wages,
23 expenses, and attorney's fees.

24 **EIGHTH CAUSE OF ACTION**

25 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

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

27 93. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
28 though fully set forth herein.

1 94. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
2 unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice
3 ...”

4 95. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
5 be predicated on a violation of any state or federal law. In the instant case, Defendants’ policies
6 and practices violated state law, causing Plaintiffs and Class Members to suffer and continue to
7 suffer injuries-in-fact.

8 96. Defendants’ policies and practices violated state law in at least the following
9 respects:

- 10 (a) Failing to pay all wages earned (including minimum wage and overtime
11 wages) to Plaintiffs and Class Members in violation of Labor Code §§
12 227.3, 510, 511, 1182.12, 1194, 1194.2, 1197, and 1198;
- 13 (b) Failing to provide compliant meal periods without paying Plaintiffs and
14 Class Members premium wages for every day said meal periods were not
15 provided in violation of Labor Code §§ 226.7 and 512;
- 16 (c) Failing to authorize or permit compliant rest breaks without paying
17 Plaintiffs and Class Members premium wages for every day said rest
18 breaks were not authorized or permitted in violation of Labor Code §
19 226.7;
- 20 (d) Failing to provide the Class Members with accurate itemized wage
21 statements in violation of Labor Code § 226;
- 22 (e) Failing to timely pay all earned wages to the members of the Waiting
23 Time Subclass upon separation of employment in violation of Labor
24 Code §§ 201, 202, 203, and 227.3; and
- 25 (f) Failing to reimburse business expenses in violation of Labor Code §§
26 2800 and 2802.

27 97. As alleged herein, Defendants systematically engaged in unlawful conduct in
28 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages

1 (minimum and overtime wages), failing to provide meal periods and rest periods or
2 compensation in lieu thereof, failing to furnish accurate wage statements, failing to pay all
3 wages due and owing upon separation of employment in a timely manner, and failing to
4 reimburse business expenses, all in order to decrease their costs of doing business and increase
5 their profits.

6 98. At all relevant times herein, Defendants held themselves out to Plaintiffs and
7 Class Members as being knowledgeable concerning the labor and employment laws of
8 California.

9 99. At the time Plaintiffs and Class Members were hired, Defendants knowingly,
10 intentionally, and wrongfully misrepresented to each of them their conformance with the
11 California Labor Code and IWC Wage Orders, including proper payments required by law.

12 100. At all times relevant herein, Plaintiffs and Class Members relied on and believed
13 Defendants' representations concerning their conformance with California's wage and hour
14 laws all to their detriment.

15 101. At all times relevant herein, Defendants intentionally avoided paying Plaintiffs
16 and Class Members wages and monies, thereby creating for Defendants an artificially lower
17 cost of doing business in order to undercut their competitors and establish and/or gain a greater
18 foothold in the marketplace.

19 102. As a result of Defendants' intentional, willful, purposeful, and wrongful
20 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
21 Plaintiffs and Class Members suffered a loss of wages and monies, all in an amount to be
22 shown according to proof at trial.

23 103. By violating the foregoing statutes and regulations as herein alleged,
24 Defendants' acts constitute unfair and unlawful business practices under California Business
25 and Professions Code §§ 17200, *et seq.*

26 104. As a result of the unfair and unlawful business practices of Defendants, as
27 alleged herein, Plaintiffs and Class Members are entitled to injunctive relief, disgorgement, and
28 restitution in an amount to be shown according to proof at trial.

1 105. Plaintiffs seek to enforce important rights affecting the public interest within the
2 meaning of California Code of Civil Procedure § 1021.5. Defendants’ conduct, as alleged
3 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiffs, Class
4 Members, and the general public. Based on Defendants’ conduct as alleged herein, Plaintiffs
5 and Class Members are entitled to an award of attorneys’ fees pursuant to California Code of
6 Civil Procedure § 1021.5.

7 **NINTH CAUSE OF ACTION**

8 **ENFORCEMENT OF LABOR CODE §§ 2698, ET SEQ. (“PAGA”)**

9 106. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs
10 as though fully set forth herein.

11 107. Pursuant to Labor Code §2699(a), any provision of the Labor Code that provides
12 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
13 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for
14 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
15 an aggrieved employee on behalf of himself or herself and other current or former employees
16 pursuant to the procedures specified in Labor Code § 2699.3.

