

STATE OF MICHIGAN

42<sup>nd</sup> CIRCUIT COURT FOR THE COUNTY OF MIDLAND

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JESUS DELGADO; ARMANDO NEGRON;  
ANDRES FEO; BELLALIZ GONZALEZ;  
DOUGLAS COLINA; ELY PETIT; FEDOR  
DELGADO; FRANYN RODRIGUEZ;  
GABRIELA GUGLIOTTA; HILDA  
MANZANERO; IVETTE CONTRERAS;  
JOSE FELIX RODRIGUEZ; LEILA  
DELGADO; LEYDA YANES; MARALI  
RUBIO; MORAIVA BRACHO; REINALDO  
QUINTERO, SR.; and ELIEY DELGADO  
Individually and as Next Friend for  
ELIANNY HUERTA DELGADO, a minor,  
and CAMILA HUERTA DELGADO, a minor;

Plaintiffs,

Case No. \_\_\_\_\_

Hon. \_\_\_\_\_

v.

SERVPRO INDUSTRIES L.L.C.;  
BTN SERVICES LLC; ALEJANDRO  
FERNANDEZ FAVREAU (a.k.a. FERNANDEZ  
ALEJANDRO; ALEJANDRO FERNANDEZ);  
And RACM, LLC (d/b/a SERVPRO OF  
SAGINAW, SERVPRO OF BAY CITY,  
SERVPRO of MIDLAND/GLADWIN  
COUNTIES);

Defendants.

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**COMPLAINT**  
**AND DEMAND FOR JURY TRIAL**

NOW COMES Plaintiffs JESUS DELGADO; ARMANDO NEGRON; ANDRES FEO; BELLALIZ GONZALEZ; DOUGLAS COLINA; ELY PETIT; FEDOR DELGADO; FRANYN RODRIGUEZ; GABRIELA GUGLIOTTA; HILDA MANZANERO; IVETTE CONTRERAS; JOSE FELIX RODRIGUEZ; LEILA DELGADO; LEYDA YANES; MARALI RUBIO; MORAIVA BRACHO; REINALDO QUINTERO, SR.; and ELIEY DELGADO, Individually and as Next Friend for ELIANNY HUERTA DELGADO, a minor, and CAMILA HUERTA DELGADO, a minor; by and through their attorneys the Sugar Law Center for Economic & Social Justice and Resilience Force Justice Project and for their Complaint, do hereby state as follows:

**I. INTRODUCTION**

1. This lawsuit arises from Defendants' conduct that created highly unsafe and life-threatening conditions during the course of disaster recovery work following the Michigan floods in May 2020 and following a warehouse fire in Nappanee, Indiana. Defendants' actions caused Plaintiffs to be exposed to and to contract COVID-19. Defendants misrepresented safety precautions that would be taken; purposefully misrepresented instructions from public health officials; and improperly discharged workers who had been exposed. Defendants then sent the workers home, spreading the risk of COVID-19 to their families and to other communities. Throughout, Defendants failed to properly compensate the Plaintiffs for their labor; and engaged in and benefited from coercive practices amounting to forced labor. Defendants' unlawful practices caused severe injuries and resulting damages to Plaintiffs and their family members.

**II. SUMMARY OF PLAINTIFFS' CLAIMS**

2. In the aftermath of the Michigan dam breaks and floods of 2020, the Plaintiffs, who are disaster resilience workers, were subjected to unsafe and life-threatening conditions as they

provided essential labor and services to Defendants SERVPRO INDUSTRIES L.L.C. (“SERVPRO”), RACM LLC (“RACM”), BTN SERVICES LLC (“BTN”); and ALEJANDRO FERNANDEZ FAVREAU (“FERNANDEZ”) during work to aid the Midland community’s recovery.

3. In May 2020, the State of Michigan faced the first natural disaster of the COVID-19 era when unprecedented rains breached two dams. A heatwave brought unprecedented rains and surging waters overwhelmed the Edenville Dam and Sanford Dam, flooding the City of Midland. Over 10,000 local residents were forced to evacuate. In order for them to return to their homes, the Midland community needed large-scale repairs, water pumped out, toxic mold removed, streets salvaged, and buildings saved.

4. Days after the floods, the Defendants hired more than 100 resilience workers, including the Plaintiffs, out of Florida, Texas, and other locations to perform this essential rebuilding work. The promised rate of pay was \$12 an hour for regular time and \$18 an hour for overtime.

5. The Defendants are private companies who obtained disaster recovery contracts following the flooding. With extreme weather events on the rise, disaster recovery is a growing industry. Defendant FERNANDEZ is a co-owner of Defendant BTN (i.e. Back To New), a disaster recovery company hired by the Defendant RACM, the owners of several SERVPRO disaster recovery franchises, including SERVPRO of Midland/Gladwin Counties, which was the second largest volume SERVPRO franchise in the entire United States. Defendant SERVPRO is a large disaster cleanup and restoration franchisor operating throughout the United States and with a reported worth of \$1 billion.

6. Most of the workers who arrived to provide this labor, including many of the Plaintiffs, were experienced resilience workers—people who repair and rebuild after disasters. Most brought with them deep experience in post-disaster recovery and repair, having rebuilt cities after numerous hurricanes and floods. Like most of this workforce, the Plaintiffs were dependent on their employer not only for wages, but also for transportation to the job, housing during the tenure, tools and equipment, translations from English into Spanish, and maintenance of health and safety standards at their worksites.

7. Despite the COVID-19 pandemic, Defendants crowded most Plaintiffs into vans and transported them from Florida to Midland, Michigan—a 20 to 28 hour drive. Defendants arrived in Michigan to rebuild a hospital, the MidMichigan Medical Center, which was critical to Midland’s COVID-19 response. The resilience workers removed flood-damaged items including furniture, medical equipment, and boxes with supplies. They tore down parts of the building that were mold-infested and water-logged or otherwise beyond repair, including walls, ceilings, and tiles. They did similar work in at least three other Michigan locations.

8. Despite the COVID-19 pandemic and in violation of the Michigan Governor’s executive orders, the Defendants housed workers four to a standard-sized hotel room with two people sharing a bed. Defendants also crowded workers in vans to transport them between the hotel and the worksite each day. Defendants promised to check workers’ temperatures each day before they entered the van but did not do so. Defendants inadequately screened workers at the worksite. Defendants gathered nearly the entire work crew indoors in a crowded room for a 30-to-60 minute meeting each morning at the hospital. The Defendants failed to consistently provide workers with essential personal protective equipment, such as masks; failed to require all people on the site to wear masks; directed workers to perform tasks without regard for proper social

distancing; failed to develop a plan or protocols to prevent the spread of COVID-19; and failed to require and provide time or supplies for adequate hand washing and sanitation.

9. Eventually, workers began to exhibit symptoms of COVID-19. Alarmed, some workers asked to be tested. Defendant FERNANDEZ became angry and told workers that if they wanted to be tested, they would have to go on their own. Some workers did and tested positive. An outbreak spread through the workforce. Then, even as they finally arranged for testing for some workers, Defendants still transported workers in crowded vans to the testing site. In the end, Defendants did not arrange for testing of all workers. The law required the Defendants to notify all co-workers and contractors who may have come into contact with people with a confirmed case of COVID-19. The Defendants did not do so.

10. After some workers tested positive for COVID-19, officials from the Bay County Health Department became involved. Health officials stated that workers who tested positive or were likely exposed to COVID-19 needed to immediately isolate (those who had tested positive) and/or quarantine (those who had close contact with those who tested positive) locally. To contain the outbreak, and to protect the workers and the public health, it was imperative that the workers understand isolation and quarantine requirements. The Health Department, however, had no Spanish speakers, and the workers, for the most part, spoke only Spanish. So, Health Department officials asked Defendant FERNANDEZ to transmit this information to the workers. Defendant FERNANDEZ asked the health department who would pay for the costs of isolation and quarantine. The health department replied that he brought the workers to Michigan and so he should be responsible for the cost of their well-being. Defendant FERNANDEZ did not transmit the information as asked. Instead, he told workers that health officials had stated they could return home. Workers objected and said they needed to stay to seek medical attention and quarantine

and/or isolate. Defendant FERNANDEZ knew that most of the workers spoke little English and depended upon him to act as their interpreter and support system while in Michigan. In response to their requests, he told them that if they stayed in Michigan, they were on their own for any further housing and transportation costs and terminated their employment.

11. The Defendants immediately began arranging for cars, vans, and flights back to Florida, Texas, and other locations, and began announcing departure arrangements for the following morning. The Defendants again packed many workers, some of them beginning to deteriorate with active COVID-19 symptoms, into vans and two cars and transported them over a thousand miles back to Florida, on a journey that took 20 to 28 hours, exposing countless members of the public *en route* and infecting numerous relatives when they arrived. When one of the Plaintiffs called the Bay County Health Department from the road to inquire about his test results, a Bay County Health official expressed surprise and dismay that the workers had left the state.

12. Meanwhile, Defendants had hired new workers and transported some Michigan workers to Indiana to conduct disaster recovery work following a warehouse fire in Nappanee, Indiana. There Defendants repeated this pattern of disregarding the workers safety and the safety of the community. One group of workers began exhibiting symptoms of COVID-19 and asked to be tested and about sick leave. The Defendants told them they were on their own and if they got tested, they could not return to work. After another outbreak among the workforce in Indiana, Defendants arranged for testing, transporting workers in crowded vans, and then terminated all the affected workers before transporting them back to Florida, again with many in crowded vans while they were sick.

13. As a result of the Defendants' actions, Plaintiffs were exposed to and contracted COVID-19. Plaintiffs suffered symptoms including but not limited to flu-like symptoms,

difficulty breathing, headaches, body aches, loss of taste, and/or a loss of a sense of smell. One worker was hospitalized for a month. Two were placed on ventilators for weeks and incurred hundreds of thousands of dollars in medical bills.

### **III. CAUSES OF ACTION, JURISDICTION, AND VENUE**

14. This is an action for common law negligence, fraudulent misrepresentation, breach of contract and unjust enrichment claims under Michigan and Indiana common law and for public nuisance, innocent misrepresentation, and wrongful discharge in violation of public policy under Michigan common law and constructive fraud under the common law of Indiana. This action is also for statutory violations of the Fair Labor Standards Act of 1938, 29 USC §§ 203 *et seq*; the Michigan Workforce Opportunity Act, MCL 408.411 *et seq*; the Emergency Paid Sick Leave Act, Public Law 116–127—Mar. 18, 2020, §§ 5101 *et seq*; and the Victims of Trafficking and Violence Protection Act of 2000, 18 USC §§ 1581 *et seq* and 22 USC §§ 7101 *et seq*; as amended by the Trafficking Victims Protection Reauthorization Act of 2003 and the William Wilberforce Trafficking and Violence Protection Reauthorization Act of 2008.

15. Pursuant to MCL § 600.711, this Honorable Court has jurisdiction over the parties in this case and pursuant to MCL § 600.601, § 600.605 and § 600.8301, this Honorable Court has jurisdiction over Plaintiffs’ claims, since the amount in controversy exceeds \$25,000.

