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the Putative Class, and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA**

JOSE DELGADILLO, on behalf of himself, all
other members of the putative class, and the
aggrieved employees,

Plaintiff,

v.

CALYX PEAK COMPANIES, an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 20CV00688

CLASS ACTION

FIRST AMENDED COMPLAINT

- (1) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (2) Violation of California Labor Code § 1198 (Unpaid Overtime);
- (3) Violation of California Labor Code § 226.7 (Unpaid Meal Period Premiums);
- (4) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); and
- (7) Violation of California Business & Professions Code §§ 17200, et seq.
- (8) Violation of California Labor Code §§ 2698 et seq. (Private Attorney General Act of 2004).

DEMAND FOR JURY TRIAL

1 Plaintiff JOSE DELGADILLO (“Plaintiff”) on behalf of himself, all other members of the putative
2 class, and the aggrieved employees, files this Complaint against Defendants CALYX PEAK
3 COMPANIES, an unknown business entity, and DOES 1 through 100, inclusive (“Defendants”).
4 Plaintiff’s allegations are based upon information and belief and upon investigation of Plaintiff’s counsel,
5 except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff’s personal
6 knowledge.

7 **JURISDICTION AND VENUE**

8 1. This class action is brought pursuant to California Code of Civil Procedure section 382.
9 The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
10 Superior Court and will be established according to proof at trial. The amount in controversy for each
11 class representative or putative class member, including claims for compensatory damages, interest,
12 penalties, and attorneys’ fees, is less than \$75,000.

13 2. This Court has jurisdiction over this action pursuant to the California Constitution, Article
14 VI, section 10, which grants the Superior Court “original jurisdiction in all causes except those given by
15 statute to other courts.” The statutes under which this action is brought do not specify any other basis for
16 jurisdiction.

17 3. This Court has jurisdiction over all Defendants because each defendant is either a citizen
18 of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the
19 California market so as to render the exercise of jurisdiction over it by the California courts consistent
20 with traditional notions of fair play and substantial justice.

21 4. Venue is proper in this Court because, upon information and belief, the named Defendants
22 reside, transact business, or have offices in this county and the acts and omissions alleged herein took
23 place in this county.

24 **PARTIES**

25 5. Plaintiff JOSE DELGADILLO (“Plaintiff”) is a citizen of the State of California.

26 6. Defendant CALYX PEAK COMPANIES is an unknown business entity with its
27 headquarters in Foxborough, Massachusetts. It operates a Cultivation Greenhouse in Santa Barbara
28 County, an Extraction Manufacturing and Distribution Facility in Orange County, and a Dispensary in

1 Los Angeles County. Plaintiff worked at the Cultivation Greenhouse in Santa Barbara County. At all
2 relevant times, CALYX PEAK COMPANIES was the “employer” of Plaintiff within the meaning of all
3 applicable state laws and statutes.

4 7. At all times herein relevant, Defendants CALYX PEAK COMPANIES and DOES 1
5 through 100, and each of them, were the agents, partners, joint venturers, representatives, servants,
6 employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant
7 hereto were acting within the course and scope of their authority as such agents, partners, joint venturers,
8 representatives, servants, employees, successors, co-conspirators and assigns, and that all acts or
9 omissions alleged herein were duly committed with the ratification, knowledge, permission,
10 encouragement, authorization and consent of each defendant designated herein.

11 8. The true names and capacities, whether corporate, associate, individual or otherwise, of
12 defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues said defendants by such
13 fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that
14 each of the defendants designated as a Doe is legally responsible for the events and happenings referred
15 to in this complaint, and unlawfully caused the injuries and damages to Plaintiff alleged in this complaint.
16 Plaintiff will seek leave of court to amend this complaint to show the true names and capacities when the
17 same have been ascertained

18 9. Defendants CALYX PEAK COMPANIES and DOES 1 through 100 will hereinafter
19 collectively be referred to as “Defendants” or “Calyx Peak.”

20 **FACTUAL ALLEGATIONS**

21 10. Defendants employed Plaintiff as a non-exempt or hourly-paid employee.

