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Attorneys for Plaintiff and the Proposed Class

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

ADRIAN SANCHEZ, an individual, on
behalf of himself and others similarly situated

PLAINTIFF,

v.

K & D LANDSCAPING, INC.; and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO. 20CV370601

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
3. Violation of Labor Code § 226(a)
4. Penalties Pursuant to Labor Code § 203
5. Violation of Business & Professions Code § 17200
6. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff ADRIAN SANCHEZ, an individual, on behalf of himself, all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under Labor Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter “PAGA”),
4 complains of Defendant K & D LANDSCAPING, INC. (“Defendant”), and each of them, as
5 follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure
9 §382, and Labor Code §2699, et seq., on behalf of Plaintiff and a Proposed Class defined as:

10 All persons who are employed or have been employed as an hourly
11 employee by K & D LANDSCAPING, INC., in the State of
12 California who worked one or more pay periods since four (4) years
13 prior to the filing of this action to the present plus any additional
14 time during which the statutes of limitation for the causes of action
herein were tolled pursuant to Emergency Rule 9 of the California
Rules of Court, the ‘Emergency Rules Related to COVID-19’
 (“Proposed Class”)

15 2. From at least four (4) years prior to the filing of this action and continuing to the
16 present, Defendant has had a consistent policy of failing to pay wages and/or overtime to all
17 Proposed Class members when the Proposed Class Member works more than eight hours in a day
18 or forty hours in a week. Plaintiff and other Proposed Class members were not properly
19 compensated for all hours worked at the appropriate rate of pay.

20 3. For at least four (4) years prior to the filing of this action and continuing to the
21 present, Defendant has failed to reimburse Plaintiff and the Proposed Class for their personal
22 cellphone usage and mileage while working.

23 4. For at least one (1) year prior to the filing of this action continuing to the present,
24 Defendant has failed to issue wage statements that include the address of the legal entity that is the
25 employer. Furthermore, as a result of Defendant’s failure to pay wages as described above,
26 Plaintiff and the Proposed Class are issued wage statements in violation of Labor Code §226(a)(2)
27 and do not accurately show the number of total hours worked at each applicable hourly rate in
28 effect during the pay period and the corresponding number of hours worked at each hourly rate by

1 Plaintiff and the Proposed Class in violation of Labor Code §226(a)(9).

2 5. For at least three (3) years prior to the filing of this action continuing to the present,
3 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
4 the Proposed Class.

5 6. Plaintiff, on behalf of himself and all Proposed Class members brings this action
6 pursuant to Labor Code §§201, 202, 203, 226(a), 510, 1194, 1199, 2802, and IWC Wage Order 5-
7 2001, seeking unpaid wages/overtime, unreimbursed expenses, accurate itemized wage
8 statements, other penalties, injunctive and other equitable relief, and reasonable attorneys' fees
9 and costs.

10 7. Plaintiff, on behalf of himself and all Proposed Class members, pursuant to
11 Business & Professions Code §§17200-17208, also seeks injunctive relief, restitution, and
12 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

13 8. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
14 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
15 PAGA and continuing to the present, Defendant has violated several Labor Code provisions, as
16 detailed below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of himself and all
17 aggrieved employees presently or formerly employed by Defendant during the liability period as
18 defined in their PAGA notice letter (*see* Exhibit "1"), brings this representative action pursuant to
19 Labor Code §2699, et seq. seeking penalties for Defendant's failure to pay wages and/or overtime,
20 failure to reimburse expenses, failure to provide accurate itemized wage statements, and failure to
21 pay all wages due upon termination.

22 **II.**

23 **JURISDICTION AND VENUE**

24 9. This Court has subject matter jurisdiction over all causes of action asserted herein
25 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
26 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
27 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
28 State of California or is subject to adjudication in the courts of the State of California.

1 10. This Court has personal jurisdiction over Defendant because Defendant has caused
2 injuries in the County of Santa Clara and the State of California through their acts, and by their
3 violation of the California Labor Code, California state common law, and California Business &
4 Professions Code §17200, *et seq.*

5 11. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
6 Civil Procedure §395. Defendant operates within California and does business within Santa Clara
7 County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class
8 members within the State of California and the county of Santa Clara.