16. Venue is proper pursuant to MCL § 600.1601 *et seq* since the cause of action arose in this county and each of the Defendants conduct business in this county.

### **IV. PARTIES**

17. Plaintiffs JESUS DELGADO; ANDRES FEO; ARMANDO NEGRON; BELLALIZ GONZALEZ; DOUGLAS COLINA; ELY PETIT; FEDOR DELGADO; FRANYN RODRIGUEZ; GABRIELA GUGLIOTTA; HILDA MANZANERO; IVETTE CONTRERAS;

JOSE FELIX RODRIGUEZ; LEILA DELGADO; LEYDA YANES; MARALI RUBIO; MORAIVA BRACHO; and REINALDO QUINTERO, SR.; ELIEY DELGADO, ELIANNY HUERTA DELGADO, a minor, and CAMILA HUERTA DELGADO, a minor; reside in the State of Florida.

18. Plaintiff LEYDA YANES is the spouse of Plaintiff Jesus Delgado and resides in the same household as her husband.

19. Plaintiff FEDOR DELGADO is the son of Plaintiff Jesus Delgado.

20. ELIANNY HUERTA DELGADO is a minor child and a resident of the State of Florida. She is the daughter of ELIEY DELGADO and resides in her household.

21. CAMILA HUERTA DELGADO is a minor child and a resident of the State of Florida. She is the daughter of ELIEY DELGADO and resides in her household.

22. The Defendant SERVPRO INDUSTRIES LLC is a Nevada corporation with its headquarters in the City of Gallatin, Tennessee. The Defendant SERVPRO conducts business throughout the United States, including the State of Michigan and this judicial district.

23. The Defendant BTN SERVICES LLC is a Delaware corporation with its headquarters in the City of Houston, Texas. The Defendant BTN conducts business throughout the United States, including the State of Michigan and this judicial district.

24. The Defendant ALEJANDRO FERNANDEZ (a.k.a. FERNANDEZ ALEJANDRO; ALEJANDRO FERNANDEZ FAVREAU is an owner, officer, employee, and work crew supervisor for the Defendant BTN. The Defendant FERNANDEZ conducts business throughout the United States, including the State of Michigan and this judicial district.

25. The Defendant RACM, L.L.C. is a Michigan corporation with its headquarters in the City of Saginaw, Michigan. The Defendant RACM does business under various registered

assumed names, including but not limited to SERVPRO OF SAGINAW, SERVPRO OF BAY CITY, and SERVPRO of MIDLAND/GLADWIN COUNTIES and conducts business throughout the United States, including the State of Michigan and this judicial district.

## **V. COMMON ALLEGATIONS OF FACT**

### ***A. Defendants***

26. The Defendant BTN is engaged in on-demand cleaning and disaster recovery work. At all times relevant to the facts herein, the Defendant BTN was a subcontractor to the Defendant RACM.

27. At all relevant times, the Defendant BTN was a contractor and/or agent of the Defendant RACM and/or of the Defendant SERVPRO.

28. The Defendant FERNANDEZ exercises significant control over the operations of the Defendant BTN. He had and has supervisory duties, participates in and/or sets employee policies, and, at all times, acted in the interest of the Defendant BTN in relation to the Plaintiffs.

29. At all relevant times, the Defendant FERNANDEZ was an employee of the Defendant BTN and was acting within the scope of his employment with the Defendant BTN.

30. The Defendant RACM is a general contractor engaged in disaster recovery work. At all times relevant to the facts herein, the Defendant RACM was a franchisee of the Defendant SERVPRO and the Defendant RACM retained BTN as a subcontractor to work on the relevant projects.

31. At all relevant times, the Defendant RACM was a franchisee and/or agent of the Defendant SERVPRO.

32. The Defendant SERVPRO is a disaster recovery company. The Defendant RACM operates numerous franchises of the Defendant SERVPRO. Following flooding in the Midland

area in May 2020, the Defendant RACM contracted to perform disaster recovery work at the MidMichigan Medical Center, the Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other locations. Following a fire at the Quality Hardwood Sales warehouse in Nappanee, Indiana that occurred in early June 2020, the Defendant RACM contracted to perform disaster recovery work at the facility.

33. The Defendant SERVPRO provides its franchisees with a cleaning, restoration, and remediation system. The Defendant SERVPRO's system includes processes, specifications, policies and procedures for residential and commercial cleaning, restoration and remediation services following water and other damages caused by natural disasters and catastrophes, including floods and fires. Franchisees, including but not limited to the Defendant RACM, are required to follow the Defendant SERVPRO's cleaning, restoration, and remediation system.

34. The Defendant SERVPRO provides and requires that its franchisees and their employees undergo mandatory training on the Defendant's cleaning, restoration, and remediation system before opening a franchise and thereafter requires its franchisees and their employees to attend periodic mandatory training provided by the Defendant.

35. The Defendant SERVPRO also offers and conducts voluntary trainings and provides information its franchisees and their employees, concerning new and updated topics on a periodic basis.

36. Upon information and belief, the Defendant SERVPRO's mandatory and voluntary trainings and distributed information address various health and safety topics for the protection of disaster recovery workers and the public.

37. Upon information and belief, the Defendant SERVPRO provides its franchisees with management and operations manuals and other writings setting forth requirements for how

franchises must be operated, and the cleaning, restoration and remediation system must be implemented.

38. Upon information and belief, the Defendant SERVPRO owns all techniques and know-how developed by franchisees.

39. Upon information and belief, the Defendant SERVPRO requires that its franchisees obtain the approval of Defendant SERVPRO before subcontracting disaster recovery work.

40. The Defendant SERVPRO effectively supervises and controls the operations and work performed by its franchises, including but not limited to the operations and work of the Defendant RACM.

***B. Michigan's Public Health Orders.***

41. On May 18, 2020, Governor Gretchen Whitmer issued Executive Order No. 2020-91 pursuant to powers granted by Const. 1963, art 5, § 1, the Emergency Management Act, MCL 30.401 *et seq.*, and the Emergency Powers of the Governor Act of 1945, MCL 10.31 *et seq.*

42. On May 21, 2020, Governor Gretchen Whitmer issued Executive Order No. 2020-97 pursuant to powers granted by Const. 1963, art 5, § 1, the Emergency Management Act, MCL 30.401 *et seq.*, and the Emergency Powers of the Governor Act of 1945, MCL 10.31 *et seq.*

43. Pursuant to Executive Orders No. 2020-91 and Order No. 2020-97 and at the times relevant herein, all businesses with workers who had to leave their residences to perform work were required to adopt and enforce various safety protocols and practices at their worksites for the protection of employees, contractors, the public and others from contracting COVID-19.

44. On May 18, 2020, the Director of the Michigan Department of Health and Human Services (DHHS) issued an emergency order pursuant to the state's Public Health Code, MCL 333.2253.

45. On May 27, 2020, the Director of the Michigan Department of Health and Human Services (DHHS) issued an updated emergency order pursuant to the state's Public Health Code, MCL 333.2253.

46. Pursuant to the Director of DHHS's May 18 and May 27 emergency orders and at the times relevant herein, all businesses with workers who had to leave their residences to perform work were required to adopt and enforce various safety protocols and practices at their worksites for the protection of employees, contractors, the public and others from contracting COVID-19.

47. On April 3, 2020, Governor Gretchen Whitmer issued Executive Order No. 2020-36 pursuant to powers granted by Const 1963, art 5, § 1, the Emergency Management Act, MCL 30.401 *et seq.*, and the Emergency Powers of the Governor Act of 1945, MCL 10.31 *et seq.*

48. Pursuant to Executive Order No. 2020-36, all employers are prohibited from discharging, disciplining, or otherwise retaliating against workers who had to stay off work because they had been in contact with, had symptoms of, or had contracted COVID-19.

### ***C. Activities in Michigan***

49. Following flooding in the Midland area in May 2020, the Defendant RACM was contracted to perform disaster recovery work at the MidMichigan Medical Center, the Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University and other locations and/or around in and/or around Midland, Michigan. The Defendant RACM subcontracted this work to companies including, but not limited to, the Defendant BTN.

50. During May 2020, the Defendant BTN was contracted by the Defendant RACM to perform disaster recovery work in and/or around Midland, Michigan at locations including but not limited to the MidMichigan Medical Center, the Currie Golf Course, Herbert D. Doan Midland County History Center, and Northwood University.

51. In late May, the Defendant BTN sought to hire workers to perform the disaster recovery work that it had been retained to perform in and/or around Midland, Michigan.

52. The Defendant BTN recruited workers, including the Plaintiffs, representing that the Defendant would pay compensation including, but not limited to, pay at the rate of \$12/hr for regular hours and at \$18/hr for overtime hours; a paid lunch; daily transportation to and from the Michigan worksites and their hotels; the costs of a hotel room throughout the length of the project; round-trip transportation from their home state to Michigan; and a driving bonus for persons who would also act as drivers.

53. Based on the Defendant BTN's representations, the Plaintiffs JESUS DELGADO; ARMANDO NEGRON; ANDRES FEO; BELLALIZ GONZALEZ; DOUGLAS COLINA; FEDOR DELGADO; GABRIELA GUGLIOTTA; HILDA MANZANERO; IVETTE CONTRERAS; JOSE FELIX RODRIGUEZ; LEILA DELGADO; LEYDA YANES; MARALI RUBIO; MORAIVA BRACHO; and REINALDO QUINTERO, SR. ("Michigan Plaintiffs") responded to the Defendant BTN's recruitment solicitation and were hired to perform disaster recovery work in and/or around Midland, Michigan.

54. Workers including but not limited to the Plaintiffs JOSE DELGADO, ARMANDO NEGRON, DOUGLAS COLINA, FEDOR DELGADO, HILDA MANZANERO, and REINALDO QUINTERO, SR. acted as drivers and drove vans and other vehicles transporting persons to and from Florida and Michigan, and to and from their hotels and locations in and around Midland, Michigan.

55. The Defendant BTN promised workers, including the Michigan Plaintiffs, that workers would be screened for COVID-19 symptoms before entering the vans that transported them to Michigan.

56. The Defendant BTN further promised workers, including the Michigan Plaintiffs, that they would be screened for COVID-19 symptoms each day before entry into the vans that transported workers to and from their hotels and their worksites, including but not limited to the MidMichigan Medical Center, Currie Golf Course, Herbert D. Doan Midland County History Center, and Northwood University.

57. Beginning on or about May 23 or 24, The Defendant BTN started transporting workers, including the Michigan Plaintiffs, from their homes in Florida to hotels in Midland and Bay City, Michigan.

58. Workers, including many of the Michigan Plaintiffs, were transported from Florida to Michigan in vans carrying approximately 7-15 workers in each van.

59. The Defendants did not screen workers or the Plaintiffs for COVID-19 before they entered the vans that transported persons from Florida to Midland, Michigan.

60. Pursuant to the policies and practices of the Defendants FERNANDEZ, BTN, and/or RACM, workers, including the Michigan Plaintiffs, were not compensated for time spent travelling from to and from their homes to Midland, Michigan.

