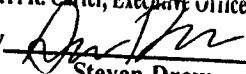


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on behalf of himself, all others similarly situated,
and on behalf of the general public.

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Superior Court of California
County of Los Angeles

SEP 10 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By , Deputy
Steven Drew

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

KEITH DAVIS on behalf of himself, all
others similarly situated, and on behalf of
the general public,

Plaintiffs,

v.

WALNUT LLC; and DOES 1-100,
Defendants.

Case No. **20STCV34519**

**PLAINTIFF'S CLASS ACTION
COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, AND RESTITUTION**

- 1) Failure to Pay All Straight Time Wages;
- 2) Failure to Pay All Overtime Wages;
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 4-2001(11); Cal. Code Regs., tit. 8 § 11040);
- 4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 4-2001(12); Cal. Code Regs. Title 8 § 11040);
- 5) Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (Lab. Code §§ 233, 234, 246);
- 6) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175);
- 7) Failure to Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802, Cal. Regs., tit. 8, § 11040(8));
- 8) Violations of the Labor Code Private Attorneys General Act of 2004 ("PAGA"); and,
- 9) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.).

DEMAND FOR JURY TRIAL

1 Plaintiff KEITH DAVIS, on behalf of himself, all others similarly situated, and on behalf of the
2 general public, complains of Defendant WALNUT LLC (“DEFENDANT” or “WALNUT”)
3 and/or DOES and for causes of action and alleges:

4 1. This is a class action pursuant to California Code of Civil Procedure section 382 on behalf
5 of Plaintiff KEITH DAVIS and all non-exempt trimmers, post-harvesters, cultivators,
6 and/or other workers with similar job designations and titles who are presently or formerly
7 employed by WALNUT and/or DOES and/or their subsidiaries or affiliated companies
8 and/or predecessors within the State of California.

9 2. WALNUT plants, harvests, and cultivates cannabis.

10 3. WALNUT is headquartered in Long Beach, California.

11 4. WALNUT has locations throughout California, including in Long Beach, California.

12 5. WALNUT employs non-exempt trimmers, post-harvesters, cultivators and/or other
13 workers with similar job designations or titles to plant, harvest, and cultivate cannabis.

14 6. Throughout the time period that includes the four years prior to filing this action to the
15 present (the “Statutory Period”), WALNUT has maintained uniform policies that violate
16 the wage and hour rights of Plaintiff and similarly situated trimmers, post-harvesters,
17 cultivators, and/or other workers with similar job designations or titles in the manner
18 complained of herein.

19 7. Throughout the statutory period WALNUT has not paid its trimmers, post-harvesters,
20 cultivators, and/or other workers with similar job designations or titles for all time they
21 were performing work and/or are subject to WALNUT’s control. Failing to pay for all
22 hours worked while under WALNUT’s control and/or while suffered or permitted to work
23 has resulted in trimmers, post-harvesters, cultivators and/or other workers with similar job
24 designations or titles being deprived of straight time and/or overtime wages.

25 8. Throughout the Statutory Period, and through uniform policies applicable to all trimmers,
26 post-harvesters, cultivators, and/or other workers with similar job designations or titles,
27 WALNUT failed to provide trimmers, post-harvesters, cultivators, and/or other workers
28 with similar job designations or titles with meal periods that comply with California law

- 1 and failed to authorize and permit rest periods that comply with California law.
- 2 9. For at least four (4) years prior to the filing of this action and through to the present,
- 3 Defendants WALNUT and/or DOES and/or their officers and/or managing agents have
- 4 had a consistent policy and/or practice of adopting an absence control policy that counts
- 5 sick leave taken as an unauthorized absence that may result in discipline, discharge,
- 6 demotion, or termination, in direct violation of California's state wage and hour laws.
- 7 10. Throughout the statutory period, Defendants WALNUT and/or DOES have failed to
- 8 comply with Labor Code sections 233, 234, and 246 by adopting an absence control policy
- 9 that counts sick leave taken as an unauthorized absence that may result in discipline,
- 10 discharge, demotion, or termination, and failed to itemize the amount of accrued/available
- 11 sick leave on wage statements for Plaintiff and members of the proposed class.
- 12 11. Throughout the Statutory Period, and through uniform policies applicable to all trimmers,
- 13 post-harvesters, cultivators, and/or other workers with similar job designations or titles,
- 14 WALNUT failed to reimburse trimmers, post-harvesters, cultivators, and/or other workers
- 15 with similar job designations or titles for all work-related expenses incurred for business
- 16 purposes.
- 17 12. Throughout the Statutory Period and through uniform policies applicable to all trimmers,
- 18 post-harvesters, cultivators, and/or other workers with similar job designations or titles,
- 19 WALNUT knowingly and intentionally provides wage statements to employees that fail to
- 20 specifically itemize everything required under California Labor Code section 226 (a).
- 21 13. For at least four (4) years prior to the filing of this action and through to the present,
- 22 Defendants WALNUT and/or DOES and/or their officers and/or managing agents have
- 23 had a consistent policy and/or practice of failing to itemize the amount of accrued/available
- 24 sick leave hourly, non-exempt trimmers, post-harvesters, cultivators, or similar job
- 25 designations and titles, and/or other workers with similar job designations or titles, have
- 26 on wage statements each pay period.
- 27 14. Throughout the Statutory Period and through uniform policies applicable to all trimmers,
- 28 post-harvesters, cultivators, and/or other workers with similar job designations or titles,

1 WALNUT knowingly and intentionally failed to pay all wages owed to trimmers, post-
2 harvesters, cultivators, and/or other workers with similar job designations or titles in a
3 timely manner at the time trimmers, post-harvesters, cultivators, and/or other workers with
4 similar job designations or titles terminated their employment – either voluntarily or
5 involuntarily – with WALNUT.

6 15. Plaintiff KEITH DAVIS, on behalf of himself and all of WALNUT's and/or DOES' non-
7 exempt trimmers, post-harvesters, cultivators and/or other workers with similar job
8 designations or titles employed at any time during the Statutory Period brings this action
9 pursuant to California Labor Code Sections 218, 218.5, 222, 223, 224, 226, subd. (b),
10 226.3, 226.7, 233, 234, 510, 512, 515, 558, 1194, 1194.2, 1197, and California Code of
11 Regulations, Title 8, sections 11050 and 3395, seeking unpaid wages, overtime, unpaid
12 reimbursement for business expenses, meal and rest period compensation, penalties,
13 injunctive and other equitable relief, and reasonable attorneys' fees and costs.