22 11. Defendants have the authority to hire and terminate Plaintiff and the other class members;
23 to set work rules and conditions governing Plaintiff and the other class members; and to supervise their
24 daily employment activities.

25 12. Defendants directly hired and paid wages and benefits to Plaintiff and the other class
26 members.

27 13. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
28 relevant, Defendants were advised by skilled lawyers and other professionals, employees, advisors, and

consultants highly knowledgeable about California wage law, employment and personnel practices.

14. Plaintiff is informed and believes, and based thereon alleges, that at all times herein relevant, without any justification, Defendants ignored the employment and personnel policy changes proposed by skilled lawyers and other professionals, employees, advisors, and consultants highly knowledgeable about California wage laws, employment, and personnel practice.

15. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive certain wages for all work performed, including for overtime compensation.

16. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were working over eight (8) hours per day and were entitled to receive certain wages for overtime compensation and that they were not receiving wages for overtime compensation.

17. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a uniform policy and systematic scheme of wage abuse against their hourly paid employees.

18. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to provide Plaintiff and the other class members the required rest and meal periods during the relevant time period as required under the Industrial Welfare Commission Wage Orders and/or applicable Labor Codes, thus are entitled to any and all applicable penalties.

19. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other class members' regular rate of pay when a meal period was missed.

20. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive all rest periods or payment of one additional hour of pay at Plaintiff's and the other class members' regular rate of pay when a rest period was missed.

21. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive all wages owed to

1 them upon discharge or resignation.

2 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
3 should have known that Plaintiff and the other class members were entitled to receive complete and
4 accurate wage statements in accordance with California law.

5 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
6 should have known that they had a duty to compensate Plaintiff and the other class members pursuant to
7 California law, and that Defendants had the financial ability to pay such compensation, but willfully,
8 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and the other class
9 members that they were properly denied wages, all in order to increase Defendants' profits.

10 24. At all material times set forth herein, Defendants regularly and consistently failed to
11 compensate Plaintiff and the other class members for all hours worked.

12 25. At all material times set forth herein, Defendants failed to fully comply with the relevant
13 provision of the Labor Code and the IWC orders to pay overtime wages to Plaintiff and the other class
14 members.

15 26. At all material times set forth herein, Defendants failed to fully comply with the relevant
16 provision of the Labor Code and the IWC orders to provide uninterrupted meal and rest periods to Plaintiff
17 and the other class members.

18 27. At all material times set forth herein, Defendants regularly and consistently failed to
19 provide complete and accurate wage statements to Plaintiff and the other class members.

20 28. At all material times set forth herein, Defendants regularly and consistently failed to pay
21 Plaintiff and the other class members all wages owed to them upon discharge or resignation.

22 **CLASS ACTION ALLEGATIONS**

23 29. Plaintiff brings this action on his own behalf and on behalf of all other members of the
24 general public similarly situated, and thus, seeks class certification under Code of Civil Procedure section
25 382.

26 30. The proposed class is defined as follows:

27 All current and former hourly-paid or non-exempt employees employed by
28 Defendants within the State of California at any time during the period from

February 5, 2016 to final judgment.

31. Plaintiff reserves the right to establish subclasses as appropriate.

32. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be ninety-nine (99) individuals or more and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom they have a well-defined community of interest.

c. Plaintiff will fairly and adequately protect the interests of each class member, with whom they have a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed Class Counsel, are versed in the rules governing class action discovery, certification, settlement, and trial. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

d. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.

e. Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the

1 vindication of their rights.