61. On or about May 23 or May 24, the workers began arriving in Michigan.

62. Workers, including the Michigan Plaintiffs, were initially housed at a Hampton Inn hotel in Midland and at a DoubleTree by Hilton hotel in Bay City, Michigan.

63. After several days, all the workers were moved into the Hampton Inn in Midland, at which time the Defendants BTN and/or RACM issued new room assignments, seemingly without regard to prior room assignments.

64. At the hotels, the Defendants BTN and/or RACM assigned four workers, including the Michigan Plaintiffs, to each room. Each room had two double beds and the Defendant BTN

and/or RACM required two workers to share each bed. In many cases, unrelated persons were required to share rooms and beds and unrelated men and women were required to share rooms.

65. Beginning on or about May 23 or 24, the workers started recovery work at the MidMichigan Medical Center, Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and/or other worksites in and around Midland, Michigan.

66. The Defendants had approximately 130 workers, including the Michigan Plaintiffs, performing disaster recovery work related to the Midland floods.

67. At all times, the Defendants BTN and/or RACM classified their workers, including each of the Michigan Plaintiffs, as independent contractors.

68. At no time did the Defendants BTN and/or RACM carry workers compensation insurance for the Michigan Plaintiffs under the terms of the Michigan's Workers Disability Compensation Act, MCL 418.101 *et seq.*

69. At the beginning of each workday, the Defendants BTN and/or RACM transported workers, including the Michigan Plaintiffs, from their assigned hotel to the MidMichigan Medical Center, Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other worksites in the Defendant BTN's vans. Between 8-15 persons were transported in each van on each trip.

70. The Defendants BTN and/or RACM did not adequately screen workers, including the Michigan Plaintiffs, for COVID-19 before they entered the vans each day.

71. Pursuant to the policies and practices of the Defendants, workers including the Michigan Plaintiffs, were not compensated for time spent travelling to and from their hotel and their assigned worksites.

72. The Defendants BTN and/or RACM did not adequately screen workers, including the Michigan Plaintiffs, for COVID-19 before beginning work each day.

73. At the MidMichigan Medical Center, the Defendants BTN and/or RACM directed workers, including the Michigan Plaintiffs, to clean and remediate the basement of the hospital. The basement of the hospital included rooms that housed the hospital's morgue.

74. During the weeks and months prior to the arrival of the workers, including the Michigan Plaintiffs, the MidMichigan Medical Center had diagnosed, treated, and housed COVID-19 patients, including patients who died at the facility.

75. While working at the MidMichigan Medical Center, approximately 130 workers, including the Michigan Plaintiffs, were required by the Defendants BTN and/or RACM to gather in the morgue of the MidMichigan Medical Center for a daily briefing. The space did not permit social distancing during the meeting and face coverings were not provided and required to be worn by all persons present during the meeting. The meetings generally lasted between 30 and 60 minutes.

76. At the Currie Golf Course, the workers, including the Michigan Plaintiffs, were directed to clean and remediate the golf course's clubhouse.

77. At the Herbert D. Doan Midland County History Center, the workers, including the Michigan Plaintiffs, were directed to clean and remediate the center.

78. At Northwood University, the workers, including the Michigan Plaintiffs, were directed to clean and remediate the school's library.

79. At the MidMichigan Medical Center, Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University and other worksites, Defendant

FERNANDEZ, and other employees of the Defendant BTN directly supervised and directed the work of the workers, including the work of the Michigan Plaintiffs.

80. At the MidMichigan Medical Center, Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other worksites, the Defendant RACM's employees directly supervised and directed the work of the workers, including the work of the Michigan Plaintiffs.

81. At the MidMichigan Medical Center, Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other worksites, the Defendants BTN, RACM, and/or SERVPRO supplied all tools, equipment, and supplies used by the workers, including the Michigan Plaintiffs, in the course of their work.

82. At the MidMichigan Medical Center, Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other worksites in and around Midland, Michigan, the Defendants BTN, RACM, and/or SERVPRO individually and/or jointly established, implemented, and/or enforced the safety and health rules, including but not limited to rules to prevent and contain transmission of COVID-19 among workers.

83. At the MidMichigan Medical Center, Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other worksites in and around Midland, Michigan, neither the Defendant BTN nor the Defendant RACM:

- a. had a COVID-19 preparedness and response plan that was consistent with guidance from the Occupational Health and Safety Administration's guidance and that was readily available to workers;
- b. provided COVID-19 training to workers;
- c. conducted a daily screening protocol for workers;
- d. conducted a daily questionnaire for workers, covering symptoms and exposure to persons suspected or confirmed as having COVID-19;

- e. sought to keep everyone at the worksite at least six feet from one another to the maximum extent possible;
- f. provided adequate personal protective equipment, including but not limited to face coverings to all their workers;
- g. required face coverings to be worn when workers could not consistently maintain at least six feet of separation from others at the worksites;
- h. increased cleaning and disinfection to limit exposure to COVID-19;
- i. provided adequate washing stations or hand sanitizer for use by workers; or
- j. provided adequate time during the workday for workers to wash hands frequently.

84. Furthermore, when a worker was identified with a confirmed case of COVID-19, neither the Defendant BTN nor the Defendant RACM:

- a. undertook to inform the local public health department and/or co-workers and contractors who may have come in contact with the worker;
- b. established a response plan for dealing with a confirmed infection in the workplace;
- c. had protocols for isolating infected workers from other workers;
- d. required or enforced any quarantine practices for infected workers;
- e. undertook disinfecting or deep cleaning of equipment, vehicles, or facilities following notification of a confirmed case of COVID-19; or
- f. restricted travel by infected workers.

85. Beginning on or about June 1-2, various persons among the workers began to feel ill with symptoms of COVID-19.

86. Beginning on or about June 1-3, the Defendants BTN and/or RACM knew or should have known that various persons among the workers were feeling ill with symptoms of COVID-19.

87. Beginning on or about June 4, the Defendant BTN and/or RACM began transporting some workers, including some of the Michigan Plaintiffs, to get tested for COVID-19 at a local medical clinic.

88. Groups of workers, including some of the Michigan Plaintiffs, were transported to the medical clinic for testing in Defendant BTN's vans with between 8-15 persons in each van.

89. Beginning on or about June 6, workers, including some of the Michigan Plaintiffs, began to be informed by the Defendant FERNANDEZ that they had tested positive for COVID-19.

90. On or about June 6, the Bay County Public Health Department learned that some of the workers had tested positive for COVID-19.

91. Because the workers' primarily spoke Spanish and the Bay County Health Department did not have a Spanish language translator available, health department officials communicated with the workers, including the Michigan Plaintiffs, through the Defendant FERNANDEZ.

92. On or about June 6, representatives of the Bay County Health Department informed the Defendant FERNANDEZ that the workers should remain in Michigan, shelter in place, isolate, and/or quarantine.

93. Bay County Health Department's representatives further recommended to Defendant FERNANDEZ that further testing of all workers be undertaken.

94. On or about June 7, the Defendants FERNANDEZ, BTN, and/or RACM terminated the employment of all affected workers, including the affected Michigan Plaintiffs.

95. On or about June 7 and despite the clear directives of the Bay County Health Department, Defendant FERNANDEZ misrepresented to the affected workers, including the

affected Michigan Plaintiffs, that health department officials told him that workers could leave the state and go home.

96. Plaintiff BELLALIZ GONZALEZ told Defendant FERNANDEZ that she wanted to stay in Michigan and receive medical care. Defendant FERNANDEZ told her that if she stayed in Michigan, she would be responsible for arranging and paying for her own hotel room and for arranging and paying for her transportation home.

97. Beginning on or about June 7, Defendant BTN transported some workers, including many of the Michigan Plaintiffs, from Michigan to Florida in vans filled with between 8-15 people and in two cars with 4 persons in each car.

98. Beginning on or about June 8, Defendants BTN and/or RACM sent a group of workers including the Plaintiff GABRIELA GUGLIOTTA, back to work conducting disaster recovery at worksites in and/or around Midland, Michigan.

***D. Statement of Activities in Indiana***

99. Following a fire on June 1, 2020, the Defendant RACM was contracted to perform disaster recovery work at the Quality Hardwood Sales' warehouse in Nappanee, Indiana.

100. The Defendant RACM subcontracted the disaster recovery work to companies including, but not limited to, the Defendant BTN.

101. In early June, the Defendant BTN sought to hire workers to perform the disaster recovery work that it had been retained to perform in Nappanee, Indiana.

102. The Defendant BTN recruited workers, including the Plaintiffs ELY PETIT and FRANYN RODRIGUEZ, representing that the Defendant would pay compensation including, but not limited to, pay at the rate of \$12/hr for regular hours and at \$18/hr for overtime hours; a paid lunch; daily transportation to and from the Indiana worksite and their hotels; the costs of a hotel

room throughout the length of the project; round-trip transportation from their home state to Indiana; and a driving bonus for persons who would also act as drivers.

103. The Defendant BTN promised workers, including the Plaintiffs ELY PETIT and FRANYN RODRIGUEZ, that workers would be screened for COVID-19 symptoms before entering the vans that transported workers to the Indiana worksite.

104. The Defendant BTN further promised workers, including the Plaintiffs, ELY PETIT and FRANYN RODRIGUEZ, that they would be screened for COVID-19 symptoms each day before entry into the vans that transported workers to and from their hotels and the worksite.

105. The Plaintiffs ELY PETIT and FRANYN RODRIGUEZ responded to the Defendant BTN recruitment solicitation and were hired to perform disaster recovery work in Nappanee, Indiana.

106. On or about June 1-2, the Defendants BTN and/or RACM selected workers from the Michigan worksite to be transferred to perform disaster recovery work in the Nappanee, Indiana.

107. The Plaintiffs IVETTE CONTRERAS and JOSE FELIX RODRIGUEZ were among the Michigan workers selected to work in Indiana.

108. The workers travelled from their homes in Florida and from the Michigan worksite in the Defendant BTN's vans. Each van carried 8-15 workers during the trip to the Nappanee, Indiana worksite.

109. The Defendant BTN did not screen workers or the Plaintiffs ELY PETIT, FRANYN RODRIGUEZ, IVETTE CONTRERAS, and JOSE FELIX RODRIGUEZ ("Indiana Plaintiffs") for COVID-19 before they entered the vans that transported persons to the Indiana worksite.

110. On or about June 2-3 the Defendants' workers, including the Indiana Plaintiffs, began arriving in Indiana.

111. The workers, including the Indiana Plaintiffs were housed at a Best Western Hotel in Goshen, Indiana.

112. At the hotel, the Defendants BTN and/or RACM assigned four workers, including the Indiana Plaintiffs, to each room. Each room had two double beds and the Defendant BTN and/or RACM required two workers to share each bed. In many cases, unrelated persons were required to share rooms and beds. Room assignments were made seemingly without regard for previous room assignments in Michigan.

113. The Defendants had approximately 40 workers, including the Indiana Plaintiffs, performing disaster recovery work related to the warehouse fire.

114. At all times, the Defendants BTN and/or RACM classified their workers, including each of the Indiana Plaintiffs, as independent contractors.