14 16. Plaintiff KEITH DAVIS, on behalf of himself and all of WALNUT's and/or DOES' non-
15 exempt trimmers, post-harvesters, cultivators and/or other workers with similar job
16 designations or titles employed at any time during the Statutory Period, pursuant to
17 California Business and Professions Code sections 17200-17208, also seeks injunctive
18 relief, restitution, and disgorgement of all benefits WALNUT and/or DOES enjoyed from
19 their failure to pay all straight time wages, overtime wages, and meal and rest period
20 compensation.

21 **I. VENUE**

22 17. Venue as to each Defendant, WALNUT and/or DOES, is proper in this judicial district,
23 pursuant to California Code of Civil Procedure section 395. Defendant WALNUT and/or
24 DOES conduct business and commit California Labor Code violations within Los Angeles
25 County, and each Defendant and/or DOE is within California for service of process
26 purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and those
27 similarly situated within the State of California and within Los Angeles County. Defendant
28 WALNUT and/or DOES employ numerous trimmers, post-harvesters, cultivators and/or

1 other workers with similar job designations or titles who perform and/or performed work
2 for WALNUT in Los Angeles County, California during the Statutory Period.

3 II. PARTIES

4 A. Plaintiffs.

5 18. Throughout the Statutory Period, Plaintiff KEITH DAVIS is and was a resident of
6 California. During the Statutory Period, KEITH DAVIS was employed by Defendant
7 WALNUT and/or DOES in California and performed work in Los Angeles County.

8 19. Plaintiff and the proposed class of similarly situated trimmers, post-harvesters, cultivators
9 and/or other workers with similar job designations or titles are covered by, inter alia,
10 California IWC Occupational Wage Order No. 4-2001, and Title 8, California Code of
11 Regulations, § 11040.

12 B. Defendants.

13 20. WALNUT plants, harvests, and cultivates cannabis.

14 21. WALNUT has a strong foothold in Southern California, including the County of Los
15 Angeles.

16 22. WALNUT employs trimmers, post-harvesters, cultivators and/or other workers with
17 similar job designations or titles to plant, harvest, and cultivate cannabis.

18 23. WALNUT employed Plaintiff and similarly situated non-exempt trimmers, post-
19 harvesters, cultivators and/or other workers with similar job designations or titles in
20 California.

21 24. The true names and capacities, whether individual, corporate, associate, or otherwise, of
22 Defendants DOES 1-100, inclusive, are presently unknown to Plaintiff, who therefore sues
23 these Defendants by such fictitious names under Code of Civil Procedure section 474.
24 Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
25 designated herein as a DOE is legally responsible in some manner for the unlawful acts
26 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the
27 true names and capacities of the Defendants designated hereinafter as DOES when such
28 identities become known.

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

6 **III. CLASS ACTION ALLEGATIONS**

7 26. Plaintiff brings this action on behalf of himself and all others similarly situated as a class
8 action pursuant to section 382 of the California Code of Civil Procedure. Plaintiff seeks to
9 represent a Class composed of and defined as follows:

10
11 All California citizens who are employed or have been employed by
12 Defendant in the State of California as non-exempt trimmers, post-
13 harvesters, cultivators and/or other workers with similar job
14 designations or titles during the period of the relevant statute of
15 limitations. ("Class Members")

16
17 Plaintiff also seeks to represent subclasses composed of and defined as follows:

18
19 All Class Members who worked one (1) or more shifts in excess of
20 five (5) hours.

21
22 All Class Members who worked one (1) or more shifts in excess of
23 six (6) hours.

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25 All Class Members who worked one (1) or more shifts in excess of
26 ten (10) hours.

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28 All Class Members who worked one (1) or more shifts in excess of

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twelve (12) hours.

All Class Members who worked one (1) or more shifts in excess of two (2) hours.

All Class Members who worked one (1) or more shifts in excess of three (3) hour and one-half hours, but less than or equal to six (6) hours.

All Class Members who worked one (1) or more shifts in excess of six (6) hours, but less than or equal to ten (10) hours.

All Class Members who worked one (1) or more shifts in excess of ten (10) hours.

All Class Members who worked one (1) or more shifts in which they received a wage statement for the corresponding pay period.

All Class Members who were not paid wages for meal periods.

All Class Members who were not paid for all time during which they were subject to the control of Defendant and/or suffered or permitted to work for Defendant during the relevant period of the statute of limitations.

All Class Members who were not reimbursed and/or indemnified for expenses in direct consequence of the discharge of their work duties.

All Class Members who had wages unlawfully deducted.

27. Plaintiff reserves the right under rule 1855, subdivision (b), California Rules of Court, to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

28. This action has been brought and may properly be maintained as a class action under the provisions of section 382 of the California Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity.

29. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that WALNUT and/or DOES currently employ, and during the liability period employed, over one hundred (100) Class Members in Los Angeles County and dispersed throughout California during the liability period and who are or have been affected by WALNUT's and/or DOES' policies of wage theft, failure to pay all straight and overtime wages owed, failure to provide meal and/or rest periods without the appropriate legal compensation, failure to implement a lawful sick pay policy, willful failure to pay all wages due at time of separation from employment, and knowing and intentional failure to provide accurate and itemized employee wage statements.

30. Accounting for employee turnover during the relevant periods increases this number substantially. Upon information and belief, Plaintiff alleges WALNUT's and/or DOES' employment records will provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

B. Commonality.

31. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. These common questions of law and

1 fact include, without limitation:

2 (1) Whether WALNUT and/or DOES violated the Labor Code
3 and/or applicable IWC Wage Orders in failing to pay its non-exempt
4 employees all earned wages at the regular rate for all hours worked.

5 (2) Whether WALNUT's and/or DOES' uniform policies
6 and/or practices whereby non-exempt employees were pressured and/or
7 incentivized to forego taking meal and/or rest periods.

8 (3) Whether WALNUT's and/or DOES' violated Labor Code
9 section 226.7, IWC Wage Order No. 4-2001 or other applicable IWC Wage
10 Orders, and/or California Code of Regulations, Title 8, section 11040, by
11 failing to authorize, permit, and/or provide thirty-minute meal periods
12 before the end of the fifth hour worked and/or failing to pay said employees
13 one (1) hour of pay at the employee's regular rate of compensation for each
14 work day that the rest period was not authorized, permitted and/or provided.

15 (4) Whether WALNUT and/or DOES violated Labor Code
16 section 226.7, IWC Wage Order No. 4-2001 or other applicable IWC Wage
17 Orders, and/or California Code of Regulations, Title 8, section 11040, by
18 failing to authorize, permit, and/or provide ten minute rest periods to its
19 non-exempt employees for every four (4) hours or major fraction thereof
20 worked and/or failing to pay said employees one (1) hour of pay at the
21 employee's regular rate of compensation for each work day that the rest
22 period was not authorized, permitted and/or provided.

