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JULIAN CORTEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

20ST CV 24030

JULIAN CORTEZ, individually and as a
private attorney general;

Plaintiff,

vs.

M.S. LANDSCAPE & GARDEN, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

COMPLAINT FOR:

- (1) VIOLATION OF CALIFORNIA
LABOR CODE §§ 510 AND 1198
(UNPAID OVERTIME)**
- (2) VIOLATION OF CALIFORNIA
LABOR CODE §§ 1194, 1197 AND
1197.1 (UNPAID MINIMUM
WAGES)**
- (3) VIOLATION OF CALIFORNIA
LABOR CODE § 226.7 (UNPAID
REST PERIOD PREMIUMS)**
- (4) VIOLATION OF CALIFORNIA
LABOR CODE §§ 226.7 AND
512(a) (UNPAID MEAL PERIOD
PREMIUMS)**
- (5) VIOLATION OF CALIFORNIA
LABOR CODE § 226(a) (FAILURE
TO PROVIDE ACCURATE
WAGE STATEMENTS)**
- (6) VIOLATION OF CALIFORNIA
LABOR CODE §§ 201, 202 AND
203 (FINAL WAGES NOT
TIMELY PAID)**
- (7) VIOLATION OF CALIFORNIA
LABOR CODE § 2802 (FAILURE
TO REIMBURSE EXPENSES)**
- (8) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE § 17200, ET SEQ.**

(9) FAILURE TO PROVIDE
PERSONNEL RECORDS
(10) PRIVATE ATTORNEY
GENERAL ACT, LABOR CODE
§2698 ET SEQ

DEMAND FOR TRIAL BY JURY

Plaintiff JULIAN CORTEZ (“Plaintiff”), as an individual, and as a private attorney general
alleges as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff is, and at all relevant times mentioned herein was, a resident of the County of
Orange, State of California.

2. Defendant M.S. LANDSCAPE & GARDEN, INC., (“M.S. Landscape”) and at all
times mentioned herein was, a corporation organized and existing under the laws of the State of
California, doing business in the County of Los Angeles, California.

3. M.S. Landscape at all times herein mentioned was, (a) conducting business in the
County of Los Angeles, State of California; (b) the employer of Plaintiff consistent with California
Labor Code and Industrial Welfare Commission Wage Orders; and (c) Plaintiff’s employer as
defined under Government Code section 12926 subsection (c).

4. The acts alleged herein arose in Los Angeles County, within the State of California.

5. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. The Doe defendants may be individuals, partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant, employee, co-venturer, and/or co-conspirator of each of the other defendants and was at all times mentioned, acting within the scope, purpose, consent, knowledge, ratification and authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Doe defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged was proximately caused by its conduct. Doe Defendants 1 through 50 and M.S. Landscape are herein collectively referred to as "Defendants."

GENERAL ALLEGATIONS

6. Plaintiff is employed by Defendants from approximately October 2016 through the present, but last worked a shift for Defendants on or about July 2019.

7. Plaintiff was scheduled to work Monday through Friday and required to work at least eight (8) hours per day and often work in excess of twelve (12) hours per day.

8. Plaintiff's worked in landscape maintenance and installation and his responsibilities included in part, trimming grass, trimming trees, installing plants, installing and maintaining irrigation systems throughout Southern California, including Los Angeles, California.

9. Plaintiff worked on residential and commercial projects during his tenure with Defendants.

10. Plaintiff and similarly aggrieved current and former non-exempt employees (“Aggrieved Employees”) were required to regularly work more than five (5) hours without being provided a meal period and to work more than ten (10) hours without being provided with a second meal period. In fact, Plaintiff was reprimanded for taking or attempting to take an uninterrupted 30-minute meal period. Further, Defendants forced Plaintiff and Aggrieved Employees to take

1 their lunch after six (6) hours of working.

2 11. Plaintiff and Aggrieved Employees never waived their rights to a meal period when
3 they worked six (6) or more hours.

4 12. Plaintiff and Aggrieved Employees never received a second lunch period.

5 13. Plaintiff and Aggrieved Employees never received payment of one (1) additional hour
6 of pay at their regular rate of pay when a meal period was missed or interrupted.

