

CHAMI LAW, PC
11845 W. OLYMPIC BLVD., SUITE 1000
LOS ANGELES, CALIFORNIA 90064

Pouya B. Chami, Esq. SBN 262965
CHAMI LAW, PC
11845 W. Olympic Blvd., Suite 1000
Los Angeles, California 90064
Phone: (310) 484-5001
Fax: (310) 484-5002
pchami@chamilaw.com

Attorney for Plaintiff
JOSE AREVALO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

Assigned for All Purposes
Judge Layne H. Melzer

JOSE AREVALO, an individual;

Plaintiffs,

v.

LAND FORMS LANDSCAPE
CONSTRUCTION, INC., a California
corporation; JEFF TRACY, an individual;
and DOES 1 through 50, Inclusive,

Defendants.

Case No. 30-2020-01143299-CU-OE-CJC

COMPLAINT FOR:

- 1. Unpaid Wages (Labor Code § 202)**
- 2. Unpaid Overtime Wages (Labor Code §§ 510, 1194)**
- 3. Failure to Provide Meal Periods (Labor Code § 226.7)**
- 4. Failure to Provide Rest Periods (Labor Code § 226.7)**
- 5. Failure to Keep and Provide Accurate Itemized Wage Statements (Labor Code § 226)**
- 6. Waiting Time Penalties (Labor Code § 203)**
- 7. Unfair Business Practices (Business and Professions Code § 17200)**
- 8. Penalties Pursuant to the California Private Attorneys General Act (Labor Code § 2699 et seq.)**

DEMAND FOR JURY TRIAL

1 Plaintiffs, Jose Arevalo, by and through his attorney of record, Chami Law, PC, hereby
2 complains against Defendants Land Forms Landscape Construction, Inc., a California
3 corporation; Jeff Tracy, an individual; and DOES 1 through 50, inclusive, as follows:

4 **JURISDICTION AND VENUE**

5 1. This Court has personal jurisdiction over Defendants as it is a resident of, has
6 contacts with, and/or is doing business in the State of California.

7 2. Venue is proper in this Court as Defendants is an individual residing in the County
8 of Orange, State of California and/or a California corporation with its principal place of business
9 in the County of Los Angeles, State of California.

10 **PARTIES**

11 3. Plaintiff Jose Arevalo (hereafter "Plaintiff" or "Mr. Arevalo") is an individual
12 residing in the County of Orange, State of California.

13 4. Defendant Land Forms Landscape Construction, Inc., (hereinafter "Land Forms")
14 is a California corporation operating in the City of Irvine, County of Orange, State of California
15 and is located in the County of Orange, State of California.

16 5. Defendant Jeff Tracy (hereinafter "Mr. Tracy") is an individual residing in the
17 County of Orange, State of California

18 6. The true names and capacities of Defendant DOES 1 through 50 ("DOES") are
19 unknown to Plaintiff, and Plaintiff will seek leave of Court to amend his Complaint to allege such
20 names and capacities as soon as they are ascertained.

21 7. The true names and capacities, whether individual, corporate, associate, or
22 otherwise, of Defendant used herein as DOES 1 to 50, inclusive, are currently unknown to
23 Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
24 § 474. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
25 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
26 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
27 capacities of the Defendants designated hereinafter as DOES when such identities become
28 known.

1 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
2 acted in all respects pertinent to this action as the agent and/or the alter-ego of the other
3 Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
4 and the acts of each Defendant are legally attributable to the other Defendants.

5 9. Furthermore, Defendants, and each of them, acted in all respects as the employers
6 or joint employers of Plaintiff. Defendants, and each of them, exercised control over the wages,
7 hours or working conditions of Plaintiff, or suffered or permitted Plaintiff to work, or engaged,
8 thereby creating a common law employment relationship, with Plaintiff. Therefore, Defendants,
9 and each of them, employed or jointly employed Plaintiff.

10 10. Plaintiff is informed and believes, and based thereon alleges, that at all relevant
11 times, Defendant, including DOES 1 through 50, was and is the agent, servant, representative,
12 independent contractor, partner, joint venturer, alter ego and/or employee of each or some of the
13 other co-defendants, and in doing these acts herein referred to, each Defendant was acting within
14 the course and scope of his authority as such agent, servant, representative, independent
15 contractor, partner, co-conspirator, joint employer, alter ego and/or employee with the express
16 and/or implied approval, permission, knowledge, consent, and/or ratification of other co-
17 defendants, and are in some manner responsible for the occurrences hereinafter alleged and as
18 such, Defendants are jointly and severally liable for the injuries and damages hereinafter
19 described.