23 (5) Whether WALNUT and/or DOES violated Labor Code
24 sections 233 and 234 by adopting uniform policies and/or practices which
25 counts sick leave taken pursuant as an unauthorized absence that may result
26 in discipline, discharge, demotion, or termination.

27 (6) Whether WALNUT and/or DOES violated Labor Code
28 section 246 by having uniform policies and/or practices of failing to provide

1 Class Members wage statements itemizing the amount of accrued/available
2 sick leave.

3 (7) Whether WALNUT and/or DOES willfully failed to pay, in
4 a timely manner, wages owed to members of the proposed Class who left
5 WALNUT's and/or DOES' employ or who were terminated.

6 (8) Whether WALNUT and/or DOES had uniform policies
7 and/or practices of failing to provide employees accurate and itemized wage
8 statements.

9 (9) Whether WALNUT and/or DOES had uniform policies
10 and/or practices of failing to timely pay all wages owed to employees who
11 left WALNUT's and/or DOES' employ or who were terminated.

12 (10) Whether WALNUT and/or DOES had uniform policies
13 and/or practices of failing to reimburse or indemnify Non-Exempt
14 Employees for business expenses incurred as a consequence of the
15 discharge of their work duties.

16 32. The answer to each of these respective questions will generate a common answer capable
17 of resolving class-wide liability in one stroke.

18 33. Said common questions predominate over any individualized issues and/or questions
19 affecting only individual members.

20 **C. Typicality.**

21 34. The claims of the named Plaintiff are typical of the claims of the proposed Class. Plaintiff
22 and all members of the proposed Class sustained injuries and damages arising out of and
23 caused by WALNUT's and/or DOES' common course of conduct in violation of laws and
24 regulations that have the force and effect of law and statutes as alleged.

25 35. Plaintiff KEITH DAVIS was subjected to the same uniform policies and/or practices
26 complained of herein that affected all such employees. Thus, as KEITH DAVIS was
27 subjected to the same unlawful policies and practices as all non-exempt employees, his
28 claims are typical of the class he seeks to represent.

D. Adequacy of Representation.

36. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class.

37. Plaintiff is ready and willing to take the time necessary to help litigate this case.

38. Plaintiff has no conflicts that will disallow him to fairly and adequately represent and protect the interests of the members of the Class.

39. Counsel who represent Plaintiff are competent and experienced in litigating large employment class actions.

40. Specifically, David Mara, Esq. and Jill Vecchi, Esq. are California lawyers in good standing.

41. Counsel who represent Plaintiff are competent and experienced in litigating large employment class actions.

42. The lawyers at Mara Law Firm have been named class counsel in numerous cases and Mr. Mara's and Ms. Vecchi's practice is primarily focused on representing classes, large and small, on the basis of California Labor Code and IWC Wage Order Violations similar to those alleged herein. The attorneys at the firm are also frequently called upon to and do author amicus briefs on behalf of the Consumer Attorneys of California on cases in the appellate courts and Supreme Court of California involving important issues relating to those alleged herein.

43. Mara Law Firm, PC has the resources to take this case to trial and judgment, if necessary.

44. Mr. Mara has the experience, ability, and ways and means to vigorously prosecute this case.

E. Superiority of Class Action.

45. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of WALNUT's and/or DOES' illegal policies and/or

practices of failing to pay all straight time and overtime wages owed, failing to permit or authorize rest periods, failing to provide meal periods, failing to adopt a compliant sick pay policy, knowingly and intentionally failing to comply with wage statement requirements, and failing to pay all wages due at termination.

46. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

47. Because such common questions predominate over any individualized issues and/or questions affecting only individual members, class resolution is superior to other methods for fair and efficient adjudication.

IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST WALNUT AND/OR DOES: Failure to Pay All Straight Time Wages

48. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

49. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those similarly situated for all hours worked.

50. It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages. California Labor Code section 222 prohibits the withholding of part of a wage. California Labor Code section 223 prohibits the payment of less than a statutory or contractual wage scale. California Labor Code section 1197 prohibits the payment of less than the minimum wage. California Labor Code section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. California Labor Code section 1194.2 states that an employee receiving less than the legal minimum wage is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

1 California Labor Code section 224 only permits deductions from wages when the employer
2 is required or empowered to do so by state or federal law or when the deduction is expressly
3 authorized in writing by the employee for specified purposes that do not have the effect of
4 reducing the agreed upon wage.

5 51. IWC Wage Order 4-2001(5) requires employers to pay “reporting time pay.” Each workday
6 an employee is required to report to work, but is not put to work or is furnished with less
7 than half of his or her usually or scheduled day’s work, must be paid for half of the usual
8 or scheduled day’s work, but in no event less than two hours nor more than four hours, at
9 his or her regular rate of pay. If an employee is required to report to work a second time in
10 any one workday and is furnished less than two hours of work on the second reporting, he
11 or she must be paid for two hours at his or her regular rate of pay.

12 52. Plaintiff and those similarly situated Class Members were employed by WALNUT and/or
13 DOES at all relevant times. WALNUT and/or DOES were required to compensate Plaintiff
14 for all hours worked and were prohibited from making deductions that had the effect of
15 reducing the agreed upon wage.

16 53. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those
17 similarly situated for all hours worked. For example, WALNUT fails to pay Class Members
18 for the following hours worked: pre-and post-shift work, work performed longer than the
19 scheduled shift end time, time that was rounded in Defendants’ favor, and all other time
20 during which Class Members are subject to the control of WALNUT and/or suffered or
21 permitted to work during periods of time for which WALNUT is not paying them. Failing
22 to pay for all hours worked while under WALNUT’s control and/or while suffered or
23 permitted to work has resulted in Plaintiff and Class Members being deprived of straight
24 time wages throughout the Statutory Period.

25 54. Defendant and/or DOES have had a continuous policy of requiring Plaintiff and the Class
26 Members to conduct work before clocking in, including but not limited to, undergoing a
27 chemical shoe wash, doing a fingerprint scan, undergoing a bag check, changing into work
28 clothes, and waiting in line to clock in. Defendant and/or DOE would also require Plaintiff

1 and the Class Members to conduct work after clocking out, including but not limited to,
2 undergoing a back check and changing out of work clothes. Because Plaintiff and the Class
3 Members were not clocked in during this time but were required to perform work duties,
4 they have not been paid for all the hours they worked.

