

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Barbara Scheper

Hengameh S. Safaei (SBN 248048)  
safaei@proxylawfirm.com  
Rana Nader (SBN 247182)  
nader@proxylawfirm.com  
**PROXY LAW FIRM LLP**  
10880 Wilshire Boulevard, Suite 1101  
Los Angeles, California 90024  
Telephone: (310) 853-8333  
Facsimile: (310) 861-5931

Attorneys for PLAINTIFF ELIAS SANDOVAL,  
on behalf of himself and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ELIAS SANDOVAL, on behalf of himself and  
all other aggrieved employees,

PLAINTIFF,

vs.

H&H NURSERY, INC., a California  
corporation; and DOES 1 through 50,  
inclusive,

DEFENDANTS.

CASE NO.:

**21STCV02865**

**REPRESENTATIVE ACTION**

**COMPLAINT FOR VIOLATION OF THE  
CALIFORNIA PRIVATE ATTORNEYS’  
GENERAL ACT OF 2004, CALIFORNIA  
LABOR CODE § 2698 *et seq.***

**DEMAND FOR JURY TRIAL**

PLAINTIFF ELIAS SANDOVAL (“PLAINTIFF”), on behalf of himself and all other aggrieved  
employees, hereby demands a jury trial, and alleges as follows:

**INTRODUCTION**

1. PLAINTIFF brings this action on behalf of himself and all other aggrieved employees of  
Defendant H&H Nursery, Inc. and DOES 1 through 50, inclusive (collectively, “DEFENDANTS”) to

1 recover civil penalties arising from unpaid wages earned and due, including but not limited to unpaid  
2 and unlawfully calculated overtime compensation, unlawful meal and rest break policies and practices,  
3 failure to pay all wages due to discharged or quitting employees, failure to maintain required records,  
4 failure to provide accurate itemized wage statements, and failure to timely pay wages during  
5 employment.

## 6 **THE PARTIES**

7 2. PLAINTIFF is a resident of the State of California. At all times relevant to this action,  
8 PLAINTIFF was employed by DEFENDANTS in the County of Los Angeles, State of California as an  
9 hourly, non-exempt employee.

10 3. PLAINTIFF is informed and believes, and thereon alleges, that Defendant H&H  
11 NURSERY INC. ("H&H NURSERY") is, and all times relevant to this action was, a corporation  
12 organized and existing under the laws of the State of California. PLAINTIFF is further informed and  
13 believes, and based thereon alleges, that Defendant H&H NURSERY is authorized to transact and  
14 conduct business in the State of California and does transact and conduct business in the State of  
15 California. Further, H&H NURSERY maintains grounds, facilities, and offices in the County of Los  
16 Angeles, State of California. H & H Nursery employed PLAINTIFF and similarly aggrieved persons  
17 within the State of California.

18 4. At this time, the true names and capacities of DOES 1 through 50, inclusive, are unknown  
19 to PLAINTIFF, and PLAINTIFF therefore sues such DEFENDANTS under fictitious names.  
20 PLAINTIFF is informed and believes, and thereon alleges, that each defendant designated as a DOE is  
21 in some manner responsible for the occurrences alleged herein, and that PLAINTIFF and other aggrieved  
22 employees' injuries and damages were proximately caused by the conduct of said DOE defendants.  
23 PLAINTIFF will seek leave of the court to amend this Complaint to allege the true names and capacities  
24 of said DOE defendants when such information is ascertained.

25 5. PLAINTIFF is informed and believes, and based thereon alleges, that at all relevant  
26 times, DEFENDANTS were joint employers of PLAINTIFF and other aggrieved employees.  
27 PLAINTIFF is informed and believes, and thereon alleges, that at all times relevant to this action,

1 DEFENDANTS were the alter egos, predecessors, divisions, affiliates, integrated enterprises, joint  
2 employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents, partners,  
3 joint venturers, and/or guarantors, actual or ostensible, of each other. Each defendant was dominated  
4 by his, her, or its codefendants, and each was the alter ego of the other.