9 12. This case should be classified as complex according to Rule 3.400 of the California
10 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
11 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive
12 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
13 require substantial post judgment judicial supervision.

14 **III.**

15 **PARTIES**

16 **A. PLAINTIFF**

17 13. Plaintiff ADRIAN SANCHEZ is a resident of California and performed work for
18 Defendant in the County of Santa Clara as an hourly employee.

19 14. Plaintiff and all Proposed Class members, were regularly required to:
20 a. Work without being paid for all hours at the appropriate rate;
21 b. Work without being reimbursed for personal cellphone usage and mileage
22 and,
23 c. Work without being provided itemized wage statements in writing that
24 show the address of the legal entity that is the employer; and accurately report all hours worked
25 and the corresponding rate of pay for all hours.

26 15. Defendant willfully failed to compensate Plaintiff and all Proposed Class members
27 for wages at the termination of employment.

28 16. As a result of this conduct, Defendant has engaged in unfair competition and

1 unlawful business practices.

2 17. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA
3 are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (*see* Labor Code
4 §2699(c).)

5 **B. DEFENDANTS**

6 18. Defendant K & D LANDSCAPING, INC. is believed to be a California corporation
7 operating within the State of California. Defendant’s corporate address is believed to be 62-C
8 Hangar Way, Watsonville, CA 95076. Upon information and belief, Defendant employed Plaintiff
9 and similarly situated persons as hourly employees within California. Defendant has done and does
10 business throughout the State of California.

11 19. The true names and capacities, whether individual, corporate, associate, or
12 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
13 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
14 §474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
15 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
16 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
17 capacities of the Defendants designated hereinafter as DOES when such identities become known.

18 20. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
19 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
20 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
21 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
22 employer and/or joint employer of Plaintiff and the Proposed Class members.

23 21. Furthermore, Defendants acted in all respects as the employers or joint employers
24 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
25 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
26 engaged, thereby creating a common law employment relationship, with the Proposed Class.
27 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

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1 **IV.**

2 **FACTUAL BACKGROUND**

3 22. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
4 classified as non-exempt employees by Defendant. Defendant hires employees who work are paid
5 on an hourly basis.

6 23. On a regular and consistent basis, Plaintiff and the Proposed Class members were
7 not paid at the proper rate of compensation. Plaintiff and Proposed Class members were not
8 properly compensated for overtime at the appropriate rate of pay because Defendant failed to
9 compensate them at the appropriate overtime rate when they worked over eight hours in one day
10 or forty hours in one week.

11 24. On a regular and consistent basis, Defendant failed to reimburse Plaintiff and the
12 Proposed Class for their personal cellphone usage and mileage that was incurred as a necessary
13 part of the performance of their job duties.

14 25. Defendant has failed to comply with Labor Code §226(a) by failing to provide
15 accurate itemized wage statements that show the address of the legal entity that is the employer
16 and accurately report total hours and applicable rates of pay for Plaintiff and the Proposed Class.

17 26. Defendant willfully failed to pay wages and compensation, when Plaintiff and all
18 Proposed Class members quit or were discharged. This failure was willful, without legal
19 justification, and interfered with Plaintiff's and Class Members' rights.

20 27. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

21 **V.**

22 **CLASS ACTION ALLEGATIONS**

23 28. Plaintiff brings this action on behalf of himself and all others similarly situated as
24 a Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent a
25 proposed class composed of and defined as follows:

26 All persons who are employed or have been employed as an hourly
27 employee by K & D LANDSCAPING, INC., in the State of
28 California who worked one or more pay periods since four (4) years
prior to the filing of this action to the present plus any additional

time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’ (“Proposed Class”)

29. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

30. This action has been brought and may properly be maintained as a class action under the provisions of §382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the Proposed Classes are easily ascertainable.

A. NUMEROSITY

31. The potential members of the Proposed Class as defined are so numerous that joinder of all the members of the Proposed Class is impracticable. While the precise number of Proposed Class members has not been determined at this time, Plaintiff is informed and believes that Defendant currently employs, and during the relevant time periods employed over 50 members of the Proposed Class.

32. Plaintiff alleges that Defendant’s employment records would provide information as to the number and location of all Proposed Class members. Joinder of all members of the Proposed Class is not practicable.