5 55. Defendant and/or DOES have had a continuous policy of failing to pay Plaintiff and the
6 Class Members for hours worked after the scheduled shift end time and/or have had a
7 continuous policy of changing Plaintiff's and the Class Members' recorded time worked
8 to reduce the number of hours worked by Plaintiff and the Class Members. As a result,
9 Plaintiff and the Class Members are not paid for all of the hours they work.

10 56. Defendant and/or DOES have had a continuous policy of failing to record Plaintiff's and
11 the Class Members' hours worked. Defendant and/or DOES did not have any method for
12 Plaintiff and the Class Members to record their time worked, such as their start and end
13 times. As a result, Defendant and/or DOES did not have records of the hours worked by
14 Plaintiff and the Class Members. Defendant and/or DOES would pay Plaintiff and the Class
15 Members for less time than they actually worked.

16 57. Failing to pay for all hours worked while under WALNUT's control and/or while suffered
17 or permitted to work has resulted in Class Members being deprived of straight time and/or
18 overtime wages throughout the Statutory Period.

19 58. Defendant and/or DOES have a continuous and consistent policy of failing to pay full
20 wages to Plaintiff and the Class Members by deducting a portion of the wages earned by
21 Plaintiff and the Class Members when they worked through their meal periods, are not
22 relieved of all work duties during their meal periods, are not allowed to leave the work
23 location during meal periods, and/or when WALNUT recorded a meal period for Plaintiff
24 and the Class Members when no meal period was taken. Specifically, during unpaid meal
25 periods, Plaintiff and the Class Members had to undergo a chemical shoe wash, go through
26 a fingerprint scan, undergo a bag check when coming back from a meal period, change in
27 and out of work clothes, and wait in line to clock in and out.

28 59. Defendant and/or DOES have a continuous and consistent policy of clocking-out Plaintiff

1 and those similarly situated for a thirty (30) minute meal period and/or otherwise recording
2 a meal period, even though Plaintiff and all members of the Class work through their meal
3 periods. Thus, WALNUT and/or DOES do not pay Plaintiff and each and every member
4 of the Class for all time worked each and every day they work without a meal period and
5 have time deducted.

6 60. Plaintiff and the Class Members are informed and believe and thereon allege that as a direct
7 result of Defendant's and/or DOES' uniform policies and/or practices, Plaintiff and the
8 Class Members have suffered, and continue to suffer, substantial unpaid wages, and lost
9 interest on such wages, and expenses and attorneys' fees in seeking to compel WALNUT
10 and/or DOES to fully perform their obligations under state law, all to their respective
11 damage in amounts, according to proof at trial.

12 61. As a direct result of WALNUT's and/or DOES' policy of illegal wage theft, Plaintiff and
13 those similarly situated have been damaged in an amount to be proven at trial.

14 62. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
15 below.

16 **SECOND CAUSE OF ACTION AGAINST WALNUT AND/OR DOES: Failure to Pay All**
17 **Overtime Wages**

18 63. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
19 and every other paragraph in this Complaint herein as if fully plead.

20 64. It is fundamental that an employer must pay its employees for all time worked. California
21 Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages.
22 California Labor Code section 222 prohibits the withholding of part of a wage. California
23 Labor Code section 223 prohibits the payment of less than a statutory or contractual wage
24 scale. California Labor Code section 1197 prohibits the payment of less than the minimum
25 wage. California Labor Code section 224 only permits deductions from wages when the
26 employer is required or empowered to do so by state or federal law or when the deduction
27 is expressly authorized in writing by the employee for specified purposes that do not have
28 the effect of reducing the agreed upon wage.

- 1 65. WALNUT and/or DOES failed to pay overtime when employees worked over eight (8)
2 hours per day and when employees worked over forty (40) hours per week.
- 3 66. Plaintiff and those similarly situated Class Members were employed by WALNUT and/or
4 DOES at all relevant times. WALNUT and/or DOES were required to compensate Plaintiff
5 for all overtime hours worked and were prohibited from making deductions that had the
6 effect of reducing the agreed upon wage.
- 7 67. WALNUT and/or DOES failed to pay for the overtime that was due, pursuant to IWC
8 Wage Order No. 4-2001, item 3(A).
- 9 68. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those
10 similarly situated for all hours worked. For example, WALNUT fails to pay Class Members
11 for the following hours worked: pre-and post-shift work, work performed longer than the
12 scheduled shift end time, and all other time during which Class Members are subject to the
13 control of WALNUT and/or suffered or permitted to work during periods of time for which
14 WALNUT is not paying them. Failing to pay for all hours worked while under WALNUT's
15 control and/or while suffered or permitted to work has resulted in Plaintiff and Class
16 Members being deprived of straight time wages throughout the Statutory Period. Failing to
17 pay for all hours worked while under WALNUT's control and/or while suffered or
18 permitted to work has resulted in Plaintiff and Class Members being deprived of overtime
19 wages throughout the Statutory Period.
- 20 69. Defendant and/or DOES have had a continuous policy of altering, changing, and/or failing
21 to record all of Plaintiff's and the Class Members' time worked to eliminate and/or reduce
22 the number of overtime hours worked and/or to only pay employees their regular rate of
23 pay for these hours.
- 24 70. Under Wage Order 4-2001 section 3(B)(1), no employer shall be deemed to have violated
25 the daily overtime provisions by instituting, pursuant to the election procedures set forth in
26 this wage order, a regularly scheduled alternative workweek schedule of not more than ten
27 (10) hours per day within a 40 hour workweek without the payment of an overtime rate of
28 compensation. Each proposal for an alternative workweek schedule shall be in the form of

1 a written agreement proposed by the employer. The proposed agreement must designate a
2 regularly scheduled alternative workweek in which the specified number of work days and
3 work hours are regularly recurring. In order to be valid, the proposed alternative workweek
4 schedule must be adopted in a secret ballot election, before the performance of work, by at
5 least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall
6 be held during regular working hours at the employees' work site. Failure to comply with
7 the provisions set forth in Wage Order 4-2001 section 3(C)(2) shall make the election null
8 and void.

9 71. WALNUT and/or DOES did not validly implement an alternative workweek schedule.
10 WALNUT and/or DOES failed to hold a secret ballot election before the performance of
11 work prior to having employees work alternative workweek schedules. WALNUT and/or
12 DOES failed to make a disclosure in writing to the affected employees which included the
13 effects of the proposed arrangement on Plaintiff's and the Class Members' wages, hours,
14 and benefits. Because WALNUT and/or DOES did not validly implement an alternative
15 workweek schedule, WALNUT and/or DOES owe overtime wages to Plaintiff and the
16 Class Members.