5 6. PLAINTIFF is informed and believes, and based thereon alleges, that in perpetrating the  
6 acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to, and in  
7 furtherance of, their policies and practices of not paying PLAINTIFF and other aggrieved employees all  
8 wages earned and due, through methods and schemes which include, but are not limited to: failing to  
9 pay overtime premiums; failing to provide rest and meal periods; failing to properly maintain records;  
10 failing to provide accurate itemized statements for each pay period; failing to timely pay wages during  
11 employment; and requiring, permitting, or suffering the employees to work off the clock, in violation of  
12 the California Labor Code ("Labor Code") and applicable Industrial Welfare Commission ("IWC")  
13 Wage Order(s).

14 7. PLAINTIFF is informed and believes, and thereon alleges, that each and every one of  
15 the acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS,  
16 each acting as agents and/or employees, and/or under the direction and control of, each of the other  
17 DEFENDANTS, and that said acts and failures to act were within the course and scope of said agency,  
18 employment, and/or direction and control.

19 8. PLAINTIFF is informed and believes, and based thereon alleges, that in accordance with  
20 Labor Code Section 558.1, DEFENDANTS and any person acting on behalf of DEFENDANTS are  
21 liable for violating, or causing to violate, any provision regulating minimum wages or hours and days  
22 of work in any order of the Industrial Welfare Commission, or Labor Code Sections 203, 226, 226.7,  
23 1193.6, or 1194.

#### 24 **JURISDICTION AND VENUE**

25 9. The Superior Court of the State of California has jurisdiction in this matter because  
26 PLAINTIFF is a resident of the State of California, and DEFENDANTS are qualified to do business in  
27 California and regularly conduct business in the State of California.

10. No federal question is at issue because the claims are based exclusively on California state law.

11. Venue is proper in this judicial district and the County of Los Angeles, California because among other things, PLAINTIFF and the other aggrieved employees performed work for DEFENDANTS in the County of Los Angeles; DEFENDANTS maintain grounds, facilities, and offices, and transact business in the County of Los Angeles; DEFENDANTS' unlawful policies, procedures, and practices, which are the subject of this action were applied to PLAINTIFF and other aggrieved employees in the County of Los Angeles; and DEFENDANTS' unlawful acts and omissions occurred in the County of Los Angeles.

## **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

12. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code Sections 2698-2699.5, PLAINTIFF brings this action on behalf of himself and all current and former non-exempt aggrieved employees of DEFENDANTS in the State of California at any time within the period beginning one (1) year and sixty-five (65) days prior to the filing of this action and ending at the time this action settles or proceeds to final judgment (the “PAGA PENALTY PERIOD”).

13. In accordance with Labor Code Section 2699.3, on November 5, 2020, PLAINTIFF gave written notice to the California Labor and Workforce Development Agency (“LWDA”), by filing a PAGA Notice online, a copy of which was sent by certified mail to DEFENDANTS notifying them of the specific provisions of the Labor Code and IWC Wage Order(s) alleged to have been violated, including the facts and theories to support the alleged violations. A copy of PLAINTIFF’S PAGA Notice is attached as Exhibit “1.”

14. The LWDA did not provide notice of its intention to investigate DEFENDANTS' violations within the sixty-five (65) calendar days of the November 5, 2020 postmark date of when the PAGA Notice filed and sent by PLAINTIFF. Since PLAINTIFF has waited more than sixty-five (65) days from the November 5, 2020 postmark date of PLAINTIFF's Page Notice before filing this Civil Action, PLAINTIFF has complied with all of the requirements set forth in Labor Code Section 2699.3 to commence a representative action under the PAGA.

1 **FACTUAL ALLEGATIONS**

2 **Failure to Provide Complaint Meal Periods**

3 **(Labor Code §§ 226.7, 512; IWC Wage Order No. 14, § 11)**

4 15. During the PAGA PENALTY PERIOD, as part of DEFENDANTS' illegal policies,  
5 procedures, and practices to deprive their current and former non-exempt employees all wages earned  
6 and due, DEFENDANTS required, suffered or permitted PLAINTIFF and other aggrieved employees  
7 to take less than the 30-minute meal period, or to work through them, and have failed to otherwise  
8 provide the required complaint meal periods to PLAINTIFF and other aggrieved employees under Labor  
9 Code Sections 226.7 and 512 and IWC Order No. 14-2001, § 11.