20 11. In addition to his individual claims, Plaintiff hereby brings a representative action
21 pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code §
22 2699 et seq. on behalf of himself and the State of California, as well as on behalf of a group of
23 aggrieved employees defined as: All individuals hired as field laborers, general laborers,
24 construction workers, maintenance workers, or a similar title, for Land Forms in the State of
25 California who worked one or more pay periods since one (1) year prior to the date of January 24,
26 2020, and continuing to the present (hereinafter "aggrieved employees").

27 ///

28 ///

FACTUAL ALLEGATIONS

12. Mr. Arevalo was hired by Land Forms and Mr. Tracy in 2015 as a field laborer, performing construction and maintenance services at various worksites that he was assigned to by Defendants.

13. Mr. Arevalo, and other aggrieved employees, performed exclusively non-exempt tasks for Defendants under the supervision and control of Defendants, including Jeff Tracy, and others.

14. Plaintiff generally worked five to six days per week.

15. Plaintiff, and other aggrieved employees, would generally arrive at Defendants workshop every day at 6:00 a.m., and then be given a company truck to drive to various worksites.

16. Plaintiff and other aggrieved employees would then be required to remain working at the worksite until at least 3:30 p.m., and then deliver the company truck back to Defendants' workshop, and generally complete their shift between 5:40 p.m. and 6:00 p.m., or later.

17. Despite these long hours, Plaintiff and other aggrieved employees were not accurately compensated for earned overtime wages.

18. In fact, Defendants would not permit Plaintiff and other aggrieved employees to record all of the hours they spent working on their timesheets.

19. Instead, Plaintiff and other aggrieved employees were generally paid for the work they performed between 6:00 a.m. and 3:30 p.m., and were generally denied payment, including accrued overtime wages, for the work done from 3:30 p.m. to 6:00 p.m., which often involved Plaintiff and other aggrieved employees being required to deliver the Defendants' trucks back to the workshop where Plaintiff and other aggrieved employees began their work shifts.

20. This resulted in a severe underpayment of overtime wages earned by Plaintiff and other aggrieved employees throughout his and their employment – as Plaintiff and other aggrieved employees would generally work between 55 and 65 hours per week, if not more.

21. Defendants knowingly denied Plaintiff and other aggrieved employees the accurate payment of their overtime wages, accurate itemized wage statements and related wage

entitlements in order to reduce their business expenses, including their payroll tax liability and liability for wages to their employees.

22. Plaintiff and other aggrieved workers were also denied uninterrupted meal and rest breaks as a result of under-staffing and demands of management at various worksites.

23. Pursuant to Labor Code § 226.7 and Wage Order 16-2001, Defendants failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof.

24. On a regular and consistent basis, Defendants failed to provide Plaintiff and the aggrieved employees with rest periods despite regularly requiring Plaintiff and the aggrieved employees to work over eight (8) hours.

25. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7.

26. Labor Code §226(a) requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing a number of specified requirements, including total hours worked by the employee, all deductions, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, among other requirements.

27. Defendants failed to issue Plaintiff and the aggrieved employees with itemized wage statements that accurately reflected the number of hours that he and they worked, or their accurate amount of earned wages, as well as other violations of the Labor Code.

28. As such, Plaintiff and his coworkers are aggrieved employees within the meaning of PAGA and Defendants have violated Labor Code §226(a) with respect to Plaintiff and his coworkers/other aggrieved employees.

29. Plaintiff resigned from his employment on September 24, 2019 as a result of Defendants' unlawful wage and hour practices.

30. At the time of his resignation, Mr. Arevalo was still owed premium pay for missed meal and rest periods, as well as unpaid wages, including overtime wages, that remain

1 outstanding through the present and which subject Defendants to waiting time penalties.

2 31. Upon information and belief, Defendants have also denied other aggrieved
3 employees the full payment of their wages, including overtime wages, as well as premium pay for
4 missed meal and rest periods, at the time of their termination and/or resignation

5 **FIRST CAUSE OF ACTION**

6 **[Failure to Pay Wages When Due in Violation of Labor Code §202]**

7 **(By Plaintiff Against Defendant Land Forms and DOES 1 through 10)**

8 32. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
9 this Complaint as if the same were set forth at length herein.

10 33. As the end of his employment by Defendant, Plaintiff was owed compensation by
11 Defendant which has never been paid. Said wages remain due and unpaid to Plaintiff.

12 34. Labor Code § 202 requires that if an employee quits, the wages earned and unpaid
13 at the time of termination are due and payable immediately.

14 35. Defendant's failure to pay the full amount of earned wages due to Plaintiff upon
15 his resignation was willful and deliberate, and Plaintiff is entitled to penalties.