7 14. Because of Defendants' policies and practices, Plaintiff was never able to take an
8 uninterrupted ten (10) minute rest break and was reprimanded every time he asked for one or
9 attempted to take one.

10 15. Plaintiff and Aggrieved Employees never received payment of one (1) additional hour
11 of pay at their regular rate of pay when a rest break was missed or interrupted.

12 16. Plaintiff requested that his supervisors provide him with a ten (10) minute uninterrupted
13 rest break and/or a thirty (30) minute uninterrupted meal period, however such requests were
14 denied.

15 17. Furthermore, Defendants often requested Plaintiff and Aggrieved Employees to keep
16 working after they clocked-out for the day to finish their assigned work. Defendants failed to pay
17 Plaintiff and Aggrieved Employees for time worked off the clock at the end of their respective
18 shifts.

19 18. Plaintiff and Aggrieved Employees regularly worked more than eight (8) hours in a
20 day, and/or forty (40) hours in a week during their employment with Defendants.

21 19. Plaintiff and Aggrieved Employees did not receive payment of all wages, including
22 overtime and minimum wages and meal and rest period premiums, within any time permissible
23 under California Labor Code section 204.

24 20. Plaintiff and Aggrieved Employees were entitled to receive complete and accurate
25 wage statements in accordance with California law, but, in fact, they did not receive complete and
26 accurate wage statements from Defendants. The deficiencies included, inter alia, the failure to
27 include the total number of hours worked by Plaintiff and Aggrieved Employees and the failure to
28 include premium pay for missed and/or interrupted rest and meal breaks.

1 21. Plaintiff and Aggrieved Employees were not reimbursed for incurred business expenses
2 in the discharge of their duties for Defendants and in obedience to Defendants' instructions, which
3 includes the use of their personal cell phone, tools, and vehicle.

4 22. On or about April 17, 2020, Plaintiff's counsel sent a letter to Defendants, pursuant to
5 California Labor Code sections 226, 432, 1174 and 1198.5, requesting Plaintiff's personnel file
6 and other documents enumerated in aforementioned code sections. Defendants were required to
7 produce these documents within twenty-one (21) days and thirty (30) from the date of the request
8 respectively and failed to do so.

9 23. On or about April 20, 2020, Plaintiff notified Defendants via certified mail and filed an
10 online PAGA claim notice with the California Labor and Workforce Development Agency
11 ("LWDA") identifying Defendants' violations of the California Labor Code identified in this
12 Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor Code
13 section 2698 et seq.

14 **FIRST CAUSE OF ACTION**

15 **(Violation of California Labor Code §§ 510 and 1198)**

16 **(Against All Defendants)**

17 24. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
18 forth above.

19 25. California Labor Code section 1198 makes it illegal to employ an employee under
20 conditions of labor that are prohibited by the applicable wage order. California Labor Code section
21 1198 requires that "...the standard conditions of labor fixed by the commission shall be the
22 ...standard conditions of labor for employees. The employment of any employee ...under
23 conditions of labor prohibited by the order is unlawful."

24 26. California Labor Code section 1198 and the applicable Industrial Welfare Commission
25 ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them at
26 a rate of pay either time and one-half or two-times that person's regular rate of pay, depending on
27 the number of hours worked by the person on a daily or weekly basis.

28 27. Specifically, the applicable IWC Wage Order provides that Defendants were required

1 to pay Plaintiff, when working more than eight (8) hours in a day or more than forty (40) hours in
2 a workweek, at the rate of time-and one-half for all hours worked in excess of eight (8) hours in a
3 day or more than forty (40) hours in a workweek.

4 28. The applicable IWC Wage Order further provides that Defendants were required to pay
5 Plaintiff, when working more than twelve (12) hours in a day, overtime compensation at a rate of
6 two (2) times their regular rate of pay.

7 29. California Labor Code section 510 codifies the right to overtime compensation at one-
8 and one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
9 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and
10 to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve
11 (12) hours in a day or in excess of eight (8) hours in a day on the seventh day.