17 72. Plaintiff and the Class Members are informed and believe and thereon allege that as a direct
18 result of Defendant's and/or DOES' uniform policies and/or practices, Plaintiff and the
19 Class Members have suffered, and continue to suffer, substantial unpaid overtime wages,
20 and lost interest on such overtime wages, and expenses and attorneys' fees in seeking to
21 compel WALNUT and/or DOES to fully perform their obligations under state law, all to
22 their respective damage in amounts according to proof at time of trial. WALNUT and/or
23 DOES committed the acts alleged herein knowingly and willfully, with the wrongful and
24 deliberate intention on injuring Plaintiff and the Class Members. WALNUT and/or DOES
25 acted with malice or in conscious disregard of Plaintiff's and the Class Member's rights.
26 In addition to compensation, Plaintiff is also entitled to any penalties allowed by law.

27 73. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
28 below.

THIRD CAUSE OF ACTION AGAINST WALNUT AND/OR DOES: Failure to Provide Meal Periods, or Compensation in Lieu Thereof (Lab. Code §§ 226.7, 512, IWC Wage Order No. 4-2001(11); Cal. Code Regs., tit. 8, § 11040)

74. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

75. Under California Labor Code section 512 and IWC Wage Order No. 4, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During these meal periods of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

76. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of less than thirty (30) minutes.

77. Under California Labor Code section 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

78. WALNUT and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods to Plaintiff and Class Members who worked for work periods of more than five (5) consecutive hours. As such, Plaintiff and Class Members were required to work over five (5) consecutive hours at a time without being provided a thirty (30) minute uninterrupted meal period within that time.

79. WALNUT and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods to Plaintiff and Class Members for every five (5) continuous hours worked.

80. WALNUT's and/or DOES' business model is such that Class Members were assigned too

- 1 much work and insufficient help due to chronic understaffing to be able to take meal
2 periods. Thus, Class Members are not able to take meal periods.
- 3 81. Throughout the statutory period, WALNUT and/or DOES had a pattern and practice of
4 assigning too much work to be completed in too short of time frames, resulting in Plaintiff
5 and those similarly situated not being able to take meal periods.
- 6 82. WALNUT and/or DOES would not permit Plaintiff and the Class to take 30-minute meal
7 periods unless specifically scheduled by WALNUT and/or DOES or unless Plaintiff and
8 the Class were expressly told to by WALNUT and/or DOES. This routinely resulted in
9 Plaintiff and the Class Members not being able to take a meal period, if at all, until after
10 the fifth hour.
- 11 83. WALNUT's and/or DOES' business model was such that Plaintiff and Class Members
12 were assigned too much work that could not reasonably be completed in their assigned
13 shift, work, and/or route, resulting in Plaintiff and the Class Members routinely and
14 regularly being forced to eat their meals while working.
- 15 84. WALNUT and/or DOES unlawfully did not allow Plaintiff and the Class Members to leave
16 the work location during meal periods.
- 17 85. Plaintiff and the Class Members were not free of all work duties and/or employer control
18 during meal periods. During meal periods, Plaintiff and the Class Members had to undergo
19 a chemical shoe wash, go through a fingerprint scan, undergo a bag check when coming
20 back from a meal period, change in and out of work clothes, and wait in line to clock in
21 and out.
- 22 86. WALNUT and/or DOES failed to keep records of when Plaintiff and the Class Members
23 took meal periods.
- 24 87. Alternatively, Walnut told Plaintiff and the Class Members when they could take a meal
25 period. Therefore, if a meal period is taken after the fifth hour, it is due to Walnut and/or
26 DOES providing it at that time. In addition, if a meal period is not taken, it is due to Walnut
27 and/or DOES failing to provide it.
- 28 88. Throughout the statutory period, WALNUT and/or DOES valued productivity over

1 providing meal periods and, because of this, meal breaks were not priorities to WALNUT
2 and/or DOES.

3 89. Because of WALNUT and/or DOES demanding policies on completion times, Plaintiff
4 and those similarly situated felt that stopping work to exercise their rights to take meal
5 periods would sacrifice their jobs with WALNUT and/or DOES.

6 90. WALNUT and/or DOES did not have a policy of providing a second meal period before
7 the end of the tenth hour.

8 91. Failing to provide compensation for such unprovided or improperly provided meal periods,
9 as alleged above, WALNUT and/or DOES willfully violated the provisions of California
10 Labor Code sections 226.7, 512, and IWC Wage Order No. 4.

11 92. As a result of the unlawful acts of WALNUT and/or DOES, Plaintiff and the Class he seeks
12 to represent have been deprived of premium wages, in amounts to be determined at trial,
13 and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
14 fees and costs, pursuant to Labor Code section 226.7, and IWC Wage Order No. 4-2001.
15 Plaintiff and the Class he seeks to represent did not willfully waive their right to take meal
16 periods through mutual consent with WALNUT and/or DOES.

17 93. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
18 below.

19 **FOURTH CAUSE OF ACTION AGAINST WALNUT AND/OR DOES: Failure to**
20 **Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 4-2001(12);**
21 **Cal. Code Regs. Title 8 § 11040)**

22 94. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
23 and every other paragraph in this Complaint herein, as if fully plead.

24 95. Under IWC Wage Order No. 4, every employer shall authorize and permit all employees
25 to take rest periods, “[t]he authorized rest period time shall be based on the total hours
26 worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major
27 fraction thereof.” IWC Wage Order 4-2001(12). The time spent on rest periods “shall be
28 counted as hours worked for which there shall be no deduction from wages.” *Id.*