10 16. DEFENDANTS further violated Labor Code Sections 226.7 and 512 and IWC Wage  
11 Order No. 14-2001, § 11 by failing to compensate PLAINTIFF and other aggrieved employees who  
12 were not provided with a meal period, in accordance with the applicable IWC Wage Order, one (1)  
13 additional hour of compensation at each employee's regular rate of pay for each workday that a  
14 complaint meal period was not provided.

15 **Failure to Provide Compliant Rest Periods**

16 **(Labor Code §§ 226.7; IWC Wage Order No. 14-2001, § 12)**

17 17. At all relevant times, as part of DEFENDANTS' illegal policies, procedures, and  
18 practices to deprive their current and former non-exempt employees all wages earned and due,  
19 DEFENDANTS failed to provide compliant rest periods to PLAINTIFF and other aggrieved employees  
20 as required pursuant to Labor Code section 226.7, and IWC Wage Order No. 14-2001, § 12.

21 18. DEFENDANTS further violated Labor Code Section 226.7 and IWC Wage Order No.  
22 14- 2001, § 12 by failing to pay PLAINTIFF and other aggrieved employees who were not provided  
23 with a compliant rest period, in accordance with the applicable IWC Wage Order, one (1) additional  
24 hour of compensation at each employee's regular rate of pay for each workday that a compliant rest  
25 period was not provided.

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1 **Failure to Pay Overtime Wages**

2 **(Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 14-2001, § 3)**

3 19. Under Labor Code Sections 510 and 1194 and IWC Wage Order No. 14-2001, § 3,  
4 DEFENDANTS are required to compensate PLAINTIFF and other aggrieved employees for all  
5 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked  
6 in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on  
7 the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours  
8 in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of  
9 work in any workweek.

10 20. PLAINTIFF and other aggrieved employees are current and former non-exempt  
11 employees of DEFENDANTS entitled to the protections of Labor Code Sections 510 and 1194 and IWC  
12 Wage Order No. 14-2001.

13 21. During the PAGA PENALTY PERIOD, DEFENDANTS failed to compensate  
14 PLAINTIFF and other aggrieved employees for all overtime hours worked as required under the  
15 foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay  
16 overtime at one and one-half (1 ½) or double the regular rate of pay as provided by Labor Code Sections  
17 510, 1194, and IWC Wage Order No. 14-2001, § 3; requiring, suffering, or permitting PLAINTIFF and  
18 other aggrieved employees to work off the clock; requiring, permitting, or suffering PLAINTIFF and  
19 other aggrieved employees to work through meal breaks; illegally and inaccurately recording time in  
20 which PLAINTIFF and other aggrieved employees worked; failing to properly maintain PLAINTIFF's  
21 and other aggrieved employees' records; failing to provide accurate itemized wage statements to  
22 PLAINTIFF for each pay period; and other methods to be discovered.

23 22. DEFENDANTS have knowingly and willfully refused to perform their obligations to  
24 compensate PLAINTIFF and other aggrieved employees for all wages earned and all hours worked in  
25 violation of Labor Code Sections 510, 1194 and 1198 and IWC Wage Order No. 14-2001, § 3.

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1                                   **Failure to Pay Minimum Wages**

2                                   **(Labor Code §§ 1194, 1197; IWC Wage Order No. 14-2001, § 4)**

3           23.     Under Labor Code Sections 1194 and 1197 and IWC Wage Order No. 14- 2001, § 4,  
4 payment to an employee of less than the applicable minimum wage for all hours worked in a payroll  
5 period is unlawful.

6           24.     During the PAGA PENALTY PERIOD and in violation of Labor Code Sections 1194  
7 and 1197 and IWC Wage Order No. 14-2001, § 4, DEFENDANTS failed to pay PLAINTIFF and other  
8 aggrieved employees the applicable minimum wages for all hours worked in a payroll period by, among  
9 other things: requiring, suffering, or permitting PLAINTIFF and other aggrieved employees to work off  
10 the clock; requiring, suffering, or permitting PLAINTIFF and other aggrieved employees to work  
11 through meal breaks; illegally and inaccurately recording time in which PLAINTIFF and other  
12 aggrieved employees worked; failing to properly maintain PLAINTIFF's and other aggrieved  
13 employees' records; failing to provide accurate itemized wage statements to PLAINTIFF and other  
14 aggrieved employees for each pay period; and other methods to be discovered.