115. At no time did any of the Defendants carry workers compensation insurance for the Indiana Plaintiffs under the terms of the Workers' Compensation Act of Indiana, Ind Code §§ 22-3-1-1 *et seq.*

116. Beginning on or about June 2 or 3, the workers, including the Indiana Plaintiffs, started work at the Quality Hardwood Sales worksite.

117. At the beginning of each workday, workers, including the Indiana Plaintiffs, were transported from the hotel to the Quality Hardwood Sales worksite in the Defendant BTN's vans. Between 8-15 persons were transported in each van on each trip.

118. The Defendants BTN and/or RACM did not screen workers or the Indiana Plaintiffs for COVID-19 before they entered the vans each day.

119. The Defendants BTN and/or RACM did not adequately screen workers, including the Indiana Plaintiffs, for COVID-19 before beginning work each day.

120. At the Quality Hardwood Sales worksite, the workers, including the Indiana Plaintiffs, were directed to perform cleanup and remediation work.

121. At the Quality Hardwood Sales worksite, Defendant FERNANDEZ, and other employees of the Defendant BTN directly supervised and directed the work of the workers, including the work of the Indiana Plaintiffs.

122. At the Quality Hardwood Sales worksite, the Defendant RACM's employees directly supervised and directed the work of the workers, including the work of the Indiana Plaintiffs.

123. At the Quality Hardwood Sales worksite, the Defendants BTN, RACM, and/or the SERVPRO supplied all tools, equipment, and supplies used by the workers, including the Indiana Plaintiffs, in the course of their work.

124. At the Quality Hardwood Sales worksite, the Defendants BTN, RACM, and/or SERVPRO individually and/or jointly established, implemented, and/or enforced the safety and health rules, including but not limited to rules to prevent and contain transmission of COVID-19 among workers.

125. At the Quality Hardwood Sales warehouse worksite, neither the Defendant BTN nor the Defendant RACM:

- a. had a COVID-19 preparedness and response plan that was consistent with guidance from the Occupational Health and Safety Administration and that was readily available to workers;
- b. provided COVID-19 training to workers;
- c. conducted a daily screening protocol for workers;

- d. administered a daily questionnaire for workers, covering symptoms and exposure to persons suspected or confirmed as having COVID-19;
- e. sought to keep everyone at the worksite at least six feet from one another to the maximum extent possible;
- f. provided adequate personal protective equipment, including but not limited to face coverings to all their workers;
- g. required face coverings to be worn when workers could not consistently maintain at least six feet of separation from others at the worksites;
- h. increased cleaning and disinfection to limit exposure to COVID-19;
- i. provided adequate washing stations or hand sanitizer for use by workers; or
- j. provided time during the workday for workers to wash hands frequently.

126. Furthermore, when a worker was identified with a confirmed case of COVID-19, neither the Defendant RACM nor the Defendant BTN:

- a. undertook to inform the local public health department and/or co-workers and contractors who may have come in contact with the worker;
- b. established a response plan for dealing with a confirmed infection in the workplace;
- c. had protocols for isolating infected workers from other workers;
- d. required or enforced any quarantine practices for infected workers;
- e. undertook disinfecting or deep cleaning of equipment, vehicles, or facilities following notification of a confirmed case of COVID-19; or
- f. restricted travel by infected workers.

127. Between June 2-3, the workers began to feel ill with symptoms of COVID-19.

128. Between June 2-3, the Defendants BTN and/or RACM in Indiana knew or should have known that workers were feeling ill with symptoms of COVID-19 and that workers in Michigan, with whom some of the Indiana workers, including some of the Indiana Plaintiffs, had been in contact were feeling ill with symptoms of COVID-19.

129. On or about June 6, the Plaintiff IVETTE CONTRERAS inquired about obtaining testing for COVID-19 and the Defendant FERNANDEZ informed her that testing was not his responsibility and that if she had a test on her own, she could not work and the Defendants would not provide her with sick pay while waiting for the test results.

130. On or about June 6, the Plaintiffs IVETTE CONTRERAS was informed by the Defendants BTN and/or RACM that her services were no longer needed.

131. On or about June 6, the Defendant FERNANDEZ left the Indiana worksite to begin work on another project in Chicago, Illinois.

132. On or about June 7-10, the Plaintiff JOSE FELIX RODRIGUEZ was exhibiting symptoms of COVID-19 illness and on or about June 10, was taken with another worker to be tested at a medical clinic.

133. On or about June 12, Plaintiff JOSE FELX RODRIGUEZ learned that he had tested positive for COVID-19.

134. On or about June 12, Plaintiffs ELY PETIT and FRANYN RODRIGUEZ, were informed that all workers were being sent home and that they should check out of their hotel rooms by 11:00 am the following morning.

135. When workers protested because of concerns about COVID-19 and potentially exposing their families at home to the virus, the Defendant FERNANDEZ informed workers that they would be taken to get testing and extended checkout from the hotel to 11:00 am on June 15.

136. On or about June 13, groups of workers, including but not limited to the Plaintiffs ELY PETIT and FRANYN RODRIGUEZ, were transported to the medical clinic for testing in Defendant BTN's vans with 8 or more persons in each van.

137. On or about June 15 and before test results were available, the Defendant BTN's vans transported workers, including the Plaintiffs ELY PETIT and FRANYN RODRIGUEZ, from Indiana to Florida in vans filled with 5 or more persons.

138. Workers including but not limited to the Plaintiffs ELY PETIT and FRANYN RODRIGUEZ acted as drivers transporting persons from Indiana to Florida.

139. On or about June 16, the Defendant BTN rented a car for Plaintiff JOSE FELIX RODRIGUEZ, who acted as a driver, and the Defendant BTN paid for his gas while he travelled from Indiana to his home in Florida.

***E. COVID-19***

140. As a result of Defendants failure to adopt, require, and enforce reasonable and necessary safety protocols and practices, the Plaintiffs JESUS DELGADO; ARMANDO NEGRON; ANDRES FEO; BELLALIZ GONZALEZ; DOUGLAS COLINA; ELY PETIT; FEDOR DELGADO; FRANYN RODRIGUEZ; GABRIELA GUGLIOTTA; HILDA MANZANERO; IVETTE CONTRERAS; JOSE FELIX RODRIGUEZ; LEILA DELGADO; LEYDA YANES; MARALI RUBIO; MORAIVA BRACHO; REINALDO QUINTERO, SR. contracted COVID-19.

141. The Plaintiff JESUS DELGADO resides in the same household as his daughter Plaintiff ELIEY DELGAGO and his granddaughters, Plaintiffs ELIANNY HUERTA DELGADO, a minor, and CAMILA HUERTA DELGADO, a minor.

142. Following Plaintiff JESUS DELGADO's return home and despite social distancing within the household, Plaintiffs ELIANNY HUERTA DELGADO, a minor, and CAMILA HUERTA DELGADO, a minor, were exposed to and contracted COVID-19.

143. Plaintiffs JESUS DELGADO; ARMANDO NEGRON; ANDRES FEO; BELLALIZ GONZALEZ; DOUGLAS COLINA; ELY PETIT; FEDOR DELGADO; FRANYN RODRIGUEZ; GABRIELA GUGLIOTTA; HILDA MANZANERO; IVETTE CONTRERAS; JOSE FELIX RODRIGUEZ; LEILA DELGADO; LEYDA YANES; MARALI RUBIO; MORAIVA BRACHO; REINALDO QUINTERO, SR.; ELIANNY HUERTA DELGADO, a minor; and CAMILA HUERTA DELGADO, a minor; suffered symptoms including but not limited to flu-like symptoms, difficulty breathing, headaches, body aches, loss of taste, and/or a loss of a sense of smell.

144. Plaintiffs JESUS DELGADO and ARMANDO NEGRON became severely ill from COVID-19 requiring weeks of hospitalization during which they were intubated and placed on a ventilator in the intensive care unit.

145. Plaintiff JESUS DELGADO continues to receive medical care for sequelae related to his illness.

## **VI. COUNT 1: NEGLIGENCE**

146. Plaintiffs incorporate by reference paragraphs 1 through 145 as if fully stated herein.

147. Under the common law of Michigan, the Defendants FERNANDEZ, BTN, RACM, and SERVPRO owed a duty of due care to each of the Michigan Plaintiffs and to Plaintiffs ELIEY DELGADO, ELIANNY HUERTA DELGADO, a minor, and CAMILA HUERTA DELGADO, a minor (the Michigan Plaintiffs, ELIEY DELGADO, ELIANNY HUERTA DELGADO and CAMILA HUERTA DELGADO are hereafter collectively referred to as the “Michigan Plaintiffs II”).

148. Defendants FERNANDEZ, BTN, and/or RACM breached their duties and are directly liable to the Michigan Plaintiffs II for negligent acts and omissions, including but not limited to:

- a. Failing to properly develop, adopt, and implement a COVID-19 preparedness and response plan;
- b. Failing to adequately provide reasonable and necessary COVID-19 training to workers;
- c. Failing to adequately screen workers for COVID-19 before transporting them to worksites in Michigan and Indiana;
- d. Failing to adequately screen workers for COVID-19 before housing them in multi-person hotel rooms;
- e. Failing to adequately screen workers for COVID-19 before transporting them in groups in a single van to and from their hotels and their worksites;
- f. Failing to adequately screen workers for COVID-19 before entry into work locations including but not limited to the MidMichigan Medical Center, the Currie Golf Course, Herbert D. Doan Midland County History Center, and Northwood University and other worksite locations in and/or around Midland, Michigan;
- g. Failing to adequately design transportation, housing, and work activities to permit and promote safe social distancing;
- h. Failing to adequately observe, require, and enforce safe social distancing practices during transportation, housing, and work activities;
- i. Transporting workers in vans with 8-15 persons;
- j. Housing workers in multi-person hotel rooms;
- k. Requiring workers to share beds;
- l. Failing to adequately provide face coverings and masks for use during transportation, housing, and all work activities when safe social distancing was not possible;
- m. Failing to adequately require and enforce the wearing of face coverings and masks during transportation, housing, and all work activities when safe social distancing was not possible;

- n. Failing to develop, implement, require, and enforce heightened cleaning and disinfecting of tools, equipment and vehicles used during transportation and work activities;
- o. Failing to adequately provide washing stations or hand sanitizer for use by workers during transportation, housing, and work activities;
- p. Failing to allow and/or provide adequate time during the workday for workers to wash and sanitize their hands frequently;
- q. Otherwise failing to adequately inform, instruct, and train workers on safe practices to prevent the transmission of COVID-19;
- r. Otherwise failing to adequately develop, implement, and enforce COVID-19 screening protocols and practices;
- s. Otherwise failing to adequately develop, implement, and enforce safe social distancing protocols and practices;
- t. Otherwise failing to adequately develop, implement, and enforce protocols and practices requiring the use of personal protective equipment such as face coverings and masks;
- u. Otherwise failing to adequately develop, implement, and enforce reasonable and necessary cleaning, disinfecting, sanitation, and hygiene protocols and practices;
- v. Otherwise failing to adequately supervise their employees to ensure that reasonable and necessary safety protocols and practices to limit exposure to COVID-19 were observed and enforced; and/or
- w. Otherwise failing to develop, implement, and enforce reasonable safety protocols and practices to limit exposure to COVID-19.