12 30. During the relevant time period, Plaintiff worked in excess of eight (8) hours in a day,
13 in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week. Although
14 Plaintiff regularly worked off-the-clock that should have been compensated at an overtime rate.

15 31. Moreover, Defendants failed to pay the correct overtime rate. Defendants' failure to
16 pay Plaintiff this overtime compensation, as required by California law, violates the provisions of
17 California Labor Code sections 510 and 1198, and is therefore unlawful.

18 32. Pursuant to California Labor Code section 1194, Plaintiff is entitled to recover their
19 unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

20 **SECOND CAUSE OF ACTION**

21 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

22 **(Against All Defendants)**

23 33. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
24 forth above.

25 34. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide
26 that the minimum wage for employees fixed by the Industrial Welfare Commission is the minimum
27 wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is
28 unlawful.

1 35. As set forth above, Defendants regularly required Plaintiff to work off-the-clock during
2 meal periods and after his scheduled shifts. To the extent that these off-the-clock hours did not
3 qualify for overtime premium payment, Defendants did not even pay minimum wages for those
4 hours worked off-the-clock in violation of California Labor Code sections 1194, 1197 and 1197.1.

5 36. Defendants' failure to pay Plaintiff the minimum wage as required violates California
6 Labor Code sections 1194, 1197 and 1197.1. Pursuant to those sections, Plaintiff is entitled to
7 recover the unpaid balance of his minimum wage compensation as well as interest, costs, and
8 attorney's fees.

9 37. Pursuant to California Labor Code section 1194.2, Plaintiff is entitled to recover
10 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

11 **THIRD CAUSE OF ACTION**

12 **(Violation of California Labor Code § 226.7)**

13 **(Against All Defendants)**

14 38. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
15 forth above.

16 39. At all relevant times herein set forth, the applicable IWC Wage Order and California
17 Labor Code section 226.7 were applicable to Plaintiff's employment by Defendants.

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

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

26 42. During the relevant time period, Defendants required Plaintiff to work four (4) or more
27 hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period
28 worked. Defendants' failure to properly staff and coordinate Plaintiff's schedule, forced Plaintiff

1 to work through all or part of his rest breaks.

2 43. Defendants had no policy and/or practice to pay premiums for missed rest breaks and
3 thus failed to pay Plaintiff the full rest period premium due pursuant to California Labor Code
4 section 226.7.

5 44. Defendants' conduct violates the applicable IWC Wage Orders and California Labor
6 Code section 226.7.

7 45. Pursuant to the applicable IWC Wage Order and California Labor Code section
8 226.7(b), Plaintiff is entitled to recover from Defendants one (1) additional hour of pay at
9 Plaintiff's regular hourly rate of compensation for each work day that the rest period was not
10 provided.

11 **FOURTH CAUSE OF ACTION**

12 **(Violation of California Labor Code §§ 226.7 and 512(a))**

13 **(Against All Defendants)**

14 46. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
15 forth above.

16 47. At all relevant times herein set forth, the applicable IWC Wage Order and California
17 Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's employment by Defendants.

18 48. At all relevant times herein set forth, California Labor Code section 226.7 provides that
19 no employer shall require an employee to work during any meal period mandated by the applicable
20 IWC Wage Order.

21 49. At all relevant times herein set forth, California Labor Code section 512(a) provides
22 that an employer may not require, cause, or permit an employee to work for a period of more than
23 five (5) hours per day without providing the employee with a meal period of not less than thirty
24 (30) minutes, except that if the total work period per day of the employee is not more than six (6)
25 hours, the meal period may be waived by mutual consent of both the employer and the employee.

26 50. During the relevant time period, Defendants willfully required Plaintiff to work during
27 meal periods and failed to compensate Plaintiff for work performed during meal periods.
28 Moreover, Defendants did not schedule or take any action to relieve Plaintiff of his duties for

1 second meal periods when he worked shifts over 10 hours or more. At the same time, Defendants
2 had a practice and/or policy of not paying all premiums due for meal break violations. As a result
3 Defendants failed to pay Plaintiff all meal period premiums due pursuant to California Labor Code
4 section 226.7.