- 1 96. Under California Labor Code section 226.7, if the employer does not provide an employee
2 a rest period in accordance with the above requirements, the employer shall pay the
3 employee one (1) hour of pay at the employee's regular rate of compensation for each
4 workday that the rest break is not provided.
- 5 97. At all relevant times, Defendant and/or DOES failed to authorize and/or permit rest period
6 time based upon the total hours worked daily at the rate of ten (10) minutes net rest time
7 per four (4) hours or major fraction thereof.
- 8 98. In the alternative, WALNUT's and/or DOES' business model was such that Class
9 Members were assigned too much work that could not be reasonably completed within
10 their assigned shift, resulting in Class Members routinely and regularly being forced to
11 work through their rest periods.
- 12 99. Throughout the statutory period, WALNUT and/or DOES had a pattern and practice of
13 assigning too much work to be completed in too short of time frames, resulting in Plaintiff
14 and those similarly situated not to take rest periods.
- 15 100. Because of WALNUT's and/or DOES' demanding policies on task completion times,
16 Plaintiff and those similarly situated felt that exercising their rights to take rest breaks
17 would sacrifice their jobs with WALNUT and/or DOES.
- 18 101. Throughout the statutory period, WALNUT's and/or DOES' uniform policies and
19 practices resulted in Class Members not receiving rest breaks.
- 20 102. Throughout the statutory period, WALNUT and/or DOES valued productivity over
21 providing rest periods and, because of this, rest periods were not priorities to WALNUT
22 and/or DOES.
- 23 103. Throughout the statutory period, WALNUT's and/or DOES' policies promoting
24 productivity subjugated Plaintiff's and those similarly situated's rights to rest periods.
- 25 104. WALNUT and/or DOES did not allow Plaintiff and the Class Members to leave the work
26 location during rest periods.
- 27 105. As a result of the unlawful acts of WALNUT and/or DOES, Plaintiff and the Class he seeks
28 to represent have been deprived of premium wages, in amounts to be determined at trial,

1 and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’
2 fees and costs, pursuant to Labor Code section 226.7, and IWC Wage Order No. 5-2001.

3 106. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
4 below.

5 **FIFTH CAUSE OF ACTION AGAINST WALNUT AND/OR DOES: Failure to Adopt a**
6 **Compliant Sick Pay/Paid Time Off Policy (Lab. Code §§ 233, 234, 246)**

7 107. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
8 and every other paragraph in this Complaint herein as if fully plead.

9 108. Section 246(a)(1) of the California Labor Code states: “An employee who, on or after July
10 1, 2015, works in California for the same employer for 30 or more days within a year from
11 the commencement of employment is entitled to paid sick days as specified in this section.

12 109. Section 246(c) of the Labor Code states: “An employee shall be entitled to use accrued
13 paid sick days beginning on the 90th day of employment, after which day the employee
14 may use paid sick days as they are accrued.

15 110. Section 233(c) of the California Labor Code states: “An employer shall not deny an
16 employee the right to use sick leave or discharge, threaten to discharge, demote, suspend,
17 or in any manner discriminate against an employee for using, or attempting to exercise the
18 right to use, sick leave to attend to an illness or the preventive care of a family member, or
19 for any other reason specified in subdivision (a) of Section 246.5.

20 111. Section 233(d) of the California Labor Code provides relief for violations of this section,
21 stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to
22 reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate
23 equitable relief.

24 112. Section 234 of the California Labor Code further forbids employers from adopting an
25 “absence control policy that counts sick leave taken pursuant to Section 233 as an absence
26 that may lead to or result in discipline, discharge, demotion, or suspension is a per se
27 violation of Section 233. An employee working under this policy is entitled to appropriate
28 legal and equitable relief pursuant to Section 233.

1 113. Defendants WALNUT and/or DOES operate under an absence control policy that counts
2 sick leave taken pursuant to Section 233 as an unauthorized absence that may result in
3 discipline, discharge, demotion, or termination. Thus, Defendants WALNUT and/or
4 DOES' sick pay policy punishes Plaintiff and Class Members by way of suspension and/or
5 termination for use of protected and appropriate sick leave.

6 114. Further, Defendants WALNUT and/or DOES' sick pay policy fails to pay sick pay for all
7 appropriate and protected purposes enumerated in Labor Code section 233, 234, and 246,
8 and Defendants WALNUT and/or DOES fail to itemize the amount of accrued/available
9 sick leave Plaintiff and Class Members have on wage statements each pay period.

10 115. As a result of the unlawful acts of Defendants WALNUT and/or DOES, Plaintiff and the
11 Class he seeks to represent have been incurred damages, in amounts to be determined at
12 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon,
13 attorneys' fees and costs, pursuant to Labor Code section 233(e).

14 116. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
15 below.

16 **SIXTH CAUSE OF ACTION AGAINST WALNUT AND/OR DOES: Knowing and**
17 **Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab.**
18 **Code §§ 226, 1174, 1175; IWC Wage Order No. 4; Cal. Code Regs., Title 8, §4)**

19 117. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
20 and every other paragraph in this Complaint herein as if fully plead.

21 118. California Labor Code section 226 subdivision (a) requires Defendant and/or DOES to,
22 inter alia, itemize in wage statements and accurately report the total hours worked and total
23 wages earned. WALNUT and/or DOES have knowingly and intentionally failed to comply
24 with California Labor Code section 226, subdivision (a), on each and every wage statement
25 provided to Plaintiff KEITH DAVIS and members of the proposed Class.

26 119. California Labor Code section 1174 requires WALNUT and/or DOES to maintain and
27 preserve, in a centralized location, records showing the daily hours worked by and the
28 wages paid to its employees. WALNUT and/or DOES have knowingly and intentionally

1 failed to comply with California Labor Code section 1174. The failure of WALNUT and/or
2 DOES, and each of them, to comply with California Labor Code section 1174 is unlawful
3 pursuant to California Labor Code section 1175.

4 120. WALNUT and/or DOES failed to maintain accurate time records - as required by IWC
5 Wage Order No. 4-2001(7), and Cal. Code Regs., Title 8 section 11040 - showing, among
6 other things, when the employee begins and ends each work period, the total daily hours
7 worked in itemized wage statements, total wages, bonuses and/or incentives earned, and
8 all deductions made.

9 121. WALNUT and/or DOES have knowingly and intentionally failed to provide Plaintiff and
10 the Class Members with accurate itemized wage statements which show: “(1) gross wages
11 earned, (2) total hours worked by the employee, . . . (4) all deductions, provided that all
12 deductions made on written orders of the employee may be aggregated and shown as one
13 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
14 paid, (7) the name of the employee and only the last four digits of his or her social security
15 number or an employee identification number other than a social security number, (8) the
16 name and address of the legal entity that is the employer and, if the employer is a farm
17 labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the
18 legal entity that secured the services of the employer, and (9) all applicable hourly rates in
19 effect during the pay period and the corresponding number of hours worked at each hourly
20 rate by the employee[.]” California Labor Code section 226(a).

21 122. WALNUT and/or DOES knowingly and intentionally did not include the gross wages
22 earned on wage statements. WALNUT therefore knowingly and intentionally failed to
23 itemize the gross wages earned on Plaintiff’s and the Class Members’ wage statements.

24 123. In every pay period during the period of the relevant statute of limitations, WALNUT
25 and/or DOES knowingly and intentionally did not itemize the total hours worked on wage
26 statements as California Labor Code section 226, subsection (a), requires. In every pay
27 period during the period of the relevant statute of limitations, WALNUT and/or DOES
28 knowingly and intentionally did not include the total hours worked on wage statements.