149. The Defendants FERNANDEZ, BTN, and/or RACM further breached their duties and are directly liable to the Michigan Plaintiffs II for negligent acts and omissions, including but not limited to:

- a. Failing to and/or not reasonably informing co-workers and contractors who may have come into contact with a person known to have become infected with COVID-19;

- b. Failing to adequately establish a response plan for dealing with a confirmed case of COVID-19 among workers;
- c. Failing to have adequate protocols for isolating, quarantining, and sheltering in place workers who had contracted COVID-19;
- d. Failing to adequately require and enforce isolation, quarantine and sheltering in place for workers who had contracted COVID-19;
- e. Failing to adequately undertake disinfecting and deep cleaning of tools, equipment, vehicles, and facilities following notification that a worker had contracted COVID-19;
- f. Failing to provide adequate housing for workers who had contracted COVID-19 to prevent transmission of the virus to other persons;
- g. Failing to make adequate transportation and travel arrangements for workers who had contracted COVID-19 to prevent transmission of the virus to other persons;
- h. Unreasonably directing workers who had contracted COVID-19 to return to their homes and falsely representing the same as the instructions of public health officials.

150. The Defendants FERNANDEZ, BTN, and/or RACM breached their duties and are liable to each of the Michigan Plaintiffs II under respondeat superior and/or are vicariously liability for the negligent acts and omissions of their employees and agents. The negligent acts and omissions of their employees and agents, include but are not limited to those acts and omissions listed above.

151. Under Michigan common law, the Defendants FERNANDEZ, BTN, and/or RACM's duties are nondelegable under the common work area and inherently dangerous work doctrines.

152. The Defendants FERNANDEZ, BTN, and/or RACM are liable to each of Michigan Plaintiffs II for the above-stated negligent acts and omissions of each other and other contractors at the worksite under the common work area doctrine.

153. The Defendants FERNANDEZ, BTN, and/or RACM acted as a general contractor in relation to the Michigan Plaintiffs at the MidMichigan Medical Center, Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other Michigan worksite locations and each had supervisory and coordinating authority over the worksites.

154. The MidMichigan Medical Center, Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other Michigan worksites were common work areas shared by multiple subcontractors and their employees.

155. The transmission of COVID-19 was a known and avoidable danger at the MidMichigan Medical Center, Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other Michigan worksite locations.

156. The danger of transmission of COVID-19 created a high degree of risk of serious harm to a significant number of workers at the MidMichigan Medical Center, Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other Michigan worksite locations.

157. The Defendants FERNANDEZ, BTN, and/or RACM are liable to the Michigan Plaintiffs II for the above-stated negligent acts and omissions of each other and other contractors at the worksite under the inherently dangerous work doctrine.

158. The disaster recovery work at issue was inherently dangerous and its execution clearly exposes others to unusual perils.

159. In addition, the disaster recovery work was likely to cause harm to other persons unless due care was taken.

160. The Defendant RACM is directly liable for the negligent selection of the Defendant BTN, a careless contractor who did not possess the requisite degree of skill, safe equipment, and

competent supervision to properly perform the disaster recovery work at the MidMichigan Medical Center, Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, Quality Hardwood Sales, and other Michigan worksite locations under the circumstances known and existing.

161. The Defendant SERVPRO breached its duties and is directly liable to the Michigan Plaintiffs II for negligent acts and omissions, including but not limited to:

- a. Failing to properly develop, adopt, and implement a COVID-19 preparedness and response plan as part of the cleaning, restoration, and remediation system that its franchisees are required to implement and follow;
- b. Failing to provide mandatory training for franchisees and their employees on safe protocols and practices during the COVID-19 pandemic;
- c. Failing to provide voluntary trainings, manuals, instructional material, and other information to franchisees on reasonable and necessary safety protocols and practices during the COVID-19 pandemic;
- d. Failing to adequately supervise their franchisees to ensure that reasonable and necessary safety protocols and practices to limit exposure to COVID-19 were observed and enforced at their worksites; and/or
- e. Otherwise failing to adequately inform, instruct, and train franchisees and their employees on safe policies and practices to prevent the transmission of COVID-19 as part of the required cleaning, restoration, and remediation system.

162. The Defendant SERVPRO breached its duties and is liable to each of the Michigan Plaintiffs II for the previously stated negligent acts and omission of the Defendants RACM and/or BTN under respondeat superior and/or are vicariously liability for the negligent acts and omissions of their agents.

163. To the extent that the Defendant SERVPRO approved and/or jointly participated in the selection of Defendant BTN, the Defendant SERVPRO is directly liable for the negligent selection of the Defendant BTN, a careless contractor who did not possess the requisite degree of

skill, safe equipment, and competent supervision to properly perform the disaster recovery work at the MidMichigan Medical Center, Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other Michigan worksite locations under the circumstances known and existing.

164. Plaintiff LEYDA YANES has been deprived of various support and services performed by her spouse Plaintiff JESUS DELGADO; has been required to spend significant time assisting in the management of her husbands' care; and has suffered a loss of society and companionship.

165. Plaintiffs FEDOR DELGADO, LEILA DELGADO and ELIEY DELGADO have been deprived of a loss of society and companionship as a result of the illness and injuries suffered by their father Plaintiff JESUS DELGADO.

166. As a direct and proximate result of the negligent acts and omissions of the Defendants FERNANDEZ, BTN, RACM, and/or SERVPRO, each of the Michigan Plaintiffs II contracted COVID-19 and suffered consequent injuries and damages.

167. Each of the Michigan Plaintiffs II are entitled to compensatory damages and have, and will in the future, suffer damages including but not limited to lost wages and income, loss of earning capacity, reasonable and necessary medical expenses, pain and suffering, mental anguish, fright and shock, denial of social pleasure and enjoyments, embarrassment, humiliation and mortification, disability, and miscellaneous expenses.

**VII. COUNT 2: NEGLIGENCE UNDER INDIANA COMMON LAW**

168. Plaintiffs incorporate by reference paragraphs 1 through 167 as if fully stated herein.

169. Under the common law of Indiana, the Defendants FERNANDEZ, BTN, RACM, and SERVPRO owed a duty of due care to each of the Indiana Plaintiffs.

170. Defendants FERNANDEZ, BTN, and/or RACM breached their duties and are directly liable to the Indiana Plaintiffs for negligent acts and omissions, including but not limited to:

- a. Failing to properly develop, adopt, and implement a COVID-19 preparedness and response plan;
- b. Failing to adequately provide reasonable and necessary COVID-19 training to workers;
- c. Failing to adequately screen workers for COVID-19 before transporting them to worksites in Indiana;
- d. Failing to adequately screen workers for COVID-19 before housing them in multi-person hotel rooms;
- e. Failing to adequately screen workers for COVID-19 before transporting them in groups in a single van to and from their hotels and the Quality Hardwood Sales warehouse worksite;
- f. Failing to adequately screen workers for COVID-19 before entry into the worksite at the Quality Hardwood Sales warehouse;
- g. Failing to adequately design transportation, housing, and work activities to permit and promote safe social distancing;
- h. Failing to adequately observe, require, and enforce safe social distancing practices during transportation, housing, and work activities;
- i. Transporting workers in vans with 8-15 persons;
- j. Housing workers in multi-person hotel rooms;
- k. Requiring workers to share beds;
- l. Failing to adequately provide face coverings and masks for use during transportation, housing, and all work activities when safe social distancing was not possible;

- m. Failing to adequately require and enforce the wearing of face coverings and masks during transportation, housing, and all work activities when safe social distancing was not possible;
- n. Failing to develop, implement, require, and enforce heightened cleaning and disinfecting of tools, equipment and vehicles used during transportation and work activities;
- o. Failing to adequately provide washing stations or hand sanitizer for use by workers during transportation, housing, and work activities;
- p. Failing to allow and/or provide adequate time during the workday for workers to wash and sanitize their hands frequently;
- q. Otherwise failing to adequately inform, instruct, and train workers on safe practices to prevent the transmission of COVID-19;
- r. Otherwise failing to adequately develop, implement, and enforce COVID-19 screening protocols and practices;
- s. Otherwise failing to adequately develop, implement, and enforce safe social distancing protocols and practices;
- t. Otherwise failing to adequately develop, implement, and enforce protocols and practices requiring the use of personal protective equipment such as face coverings and masks;
- u. Otherwise failing to adequately develop, implement, and enforce reasonable and necessary cleaning, disinfecting, sanitation, and hygiene protocols and practices;
- v. Otherwise failing to adequately supervise their employees to ensure that reasonable and necessary safety protocols and practices to limit exposure to COVID-19 were observed and enforced; and/or
- w. Otherwise failing to develop, implement, and enforce reasonable safety protocols and practices to limit exposure to COVID-19.

171. The Defendants FERNANDEZ, BTN, and/or RACM further breached their duties and are directly liable to the Indiana Plaintiffs for negligent acts and omissions, including but not limited to:

- a. Failing to and/or not reasonably informing co-workers and contractors who may have come into contact with a person known to have become infected with COVID-19;
- b. Failing to adequately establish a response plan for dealing with a confirmed case of COVID-19 among workers;
- c. Failing to have adequate protocols for isolating, quarantining, and sheltering in place workers who had contracted COVID-19;
- d. Failing to adequately require and enforce isolation, quarantine and sheltering in place for workers who had contracted COVID-19;
- e. Failing to adequately undertake disinfecting and deep cleaning of equipment, vehicles, and facilities following notification that a worker had contracted COVID-19;
- f. Failing to provide adequate housing for workers who had contracted COVID-19 to prevent transmission of the virus to other persons;
- g. Failing to make adequate transportation and travel arrangements for workers who had contracted COVID-19 to prevent transmission of the virus to other persons;
- h. Unreasonably directing workers who had contracted COVID-19 to return to their homes and falsely representing the same as the instructions of public health officials.

172. The Defendants FERNANDEZ, BTN, and/or RACM breached their duties and is liable to each of the Indiana Plaintiffs under respondeat superior and/or are vicariously liable for the negligent acts and omissions of their employees and agents. The negligent acts and omissions of their employees and agents, include but are not limited to those acts and omissions listed above.

173. Under Indiana common law, the Defendants FERNANDEZ, BTN, and/or RACM's duties of care are nondelegable under the inherently dangerous work, peculiar risk, specific duty, and nuisance doctrines.

174. The Defendants FERNANDEZ, BTN, and/or RACM are liable to the Indiana Plaintiffs for the above-stated negligent acts and omissions of each other and other contractors at

the worksite under the intrinsically dangerous work, peculiar risk, specific duty, and nuisance doctrines.

175. The disaster recovery work at issue is intrinsically dangerous work that necessarily attended danger no matter how skillfully it was performed, and Defendants are strictly liable for harms caused in the performance of the work.

176. The disaster recovery work under the conditions that it was to be performed involved peculiar risks such that it was likely to cause harm to other persons unless due care was taken. As stated above, Defendants failed to use due care in the performance of the work and their failures caused harm to the Indiana Plaintiffs.