B. COMMONALITY

33. There are questions of law and fact common to the Proposed Class that predominate over any questions affecting only individual Proposed Class members. These common questions of law and fact include, without limitation:

a. Whether Defendant failed to pay wages and/or overtime compensation as required by the Labor Code and Wage Orders under Labor Code §§510, 1194, and 1199;

b. Whether Defendant violated Labor Code §2802 by failing to reimburse out of pocket expenses for the cost of personal cellphone usage and mileage;

c. Whether Defendant violated Labor Code §226(a) by failing to provide accurate itemized wage statements that show the address of the employer and accurately report the total hours worked and the applicable rates for all hours worked;

1 d. Whether Defendant violated §§201-203 of the Labor Code by failing to pay
2 compensation due and owing at the time that any Proposed Class member's employment with
3 Defendant terminated;

4 e. Whether Defendant violated §17200, *et seq.* of the Business & Professions
5 Code by engaging in the acts previously alleged; and

6 f. Whether Plaintiff and the members of the Proposed Class are entitled to
7 equitable relief pursuant to Business & Professions Code §17200, *et seq.*

8 g. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
9 acts alleged herein.

10 **C. TYPICALITY**

11 34. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
12 all members of the Proposed Class sustained injuries and damages arising out of and caused by
13 Defendant's common course of conduct in violation of laws, regulations that have the force and
14 effect of law, and statutes as alleged herein.

15 **D. ADEQUACY OF REPRESENTATION**

16 35. Plaintiff will fairly and adequately represent and protect the interests of the
17 members of the Proposed Class.

18 36. Counsel who represent Plaintiff and the Proposed Class are competent and
19 experienced in litigating large employment class actions.

20 **E. SUPERIORITY OF CLASS ACTION**

21 37. A class action is superior to other available means for the fair and efficient
22 adjudication of this controversy. Individual joinder of all Proposed Class members is not
23 practicable, and questions of law and fact common to the Proposed Class predominate over any
24 questions affecting only individual members of the Proposed Class. Each member of the Proposed
25 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
26 practice of failing to pay all wages due, failing to reimburse expenses, failing to provide accurate
27 itemized wage statements, and failing to pay all wages upon resignation or termination.

28 38. 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.

VI.

FIRST CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

FAILURE TO PAY WAGES AND/OR OVERTIME UNDER

LABOR CODE §§510, 1194, AND 1199

39. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

40. Labor Code §§510, 1194 and 1199 require an employer to compensate its employees at the rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. Plaintiff and the Proposed Class were forced to work on a regular and consistent basis without receiving compensation for all hours worked at the proper rate.

37. Plaintiff and the Proposed Class were not properly compensated for all hours worked because Defendant failed to pay Plaintiff and the Proposed Class for each and every hour worked. Plaintiff and the Proposed Class routinely worked “off the clock” and performed compensable activities after their work shifts for which no pay was provided. Specifically, Defendant required Plaintiff and the Proposed Class to clock out at the end of their working shift via an application on their personal phones, but required them to continue working off the clock. In addition, Defendant sent nightly text messages to Plaintiff and the Proposed Class for which no pay was provided.

41. By their policy of requiring Plaintiff and the Proposed Class to work “off the clock” Defendant failed to pay all wages due at the regular rate of pay and for work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 ½) their regular rate of pay.

42. Defendant willfully violated the provisions of Labor Code §§ 510, 1194 and 1199.

43. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class members have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

VII.

SECOND CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

FAILURE TO REIMBURSE EXPENSES PURSUANT TO

LABOR CODE §2802

44. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

45. Labor Code §2802 requires employers to indemnify employees for or all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

46. Defendant has failed to reimburse Plaintiff and the Proposed Class for the cost of cellular usage for work and mileage used for transportation despite the fact that these expenditures were necessary for the performance of their job duties.

47. Defendant required Plaintiff and the Proposed Class to have an application on their phones to clock in and clock out. Defendant also routinely texted Plaintiff and Proposed Class Members throughout the day and each night.

48. Defendant required Plaintiff and the Proposed Class to incur mileage on their personal vehicles to travel for work.

49. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have been deprived of reimbursement in the amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

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1 **VIII.**

2 **THIRD CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **VIOLATION OF LABOR CODE §226(A)**

5 50. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
6 by reference all previous paragraphs.