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

16                                   **(Labor Code § 204)**

17           25.     Under Labor Code Section 204, for all labor performed between the 1st and 15th days of  
18 any calendar month, DEFENDANTS are required to pay their nonexempt employees between the 16th  
19 and 26th day of the month during which the labor was performed. Labor Code Section 204 provides that  
20 for all labor performed between the 16th and 26th days of any calendar month, DEFENDANTS are  
21 required to pay their nonexempt employees between the 1st and 10th day of the following calendar  
22 month.

23           26.     Labor Code Section 204 further provides that all wages earned for labor in excess of the  
24 normal work period shall be paid no later than the payday of the next regular payroll period.

25           27.     During the PAGA PENALTY PERIOD, DEFENDANTS knowingly and willfully failed  
26 to timely pay PLAINTIFF and other aggrieved employees all the wages for labor performed by the next  
27 regular payroll period as required by Labor Code Section 204.

1                                   **Failure to Pay All Wages Due Upon Separation of Employment**

2                                   **(Labor Code §§ 201, 202, 203)**

3           28.     Under Labor Code Sections 201, 202 and 203, DEFENDANTS are required to pay all  
4 earned and unpaid wages to an employee who is discharged. Labor Code Section 201 provides that if  
5 an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge  
6 are due and payable immediately.

7           29.     Under Labor Code Section 202, DEFENDANTS are required to pay all accrued wages  
8 due to an employee no later than 72 hours after the employee quits, unless the employee provided 72  
9 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or  
10 wages at the time of quitting.

11          30.     Labor Code Section 203 provides that if an employer willfully fails to pay, in accordance  
12 with Labor Code sections 201 and 202, any wages of an employee who is discharged or who quits, the  
13 employer is liable for waiting time penalties in the form of continued wages to the employee for up to  
14 thirty (30) days.

15          31.     During the PAGA PENALTY PERIOD and in violation of Labor Code Sections 201 and  
16 202, DEFENDANTS willfully failed to timely pay accrued wages and other compensation to  
17 PLAINTIFF and other aggrieved employees who were discharged or who quit.

18                                   **Failure to Furnish Accurate Itemized Wage Statements**

19                                   **(Labor Code § 226(a); IWC Wage Order No. 14-2001, § 7)**

20          32.     During the PAGA PENALTY PERIOD, DEFENDANTS routinely failed and continue  
21 to fail to provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage  
22 statements in writing showing each employee's gross wages earned, total hours worked, the number of  
23 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all  
24 deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the  
25 name of the employee and only the last four digits of his or her social security number or employee  
26 identification number, the name and address of the legal entity or entities employing PLAINTIFF and  
27 other aggrieved employees, and all applicable hourly rates in effect during each pay period and the

1 corresponding number of hours worked at each hourly rate, in violation of Labor Code Section 226,  
2 subdivision (a) and IWC Wage Order No. 14-2001 § 7.

3 33. During the PAGA PENALTY PERIOD, DEFENDANTS knowingly and intentionally  
4 failed to provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage  
5 statements in accordance with Labor Code Section 226, subdivision (a).

6 34. During the PAGA PENALTY PERIOD, PLAINTIFF and other aggrieved employees  
7 suffered injury as a result of DEFENDANTS' failure to provide timely and accurate itemized wage  
8 statements as PLAINTIFF and other aggrieved employees could not timely and easily determine from  
9 the wage statement alone any of the following: gross wages earned, total hours worked by the employee,  
10 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-  
11 rate basis, all deductions, provided that all deductions made on written orders of the employee may be  
12 aggregated and shown as one item, net wages earned, the inclusive dates of the period for which the  
13 employee is paid, the name of the employee and the last four digits of his or her social security number  
14 or an employee identification number other than a social security number, the name and address of the  
15 legal entity that is the employer and, all applicable hourly rates in effect during the pay period and the  
16 corresponding number of hours worked at each hourly rate by the employee.