1 WALNUT and/or DOES therefore knowingly and intentionally failed to itemize the total
2 hours worked on Plaintiff's and the Class Members' wage statements.

3 124. WALNUT and/or DOES have a continuous policy of not paying Plaintiff and the Class
4 Members for all hours worked. WALNUT and/or DOES have not paid for all the time
5 Plaintiff and the Class Members worked throughout the day, including, but not limited to
6 rounding, before shifts start, after shifts end, and/or any other time in the day when the
7 employees were performing work tasks, subject to the control of WALNUT and/or DOES
8 and/or otherwise had work duties. Further, WALNUT and/or DOES would require Plaintiff
9 and the Class Members to conduct work before clocking in, including but not limited to,
10 undergoing a chemical shoe wash, doing a fingerprint scan, undergoing a bag check,
11 changing into work clothes, and waiting in line to clock in. In addition, WALNUT and/or
12 DOES does not pay Plaintiff and the Class Members if they work longer than their
13 scheduled shift length.

14 125. Additionally, WALNUT and/or DOES have had a continuous policy of not paying Plaintiff
15 and the Class Members for all hours worked in that WALNUT and/or DOES continuously
16 and consistently clocked Plaintiff and the Class Members out for a thirty (30) minute meal
17 period and/or otherwise recorded a meal period, even though Plaintiff and the Class
18 Members work through their meal periods and/or were unable to take meal periods. Thus,
19 WALNUT and/or DOES shave/steal earned wages from Plaintiff and the Class Members
20 every day they work without a meal period and have time deducted.

21 126. In every pay period during the period of the relevant statute of limitations, WALNUT
22 and/or DOES knowingly and intentionally did not include the net wages earned on wage
23 statements.

24 127. As a result of the knowing and intentional failure by WALNUT and/or DOES to comply
25 with itemized employee wage statement provisions, Plaintiff and the Class Members have
26 been able to reconstruct only a reasonable estimate of the hours worked and have, therefore,
27 not received full compensation.

28 128. WALNUT and/or DOES knowingly and intentionally did not include Plaintiff's and the

1 Class Members' last four digits of his or her social security number or an employee
2 identification number other than the social security number.

3 129. Under California Labor Code section 226.3, "[a]ny employer who violates subdivision (a)
4 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars
5 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)
6 per employee for each violation in a subsequent citation, for which the employer fails to
7 provide the employee a wage deduction statement or fails to keep the records required in
8 subdivision (a) of Section 226." The penalties provided for in California Labor Code
9 section 226.3 are in addition to other penalties provided by law.

10 130. As a direct result of WALNUT and/or DOES unlawful acts, Plaintiff and the Class he
11 intends to represent have been damaged and are entitled to recovery of such amounts, plus
12 interest thereon, attorneys' fees, and costs, pursuant to California Labor Code section 226.

13 131. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
14 below.

15 **SEVENTH CAUSE OF ACTION AGAINST WALNUT AND/OR DOES: Failure to**
16 **Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802; IWC Wage Order No. 4; Cal. Code**
17 **Regs., Title 8, § 11040)**

18 132. Plaintiff and those similarly situated Class members hereby incorporate by reference each
19 and every other paragraph in this Complaint herein as if fully plead.

20 133. An employer shall indemnify employees for all necessary expenditures or losses incurred
21 by the employees in direct consequence of the discharge of the employees' duties, or the
22 employees' obedience to the directions of the employer. Further, an employer shall not
23 collect or receive from an employee any part of wages theretofore paid by employer to
24 employee.

25 134. WALNUT and/or DOES have had a continuous policy and/or practice of failing to
26 reimburse and/or indemnify Plaintiff and the Class Members for expenses for company
27 and/or business-related purposes.

28 135. WALNUT and/or DOES have had a continuous policy and/or practice of failing to

1 reimburse and/or indemnify Plaintiff and the Class Members for expenses incurred as a
2 direct consequence of the discharge of their work duties.

3 136. WALNUT and/or DOES have had a continuous policy and/or practice of failing to
4 reimburse and/or indemnify Plaintiff and the Class Members for expenses incurred in direct
5 consequence of employees' obedience to the directions of WALNUT and/or DOES.

6 137. WALNUT and/or DOES have had a continuous policy and/or practice of failing to
7 reimburse and/or indemnify Plaintiff and the Class Members. Plaintiff and the Class
8 Members incurred expenses in the discharge of their duties without receiving
9 reimbursement from WALNUT.

10 138. WALNUT, for example, fails to reimburse for all work-related expenses, such as, but not
11 limited to, but are not limited to, having to purchase protective gear including, but not
12 limited to, eye protection..

13 139. WALNUT and/or DOES have had a continuous policy and/or practice of illegally
14 deducting wages, earned bonuses and/or incentives from employees.

15 140. Said continuous policy and/or practice of failing to reimburse Plaintiff and Class Members
16 and deducting wages from employees is illegal under California Labor Code sections 221,
17 2802, and Cal. Code Regs. Title 8, section 11040(8).

18 141. As a direct result of WALNUT's and/or DOES' policy of failing to reimburse Plaintiff and
19 Class Members and deducting wages from employees, Plaintiff and those similarly situated
20 have been damaged in an amount to be proven at trial.

21 142. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
22 below.

23 **EIGHTH CAUSE OF ACTION AGAINST WALNUT AND/OR DOES: Violations of the**
24 **Private Attorneys General Act of 2004 ("PAGA") (Labor Code §2698 et seq.).**

25 143. Plaintiff and those similarly situated Class members hereby incorporate by reference each
26 and every other paragraph in this Complaint herein as if fully plead.

27 144. Plaintiff, by virtue of his employment with WALNUT, and WALNUT's failure to provide
28 meal and rest periods, overtime compensation, all wages for all work performed at the

1 statutory minimum agreed upon rate, accurate itemized wage statements, all wages due at
2 termination, and reimbursement for business expenses – for the reasons stated herein above
3 – are aggrieved employees with standing to bring an action under the Private Attorney
4 General Act (“PAGA”). Plaintiff, as representative of the people of the State of California,
5 will seek any and all penalties otherwise capable of being collected by the Labor
6 Commission and/or the Department of Labor Standards Enforcement (“DLSE”). This
7 includes each of the following, as set forth in Labor Code Section 2699.5, which provides
8 that Section 2699.3(a) applies to any alleged violation of the following provisions: Sections
9 201 through 203, 204, 205.5, 221, 222, 223, 226, 226.7, 246, 247.5, 248.5, 510, 512, 558,
10 1174, 1194, 1197, 1197.1, 1199, and 2802.