7 51. Labor Code §226(a)(8) requires employers to issue accurate itemized wage
8 statements in writing that show the name and address of the employer. Here, Defendant issues
9 Plaintiff and the Proposed Class Members itemized wage statements that do not show the
10 employer's address.

11 52. Labor Code §226(a) requires employers to issue accurate itemized wage
12 statements in writing that show total hours worked by the employee and all applicable hourly rates
13 in effect during the pay period and the corresponding number of hours worked at each hourly rate
14 by the employee. (Labor Code §§ 226(a)(2) and (9) respectively.) As a result of Defendant's
15 failure to pay wages, Defendant issues Plaintiff and the Proposed Class Members itemized wage
16 statements that do not accurately show total hours worked or all applicable hourly rates in effect
17 during the pay period and the corresponding number of hours worked at each hourly rate.

18 53. Defendant's failure to provide accurate itemized wages statements according to
19 Labor Code §226(a) was all done on a regular and consistent basis.

20 54. An employee suffering injury as a result of a knowing and intentional failure by an
21 employer to comply with Labor Code §226(a) is entitled to recover the greater of all actual
22 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
23 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
24 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
25 reasonable attorneys' fees.

26 ///

1 **IX.**

2 **FOURTH CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

5 55. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
6 by reference all previous paragraphs.

7 56. Numerous members of the Proposed Class including the Plaintiff are no longer
8 employed by Defendant. They were either fired or quit Defendant's employ.

9 57. Defendant's failure to pay wages, as alleged above was willful in that Defendant
10 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
11 penalties under Labor Code §203, which provides that an employee's wages shall continue as a
12 penalty until paid for a period of up to thirty (30) days from the time they were due.

13 58. Defendant has failed to pay Plaintiff and others a sum certain at the time of
14 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
15 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code §203, Plaintiff and
16 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class
17 members' daily wage multiplied by thirty (30) days.

18 **X.**

19 **FIFTH CAUSE OF ACTION**

20 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

21 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE §17200**

22 59. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
23 by reference all previous paragraphs.

24 60. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
25 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
26 Business & Professions Code §17200, *et seq.* The conduct of Defendant as alleged in this
27 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
28 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public

1 interest within the meaning of Code of Civil Procedure §1021.5.

2 61. Plaintiff is a “person” within the meaning of Business & Professions Code §17204,
3 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
4 appropriate equitable relief.

5 62. Business & Profession Code §17200, *et seq.* prohibits unlawful and unfair business
6 practices.

7 63. California’s wage and hour laws express fundamental public policies. Providing
8 employees with proper wages and compensation are fundamental public policies of this State and
9 of the United States. Labor Code §90.5(a) articulates the public policies of this State to enforce
10 vigorously minimum labor standards, to ensure that employees are not required or permitted to
11 work under substandard and unlawful conditions, and to protect law-abiding employers and their
12 employees from competitors who lower their costs by failing to comply with minimum labor
13 standards.

14 64. Defendant has violated statutes and public policies as alleged herein. Through the
15 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
16 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
17 business practices in violation of Business & Profession Code §17200, *et seq.*, depriving Plaintiff,
18 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
19 guaranteed to all employees under law.

20 65. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
21 violation of §17200, *et seq.* of the Business & Professions Code.

22 66. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
23 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
24 §17200, *et seq.* of the Business & Professions Code.

25 67. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
26 others similarly situated have been damaged in a sum as may be proven.

27 68. Unless restrained, Defendant will continue to engage in the unlawful conduct as
28 alleged above. Pursuant to the Business & Professions Code, this court should make such orders

1 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
2 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
3 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
4 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
5 Proposed Class the money Defendant has unlawfully failed to pay.

6 **XI.**

7 **SIXTH CAUSE OF ACTION**

8 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

9 56. Plaintiff, on behalf of himself and all aggrieved employees, realleges and
10 incorporates by reference all previous paragraphs.

11 57. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
12 seeks penalties under Labor Code §2699, et seq use of Defendant's violation of Labor Code §§
13 201, 202, 203, 226(a), 510, 1194, 1199, 2802, and IWC Wage Order 5-2001; and California Code
14 of Regulations, Title 8, Section 11050, which call for civil penalties.