17 **Failure to Maintain Accurate Records**

18 **(Labor Code §§ 226(a), 1174(d); IWC Wage Order No. 14-2001, § 7)**

19 35. During the PAGA PENALTY PERIOD, as part of DEFENDANTS' illegal payroll  
20 policies and practices to deprive PLAINTIFF and other aggrieved employees of all wages earned and  
21 due, DEFENDANTS knowingly and intentionally failed to maintain records as required under Labor  
22 Code Sections 226, subdivision (a) and 1174, subdivision (d) and IWC Wage Order No. 14-2001, § 7,  
23 including but not limited to the following records: total daily hours worked by each employee; applicable  
24 rates of pay; all deductions; meal periods; time records showing when each employee begins and ends  
25 each work period; and accurate itemized statements.

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**FIRST CAUSE OF ACTION**  
**VIOLATION OF THE PRIVATE ATTORNEYS' GENERAL ACT**  
**(Labor Code §§ 2698 et seq.)**  
**(AGAINST ALL DEFENDANTS)**

36. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of the allegations in paragraphs 1 through 35, above.

37. PLAINTIFF is an “aggrieved employee” within the meaning of Labor Code Section 2699, subdivision (c), and a proper representative to bring a civil action on behalf of himself and other current and former non-exempt employees of DEFENDANTS under the procedures specified in Labor Code sections 2699.3, because PLAINTIFF was employed by DEFENDANTS and one or more of the alleged Labor Code violations was committed against PLAINTIFF during the PAGA PENALTY PERIOD.

38. PLAINTIFF seeks to recover civil penalties through a representative action permitted by PAGA.

39. Pursuant to Labor Code Sections 2698 through 2699.5, PLAINTIFF seeks to recover civil penalties from DEFENDANTS in a representative action for the violations set forth above which include, but are not limited to, violations of Labor Code Sections 201, 202, 203, 204, 226, subdivision (a), 226.7, 510, 512, 1174, subdivision (d), 1194, 1194.2, 1197, and 1198.

40. Under Labor Code Section 2699, subdivision (a), PLAINTIFF seeks civil penalties based on DEFENDANTS’ violations of Labor Code provisions for which a civil penalty is specifically provided which include, but are not limited to, the following:

- a. Under Labor Code Section 210, DEFENDANTS are subject to a civil penalty in the amount of one hundred dollars (\$100.00) for the initial violation and two hundred dollars (\$200.00) per employee for violations in subsequent pay periods for violations of Labor Code Section 204;
- b. Under Labor Code Section 226.3, DEFENDANTS are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250.00) per aggrieved employee for the initial pay period

1 where a violation occurs and one thousand dollars (\$1,000.00) per aggrieved employee for  
2 violations in subsequent pay periods for violations of Labor Code Section 226, subdivision  
3 (a);

4 c. Under Labor Code Section 558, subdivision (a), “[a]ny employer or other person acting on  
5 behalf of an employer who violates, or causes to be violated, a Section of this chapter or any  
6 provision regulating hours and days of work in any order of the Industrial Welfare  
7 Commission,” including Labor Code Sections 510 and 512, shall be subject to a civil penalty,  
8 in addition to any other penalty provided by law, of fifty dollars (\$50.00) for initial violations  
9 for each employee for each pay period for which the employee was underpaid and one  
10 hundred dollars (\$100.00) for each subsequent violation for each employee for each pay  
11 period for which the employee was underpaid. PLAINTIFF further seeks civil penalties in  
12 amounts sufficient to recover unpaid wages owed to aggrieved employees under Labor Code  
13 Section 558, subdivision (a);

14 d. Under Labor Code Section 1197.1, an employer who pays or causes to be paid to any  
15 employee a wage less than the minimum fixed by an order of the commission, shall be subject  
16 to a civil penalty as follows: for any initial violation that is intentionally committed, one  
17 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the  
18 employee is underpaid; and for each subsequent violation of the same offense, two hundred  
19 fifty dollars (\$250.00) for each underpaid employee for each pay period for which the  
20 employee is underpaid regardless of whether or not the initial violation was intentionally  
21 committed; and

22 e. Under Labor Code Section 1174.5, for violations of Labor Code Section 1174, subdivision  
23 (d), DEFENDANTS are subject to a civil penalty of five hundred dollars (\$500.00).