5 51. Defendants' conduct violates the applicable IWC Wage Order, and California Labor
6 Code sections 226.7 and 512(a).

7 52. Pursuant to the applicable IWC Wage Order and California Labor Code section
8 226.7(b), Plaintiff is entitled to recover from Defendants one (1) additional hour of pay at Plaintiff's
9 regular hourly rate of compensation for each work day that the meal period was not provided.

10 **FIFTH CAUSE OF ACTION**

11 **(Violation of California Labor Code § 226(a))**

12 **(Against All Defendants)**

13 53. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
14 forth above.

15 54. Labor Code § 226(a) requires employers, including Defendants, to furnish employees
16 accurate itemized wage statements in writing delineating items of information as required by
17 Labor Code § 226(a).

18 55. Defendants knowingly and intentionally, as a matter of uniform policy and practice,
19 failed to furnish Plaintiff with accurate and complete wage statements regarding, among other
20 things, Plaintiff's correct regular rates of pay, rates of overtime pay, corresponding hours worked
21 at each rate of pay, total gross wages earned, proper entity name, and total net wages earned, in
22 violation of Labor Code § 226.

23 56. Defendants' failure to furnish Plaintiff with complete and accurate itemized wage
24 statements resulted in actual injury, as said failures lead to, among other things, the non-payment
25 of all Plaintiff's wages, and deprived Plaintiff of the information necessary to, among other things,
26 identify the discrepancies in Defendants' reported data, and to know, understand and question the
27 rate of pay and hours Defendants used to calculate their wages.

57. Defendants' failures create an entitlement to recovery by Plaintiff in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code §§ 226 and 226.3.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201, 202, 203)

(Against All Defendants)

58. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

59. At all times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves 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 (12) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

60. During the relevant time period, Defendants willfully failed to pay Plaintiff earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of leaving Defendants' employ.

61. Defendants' failure to pay Plaintiff his wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

62. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

63. Plaintiff is entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant

1 to California Labor Code section 203.

2 **SEVENTH CAUSE OF ACTION**

3 **(Violation of California Labor Code §§ 2800 and 2802)**

4 **(Against All Defendants)**

5 64. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
6 forth above.

7 65. Labor Code § 2802 requires that an “employer shall indemnify his or her employee for
8 all necessary expenditures or losses incurred by the employee in the direct consequence of the
9 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
10 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
11 unlawful.”

12 66. Labor Code § 2802 further provides “[a]ll awards made by a court or by the Division
13 of Labor Standards Enforcement for reimbursement of necessary expenditures under this section
14 shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the
15 date on which the employee incurred the necessary expenditures under this section shall carry
16 interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which
17 the employee incurred the necessary expenditure or loss.”

18 67. The statute further identifies “necessary expenditures or losses” as “all reasonable
19 costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights
20 granted by this section.”

21 68. Based on Plaintiff’s employment with Defendants, Plaintiff incurred business
22 expenses in the discharge of his duties for Defendants and in obedience to Defendants’
23 instructions, which includes the use of his own personal tools, personal cell phone, and personal
24 vehicle.

25 69. As a direct and proximate cause of Defendants’ wrongful conduct, Plaintiff has
26 sustained and will continue to sustain damages in the amount of unreimbursed expenditures and
27 losses, together with interest thereon, attorney’s fees and costs of suit. Plaintiff is entitled to an
28 unpaid balance of expenses owed, penalties plus interest and reasonable attorney’s fees and costs

of suit, in an amount to be determined at trial according to proof.

EIGHTH CAUSE OF ACTION

(Unfair Competition Against All Defendants)

70. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

71. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any “*unlawful, unfair or fraudulent business act or practice....*”

72. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200, *et seq.*, by engaging in the conduct alleged herein, including, but not limited to, (1) failing to pay Plaintiff all overtime and minimum wages owed; (2) failing to pay Plaintiff an additional hour of premium pay for meal period violations; (3) failing to pay Plaintiff an additional hour of premium pay for rest period violations; (4) willfully failing to reimburse Plaintiff for incurred business expenses in the discharge of his duties in obedience to Defendants’ instructions which included the use of his personal tools, personal cell phone, and personal vehicle; (5) willfully failing to timely pay Plaintiff all wages during and at the end of employment; and (6) knowingly failing to furnish Plaintiff with accurate and complete wage statements.