177. Upon information and belief, the Defendants FERNANDEZ, BTN, and/or RACM had a legal and/or contractual duty to develop, implement, and enforce workplace safety policies and practices at the Nappanee, Indiana worksite. As stated above, Defendants failed to use due care in the development, implementation, and enforcement of workplace safety policies and practices at the worksite and their failures caused harm to the Indiana Plaintiffs.

178. The disaster recovery work under the conditions that it was to be performed were likely to create a nuisance unless due care was taken. As stated above, Defendants failed to use due care in the performance of the work and in fact created a nuisance that caused harm to the Indiana Plaintiffs.

179. The Defendant RACM is directly liable for the negligent selection of the Defendant BTN, a careless contractor who did not possess the requisite degree of skill, safe equipment, and competent supervision to properly perform the disaster recovery work at the MidMichigan Medical Center, Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood

University, Quality Hardwood Sales, and other worksite locations under the circumstances known and existing.

180. The Defendant SERVPRO breached its duties and is directly liable to the Indiana Plaintiffs for negligent acts and omissions, including but not limited to:

- a. Failing to properly develop, adopt, and implement a COVID-19 preparedness and response plan as part of the cleaning, restoration, and remediation system that its franchisees are required to implement and follow;
- b. Failing to provide mandatory training for franchisees and their employees on safe protocols and practices during the COVID-19 pandemic;
- c. Failing to provide voluntary trainings, manuals, instructional material, and other information to franchisees on reasonable and necessary safety protocols and practices during the COVID-19 pandemic;
- d. Failing to adequately supervise their franchisees to ensure that reasonable and necessary safety protocols and practices to limit exposure to COVID-19 were observed and enforced at their worksites;
- e. Otherwise failing to adequately inform, instruct, and train franchisees and their employees on safe policies and practices to prevent the transmission of COVID-19 as part of the required cleaning, restoration, and remediation system.

181. The Defendant SERVPRO breached its duties and is liable to each of the Michigan Plaintiffs II for the previously stated negligent acts and omission of the Defendants RACM and/or BTN under respondeat superior and/or are vicariously liability for the negligent acts and omissions of their agents.

182. To the extent that the Defendant SERVPRO approved and/or jointly participated in the selection of Defendant BTN, the Defendant SERVPRO is directly liable for the negligent selection of the Defendant BTN, a careless contractor who did not possess the requisite degree of skill, safe equipment, and competent supervision to properly perform the disaster recovery work at the Quality Hardwood Sales warehouse, under the circumstances known and existing.

183. The above-stated conduct of each of the Defendants also constitutes gross negligence.

184. As a direct and proximate result of the negligent acts and omissions of the Defendants FERNANDEZ, BTN, RACM, and/or SERVPRO, each of the Indiana Plaintiffs contracted COVID-19 and suffered consequent injuries and are entitled to compensatory and punitive damages.

185. Each of the Indiana Plaintiffs have, and will in the future, suffer damages including but not limited to lost wages and income, loss of earning capacity, reasonable and necessary medical expenses, pain and suffering, mental anguish, fright and shock, denial of social pleasure and enjoyments, embarrassment, humiliation and mortification, disability, and miscellaneous expenses.

#### **VIII. COUNT 3: PUBLIC NUISANCE**

186. Plaintiffs incorporate by reference paragraphs 1 through 185 as if fully stated herein.

187. At all relevant times, the Defendants BTN and/or RACM had possession of and control the worksites at the MidMichigan Medical Center, Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other worksite locations in and/or around Midland, Michigan.

188. The worksites at the MidMichigan Medical Center, the Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other worksite locations in and/or around Midland Michigan where precautions were not being taken to prevent the transmission of COVID-19 unreasonably interfered with the common right of the public to a safe and healthy environment.

189. Plaintiffs have suffered a harm distinct from the harm suffered by the public at large, as Plaintiffs have in fact contracted COVID-19 from the nuisance created.

190. The actions of Defendants BTN and/or RACM constitute a public nuisance for which there is a private right of action under Michigan law.

191. The public nuisance created and maintained by the Defendants BTN and/or RACM is the direct and proximate cause of the damages suffered by the Michigan Plaintiffs II.

192. Each of the Michigan Plaintiffs II are entitled to compensatory damages and have, and will in the future, suffer damages including but not limited to lost wages and income, loss of earning capacity, reasonable and necessary medical expenses, pain and suffering, mental anguish, fright and shock, denial of social pleasure and enjoyments, embarrassment, humiliation and mortification, disability, and miscellaneous expenses.

**IX. COUNT 4: WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY**

193. Plaintiffs incorporate by reference paragraphs 1 through 192 as if fully stated herein.

194. The Governor's Executive Order No. 2020-36 had the full force and effect of law at the times relevant herein.

195. Executive Order No. 2020-36 prohibited the Defendant BTN and FERNANDEZ from discharging and/or retaliating against workers who had to stay off work because they had symptoms of or had contracted COVID-19 and against workers who had to isolate because they had been in contact with persons who had symptoms of or had contracted COVID-19.

196. For purposes of Executive Order No. 2020-36, the Defendants BTN and/or RACM were the employers of the Michigan Plaintiffs.

197. Despite the Governor's order, the Defendants BTN and/or RACM discharged the Michigan Plaintiffs when workers tested positive for COVID-19.

198. The Defendants BTN and/or RACM's violation of the Michigan Plaintiffs' rights is the direct and proximate cause of the damages suffered by the Michigan Plaintiffs.

199. The Michigan Plaintiffs are entitled to compensatory damages including but not limited to lost wages, the value of lost employee benefits, emotional and physical distress, mental anguish, loss of reputation, humiliation, and embarrassment.

200. Moreover, the Michigan Plaintiffs are entitled to exemplary damages in this case. At a time when Michigan was among the states with the highest numbers of COVID-19 cases and deaths, the Defendants BTN and/or RACM's conduct was willful and reckless and caused justifiable feelings of indignation and outrage.

**X. COUNT 5: FRAUDULENT & INNOCENT MISREPRESENTATION**

201. Plaintiffs incorporate by reference paragraphs 1 through 200 as if fully stated herein.

202. The Defendants FERNANDEZ and/or BTN represented to each of the Michigan Plaintiffs that all workers would be screened for symptoms of COVID-19 before entering vans transporting workers to and from their home state.

203. The Defendants FERNANDEZ and/or BTN represented to each of the Michigan Plaintiffs that all workers would be daily screened for symptoms of COVID-19 before being transported to and from their hotel to their daily worksite location.

204. The Defendants FERNANDEZ and/or BTN represented to each of the Michigan Plaintiffs that they were independent contractors.

205. The Defendants FERNANDEZ and/or BTN knew that these representations were false or made them recklessly without knowledge of their truth and as positive assertions.

206. The Defendants FERNANDEZ and/or BTN made these representations with the intent to induce Michigan Plaintiffs to join its work crews doing the disaster recovery work in Michigan.

207. The Plaintiffs relied on these statements when agreeing to travel to Michigan and work in Michigan.

208. Alternatively, these representations of the Defendants FERNANDEZ and/or BTN were of material facts regarding contract for work, were false when made and the Michigan Plaintiffs would not have undertaken the work from which the Defendants FERNANDEZ and/or BTN benefited.

209. The Michigan Plaintiffs suffered injuries and losses as a result of the Defendants FERNANDEZ and/or BTN's misrepresentations and are entitled to compensatory damages.

210. After testing confirmed that workers had contracted COVID-19 during the course of their work, the Defendant FERNANDEZ represented to the Michigan Plaintiffs that the public health department was requesting that workers return to their homes.

211. The Defendant FERNANDEZ knew that this representation was false or made it recklessly without knowledge of its truth and as a positive assertion.

212. The Defendant FERNANDEZ made this representation with the intent to induce Michigan Plaintiffs to quickly leave the State of Michigan.

213. The Michigan Plaintiffs relied on these statements and left the state, returning to their homes in Florida.

214. Alternatively, these representations of the Defendant FERNANDEZ were of material facts related to their contract for work, were false when made and the Michigan Plaintiffs would not have undertaken to return home at that time, and the Defendants FERNANDEZ and/or BTN benefited from the worker's absence from the State of Michigan.

215. Each of the Defendant FERNANDEZ's representations were made within the scope of his ownership, employment, and agency with the Defendant BTN and Defendant BTN is liable under respondeat superior and/or are vicariously liability for the representations of the Defendant FERNANDEZ.

216. The Michigan Plaintiffs suffered injuries and losses as a result of the misrepresentations and are entitled to compensatory damages.

217. The Michigan Plaintiffs have, and will in the future, suffer damages including but not limited to lost wages and income, loss of earning capacity, reasonable and necessary medical expenses, pain and suffering, mental anguish, fright and shock, denial of social pleasure and enjoyments, embarrassment, humiliation and mortification, disability, and miscellaneous expenses.

**XI. COUNT 6: FRAUD & CONSTRUCTIVE FRAUD  
UNDER INDIANA COMMON LAW**

218. Plaintiffs incorporate by reference paragraphs 1 through 217 as if fully stated herein.

219. The Defendants FERNANDEZ and BTN represented to Indiana Plaintiffs that all workers would be screened for symptoms of COVID-19 before entering vans transporting workers to and from their home state.

220. The Defendants FERNANDEZ and BTN represented to the Indiana Plaintiffs that all workers would be daily screened for symptoms of COVID-19 before being transported to and from their hotel and their daily worksite location.

221. The Defendants FERNANDEZ and/or BTN represented to the each of the Indiana Plaintiffs that all workers were independent contractors.

222. The Defendants FERNANDEZ and BTN's representations concerned important facts.

223. The Defendants FERNANDEZ and BTN knew that these representations were false or made them recklessly without knowledge of their truth and as positive assertions.

224. The Defendants FERNANDEZ and BTN made these representations with the intent to induce the Indiana Plaintiffs to join its work crews doing the disaster recovery work in Indiana.

225. The Indiana Plaintiffs reasonably relied on these statements when agreeing to work in Indiana.

226. Alternatively, the Defendants FERNANDEZ and BTN and Indiana Plaintiffs had a relationship whereby the Defendants FERNANDEZ and BTN owed a duty to deal fairly with them and Defendants FERNANDEZ and BTN violated that duty by these misrepresentations of material facts regarding the work and the Indiana Plaintiffs relied upon them resulting in a benefit to the Defendants FERNANDEZ and BTN.

227. The Indiana Plaintiffs suffered injuries and losses as a result of the Defendants FERNANDEZ and BTN's misrepresentations.

228. As a direct and proximate result of the negligent acts and omissions of the Defendants FERNANDEZ and BTN's misrepresentations each of the Indiana Plaintiffs are entitled to compensatory and punitive damages.

229. The Indiana Plaintiffs have, and will in the future, suffer damages including but not limited to lost wages and income, loss of earning capacity, reasonable and necessary medical expenses, pain and suffering, mental anguish, fright and shock, denial of social pleasure and enjoyments, embarrassment, humiliation and mortification, disability, and miscellaneous expenses.