24 41. PLAINTIFF further seeks civil penalties based on DEFENDANTS’ violations of Labor  
25 Code provisions for which a civil penalty is not specifically provided. Labor Code Section 2699,  
26 subdivision (f) provides that for all Labor Code violations for which a civil penalty is not specifically  
27 provided, the following civil penalties apply: one hundred dollars (\$100.00) for each aggrieved

1 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved  
2 employee per pay period for each subsequent violation.

3 42. PLAINTIFF seeks such civil penalties in accordance with Labor Code Section 2699,  
4 subdivision (f) based on DEFENDANTS' violations of Labor Code provisions for which a civil penalty  
5 is not specifically provided, including but not limited to Labor Code Sections 201, 202, 203, 226.7,  
6 1194, 1197, and 1198.

7 43. PLAINTIFF further seeks reasonable attorneys' fees and costs as allowed by law  
8 including under Labor Code Section 2699, subdivision (g)(1).

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other aggrieved employees,  
11 prays for relief against DEFENDANTS, and each of them jointly and severally, as follows:

- 12 1. For civil penalties according to proof, including but not limited to the amount of any  
13 unpaid wages of PLAINTIFF and all other aggrieved employees and all penalties  
14 authorized under the PAGA including under Labor Code Sections 210, 226.3, 558,  
15 1174.5, 1197.1, and 2699, subdivisions (a) and (f);
- 16 2. For interest at the legal rate as allowed by law including pursuant to Labor Code Sections  
17 218.6, 1194, Civil Code Sections 3287, 3288, and any other applicable provision  
18 providing for prejudgment interest;
- 19 3. For reasonable attorneys' fees and costs as allowed by law including pursuant to Labor  
20 Code Section 2699, subdivision (g) and any other applicable provisions providing for  
21 attorneys' fees and costs; and

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1           4.       For such further and additional relief as allowed by law or which the Court deems just  
2                   and proper.

3       DATED: January 25, 2021

4                               Respectfully submitted,

5                               **PROXY LAW FIRM LLP**

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9                               \_\_\_\_\_  
10                              Hengameh S. Safaei  
11                              Rana Nader  
12                              Attorneys for Plaintiff ELIAS SANDOVAL  
13                              on behalf of himself and all other aggrieved  
14                              employees

15                              **DEMAND FOR JURY TRIAL**

16                              PLAINTIFF hereby demands a jury trial with respect to all issues triable of right by jury.

17       DATED: January 25, 2021

18                               Respectfully submitted,

19                               **PROXY LAW FIRM LLP**

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23                               \_\_\_\_\_  
24                              Hengameh S. Safaei  
25                              Rana Nader  
26                              Attorneys for Plaintiff ELIAS SANDOVAL  
27                              on behalf of himself and all other aggrieved  
28                              employees

## **EXHIBIT 1**



**PROXY LAW FIRM**

10880 Wilshire Boulevard, Suite 1101  
Los Angeles, CA 90024  
Telephone: 310-853-8333  
Facsimile: 310-861-5931

Hengameh S. Safaei, Esq.  
Email: safaei@proxylawfirm.com  
Rana Nader, Esq.  
Email: nader@proxylawfirm.com  
www.proxylawfirm.com

**November 5, 2020**

**VIA CERTIFIED MAIL**

Jeffrey Shibata  
Agent for Service for H&H Nursery, Inc., a California corporation  
13225 Clark Avenue  
Downey, CA 90242

**VIA ONLINE FILING SYSTEM**

PAGA Administrator  
California Labor & Workforce Development Agency (LWDA)  
pagafilings@dir.ca.gov

Re: Elias Sandoval

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE § 2699.3**

Dear Jeffrey Shibata and PAGA Administrator at California Labor & Workforce Development Agency:

This firm represents Elias Sandoval in connection with claims arising from his employment with H&H Nursery, Inc., a California corporation and Does 1 through 10 (collectively, “Employer”). Mr. Sandoval is an “aggrieved employee” as defined by Labor Code § 2699 *et seq.* due to Employer’s violations of the Labor Code set forth below. The purpose of this Notice is to comply with Labor Code § 2699.3 which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