73. Defendants’ utilization of these unfair and/or unlawful business practice deprived Plaintiff of compensation to which Plaintiff was legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants’ competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

74. Because Plaintiff is a victim of Defendants’ unfair and/or unlawful conduct alleged herein, Plaintiff seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants pursuant to Business and Professions Code §§ 17203, 17208.

75. The acts complained of herein occurred within the last four (4) years immediately preceding the filing of the Complaint in this action.

1 76. Plaintiff retained the services of counsel to file this court action to protect his interests,
2 to obtain restitution, and to enforce important rights affecting the public interest. Plaintiff thereby
3 incurred the financial burden of attorneys' fees and costs, which they are entitled to recover under
4 the Code of Civil Procedure § 1021.5.

5 **NINTH CAUSE OF ACTION**

6 **(Failure to Provide Personnel Records Against All Defendants)**

7 77. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
8 forth above.

9 78. Pursuant to California Labor Code section 1198.5(b) "the employer shall make the
10 contents of those personnel records available for inspection to the current or former employee, or
11 his or her representative, at reasonable intervals and at reasonable times, but not later than 30
12 calendar days from the date the employer receives a written request, unless the current or former
13 employee, or his or her representative, and the employer, agree in to a date beyond the 30 calendar
14 days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the
15 employer's receipt of the written request."

16 79. Further, pursuant to Subsection (k) of Labor Code section 1198.5 "[i]f an employer
17 fails to permit a current or former employee, or his or her representative, to inspect or copy
18 personnel records within the times specified in this section, or times agreed to by mutual agreement
19 as provided in this section, the current or former employee or the Labor Commissioner may recover
20 a penalty of seven hundred fifty dollars (\$750) from the employer."

21 80. Defendants intentionally and willfully failed to provide Plaintiff with a copy of records
22 pursuant to California Labor Code section 1198.5 within 30 calendar days from the date of the
23 request.

24 81. Pursuant to California Labor Code section 1198.5, Plaintiff is entitled to damages in
25 the amount of \$750.00 plus attorneys' fees and costs.

26 **TENTH CAUSE OF ACTION**

27 **(PAGA Claims Against All Defendants)**

28 82. Plaintiff re-alleges and incorporates herein by reference each and every allegation set

1 forth above.

2 83. Plaintiff brings this claim as an individual employee and in his capacity as a private
3 attorney general pursuant to the Private Attorneys General Act of 2004, California Labor Code
4 section 2698, et seq. (“PAGA”).

5 84. On or about April 20, 2020, Plaintiff notified Defendants via certified mail and filed an
6 online PAGA claim notice with the California Labor and Workforce Development Agency
7 (“LWDA”) identifying Defendants’ violations of the California Labor Code identified in this
8 Complaint and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code
9 section 2698 et seq. The LWDA assigned Plaintiff’s case number LWDA-CM-783735-20.
10 Plaintiff also submitted a filing fee of seventy-five (\$75.00) to the LWDA in accordance with
11 Labor Code section 2699.3(a)(1)(B). Sixty-five days have passed from the date of Plaintiff’s
12 notice to the LWDA, and thus Plaintiff has exhausted his administrative remedies, thereby
13 allowing Plaintiff to commence a civil action against Defendants pursuant to Labor Code section
14 2699.

15 85. During all relevant times for this action, Defendants regularly required Plaintiff and
16 Aggrieved Employees to work more than eight (8) hours per day and forty (40) hours per week.
17 However, Plaintiff and Aggrieved Employees were not paid wages, including minimum wages
18 and/or overtime wages, for such time worked. Instead, Plaintiff and Aggrieved Employees were
19 paid for just eight (8) hours in a day or forty (40) hours in a week.

20 86. During all relevant times for this action, Defendants failed to provide uninterrupted
21 meal periods to Plaintiff and Aggrieved Employees when they worked more than five (5) hours
22 per day and ten (10) hours per day because Defendants required Plaintiff and Aggrieved
23 Employees to stay on duty and never provided an uninterrupted first or second meal break.