2 33. There are common questions of law and fact as to the class members that predominate over
3 questions affecting only individual members. The following common questions of law or fact, among
4 others, exist as to the members of the class:

- 5 a. Whether Defendant failed to pay Plaintiff and the other class members the
6 legally-mandated minimum-wage for all hours worked;
- 7 b. Whether Plaintiff and the other class members worked over eight hours in a
8 single day and Defendant failed to pay them the legally required overtime
9 compensation;
- 10 c. Whether Defendants failed to provide Plaintiff and class members with the
11 opportunity to take meal periods;
- 12 d. Whether Defendants failed to authorize and permit Plaintiff and class
13 members to take rest periods;
- 14 e. Whether Defendants complied with wage reporting as required Labor Code
15 section 226;
- 16 f. Whether Defendants engaged in unfair business practices in violation of
17 California Business & Professions Code sections 17200 et seq.;
- 18 g. The appropriate amount of damages, restitution, and/or monetary penalties
19 resulting from Defendants' violation of California law; and
- 20 h. Whether Plaintiff and the class are entitled to compensatory damages
21 pursuant to the California Labor Code.

22 **FIRST CAUSE OF ACTION**

23 **(Violation of California Labor Code sections 1194, 1197, and 1197.1)**

24 **(Against Defendants CALYX PEAK COMPANIES and DOES 1 through 100)**

25 34. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 33,
26 and each and every part thereof with the same force and effect as though fully set forth herein.

27 35. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that
28 the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed

1 is unlawful.

2 36. During the relevant time period, Defendants regularly failed to pay minimum wage to
3 Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194, 1197,
4 and 1197.1.

5 37. Defendants' failure to pay Plaintiff and the other class members the minimum wage as
6 required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections
7 Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage
8 compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to
9 the wages unlawfully unpaid and interest thereon.

10 38. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members
11 are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum
12 wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

13 39. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members
14 are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
15 thereon.

16 **SECOND CAUSE OF ACTION**

17 **(Violation of California Labor Code section 1198)**

18 **(Against Defendants CALYX PEAK COMPANIES and DOES 1 through 100)**

19 40. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 39,
20 and each and every part thereof with the same force and effect as though fully set forth herein.

21 41. Pursuant to California Labor Code section 1198 and the applicable IWC Wage Order, it is
22 unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-
23 times that person's regular rate of pay, depending on the number of hours worked by the person on a daily
24 or weekly basis.

25 42. Pursuant to California Labor Code section 1198, the maximum hours of work and the
26 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
27 standard conditions of labor for employees. The employment of any employee for longer hours than those
28 fixed by the order or under conditions of labor prohibited by the order is unlawful.

43. Pursuant to the applicable IWC Wage Order, Plaintiff and the other class members are not to be employed more than eight (8) hours in any one workday or more than six (6) days in any workweek unless they receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.

44. During the relevant time period, Plaintiff and the other class members worked in excess of eight (8) hours in a day and more than six (6) days in a workweek, but did not receive overtime pay.

45. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and the other class members.

46. Defendants' failure to pay Plaintiff and the other class members overtime compensation, as required by California laws, violates the provisions of California Labor Code section 1198, and is therefore unlawful.

47. Pursuant to California Labor Code section 1194, subdivision (a), notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

48. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

(Violation of California Labor Code section 226.7)

(Against Defendants CALYX PEAK COMPANIES and DOES 1 through 100)

49. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 48, and each and every part thereof with the same force and effect as though fully set forth herein.

50. At all relevant times, the IWC Order and California Labor Code section 226.7, subdivision (a) was applicable to Plaintiff's and the other class members' employment by Defendants.

51. At all relevant times, California Labor Code section 226.7 provides that no employer shall

1 require an employee to work during any meal or rest period mandated by an applicable order of the
2 California IWC.

3 52. At all relevant times, the applicable IWC Wage Order provides that an employer may not
4 require, cause or permit an employee to work for a work period of more than five (5) hours per day without
5 providing the employee with a meal period of not less than thirty (30) minutes, except that if the total
6 work period per day of the employee is no more than six (6) hours, the meal period may be waived by
7 mutual consent of both the employer and employee.

8 53. During the relevant time period, Plaintiff and the other class members who were scheduled
9 to work for a period of time no longer than six (6) hours, and who did not waive their legally-mandated
10 meal periods by mutual consent, were required to work for periods longer than five (5) hours without an
11 uninterrupted meal period of not less than thirty (30) minutes.