16 36. As a direct, foreseeable and proximate result of Defendant's actions, and each of
17 them, Plaintiff has suffered and incurred the loss of said earned wages which were due and
18 payable at the end of his employment, in an amount according to proof at trial, and as a result,
19 Plaintiff is entitled to costs of suit, including reasonable attorneys' fees pursuant to Labor Code §
20 218.5.

21 **SECOND CAUSE OF ACTION**

22 **[Failure to Pay Overtime Wages in Violation of Labor Code §§ 510 and 1194]**

23 **(By Plaintiff Against Defendant Land Forms and DOES 1 through 10)**

24 37. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
25 this Complaint as if the same were set forth at length herein.

26 38. The Labor Code and the Wage Order provide that a workday consists of eight
27 hours, a workweek consists of 40 hours, and an employer must compensate an employee who
28 works overtime hours with either one-and-one-half times or double the employee's regular rate of

1 compensation. The Labor Code and the Wage Order also provide that the employee's regular rate
2 of compensation equals one fortieth (1/40) of the employee's weekly salary.

3 39. Defendant employed Plaintiff for more than eight hours per day and more than 40
4 hours per workweek, but Defendant failed to pay Plaintiff the overtime compensation required by
5 the California Labor Code and the Wage Order.

6 40. Defendant thus required Plaintiff to work for longer hours than those fixed, or
7 under conditions prohibited, by order of the IWC, in violation of those orders.

8 41. Defendant deprived Plaintiff of his rightfully earned overtime compensation as a
9 direct and proximate result of Defendant's failure to pay said compensation. Under Labor Code
10 section 1194, Plaintiff is entitled to recover such amounts, plus interest thereon, attorney's fees,
11 and costs.

12 **THIRD CAUSE OF ACTION**

13 **[Failure to Provide Meal Periods (Labor Code § 226.7)]**

14 **(By Plaintiff Against Defendant Land Forms and DOES 1 through 10)**

15 42. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
16 this Complaint as if the same were set forth at length herein

17 43. Plaintiff is entitled to one thirty (30) minute, duty-free meal period for every five
18 (5) hours of work pursuant to 8 C.C.R. §11040(11).

19 44. During his employment with Defendant, Plaintiff was not provided with all of his
20 thirty (30) minute, duty-free meal periods in violation of Labor Code § 226.7.

21 45. Defendant did not intend on providing Plaintiff with thirty (30) minute, duty-free
22 meal periods.

23 46. As a result of Defendant's failure to provide Plaintiff with a thirty (30) minute,
24 duty-free meal period, he is entitled to a premium wage of one (1) hour of pay for every day he
25 did not obtain his rest period in an amount to be determined at trial.

26 47. Plaintiff request that the Court award Plaintiff the reasonable attorney's fees and
27 costs incurred by his in this action.

28 48. Pursuant to Labor Code § 218.6, Plaintiff request that the Court award Plaintiff

1 interest on all due and unpaid wages, at the legal rate specified by Civil Code § 3289(b), accruing
2 from the date the wages were due and payable.

3 **FOURTH CAUSE OF ACTION**

4 **[Failure to Provide Rest Periods (Labor Code § 226.7)]**

5 **(By Plaintiff Against Defendant Land Forms and DOES 1 through 10)**

6 49. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
7 this Complaint as if the same were set forth at length herein.

8 50. Plaintiff is entitled to one ten (10) minute, duty-free rest period for every four (4)
9 hours of work pursuant to 8 C.C.R. §11040(12).

10 51. During his employment with Defendant, Plaintiff was not provided with all of his
11 ten (10) minute, duty-free rest periods in violation of Labor Code § 226.7.

12 52. Defendant did not intend on providing Plaintiff with ten (10) minute, duty-free rest
13 periods after every 4-hours worked.

14 53. As a result of Defendant's failure to provide Plaintiff with a ten (10) minute, duty-
15 free rest period, Plaintiff is entitled to a premium wage of one (1) hour of pay for every day he did
16 not obtain his rest period.

17 54. Plaintiff requests that the Court award Plaintiff the reasonable attorney's fees and
18 costs incurred by him in this action.

19 55. Pursuant to Labor Code § 218.6, Plaintiff requests that the Court award Plaintiff
20 interest on all due and unpaid wages, at the legal rate specified by Civil Code § 3289(b), accruing
21 from the date the wages were due and payable.

22 **FIFTH CAUSE OF ACTION**

23 **[Failure to Provide Accurate/Itemized Wage Statements (Labor Code § 226)]**

24 **(By Plaintiff Against Defendant Land Forms and DOES 1 through 10)**

25 56. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
26 this Complaint as if the same were set forth at length herein.