24 87. In addition, Defendants failed to permit Plaintiff and Aggrieved Employees to take
25 uninterrupted rest breaks for any shift exceeding four (4) hours of work or a major fraction thereof.

26 88. Although Defendants failed to provide uninterrupted meal and rest breaks as required
27 by California law, Defendants failed to pay Plaintiff and Aggrieved Employees premium pay for
28 those days in which they were not permitted to take a meal and/or rest break which was duty free.

1 89. In addition, Defendants failed to provide Plaintiff and Aggrieved Employees with
2 properly itemized wage statements including because Defendants failed to include the actual hours
3 worked, the correct rate of pay and the meal and rest period premiums owed.

4 90. Further, during Plaintiff and Aggrieved Employees' employment, Defendants were
5 required to pay all wages earned for labor in excess of the normal work period not later than the
6 payday for the next regular payroll period. However, Defendants failed to pay Plaintiff and
7 Aggrieved Employees all wages due to them within the time period specified by California Labor
8 Code section 204, including premiums owed.

9 91. Plaintiff, as an "Aggrieved Employee" within the meaning of Labor Code § 2698 *et*
10 *seq.*, acting on behalf of herself and other similarly Aggrieved Employees, brings this
11 representative action against Defendants to recover the civil penalties due to Plaintiff, other
12 similarly Aggrieved Employees, and the State of California according to proof pursuant to Labor
13 Code § 2699 (a) and (f) including, but not limited to \$100.00 for each initial violation and \$200.00
14 for each subsequent violation per employee per pay period for the following Labor Code
15 violations:

- 16 a. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
17 minimum wage compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*;
- 18 b. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
19 overtime compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et*
20 *seq.*;
- 21 c. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour
22 of premium pay for meal period violations in violation of Labor Code §§ 226.7 and
23 512;
- 24 d. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour
25 of premium pay for rest period violations in violation of Labor Code §§ 226.7 and
26 512;
- 27 e. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages
28 at end of employment in violation of Labor Code § 203;

- f. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages owed during employment;
- g. Failing to reimburse Plaintiff and Aggrieved Employees for incurred business expenses in the discharge of their duties for Defendants and in obedience to Defendants' instructions, which includes the use of their personal cell phone, tools, and vehicle in violation of Labor Code §§2800 and 2802;
- h. Failing to furnish Plaintiff and other similarly Aggrieved Employees with complete, accurate, itemized wage statements in violation of Labor Code § 226; and for
- i. Failing to maintain accurate records relating to Plaintiff and other similarly Aggrieved Employees work periods, meal periods, total daily hours, hours per pay period, and applicable pay rates.

92. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which they are entitled to recover under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. For punitive and exemplary damages according to proof;
2. For statutory attorneys' fees and costs pursuant to Labor Code sections 226, 1174, 1194, 1198, 2668, *et seq.*, 2802, and as allowed by law and according to proof;
3. For statutory civil penalties pursuant to Labor Code section 2668, *et seq.*, and as allowed by law and according to proof;
4. For unpaid wages and overtime;
5. For unpaid wage premiums for each day Plaintiff did not receive a meal and/or rest period;
6. For costs of suit incurred herein;

1 7. For pre- and post-judgment interest at the maximum legal rate on all amounts claimed;
2 and

3 8. For such other and further relief as the Court may deem just and proper.

4
5 DATED: June 25, 2020

PAYNE NGUYEN, LLP

6 By: 

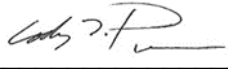
7 Cody Payne
8 Kim Nguyen
9 Attorneys for Plaintiff
10 JULIAN CORTEZ
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1 **PLAINTIFF’S DEMAND FOR A JURY TRIAL**

2 Plaintiff JULIAN CORTEZ hereby demands a trial by jury.

3
4 DATED: June 25, 2020

5 **PAYNE NGUYEN, LLP**

6 By: 

7 Cody Payne
8 Kim Nguyen
9 Attorneys for Plaintiff
10 JULIAN CORTEZ