12 54. During the relevant time period, Plaintiff and the other class members who were scheduled
13 to work for a period of time in excess of six (6) hours were required to work for periods longer than five
14 (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

15 55. During the relevant time period, Defendants intentionally and willfully required Plaintiff
16 and the other class members to work during meal periods and failed to compensate Plaintiff and the other
17 class members the full meal period premium for work performed during meal periods.

18 56. During the relevant time period, Defendants failed to pay Plaintiff and the other class
19 members the full meal period premium due pursuant to California Labor Code section 226.7.

20 57. Defendants' conduct violates applicable IWC Wage Order and California Labor Code
21 section 226.7.

22 58. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7
23 subdivision (b), Plaintiff and the other class members are entitled to recover from Defendants one
24 additional hour of pay at the employee's regular rate of compensation for each work day that the meal or
25 rest period is not provided.

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1 **FOURTH CAUSE OF ACTION**

2 **(Violation of California Labor Code section 226.7)**

3 **(Against Defendants CALYX PEAK COMPANIES and DOES 1 through 100)**

4 59. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 58,
5 and each and every part thereof with the same force and effect as though fully set forth herein.

6 60. At all times herein set forth, the applicable IWC Wage Order and California Labor Code
7 section 226.7 were applicable to Plaintiff's and the other class members' employment by Defendants.

8 61. At all relevant times, California Labor Code section 226.7 provides that no employer shall
9 require an employee to work during any rest period mandated by an applicable order of the California
10 IWC.

11 62. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer
12 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
13 middle of each work period" and that the "rest period time shall be based on the total hours worked daily
14 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total
15 daily work time is less than three and one-half (3 1/2) hours.

16 63. During the relevant time period, Defendants required Plaintiff and other class members to
17 work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four
18 (4) hour period worked.

19 64. During the relevant time period, Defendants willfully required Plaintiff and the other class
20 members to work during rest periods and failed to pay Plaintiff and the other class members the full rest
21 period premium for work performed during rest periods.

22 65. During the relevant time period, Defendants failed to pay Plaintiff and the other class
23 members the full rest period premium due pursuant to California Labor Code section 226.7

24 66. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code
25 section 226.7.

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67. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7, subdivision (b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code sections 201 and 202)

(Against Defendants CALYX PEAK COMPANIES and DOES 1 through 100)

68. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 67, and each and every part thereof with the same force and effect as though fully set forth herein.

69. Pursuant to California Labor Code sections 201 and 202, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

70. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members their wages, earned and unpaid, within seventy-two (72) hours of Plaintiff and the other class members leaving Defendants' employ.

71. Defendants' failure to pay Plaintiff and the other class members their wages, earned and unpaid, within seventy-two (72) hours of them leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

72. Pursuant to California Labor Code section 203, if an employer willfully fails to pay, without abatement or reduction, in accordance with sections 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

73. Plaintiff and the other class members are entitled to recover the statutory penalty for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to California Labor Code section 203.

1 **SIXTH CAUSE OF ACTION**

2 **(Violation of California Labor Code section 226(a))**

3 **(Against Defendants CALYX PEAK COMPANIES and DOES 1 through 100)**

4 74. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 73,
5 and each and every part thereof with the same force and effect as though fully set forth herein.

6 75. Pursuant to California Labor Code section 226, subdivision (a), every employer shall
7 furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages
8 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any
9 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
10 deductions made on written orders of the employee may be aggregated and shown as one item, (5) net
11 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
12 employee and his or her social security number, (8) the name and address of the legal entity that is the
13 employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number
14 of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall
15 be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy
16 of the statement or a record of the deductions shall be kept on file by the employer for at least three years
17 at the place of employment or at a central location within the State of California.

18 76. Defendants intentionally and willfully failed to provide Plaintiff and the other class
19 members with complete and accurate wage statements.

20 77. As a result of Defendants' violation of California Labor Code section 226, subdivision (a),
21 Plaintiff and the other class members experience actual injury because it: (1) resulted in the non-payment
22 of wages; (2) deprived Plaintiff and the class members of the information necessary to identify
23 discrepancies in Defendant's reported data; (3) created confusion over whether they received all wages
24 owed to them; (4) created difficulty and expense involved in reconstructing pay records; and (5) forced
25 Plaintiff and the class member to make mathematical computations to analyze whether the wages paid in
26 fact properly compensated them.