Mr. Sandoval is a full-time employee of H&H Nursery, Inc. (“Employer”) in Lakewood, California. He has been employed for the company for nearly 20 years as a delivery driver and general nursery worker. Pursuant to the California Private Attorneys’ General Act (“PAGA”) Mr. Sandoval seeks to represent and recover civil penalties on behalf of himself and other non-exempt “aggrieved employees” who were subject to the Labor Code violations alleged herein. For purposes of this Notice, “aggrieved employees” includes all of Employer’s current and former non-exempt employees in California who were subject to the following alleged policies and practices within one-year preceding the date of this Notice.

Employer failed to timely provide all legally compliant meal breaks to Mr. Sandoval and other aggrieved employees. Mr. Sandoval and other aggrieved employees did not always get full

30-minute uninterrupted meal breaks. Mr. Sandoval and other aggrieved employees' meal breaks were sometimes interrupted when they were required to load flowers and plants for scheduled deliveries and perform other work duties off-the-clock during meal periods making them invalid because they were not duty-free. Further, Mr. Sandoval and other aggrieved employees' first meal period were often provided after the fifth hour of work also making them non-complaint. For example, Mr. Sandoval often was not provided a meal break until after he completed scheduled deliveries and returned to the nursery after his fifth hour of work. Despite failing to provide Mr. Sandoval and other aggrieved employees with lawful meal periods, Employer did not provide Mr. Sandoval or other aggrieved employees one hour of premium pay for each workday in which a meal period violation occurred as required by Labor Code § 226.7. As such, Employer owes penalties under Labor Code §§ 2699, subdivision (f) and/or 558.

Employer failed to authorize and permit Mr. Sandoval and other aggrieved employees with paid rest breaks. Mr. Sandoval and other aggrieved employees did not always get full 10-minute uninterrupted rest breaks within the first four hours of their shift or major fraction thereof, and each subsequent four hours worked thereafter or major fraction thereof. As with the meal breaks, Mr. Sandoval and other aggrieved employees' rest breaks were interrupted when they were required to, among other things, load plants and prepare for daily projects and scheduled deliveries. As such, Mr. Sandoval and other aggrieved employees were not provided legally compliant rest breaks.

Despite failing to authorize and permit Mr. Sandoval and other aggrieved employees with lawful rest periods, Employer did not provide Mr. Sandoval or other aggrieved employees one hour of premium pay for each workday in which a rest period violation occurred as required by Labor Code § 226.7. As such, Employer owes penalties under Labor Code §§ 2699, subdivision (f) and/or 558.

As a result of Employer's unlawful policies and practices of requiring Mr. Sandoval and other aggrieved employees to perform work off-the-clock during meal periods, as described above, Mr. Sandoval and other aggrieved employees were underpaid all minimum and overtime wages to which they were owed.

As a further result of Employer's failure to pay all minimum and overtime wages, and failure to pay all meal and rest period premium wages, Employer issued unlawful wage statements to Mr. Sandoval and other aggrieved employees, and failed to timely pay Mr. Sandoval and other aggrieved employees all wages owed at the time of their separations from employment.

As set forth above, on information and belief, Employer committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order 14.

#### Meal Period Violations

Employer failed to provide Mr. Sandoval and other aggrieved employees with all required and compliant meal periods due to Employer's meal period policies and/or practices that, on information and belief, failed to provide a timely, duty-free first 30-minute meal period before the end of the fifth hour of work. See Labor Code § 226.7 and 512; Wage Order 14, § 11. Despite its violations, Employer did not pay an additional hour of premium pay to Mr. Sandoval and other aggrieved employees at their respective regular rates of pay for each meal period violation in

accordance with Labor Code § 226.7. As a result, Mr. Sandoval and other aggrieved employees are owed an additional hour of wages at their respective regular rate of compensation for each workday they experienced a meal period violation. Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”)

#### Rest Period Violations

Employer did not authorize and permit Mr. Sandoval and other aggrieved employees to take all paid and duty-free rest periods to which they are legally entitled. Despite its violations, Employer did not pay an additional hour of premium to Mr. Sandoval and other aggrieved employees at their respective regular rates of pay for each rest period violation in accordance with Labor Code § 226.7. Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”). Wage Order No 14, § 12 and Labor Code §§ 226.7, 516, and 558 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. As a result, Mr. Sandoval and other aggrieved employees are owed an additional hour of premium wages at their regular rate of compensation for each workday they experienced a rest period violation.