27 57. Labor Code § 226(a) requires every employer, at the time of each payment of
28 wages, to furnish each non-exempt employee with an accurate itemized statement showing total

hours worked by the employee, gross wages earned, all deductions taken, net wages earned, the dates of the period for which the employee is paid, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.

58. During his employment, Defendant failed to provide Plaintiff with such accurate itemized statements.

59. As a proximate result of Defendant's knowing and intentional failure to provide such accurate itemized statements to Plaintiff, Plaintiff was injured in that he was unable to verify whether Defendant paid all of his wages due to him and/or whether he had been paid incorrectly.

60. Because Plaintiff was damaged as a proximate result of Defendant's failure to comply with Labor Code § 226(a), Plaintiff is entitled to the aggregate penalties as set forth in Labor Code § 226(e) and Labor Code § 226.3. Plaintiff is also entitled to an award of costs and reasonable attorney's fees pursuant to Labor Code § 226(e).

SIXTH CAUSE OF ACTION

[Waiting Time Penalties (Labor Code § 203)]

(By Plaintiff Against Defendant Land Forms and DOES 1 through 10)

61. Plaintiff hereby incorporate and reallege each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

62. At the end of his employment by Defendant, Plaintiff was owed compensation by Defendant which has never been paid. Said wages remain due and unpaid to Plaintiff.

63. Labor Code § 202 requires that if an employee quits, the wages earned and unpaid at the time of termination are due and payable immediately. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge pursuant to Labor Code § 201, the employer is liable to the employee for penalties.

64. Defendant's failure to pay the full amount of earned wages due to Plaintiff upon his termination was willful and deliberate, and Plaintiff is entitled to penalties pursuant to Labor Code § 203.

65. As a direct, foreseeable and proximate result of Defendant's actions, and each of them, Plaintiff has suffered and incurred the loss of said earned wages which were due and

payable at the time of his termination, in an amount according to proof at trial.

66. As a result of Defendant's failure to pay Plaintiff his unpaid wages due at the time of his termination, Plaintiff is entitled to costs of suit, including reasonable attorneys' fees pursuant to Labor Code § 218.5.

SEVENTH CAUSE OF ACTION

[Unfair Business Practices]

(By Plaintiff Against Defendant Land Forms and DOES 1 through 10)

67. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

68. Defendant and DOES 1-10 and each of them, engaged in unfair competition by committing the following acts, including but not limited to: a) failing to pay Plaintiff, and other aggrieved employees, all wages due and owing; b) failing to pay Plaintiff, and other aggrieved employees, all overtime wages due and owing; c) failing to provide Plaintiff, and other aggrieved employees, all their meal periods and/or premium pay for missed meal periods; d) failing to provide Plaintiff, and other aggrieved employees, with all their rest periods and/or premium pay for missed rest periods; and e) failing to provide Plaintiffs, and other aggrieved employees, accurate itemized wage statements.

69. Defendant's conduct, as alleged above, constitutes unlawful, unfair and fraudulent activity prohibited by Business and Professions Code sections 17200, et seq.

70. As a result of their improper acts, Defendant and DOES 1-10, and each of them, have reaped and continue to reap unfair benefits and illegal profits at Plaintiff's expense.

71. Defendant and DOES 1-10, and each of them, should be made to restore to Plaintiff these gains pursuant to Business and Professions Code section 17203.

72. Defendant and DOES 1-10, and each of them, should also be subjected to penalties pursuant to Business and Professions Code section 17202 et seq.

///

///

///

1 **EIGHTH CAUSE OF ACTION**

2 **[Individual and Representative Claim per Labor Code §§ 2699 et seq. for**
3 **Unlawful Labor Practices in Violation of Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7,**
4 **226.8, 510, 551, 552, 558, 558.1, 1174, 1174.5, 1194, and 1199]**

5 **(By Plaintiff Against Defendants Land Forms, Jeff Tracy and DOES 1 through 10)**

6 73. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
7 this Complaint as if the same were set forth at length herein.

8 74. Plaintiff Mr. Arevalo is an aggrieved employee as defined in Labor Code
9 §2699(a).

10 75. Plaintiff brings this cause of action pursuant to the California Private Attorneys
11 General Act of 2004 (“PAGA”), Cal. Labor Code § 2699 et seq. on behalf of herself and the State
12 of California, as well as on behalf of the aggrieved employees defined as: All individuals hired as
13 field laborers, general laborers, construction workers, maintenance workers, or a similar title, for
14 Land Forms in the State of California who worked one or more pay periods since one (1) year
15 prior to the date Plaintiff served his PAGA notice on January 24, 2020 and continuing to the
16 present.