15 58. For each such penalty, Plaintiff and the aggrieved employees are entitled to
16 penalties in an amount to be shown at trial, subject to the following formula:

- 17 a. \$100 for the initial violation per employee per pay period.
18 b. \$200 for each subsequent violation per employee per pay period.

19 59. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
20 twenty-five percent (25%) to the affected employees.

21 60. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
22 LWDA¹ and mailed a letter by certified mail to Defendant K & D LANDSCAPING, INC.'s
23 entity address, which is PO Box 2187 Freedom, CA 95019, as proscribed by the Code on
24 September 22, 2020, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203,
25 226(a), 510, 1194, 1199, 2802. (*see* Exhibit "1.") Plaintiff also obtained an e-filing confirmation
26

27 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/266>).

1 from the LWDA confirming receipt of the notice (*see* Exhibit “2”).

2 61. As no letter evidencing the LWDA’s intention to investigate was received by
3 Plaintiff’s Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
4 action as though the LWDA had not chosen to investigate pursuant to Labor Code
5 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First
6 Amended Class and Representative Action Complaint immediately.

7 **RELIEF REQUESTED**

8 **WHEREFORE**, Plaintiff prays for the following relief:

9 1. For compensatory damages in the amount of unpaid wages and/or overtime not paid
10 to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing of this
11 action to the present as may be proven;

12 2. For compensatory damages in the amount of Plaintiff’s and each Proposed Class
13 Members’ unreimbursed out of pocket expenses necessary in the discharge of his/her duties;

14 3. For penalties pursuant to Labor Code §226(e) for violation of Labor Code §226(a)
15 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
16 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
17 an aggregate penalty of four thousand dollars (\$4,000);

18 4. For penalties pursuant to Labor Code §203 for all employees who were terminated
19 or resigned equal to their daily wage times thirty (30) days;

20 5. An award of prejudgment and post judgment interest;

21 6. An order enjoining Defendant and its agents, servants, and employees, and all
22 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
23 overtime, accurate itemized wage statements, reimbursement expenses, and wages upon
24 termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 510, 1194, 1199, 2802,
25 and IWC Wage Order 5-2001;

26 7. For restitution for unfair competition pursuant to Business & Professions Code
27 §17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

28 8. For penalties under Labor Code §2699, *et seq.* for Defendant’s violation of Labor

Code §§ 201, 202, 203, 226(a), 510, 1194, 1199, 2802, and IWC Wage Order 5-2001.

9. An award providing for payment of costs of suit;

10. An award of attorneys' fees; and

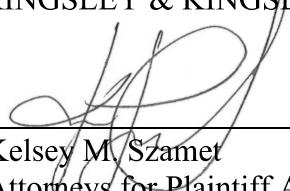
11. Such other and further relief as this Court may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of claims by jury to the extent authorized by law.

DATED: November 30, 2020

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

Attorneys for Plaintiff Adrian Sanchez and the
Proposed Class

EXHIBIT “1”

KINGSLEY & KINGSLEY

| L A W Y E R S |

September 22, 2020

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

K & D Landscaping, Inc.
62-C Hangar Way
Watsonville, CA 95076

K & D Landscaping, Inc.
PO Box 2187
Freedom, CA 95019

Re: ADRIAN SANCHEZ v. K & D LANDSCAPING, INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents ADRIAN SANCHEZ (“Plaintiff”) and a proposed group of current and former employees working for K & D LANDSCAPING, INC. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by K & D LANDSCAPING, INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”)

Defendant has violated Labor Code §§ 510, 1194, and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

Here, Plaintiff and the aggrieved employees were not properly compensated for all hours worked because Defendants failed to pay Plaintiff and the aggrieved employees for each and every hour worked. Plaintiff and the aggrieved employees routinely worked “off the clock” and performed compensable activities after their shifts for which no pay was provided. Specifically, Defendant required Plaintiff and aggrieved employees to clock out at the end of their working shift via an application on their personal phones and were required to continue working off the clock. In

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

September 22, 2020

Page 2 of 3

addition, Defendant texted Plaintiff and aggrieved employees each night when they were off the clock.