#### Overtime Wage Violations

Employer was required to pay Mr. Sandoval and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. Labor Code § 1194(a) and 1198; Wage Order No. 14, § 3. According to Labor Code § 510(a), “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” Employer failed to pay all overtime wages due to the fact that it sometimes required Mr. Sandoval and other aggrieved employees to perform work duties while clocked out during meal periods. As a result of Employer’s unlawful policies and/or practices, Mr. Sandoval and other aggrieved employees were deprived of all required overtime wages.

#### Minimum Wage Violations

Employer was required to pay Mr. Sandoval and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour worked. See Labor Code § 1182.12; 1194; 1194.2; 1197; Wage Order 14, § 4. As described above, Employer required Mr. Sandoval and other aggrieved employees to work off-the-clock by performing work during meal and rest breaks. As a result of its unlawful practices, which failed to compensate for all hours worked, Mr. Sandoval and other aggrieved employees were deprived of all required minimum wages.

#### Wage Statement Violations

Employer was required to furnish Mr. Sandoval and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. See Labor Code §§ 226(a) and 1174(d); Wage Order 14, § 7. As a result of Employer's unlawful policies and practices and its failure to pay all overtime wages, all minimum wages, and all meal premium and rest premium pay, Employer maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Sandoval and other aggrieved employees in violation of Labor Code § 226. Employer's failure to comply with its wage statement obligations was knowing and intentional and Mr. Sandoval and other aggrieved employees have suffered injury as a result.

#### Waiting Time Penalties

Labor Code sections 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Employer failed to timely pay the aggrieved employees all of their final wages at the time of their separation, which final pay was to include, but did not include, all overtime and minimum wages and meal and rest period premiums. Employer's failure to pay all final wages due to Mr. Sandoval and other aggrieved employees was willful and thus entitles aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Employer failed to pay their final wages after separation, up to a maximum of 30 days.

As an "aggrieved employee" Mr. Sandoval intends to initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties (including an amount equal to the unpaid wages) resulting from the wage and hour violations described above. Based on information and belief and investigation to date, Employer has committed the following Labor Code violations:

1. Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Sandoval and other aggrieved employees all overtime compensation;
2. Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Sandoval and other aggrieved employees the statutory minimum wage for all hours worked;
3. Labor Code §§ 226.7, 512, and 558 by failing to provide Mr. Sandoval and other aggrieved employees with lawful, timely, and duty-free meal first 30-minute meal period;
4. Labor Code §§ 226.7, 516, and 558 by failing to provide Mr. Sandoval and other aggrieved employees with all lawful, duty-free rest periods;
5. Labor Code §§ 226, *et seq.*, by failing to furnish Mr. Sandoval and other aggrieved employees with accurate and compliant itemized wage statements;
6. Labor Code §§ 201-203 by failing to timely pay all final wages due to Mr. Sandoval and other aggrieved employees upon their separation of employment;
7. Labor Code § 204 by failing to pay Mr. Sandoval and other aggrieved employees all wages earned at least twice during each calendar month; and
8. Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Sandoval and other aggrieved employees.

Pursuant to Labor Code § 2699.3, subdivision (a)(2)(A), please notify us and Employer if the LWDA intends to investigate these alleged violations.

This Notice sets forth the basis of Mr. Sandoval's grievances, rights, and remedies under the Labor Code and the PAGA. To avoid protracted litigation, please let us know by **December 5, 2020** if H&H Nursery, Inc. would like to engage in reasonable efforts to resolve this dispute before Mr. Sandoval initiates civil action.

We appreciate your attention to this matter. Please do not hesitate to contact us if you require any additional information.

Very truly yours,  
PROXY LAW FIRM LLP

A handwritten signature in blue ink, appearing to read 'H. Safaei', with a stylized, cursive script.

Hengameh S. Safaei

cc: H&H Nursery Inc. (via certified mail)