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1 Labor Code sections 1194, 1197 and 1197.1, as alleged above, constitutes unlawful and/or unfair activity
2 prohibited by California Business & Professions Code sections 17200, et seq.

3 **Failure to Timely Pay Wages Upon Termination**

4 86. Defendants' failure to timely pay wages upon termination in violation of California Labor
5 Code sections 201 and 202, as alleged above, constitutes unlawful and/or unfair activity prohibited by
6 California Business & Professions Code sections 17200, et seq.

7 **Failure to Timely Pay Wages During Employment**

8 87. Defendants' failure to timely pay wages during employment in violation of California
9 Labor Code section 204, as alleged above, constitutes unlawful and/or unfair activity prohibited by
10 California Business & Professions Code sections 17200, et seq.

11 **Failure to Provide Compliant Wage Statements**

12 88. Defendants' failure to provide compliant wage statements in violation of California Labor
13 Code section 226, subdivision (a), as alleged above, constitutes unlawful and/or unfair activity prohibited
14 by California Business & Professions Code sections 17200, et seq.

15 **Failure to Keep Complete and Accurate Payroll Records**

16 89. Defendants' failure to keep complete and accurate payroll records in violation of California
17 Labor Code section 1174, subdivision (d), as alleged above, constitutes unlawful and/or unfair activity
18 prohibited by California Business & Professions Code sections 17200, et seq.

19 **EIGHTH CAUSE OF ACTION**

20 **(Violation of California Labor Code sections 2698 et seq.)**

21 **(Against Defendant CALYX PEAK COMPANIES and DOES 1 through 100)**

22 90. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 89,
23 and each and every part thereof with the same force and effect as though fully set forth herein.

24 91. At all relevant times, PAGA provides that any provision of law under the California Labor
25 Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the
26 California Labor Code may, as an alternative, be recovered through a civil action brought by an
27 aggrieved employee under the procedures outlined in California Labor Code section 2699.3.

28 92. Under PAGA, a civil action under PAGA may be brought by an "aggrieved employee,"

1 who was employed by the alleged violator and against whom one or more of the alleged violations was
2 committed.

3 93. Plaintiff was employed by Defendants and the alleged violations were committed against
4 him during his time of employment and he is therefore an aggrieved employee.

5 94. Under California Labor Code sections 2699.3 and 2699.5, an aggrieved employee may
6 pursue a representative civil action arising under PAGA after these requirements have been met:

7 a. The aggrieved employee shall give written notice by online filing
8 (“Employee’s Notice”) to the LWDA and the employer of the specific
9 provisions of the California Labor Code alleged to have been violated,
10 including the facts and theories to support the alleged violations.

11 b. The LWDA shall provide notice (“LWDA Notice”) to the employer and
12 the aggrieved employee by certified mail it does not intend to investigate
13 the alleged violation within sixty (60) calendar days of the postmark date
14 of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the
15 LWDA Notice is not provided within sixty-five (65) calendar days of the
16 postmark date of the Employee’s Notice, the aggrieved employee may
17 commence a civil action under California Labor Code section 2699.

18 95. On February 27, 2020, Plaintiff provided written notice by online filing to the LWDA
19 and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to
20 have been violated, including the facts and theories to support the alleged violations. The LWDA did
21 not respond to this notice.

22 96. Plaintiff satisfied the administrative prerequisites under California Labor Code section
23 2699.3, subdivision (a), to recover civil penalties against Defendants for violations of the California
24 Labor Code and the applicable IWC Wage Order.

25 **Failure to Pay Minimum Wage**

26 97. California Labor Code sections 1194, 1197, and 1197.1 and the applicable IWC Wage
27 Order require employers to pay their employees at least the minimum wage for each hour worked.
28 Defendants do not pay its employees minimum wage for each hour they worked since they are required

1 to perform off-the-clock work, such as donning and doffing personal protective equipment and engage
2 in other pre- and post- shift tasks. Employees also sometimes do not receive uninterrupted 30-minute
3 meal periods and are not paid minimum wage for working this time.