11 145. On June 26, 2020, pursuant to California Labor Code section 2699.3, Plaintiff provided
12 notice to the Labor and Workforce Development Agency (“LWDA”). This notice outlined
13 the California Labor Code violations Plaintiff alleges against WALNUT and/or DOES.
14 The violations alleged in this notice also form the basis for the allegations herein.

15 146. Plaintiff brings this action against WALNUT on behalf of himself and all other similarly
16 situated aggrieved employees who work and/or worked as non-exempt, hourly all non-
17 exempt horticulturists, gardeners, arborists, landscape architects, trimmers, post-
18 harvesters, cultivators, and water managers, and/or other workers with similar job
19 designations and titles.

20 147. Plaintiff is informed and believes that WALNUT has violated and continues to violate
21 provisions of the California Labor Code and applicable Wage Orders related to meal and
22 rest periods, overtime compensation, wages for all work performed, sick pay, itemized
23 wage statements, and all wages due at termination.

24 148. Plaintiff, as personal representative of the general public, will and does seek to recover any
25 and all penalties for each and every violation shown to exist or to have occurred during the
26 one-year period of filing this action, in an amount according to proof, as to those penalties
27 that are otherwise only available to public agency enforcement actions. Funds recovered
28 will be distributed in accordance with PAGA, with at least 75% of the penalties recovered

being provided to the State of California and the LWDA.

NINTH CAUSE OF ACTION AGAINST WALNUT AND/OR DOES: Violation of Unfair Competition Law (California Bus. & Prof. Code, § 17200, et seq.)

149. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

150. WALNUT and/or DOES failure to pay all straight time and overtime wages earned, failure to provide compliant meal and/or rest breaks and/or compensation in lieu thereof, failure to itemize and keep accurate records, failure to pay all wages due at time of termination, and failure to adopt a legally compliant sick pay policy, as alleged herein, constitutes unlawful activity prohibited by California Business and Professions Code section 17200, et seq.

151. The actions of WALNUT and/or DOES in failing to pay Plaintiff and members of the proposed Class in a lawful manner, as alleged herein, constitutes false, unfair, fraudulent and deceptive business practices, within the meaning of California Business and Professions Code section 17200, et seq.

152. Plaintiff is entitled to an injunction and other equitable relief against such unlawful practices in order to prevent future damage, for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits. Plaintiff brings this cause individually and as members of the general public actually harmed and as a representative of all others subject to WALNUT and/or DOES unlawful acts and practices.

153. As a result of their unlawful acts, WALNUT and/or DOES have reaped and continue to reap unfair benefits at the expense of Plaintiff and the proposed Class he seeks to represent. WALNUT and/or DOES should be enjoined from this activity and made to disgorge these ill-gotten gains and restore Plaintiff and the members of the proposed Class pursuant to Business and Professions Code section 17203. Plaintiff is informed and believes, and thereon alleges, that Defendants and/or DOES are unjustly enriched through their policy of not all wages owed to Plaintiff and members of the proposed Class.

154. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of the

1 proposed class are prejudiced WALNUT and/or DOES unfair trade practices.

2 155. As a direct and proximate result of the unfair business practices of WALNUT and/or
3 DOES, and each of them, Plaintiff, individually and on behalf of all employees similarly
4 situated, are entitled to equitable and injunctive relief, including full restitution and/or
5 disgorgement of all wages and premium pay which have been unlawfully withheld from
6 Plaintiff and members of the proposed Class as a result of the business acts and practices
7 described herein and enjoining WALNUT and/or DOES from engaging in the practices
8 described herein.

9 156. The illegal conduct alleged herein is continuing, and there is no indication that WALNUT
10 and/or DOES will cease and desist from such activity in the future. Plaintiff alleges that if
11 WALNUT and/or DOES are not enjoined from the conduct set forth in this Complaint,
12 they will continue the unlawful activity discussed herein.

13 157. Plaintiff further requests that the Court issue a preliminary and permanent injunction
14 prohibiting WALNUT and/or DOES from continuing to not pay Plaintiff and the members
15 of the proposed Class overtime wages as discussed herein.

16 158. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
17 below.

18 **V. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for judgment as follows:

- 20 A. That the Court determine that this action may be maintained as a class action;
- 21 B. For compensatory damages, in an amount according to proof at trial, with interest
22 thereon;
- 23 C. For economic and/or special damages in an amount according to proof with interest
24 thereon;
- 25 D. For unpaid straight time and overtime wages, in an amount according to proof at trial,
26 with interest thereon;
- 27 E. For compensation for all time worked;
- 28 F. For compensation for not being provided paid rest breaks;

1 G. For compensation for not being provided paid meal periods;
2 H. For damages and/or monies owed for adopting and unlawful sick pay policy;
3 I. For damages and/or monies owed for failure to comply with itemized employee wage
4 statement provisions;
5 J. For all reimbursements of business expenses;
6 K. That Defendant be found to have engaged in unfair competition in violation of sections
7 17200 et seq. of the California Business and Professions Code;
8 L. That Defendant be ordered and enjoined to make restitution to the Class due to their
9 unfair competition, including disgorgement of their wrongfully withheld wages
10 pursuant to California Business and Professions Code sections 17203 and 17204;
11 M. That an order of specific performance of all penalties owed be issued under Business
12 and Professions Code sections 17202;
13 N. That Defendant be enjoined from continuing the illegal course of conduct, alleged
14 herein;
15 O. That Defendant further be enjoined to cease and desist from unfair competition in
16 violation of section 17200 et seq. of the California Business and Professions Code;
17 P. That Defendant be enjoined from further acts of restraint of trade or unfair competition;
18 Q. For attorneys' fees;
19 R. For Liquidated Damages;
20 S. For interest accrued to date;
21 T. For costs of suit and expenses incurred herein; and
22 U. For any such other and further relief as the Court deems just and proper.
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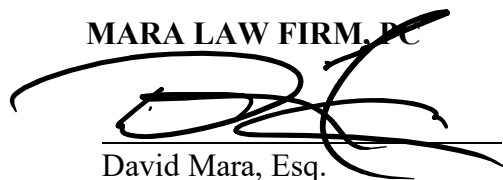
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DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

Dated: September 9, 2020

MARA LAW FIRM, PC

A large, stylized handwritten signature in black ink, appearing to read 'DM', is written over the firm name and extends across the names of the attorneys below.

David Mara, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiff KEITH DAVIS on behalf of
himself, all others similarly situated, and on behalf of
the general public.