**XII. COUNT 7: MINIMUM WAGE & OVERTIME VIOLATIONS UNDER THE FAIR LABOR STANDARDS ACT**

230. Plaintiffs incorporate by reference paragraphs 1 through 229 as if fully stated herein.

231. At all times relevant to this action, the Michigan Plaintiffs and Indiana Plaintiffs were Defendants BTN and/or FERNANDEZ's employees and these Defendants were the Michigan Plaintiffs' and the Indiana Plaintiffs' employer within the meaning of the Fair Labor Standards Act, 29 U.S.C. 201, *et seq.* ("FLSA") and 29 C.F.R. §791.

232. Each of the Defendants BTN and FERNANDEZ were individually, jointly, and/or alternatively an employer of the Plaintiffs.

233. Pursuant to provisions of the FLSA, including 29 USC § 206, the Michigan Plaintiffs and Indiana Plaintiffs were entitled to at least the minimum hourly wage, which is currently \$7.25 an hour, for each hour that they worked.

234. Pursuant to provisions of the FLSA including 29 USC § 207, and in the event they worked more than 40 hours a single week, the Michigan Plaintiffs and Indiana Plaintiffs were entitled to an overtime hourly wage of time and one-half their regular hourly wage for all hours worked in excess of 40 hours per week.

235. At all times, the FLSA required that the Defendants BTN and FERNANDEZ compensate the Michigan Plaintiffs for time spent travelling to and from Michigan and for time

spent travelling to and from their hotel and the MidMichigan Medical Center, the Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University and other worksite locations in and/or around Midland, Michigan.

236. At all times, the FLSA required that the Defendants BTN and FERNANDEZ compensate the Indiana Plaintiffs for time spent travelling to and from Indiana and for time spent travelling to and from their hotel and the Quality Hardwood Sales warehouse worksite in Nappanee, Indiana.

237. At all times, the FLSA required that the Defendants BTN and FERNANDEZ to include time within a person's weekly hours worked time spent travelling to and from Michigan and time spent travelling to and from their hotel and the MidMichigan Medical Center, the Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University and other worksite locations in and/or around Midland, Michigan.

238. At all times, the FLSA required that the Defendants BTN and FERNANDEZ to include time within a person's weekly hours worked time spent travelling to and from Indiana and time spent travelling to and from their hotel and the Quality Hardwood Sales warehouse worksite in Nappanee, Indiana.

239. At all times, the FLSA required that the Defendants BTN and FERNANDEZ to include time within a person's weekly hours worked time spent driving the Defendants' vans to and from Michigan and time spent driving the Defendants' vans to and from the workers' hotels and the MidMichigan Medical Center, the Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other locations in and/or around Midland, Michigan.

240. At all times, the FLSA required that the Defendants BTN and FERNANDEZ to include time within a person's weekly hours worked time spent driving the Defendants' vans to

and from Indiana and time spent driving the Defendants' vans to and from the workers' hotels and the Quality Hardwood Sales warehouse worksite and other locations in and/or around in Nappanee, Indiana.

241. The Michigan Plaintiffs were paid no compensation by the Defendants BTN and FERNANDEZ for time spent travelling to and from Michigan and this travel time was not included within the Defendants' calculations of weekly hours worked by the Michigan Plaintiffs.

242. The Indiana Plaintiffs were paid no compensation by the Defendants BTN and FERNANDEZ for time spent travelling to and from Indiana and this travel time was not included within the Defendants' calculations of weekly hours worked by the Indiana Plaintiffs.

243. The Michigan Plaintiffs were paid no compensation for time spent travelling to and from their hotel and the MidMichigan Medical Center, the Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other worksite locations in and/or around Midland, Michigan. This travel time was also not included within the Defendants' calculations of weekly hours worked by the Michigan Plaintiffs

244. The Indiana Plaintiffs were paid no compensation for time spent travelling to and from their hotel and the Quality Hardwood Sales warehouse worksite in Nappanee, Indiana. This travel time was also not included within the Defendants' calculations of weekly hours worked by the Indiana Plaintiffs.

245. The time spent driving Defendants BTN and FERNANDEZ's vans by Michigan Plaintiffs and Indiana Plaintiffs was not included within hours worked for purposes of calculating overtime hours.

246. Defendants BTN and FERNANDEZ's failure to pay the Michigan Plaintiffs and Indiana Plaintiffs compensation for travel time violates the minimum hourly wage requirements of 29 U.S.C. § 206.

247. When travel time and driving time is added to their weekly hours, Michigan Plaintiffs and Indiana Plaintiffs were entitled to additional overtime pay pursuant to 29 U.S.C. § 207.

248. Defendants BTN and FERNANDEZ aforesaid violations of the FLSA were knowing, intentional, and willful.

249. As a result of Defendants BTN and FERNANDEZ's conduct, the Michigan Plaintiffs and Indiana Plaintiffs are entitled to an award of damages for unpaid minimum wages and overtime wages and additional liquidated damages of 100% of any unpaid minimum wages and overtime wages and all other damages as permitted by law or equity for violation of the FLSA along with costs and attorney's fees.

**XIII. COUNT 8: MINIMUM WAGE & OVERTIME VIOLATIONS UNDER THE MICHIGAN WORKFORCE OPPORTUNITY WAGE ACT**

250. Plaintiffs incorporate by reference paragraphs 1 through 249 as if fully stated herein.

251. At all times relevant to this action, the Michigan Plaintiffs, were Defendants BTN and FERNANDEZ's employees and these Defendants were the Michigan Plaintiffs' employer within the meaning of the Michigan Workforce Opportunity Wage Act, MCL 408.411 *et seq* ("MWOWA").

252. Each of the Defendants BTN and FERNANDEZ were individually, jointly, and/or alternatively an employer of the Michigan Plaintiffs.

253. Pursuant to provisions of the MWOWA, including MCL 408.414, the Michigan Plaintiffs were entitled to at least the minimum hourly wage, which is currently \$9.45 an hour, for each hour that they worked.

254. Pursuant to provisions of the MWOWA including MCL 408.414a, and in the event they worked more than 40 hours a week, the Michigan Plaintiffs were entitled to an overtime hourly wage of time and one-half their regular hourly wage for all hours worked in excess of 40 hours per week.

255. At all times, the MWOWA required that the Defendants BTN and FERNANDEZ compensate the Michigan Plaintiffs for time spent travelling to and from Michigan and for time spent travelling to and from their hotel and the MidMichigan Medical Center, the Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University and other worksite locations in and/or around Midland, Michigan.

256. At all times, the MWOWA required that the Defendants BTN and FERNANDEZ to include time within a person's weekly hours worked time spent travelling to and from Michigan and time spent travelling to and from their hotel and the MidMichigan Medical Center, the Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University and other worksite locations in and/or around Midland, Michigan.

257. At all times, the MWOWA required that the Defendants BTN and FERNANDEZ to include time within a person's weekly hours worked time spent driving the Defendants' vans to and from Michigan and time spent driving the Defendants' vans to and from the workers' hotels and the MidMichigan Medical Center, the Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other locations in and/or around Midland, Michigan.

258. The Michigan Plaintiffs were paid no compensation by the Defendants BTN and FERNANDEZ for time spent travelling to and from Michigan and this travel time was not included within the Defendants' calculations of weekly hours worked by the Michigan Plaintiffs.

259. The Michigan Plaintiffs were paid no compensation for time spent travelling to and from their hotel and the MidMichigan Medical Center, the Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other worksite locations in and/or around Midland, Michigan. This travel time was also not included within the Defendants' calculations of weekly hours worked by the Michigan Plaintiffs

260. The time spent driving Defendants BTN and FERNANDEZ's vans by Michigan Plaintiffs was not included within hours worked for purposes of calculating overtime hours.

261. Defendants BTN and FERNANDEZ's failures to pay the Michigan Plaintiffs compensation for travel time violates the minimum hourly wage requirements of MCL 408.414.

262. When travel time and/or driving time is added to their weekly hours, the Michigan Plaintiffs were entitled to additional overtime pay pursuant to MCL 408.414a.

263. Defendants BTN and FERNANDEZ aforesaid violations of the MWOWA were knowing, intentional, and willful.

264. As a result of Defendants BTN and FERNANDEZ's conduct, Plaintiffs are entitled to an award of damages for unpaid minimum wages and overtime wages and additional liquidated damages of 100% of any unpaid minimum wages and overtime wages and all other damages as permitted by law or equity for violation of the MWOWA along with costs and attorney's fees.

**XIV. COUNT 9: BREACH OF CONTRACT, UNJUST ENRICHMENT, & RESTITUTION UNDER MICHIGAN & INDIANA COMMON LAW**

265. Plaintiff incorporates by reference paragraphs 1 through 264 as if fully stated herein.

266. At the time of accepting employment, a contract was formed and existed between the Michigan Plaintiffs and the Defendant BTN.

267. At the time of accepting employment, a contract was formed and existed between the Indiana Plaintiffs and the Defendant BTN.

268. The Defendant BTN agreed to pay the Michigan Plaintiffs and the Indiana Plaintiffs at the rate of \$12/hr for regular hours and at \$18/hr for overtime hours.

269. The Defendant BTN agreed to pay a driver's bonus to the various Michigan Plaintiffs and the Indiana Plaintiffs who performed driving tasks. Michigan and Indiana Plaintiffs who act as drivers at various times, included but are not limited to, Plaintiff JOSE DELGADO, ARMANDO NEGRON, DOUGLAS COLINA, ELY PETIT, FEDOR DELGADO, FRANYN RODRIGUEZ, HILDA MANZANERO, JOSE FELIX RODRIGUEZ, and REINALDO QUINTERO, SR.

270. Defendant BTN breached the terms and conditions of the contracts by:

- a. Failing to pay the Michigan Plaintiffs and the Indiana Plaintiffs for their travel time; and
- b. Failing to pay the legally required overtime rate to the Michigan Plaintiffs and the Indiana Plaintiffs when travel time was added to the hours worked;
- c. Failing to pay promised driver's pay rates and failure to pay for all driving time worked.

271. The Michigan Plaintiffs conferred a benefit upon the Defendant BTN by travelling to Michigan and travelling to and from their hotels to the MidMichigan Medical Center, the Currie Golf Course, Herbert D. Doan Midland County History Center, Northwood University, and other worksite locations in and/or around Midland, Michigan. The benefit conferred has unjustly enriched the Defendant BTN, without conferring any benefit on the Michigan Plaintiffs, such that Defendant BTN acts wrongfully in retaining that benefit.

272. The Indiana Plaintiffs conferred a benefit upon the Defendant BTN by travelling to and from Indiana and travelling to and from their hotel to the Quality Hardwood Sales warehouse worksite. The benefit conferred has unjustly enriched Defendant BTN, without conferring any benefit on Indiana Plaintiffs, such that Defendant BTN acts wrongfully in retaining that benefit.

273. The Michigan Plaintiffs and the Indiana Plaintiffs did not intend that Defendant BTN retain that benefit without just compensation that was promised and was legally required and have otherwise acted equitably in this matter, such that Defendant BTN must disgorge that benefit.