17 76. Plaintiff is informed and believes, and based thereon alleges, that Defendant Jeff
18 Tracy caused the violations of the Labor Code sections referenced herein and/or was a “person
19 acting on behalf of an employer” as set forth in Labor Code section 558.1, and is individually
20 liable for the civil penalties referenced herein per Labor Code section 558.1, and as set forth in
21 *Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.

22 77. Pursuant to California Labor Code section 2699 et seq. the foregoing violations of
23 Labor Code sections: 201, 202, 203, 226(a), 226.3, 226.7, 226.8, 510, 551, 552, 558, 558.1, 1174,
24 1174.5, 1194, and 1199, permit Plaintiff Mr. Arevalo to recover civil penalties through this
25 current action.

26 78. Defendant’s violations of California Labor Code sections 201, 202, 203, 226(a),
27 226.3, 226.7, 226.8, 510, 551, 552, 558, 558.1, 1174, 1174.5, 1194, and 1199 et seq. enable
28 Plaintiff Mr. Arevalo to recover a civil penalty as an aggrieved employee on behalf of himself and

on behalf of other current and former employees of Defendants.

79. Plaintiff Mr. Arevalo has complied with the procedural requirements specified in California Labor Code section 2699 et seq.

80. On January 24, 2020, Plaintiff, pursuant to Labor Code section 2699 et seq. through Plaintiff's attorneys, submitted his online complaint and PAGA Notice to the Labor and Workforce Development Agency and was assigned Case Number LWDA-CM-768669-20.

81. On January 24, 2020, Plaintiff, pursuant to Labor Code section 2699 et seq. through Plaintiff's attorneys, served Plaintiff's PAGA Notice to Defendant via certified mail return receipt requested.

82. Through the date of the filing of this action, the Labor and Workforce Development Agency has not notified Plaintiff or his attorneys that the agency intends to pursue the allegations set forth and identified in Plaintiff's PAGA notice.

83. Accordingly, the time periods set forth in Labor Code § 2699 et seq for the Labor and Workforce Development Agency to notify Plaintiff of its intent to pursue the allegations in Plaintiff's notice have elapsed and Plaintiff may file the instant Complaint and include a cause of action pursuant to Labor Code section 2699 et seq.

84. As a result of the aforementioned violations, Plaintiff hereby brings this cause of action on behalf of himself and on behalf of all other current or former employees affected by the Labor Code violations alleged in this Complaint.

85. Pursuant to California Labor Code Section 2699 et seq., Plaintiff should be awarded twenty-five percent (25%) of all penalties due under California law, as well as interest, attorneys' fees, and costs.

86. Pursuant to California Labor Code Section 2699 et seq., the court should award seventy-five percent (75%) of the penalties due under California law to the State of California.

PRAYER FOR JUDGMENT

WHEREFORE, Plaintiff prays for judgment against Defendant Land Forms, as follows:

1. For unpaid regular, overtime, and double-time wages in an amount to be proven at trial.

2. For premium pay for each day Plaintiff was not afforded an uninterrupted meal break in an amount to be proven at trial.

3. For premium pay for each day Plaintiff was not afforded an uninterrupted rest break in an amount to be proven at trial.

4. For treble, liquidated or other damages where available by law.

5. For waiting time penalties pursuant to Labor Code § 203.

6. For penalties pursuant to Labor Code §§ 226, 558 et seq. and where such penalties are available by law

7. For attorneys' fees and costs as set forth above and where such fees and costs are available by law.

8. For Defendants to be enjoined from the unlawful activities described herein in violation of Business and Professions Code § 17200, et seq.

9. For civil penalties, attorneys' fees, costs, and injunctive relief pursuant to Labor Code section 2699 et seq. of the Private Attorneys General Act of 2004.

10. For prejudgment and post-judgment interest as available by law.

11. For costs of suit incurred herein.

12. For such other and further relief as this Court may deem just and proper.

WHEREFORE, Plaintiff prays for judgment against Defendant Jeff Tracy, as follows:

13. For civil penalties, attorneys' fees, costs, and injunctive relief pursuant to Labor Code section 2699 et seq. of the Private Attorneys General Act of 2004.

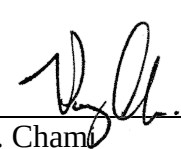
14. For prejudgment and post-judgment interest as available by law.

15. For costs of suit incurred herein.

16. For such other and further relief as this Court may deem just and proper.

CHAMI LAW, PC

DATED: April 20, 2020

By: 
Pouya B. Chami
Attorney for Plaintiff JOSE AREVALO