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones and mileage for business related purposes. Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones while working for texting and phone calls. This was required and necessary to perform their job duties. These cell phones were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using their personal cell phones. Additionally, Defendant required Plaintiff and the aggrieved employees to use their personal vehicles while working to travel to and from work sites. This travel was necessary for Plaintiff and aggrieved employees to perform their job duties. Defendant failed to reimburse Plaintiff and aggrieved employees for this mileage.

Labor Code §226(a)(8) requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized wage statement in writing showing the name and address of the legal entity that is the employer. Plaintiff and the aggrieved employees are issued wage statements that do not include the address of the legal entity that is the employer.

Labor Code §226(a) requires employers to issue accurate itemized wage statements in writing that show total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. (Labor Code §§ 226(a)(2) and (9) respectively.) As a result of Defendant's failure to pay wages, Defendant issues Plaintiff and the Proposed Class Members itemized wage statements that do not accurately show total hours worked or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Labor Code section 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not paid all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 510, 1194, 1199, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

September 22, 2020

Page **3** of **3**

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: _____

Kelsey M. Szaniet

KMS/jl

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/266>
 2. K & D LANDSCAPING, INC. via USPS Certified Mail # 7015 0640 0003 6595 5444 Watsonville
 3. K & D LANDSCAPING, INC. via USPS Certified Mail # 7015 0640 0003 6595 7479 Freedom

EXHIBIT “2”



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley



(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.

Your Street Name, Number and Suite/Apt *

16133 Ventura Boulevard

Your Mobile Phone Number

818-990-8300

Your City *

Encino

Your Work Phone Number

Your State *

California



Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Adrian Sanchez

Plaintiff/Aggrieved Employee Occupation *

Laborer

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Corporation



Employer Name *

K & D Landscaping, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

62-C Hangar Way

Employer City

Watsonville

Employer State

California



Employer Zip/Postal Code

95076

Employer Industry *

Other



Employer Industry for "Other" *

Landscape

Add additional defendants☒ Add any entity other than an individual☐ Add an individual/sole proprietor employer**Additional Employer Information (Corporation/General Partnership)**

Employer Entity Type

Corporation



Employer Name *

K & D Landscaping, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

PO BOX 2187

Employer City

Freedom

Employer State

California



Employer Zip/Postal Code

95019

Employer Industry *

Other



Employer Industry for "Other" *

Landscape

Add Additional Employers**Notice General Information**

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☐ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☒ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice. Filing fees should be paid by check, made out to LWDA, and sent by regular mail to:

Department of Industrial Relations
Accounting Unit
455 Golden Gate Ave, 10th Floor
San Francisco, CA 94102

The check should be accompanied by a cover letter with sufficient information to identify the notice, including the LWDA case number assigned upon submission of this form.

Parties requesting in forma pauperis status should complete a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form and submit it online with the notice below.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

☒ I declare that I have or will pay the filing fees required by statute [Labor Code section 2699.3(a)(1)(B)] according to the instructions on the PAGA home page, unless I have claimed in forma pauperis by checking the box below.

Notice and Other Attachments**PAGA Claim Notice (must be a .pdf) ***

LWDA Letter- K...ing, Inc..pdf

Other Attachment – (if any) (must be a .pdf)

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

Julie Lewis

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Tuesday, September 22, 2020 9:43 AM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

9/22/2020

LWDA Case No. LWDA-CM-807232-20
Law Firm : Kingsley & Kingsley
Plaintiff Name : Adrian Sanchez
Employer: K & D Landscaping, Inc.

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

KINGSLEY & KINGSLEY

| L A W Y E R S |

September 22, 2020

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

K & D Landscaping, Inc.
62-C Hangar Way
Watsonville, CA 95076

K & D Landscaping, Inc.
PO Box 2187
Freedom, CA 95019

Re: ADRIAN SANCHEZ v. K & D LANDSCAPING, INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents ADRIAN SANCHEZ (“Plaintiff”) and a proposed group of current and former employees working for K & D LANDSCAPING, INC. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by K & D LANDSCAPING, INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”)

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LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

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LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

September 22, 2020

Page **3** of **3**

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: _____

Kelsey M. Szaniet

KMS/jl

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