274. As a result of Defendant BTN's conduct, the Michigan Plaintiffs and Indiana Plaintiffs are entitled to an award of damages, restitution, costs, attorney fees, prejudgment interest and other damages as allowed by law and equity.

**XV. COUNT 10: PAID SICK LEAVE VIOLATIONS & RETALIATION  
UNDER THE EMERGENCY PAID SICK LEAVE ACT**

275. Plaintiff incorporates by reference paragraphs 1 through 274 as if fully stated herein.

276. At all times relevant to this action, the Michigan Plaintiffs and the Indiana Plaintiffs were Defendants BTN and FERNANDEZ's employees and these Defendants were these Plaintiffs' employer within the meaning of the Emergency Paid Sick Leave Act, Public Law 116-127—Mar. 18, 2020, §§ 5101 *et seq* ("EPSLA").

277. Each of the Defendants BTN and FERNANDEZ were individually, jointly, and/or alternatively an employer of the Plaintiffs within the meaning of the EPSLA.

278. Pursuant to the applicable provisions of the EPSLA, the Defendants BTN and FERNANDEZ were required to pay each of the Michigan Plaintiffs and each of the Indiana Plaintiffs paid sick leave for time off of work when experiencing symptoms, while seeking a diagnosis, after contracting, and/or while subject to isolation as a result of COVID-19.

279. Under the EPSLA, the Michigan Plaintiffs and the Indiana Plaintiffs were entitled to their full pay for up to 80 hours of leave.

280. The Defendants BTN and FERNANDEZ failed to provide paid sick leave to the Plaintiffs after experiencing symptoms, when seeking a diagnosis, after testing positive, and/or after becoming subject to isolation or quarantine as a result of COVID-19. Instead, the Defendants ceased all compensation and terminated the Michigan Plaintiffs and Indiana Plaintiffs' employment.

281. The Defendants BTN and FERNANDEZ retaliated against workers, including but not limited to various of the Michigan and Indiana Plaintiffs, when they inquired about eligibility for sick leave.

282. The Defendants BTN and FERNANDEZ's termination of the Michigan Plaintiffs and Indiana Plaintiffs' employment when they became eligible for paid sick leave constitutes retaliation in violation of EPSLA.

283. Defendants BTN and FERNANDEZ aforesaid violations of the EPSLA were knowing, intentional, and willful.

284. As a result of Defendants BTN and FERNANDEZ's conduct, Michigan Plaintiffs and Indiana Plaintiffs are entitled to an award of damages for unpaid paid sick leave and additional liquidated damages of 100% of any unpaid wages and all other damages as permitted by law or equity for violation of the EPSLA along punitive damages, costs and attorney's fees.

**XVI. COUNT 11: FORCED LABOR VIOLATIONS UNDER THE  
WILLIAM WILBERFORCE TRAFFICKING VICTIMS PROTECTION  
REAUTHORIZATION ACT OF 2008**

285. Plaintiffs incorporate by reference paragraphs 1 through 284 as if fully stated herein.

286. Defendants FERNANDEZ, BTN, RACM, and/or SERVPRO, individually and/or through their agents and employees, knowingly obtained the labor or services of the Michigan Plaintiffs and the Indiana Plaintiffs by means of the abuse of law or legal process within the meaning of the William Wilberforce Trafficking and Violence Protection Reauthorization Act of 2008, 18 USC §1589 (TVPRA).

287. Defendants FERNANDEZ, BTN, RACM, and/or SERVPRO, individually and/or through their agents and employees, used laws or legal processes, administrative, in a manner or for a purpose for which the law was not designed, in order to exert pressure on and coerce the Michigan Plaintiffs and Indiana Plaintiffs to cause them to take action or refrain from taking action under the meaning of the TVPRA 2008, 22 USC § 7102(1).

288. Defendants FERNANDEZ, BTN, RACM, and/or SERVPRO, individually and/or through their agents and employees, used the public health laws of the state and county and their role as a transmitter of information and translator for public health officials carrying out the process called for by law in a manner or purpose for which the law or legal process was not designed. The public health laws and legal process were designed for the safety of all in the community - for testing, contact tracing, isolation, and quarantine to control the spread of COVID-19.

289. Defendants FERNANDEZ, BTN, RACM, and/or SERVPRO, individually and/or through their agents and employees, abused these laws and/or legal processes when they:

- a. Promised to conduct daily screenings and failed to do so in violation of state law;
- b. Misrepresented the statements, advice, or directives of public health officials to workers;
- c. Failed to make all notifications related to confirmed COVID-19 cases as required under the law;
- d. Threatened to withdraw housing payments and leave workers without housing in Michigan and/or Indiana;

- e. After bringing them to Michigan and Indiana, threatened to leave workers without transportation back to their home states;
- f. Otherwise, threatened to abandon workers more than a thousand miles from their home;
- g. Arranged for, paid for, and transported workers out of the county contrary to the requirements of the public health law and/or the directives of public health officials; and/or
- h. Refused to assist workers with COVID-19 symptoms who were more than one thousand miles away from home and had limited English proficiency to obtain a COVID-19 test.

290. The actions of the Defendants FERNANDEZ, BTN, RACM, and/or SERVPRO, individually and/or through their agents and employees, coerced the Michigan Plaintiffs and the Indiana Plaintiffs to undertake the following actions:

- a. Continue working at the Defendants' worksites in Michigan and/or Indiana;
- b. To leave the states of Michigan and Indiana without isolating and/or quarantining; and/or
- c. To travel in vehicles crowded with other persons back to their home states.

291. The actions of the Defendants FERNANDEZ, BTN, RACM, and/or SERVPRO, individually and/or through their agents and employees, coerced the Michigan Plaintiffs and the Indiana Plaintiffs to refrain from taking the following actions:

- a. Seeking prompt medical care in Michigan and/or Indiana;
- b. Isolating or quarantining immediately;
- c. Obtaining testing and/or testing results before traveling back to their homes and potentially exposing members of their households; and/or
- d. Availing themselves of the assistance and services of the Bay County Health Department, that was working on arranging a COVID-19 to house affected workers.

292. Defendant FERNANDEZ's coercive acts caused Plaintiffs to undertake and/or refrain from undertaking the above-stated actions and for the benefit of the Defendants FERNANDEZ, BTN, RACM, and/or SERVPRO and the Defendants in-fact benefitted by reducing potential medical, housing, meals, and transportation costs; reducing continuing with their disaster recovery projects; and reducing their exposure to liability under Michigan and Indiana laws, regulations, and orders, including but not limited to those related to public health and occupational safety during the COVID-19 pandemic.

293. Defendants FERNANDEZ, BTN, RACM, and/or SERVPRO knew or should have known that the Defendant FERNANDEZ's deception regarding the safety measures and public health authority communications constituted abuse of the legal process under 18 USC 1589(a)(3).

294. As a direct and proximate result of Defendants' actions each of the Michigan Plaintiffs and the Indiana Plaintiffs are entitled to compensatory and punitive damages.

295. The Michigan Plaintiffs and the Indiana Plaintiffs have, and will in the future, suffer damages including but not limited to lost wages and income, loss of earning capacity, reasonable and necessary medical expenses, pain and suffering, mental anguish, fright and shock, denial of social pleasure and enjoyments, embarrassment, humiliation and mortification, disability, and miscellaneous expenses.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs JESUS DELGADO; ARMANDO NEGRON; ANDRES FEO; BELLALIZ GONZALEZ; DOUGLAS COLINA; ELY PETIT; FEDOR DELGADO; FRANYN RODRIGUEZ; GABRIELA GUGLIOTTA; HILDA MANZANERO; IVETTE CONTRERAS; JOSE FELIX RODRIGUEZ; LEILA DELGADO; LEYDA YANES; MARALI RUBIO; MORAIVA BRACHO; REINALDO QUINTERO, SR.; and ELIEY DELGADO, Individually and

as Next Friend for ELIANNY HUERTA DELGADO, a minor, and CAMILA HUERTA DELGADO, a minor; demand a jury trial and prays that this Honorable Court enter Judgment against the Defendants, in an amount that is fair, just and equitable for the injuries so wrongfully sustained, including but not limited to past and future physical and emotional distress, mental anguish, loss of reputation, humiliation and embarrassment, loss of society and companionship, loss of household services, lost wages, lost employee benefits, medical expenses, together with other compensatory damages, restitution, punitive damages, exemplary damages interest, costs, and attorney fees as allowed in law and equity.

Respectfully Submitted,

By: /s/ John C. Philo 

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*(Pro Hac Vice Motion to be Submitted)*

Dated: October 13, 2020

STATE OF MICHIGAN

42<sup>nd</sup> CIRCUIT COURT FOR THE COUNTY OF MIDLAND

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JESUS DELGADO; ARMANDO NEGRON;  
ANDRES FEO; BELLALIZ GONZALEZ;  
DOUGLAS COLINA; ELY PETIT; FEDOR  
DELGADO; FRANYN RODRIGUEZ;  
GABRIELA GUGLIOTTA; HILDA  
MANZANERO; IVETTE CONTRERAS;  
JOSE FELIX RODRIGUEZ; LEILA  
DELGADO; LEYDA YANES; MARALI  
RUBIO; MORAIVA BRACHO; REINALDO  
QUINTERO, SR.; and ELIEY DELGADO  
Individually and as Next Friend for  
ELIANNY HUERTA DELGADO, a minor,  
and CAMILA HUERTA DELGADO, a minor;

Plaintiffs,

Case No. \_\_\_\_\_

Hon. \_\_\_\_\_

v.

SERVPRO INDUSTRIES L.L.C.;  
BTN SERVICES LLC; ALEJANDRO  
FERNANDEZ FAVREAU (a.k.a. FERNANDEZ  
ALEJANDRO; ALEJANDRO FERNANDEZ);  
And RACM, LLC (d/b/a SERVPRO OF  
SAGINAW, SERVPRO OF BAY CITY,  
SERVPRO of MIDLAND/GLADWIN  
COUNTIES);

Defendants.

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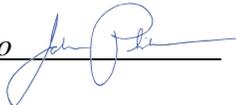
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**PLAINTIFFS' JURY DEMAND**

Plaintiff JESUS DELGADO; ARMANDO NEGRON; ANDRES FEO; BELLALIZ GONZALEZ; DOUGLAS COLINA; ELY PETIT; FEDOR DELGADO; FRANYN RODRIGUEZ; GABRIELA GUGLIOTTA; HILDA MANZANERO; IVETTE CONTRERAS; JOSE FELIX RODRIGUEZ; LEILA DELGADO; LEYDA YANES; MARALI RUBIO; MORAIVA BRACHO; REINALDO QUINTERO, SR.; and ELIEY DELGADO, Individually and as Next Friend for ELIANNY HUERTA DELGADO, a minor, and CAMILA HUERTA DELGADO, a minor; by and through their counsel, demands a trial by jury in the above-captioned matter.

Respectfully Submitted,

By: /s/ John C. Philo 

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*(Pro Hac Vice Motion to be Submitted)*

Dated: October 13, 2020