4 **Failure to Pay Overtime**

5 98. California Labor Code sections 510 and 1198 and the applicable IWC Wage Order
6 require employers to pay their employees overtime compensation equal to one and one-half times their
7 regular rate of pay for all hours worked over eight hours in one day and/or over 40 hours in a week.

8 99. Defendants do not pay its employees overtime for overtime hours worked since they are
9 required to perform off-the-clock work, such as donning and doffing personal protective equipment and
10 engage in other pre- and post- shift tasks. Employees also sometimes do not receive uninterrupted 30-
11 minute meal periods and are not paid overtime for working this time. Additionally, overtime must be
12 paid at the employee's regular rate of pay, which includes non-discretionary bonus. Defendants do not
13 include non-discretionary bonuses, such as the trim incentive, in the employees' regular rate of pay
14 calculation. .

15 **Failure to Provide Meal Periods**

16 100. California Labor Code sections 226.7 and 512 and the applicable IWC Wage Order
17 require employers to pay their employees one additional hour of pay at the employee's regular rate of
18 pay for each workday that a meal period is not provided when it should have been.

19 101. Defendants do not provide timely and uninterrupted meal periods and/or authorize and
20 permit timely and uninterrupted rest breaks for its employees. Defendants' internal policies and
21 procedures do not provide employees with timely meal periods and rest breaks or the correct number of
22 meal periods and rest breaks based on shift length. Defendants' internal policies and procedures also
23 do not provide them with a second 30-minute meal period when they work more than 10 hours a day.
24 Also, employees remain on-call and are interrupted during their meal periods and rest breaks, so they
25 are never completely relieved of all duty. Finally, Defendants do not record when meal periods are
26 taken or how long they last.

27 **Failure to Provide Rest Breaks**

28 102. California Labor Code sections 226.7 and 512 and the applicable IWC Wage Order

1 require employers to pay their employees one additional hour of pay at the employee's regular rate of
2 pay for each workday that a rest break is not provided when it should have been.

3 103. Defendants do not provide timely and uninterrupted meal periods and/or authorize and
4 permit timely and uninterrupted rest breaks for its employees. Defendants' internal policies and
5 procedures do not provide employees with timely meal periods and rest breaks or the correct number of
6 meal periods and rest breaks based on shift length. Defendants' internal policies and procedures also
7 do not provide them with a second 30-minute meal period when they work more than 10 hours a day.
8 Also, employees remain on-call and are interrupted during their meal periods and rest breaks, so they
9 are never completely relieved of all duty. Finally, Defendants do not record when meal periods are
10 taken or how long they last.

11 **Failure to Timely Pay Wages Upon Termination**

12 104. California Labor Code sections 201, 202, and 203 and the applicable IWC Wage Order
13 provide that if an employer discharges an employee, the wages earned and unpaid at the time of
14 discharge are due and payable immediately, and that if an employee voluntarily leaves his or her
15 employment, his or her wages shall become due and payable within seventy-two hours thereafter, unless
16 the employee has given seventy-two hours previous notice of his or her intention to quit, in which case
17 the employee may have his or her wages at the time of quitting.

18 105. As explained above, Defendants failed to pay its employees minimum wage for each hour
19 of work they performed, failed to pay them overtime when they worked in excess of eight hours in one
20 day and/or over 40 hours in a week, and failed to pay them one additional hour of pay at their regular
21 rate of pay when they were not provided meal periods and rest breaks. Accordingly, these wages are
22 not timely paid to Defendants' employees upon their discharge or termination.

23 **Failure to Timely Pay Wages During Employment**

24 106. California Labor Code section 204 and the applicable IWC Wage Order requires that all
25 wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any
26 calendar month, other than those wages due upon termination of an employee, are due and payable
27 between the 16th and the 26th day of the month during which the labor was performed, and that all
28 wages earned by any person in any employment between the 16th and the last day, inclusive, of any

1 calendar month, other than those wages due upon termination of an employee, are due and payable
2 between the 1st and the 10th day of the following month. Labor Code section 204 also requires that all
3 wages earned for labor over the normal work period shall be paid by the payday for the next regular
4 payroll period.