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

22 109. Defendants’ conduct violates numerous Wage Order and Labor Code sections,
23 including, but not limited to, the following:

- 24 a. violation of Labor Code §§ 201-203, 204, 210, 510, 511, 558 1182.12,
25 1194, 1194.2, 1197, and 1198 for failure to timely pay all earned wages
26 (including minimum wage and overtime wages) owed to Plaintiffs and
27 other aggrieved employees during employment and upon separation of
28 employment as herein alleged;

- 1 b. violation
- 2 c. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
- 3 periods to Plaintiffs and other aggrieved employees and failure to pay
- 4 premium wages for missed meal periods as herein alleged;
- 5 d. violation of Labor Code § 226.7 for failure to permit rest breaks to
- 6 Plaintiffs and other aggrieved employees and failure to pay premium
- 7 wages for missed rest periods as herein alleged;
- 8 e. violation of Labor Code § 226 and 226.3 for failure to provide accurate
- 9 itemized wage statements to Plaintiffs and other aggrieved employees as
- 10 herein alleged;
- 11 f. violation of Labor Code §§ 2800 and 2802 for failure to reimburse
- 12 necessary business expenses;
- 13 g. violation of Labor Code § 227.3 for failure to pay Plaintiffs and aggrieved
- 14 employees all wages owed for vacation pay at their regular rate of pay
- 15 during and upon termination of employment; and
- 16 h. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
- 17 accurate and complete records showing, among other things, the hours
- 18 worked daily by and the wages paid to aggrieved employees.

19 110. Plaintiffs are “aggrieved employees” because they were employed by the alleged
20 violator and had one or more of the violations committed against them, and therefore are
21 properly suited to represent the interests of all other aggrieved employees.

22 111. Plaintiffs have exhausted the procedural requirements under Labor Code § 2699.3
23 as to Defendants and are therefore able to pursue a claim for penalties on behalf of themselves
24 and all other aggrieved employees under PAGA.

25 112. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to
26 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
27 cited above.

1 113. For bringing this action, Plaintiffs are entitled to attorney's fees and costs incurred
2 herein.

3 **PRAYER FOR RELIEF**

4 Plaintiffs, on their own behalf and on behalf of all others similarly situated, pray for
5 relief and judgment against Defendants, jointly and severally, as follows:

6 1. For certification under California Code of Civil Procedure § 382 of the proposed
7 Class, Waiting Time Subclass, and any other appropriate subclasses;

8 2. For appointment of Javier Diaz and George Mendez as the class representatives;

9 3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;

10 4. For compensatory damages in an amount according to proof at trial;

11 5. For an award of damages in the amount of unpaid compensation including, but
12 not limited to, unpaid wages, benefits, and penalties;

13 6. For economic and/or special damages in an amount according to proof at trial;

14 7. For liquidated damages pursuant to Labor Code § 1194.2;

15 8. For statutory penalties to the extent permitted by law, including those pursuant
16 to the Labor Code and IWC Wage Orders;

17 9. For injunctive relief as provided by the California Labor Code and California
18 Business and Professions Code §§ 17200, *et seq.*;

19 10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

20 11. For an order requiring Defendants to restore and disgorge all funds to each
21 employee acquired by means of any act or practice declared by this Court to be unlawful,
22 unfair, or fraudulent and, therefore, constituting unfair competition under Business and
23 Professions Code §§ 17200, *et seq.*;

24 12. For PAGA penalties;

25 13. For pre-judgment interest;

26 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
27 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
28 226(e), 1194, 2698, *et seq.*, 2802(c); and

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

Dated: September 30, 2021

AEGIS LAW FIRM, PC

By: 


Fawn F. Bekam
Attorneys for Plaintiffs Javier Diaz and George
Mendez

DEMAND FOR JURY TRIAL

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

Dated: September 30, 2021

AEGIS LAW FIRM, PC

By: 

Fawn F. Bekam
Attorneys for Plaintiffs Javier Diaz and George
Mendez

1 **CERTIFICATE OF SERVICE**

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

5 On September 30, 2021, I served the foregoing document entitled:

6 • **FIRST AMENDED CLASS ACTION COMPLAINT**

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

9 Paul M. Suh
10 David L. Cheng
11 FORDHARRISON LLP
12 350 South Grand Avenue, Suite 2300
13 Los Angeles, CA 90071
14 Telephone: 213.237.2400
15 Facsimile: 213.237.2401
16 PSuh@fordharrison.com
17 dcheng@fordharrison.com
18 Imarquez@fordharrison.com
19 MGarner@fordharrison.com
20 EReinold@fordharrison.com
21 ktaylor@fordharrison.com

22 *Attorneys for Defendant:*

23 BGIS GLOBAL INTEGRATED SOLUTIONS US, LLC

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

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

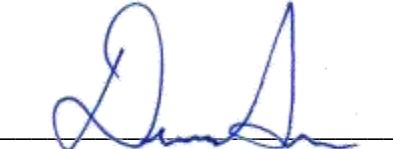
(BY ELECTRONIC TRANSMISSION) I caused said document(s) to be served via
electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

(BY PERSONAL SERVICE) I delivered the foregoing document by hand delivery to
the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
5(b)(2)(A).)

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

Executed on September 30, 2021, at Irvine, California.



Delaney Graves