5 107. As explained above, Defendants failed to pay its employees minimum wage for each hour
6 of work they performed, failed to pay them overtime when they worked in excess of eight hours in one
7 day and/or over 40 hours in a week, and failed to pay them one additional hour of pay at their regular
8 rate of pay when they were not provided meal periods and rest breaks. Accordingly, these wages are
9 not timely paid to Defendants' employees during their employment.

10 **Failure to Provide Complete and Accurate Wage Statements**

11 108. California Labor Code section 226 and the applicable IWC Wage Order requires
12 employers to make, keep, and provide true, accurate, timely, and complete wage statement.

13 109. Defendants do not provide its employees with properly itemized wage statements because
14 they failed to include the total hours worked, name and address of employer. It also does not pay
15 overtime pay when they worked in excess of eight and/or 12 hours in a day and/or 40 hours in a week,
16 minimum wage, and one additional hour of pay at their regular rate of pay when they were not provided
17 meal periods or authorized and permitted to take rest breaks.

18 **Failure to Keep Accurate Business Records**

19 110. California Labor Code section 1174, subdivision (d) and the applicable IWC Wage Order
20 requires employers to keep, at a central location in the state or at the plants or establishments at which
21 employees are employed, payroll records showing the hours worked daily by and the wages paid to, and
22 the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at
23 the respective plants or establishments. These records shall be kept in accordance with rules established
24 for this purpose by the commission, but in any case shall be kept on file for not less than two years.

25 111. Defendants intentionally and willfully failed to keep accurate and complete payroll
26 records, including but not limited to, failing to keep at a central location in the State of California payroll
27 records showing the hours worked daily by and the wages paid to, or the number of piece rate united
28 earned by or any applicable piece rate paid to, employees. This is because Defendants failed to pay its

employees minimum wage for each hour of work they performed, failed to pay them overtime when they worked in excess of eight hours in one day and/or over 40 hours in a week, and failed to pay them one additional hour of pay at their regular rate of pay when they were not provided meal periods and rest breaks.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public similarly situated, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendant provide to Class Counsel, immediately upon its appointment, the names and most current contact information (address and telephone numbers) of all class members.

As to the First Cause of Action

5. That the court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;
6. For general unpaid wages and such general and special damages as may be appropriate;
7. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;
8. For pre-judgment interest on any unpaid compensation from the date such amounts were due;
9. For reasonable attorneys' fees and costs of suit incurred herein; and
10. For liquidated damages pursuant to California Labor Code section 1194.2; and
11. For such other and further relief as the court may deem just and proper.

As to the Second Cause of Action

12. That the court declare, adjudge and decree that Defendants violated California Labor Code section 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to

1 Plaintiff and the other class members;

2 13. For general unpaid wages at overtime wage rates and such general and special damages as
3 may be appropriate;

4 14. For pre-judgment interest on any unpaid overtime compensation commencing from the
5 date such amounts were due;

6 15. For reasonable attorneys' fees and costs of suit incurred herein; and

7 16. For such other and further relief as the court may deem just and proper.

8 **As to the Third Cause of Action**

9 17. That the court declare, adjudge and decree that Defendants violated California Labor Code
10 section 226.7 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including
11 second meal periods) to Plaintiff and the other class members;

12 18. That the court make an award to Plaintiff and the other class members of one (1) hour of
13 pay at each employee's regular rate of compensation for each workday that a meal period was not
14 provided;

15 19. For all actual, consequential, and incidental losses and damages, according to proof;

16 20. For premium wages pursuant to California Labor Code section 226.7, subdivision (b);

17 21. For pre-judgment interest on any unpaid wages from the date such amounts were due;

18 22. For reasonable attorneys' fees and costs of suit incurred herein; and

19 23. For such other and further relief as the court may deem just and proper.

20 **As to the Fourth Cause of Action**

21 24. That the court declare, adjudge and decree that Defendant violated California Labor Code
22 section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff
23 and the other class members;

24 25. That the court make an award to Plaintiff and the other class members of one (1) hour of
25 pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

26 26. For all actual, consequential, and incidental losses and damages, according to proof;

27 27. For premium wages pursuant to California Labor Code section 226.7, subdivision (b);

28 28. For pre-judgment interest on any unpaid wages from the date such amounts were due;

29. For reasonable attorneys' fees and costs of suit incurred herein; and

30. For such other and further relief as the court may deem just and proper.

As to the Fifth Cause of Action

31. That the court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of the other class members no longer employed by Defendants;

32. For all actual, consequential, and incidental losses and damages, according to proof;

33. For statutory wage penalties pursuant to California Labor Code section 203 for the other class members who have left Defendants' employ;

34. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

35. For reasonable attorneys' fees and costs of suit incurred herein; and

36. For such other and further relief as the court may deem just and proper.

As to the Sixth Cause of Action

37. That the court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226, subdivision (a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

38. For actual, consequential and incidental losses and damages, according to proof;

39. For actual damages pursuant to California Labor Code section 226, subdivision (e);

40. For reasonable attorneys' fees and costs of suit incurred herein; and

41. For such other and further relief as the court may deem just and proper.

As to the Seventh Cause of Action

42. That the court decree, adjudge and decree that Defendants California Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, and failing to pay at least minimum wages to Plaintiff and the other class members.

43. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-

1 judgment interest from the day such amounts were due and payable;

2 44. For the appointment of a receiver to receive, manage and distribute any and all funds
3 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result
4 of violation of California Business and Professions Code sections 17200, et seq.;

5 45. For injunctive relief to ensure compliance with this section, pursuant to California
6 Business and Professions Code sections 17200, et seq.; and

7 46. For reasonable attorneys' fees and costs of suit incurred herein; and

8 47. For such other and further relief as the court may deem just and proper.

9 **As to the Eighth Cause of Action**

10 48. Under California Labor Code section 2699, Plaintiff requests and may recover civil
11 penalties from SWEEP.

12 49. Under California Labor Code section 2699, subdivision (i), the civil penalties recovered
13 shall be distributed: seventy-five percent (75%) to the Labor and Workforce Development Agency and
14 twenty-five percent (25%) to the aggrieved employees.

15 50. Plaintiff seeks and may recover reasonable attorneys' fees and costs under California
16 Labor Code section 2699.

17
18 Date: May 5, 2020

PARRIS LAW FIRM

19
20 By: _____
John M. Bickford

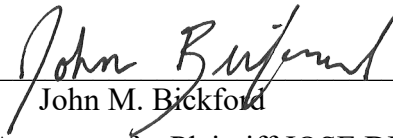
21 Attorneys for Plaintiff JOSE DELGADILLO,
22 and the Putative Class, and the Aggrieved
23 Employees
24
25
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff JOSE DELGADILLO, on behalf of himself, all other members of the putative class, and
3 the aggrieved employees, hereby demands a trial by a jury.

4
5 Date: May 5, 2020

PARRIS LAW FIRM

6 By: 
7 John M. Bickford
8 Attorneys for Plaintiff JOSE DELGADILLO,
9 the Putative Class, and the Aggrieved Employees
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PROOF OF SERVICE
1013A(3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 43364 10th Street West, Lancaster, California 93534.

On May 5, 2020, I served the foregoing document described as **FIRST AMENDED COMPLAINT**, by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

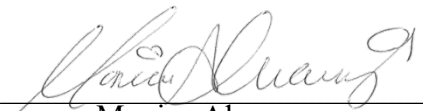
Edward M. Schmutts
2 Hampshire Street, Suite 100B
Foxborough, Massachusetts 02035

Agent for Service of Process for Defendant Calyx
Companies

☒ **BY MAIL as follows:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. postal service on that same day with postage thereon fully prepaid at Lancaster, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on May 5, 2020, at Lancaster, California.

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



Monica Alvarez