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Attorneys for Plaintiff and the Proposed Classes

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

GRANT WESTBROOK, an individual, on
behalf of himself and others similarly
situated

PLAINTIFF,

v.

C.L.M.P., LTD.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 37-2021-00019187-CU-OE-
CTL

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
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 GRANT WESTBROOK, 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 C.L.M.P., LTD. (“Defendant”) and each of them, as follows:

5 **I.**

6 **INTRODUCTION**

7 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
8 382, and Labor Code §2699, et seq., on behalf of Plaintiff and two Proposed Classes composed of
9 and defined as follows (collectively referred to herein as the “Proposed Classes” or “Proposed
10 Class Members”):

11 All persons who are employed or have been employed as an hourly
12 employee by C.L.M.P., LTD., in the State of California, and who
13 were assigned to work at Adame Landscape, Inc., since four (4)
14 years prior to the filing of this action to the present. (“Proposed
15 Hourly Class”)

16 All persons who were subjected to a temperature check prior to
17 entering the Adame Landscape, Inc., facility, beginning on March
18 19, 2020 to the present. (“Proposed Temperate Check Class”)

19 2. For at least four (4) years prior to the filing of this action continuing to the present,
20 Defendant has had a consistent policy of failing to pay wages and/or overtime to all Proposed
21 Temperate Check Class members when they work more than eight hours in a day or forty hours in
22 a week. Plaintiff and other Proposed Temperate Check Class members were not properly
23 compensated for wages/overtime at the appropriate rate of pay because Defendant required
24 Plaintiff and the Proposed Temperate Check Class to wait and receive a temperature check when
25 entering Defendant’s facility. This time spent waiting was “clocked out” and as such, Plaintiff and
26 the Proposed Temperate Check Class were not compensated at the regular rate of pay when
27 applicable and the overtime rate when applicable.

28 3. From at least four (4) years prior to the filing of this action and continuing to the
present, Defendant has had a consistent policy of failing to inform Proposed Hourly Class members
of their right to take meal periods by way of a lawful policy and requiring Proposed Hourly Class
members within the State of California, including Plaintiff, to work at least five (5) hours without

1 a meal period away from the premises and failing to pay such employees one (1) hour of pay at
2 the employees' regular rate of compensation for each workday that the meal period is not provided
3 or provided after five (5) hours and was not an off the premises meal period as required by
4 California state wage and hour laws.

5 4. For at least one (1) year prior to the filing of this action continuing to the present,
6 Defendant has failed to comply with Industrial Welfare Commission ("IWC") Wage Order 4-2001
7 and Labor Code § 226(a). Plaintiff and the Proposed Classes are issued itemized wage statements
8 that do not correctly show all gross wages earned or all applicable hourly rates in effect during the
9 pay period and the corresponding number of hours worked at each hourly rate by the employee.

10 5. For at least four (3) years prior to the filing of this action continuing to the present,
11 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
12 the Proposed Classes.

13 6. Plaintiff, on behalf of himself and all Proposed Class Members, pursuant to
14 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
15 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

16 7. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
17 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
18 PAGA and continuing to the present, Defendant has violated Labor Code provisions, as detailed
19 below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved
20 employees presently or formerly employed by Defendant during the liability period as defined in
21 her PAGA notice letter (see Exhibit "1"), brings this representative action pursuant to Labor Code
22 §2699, et seq. seeking penalties for Defendant's failure to provide all wages and/or overtime,
23 failure to provide lawful meal and rest breaks, failure to provide accurate itemized wage
24 statements, and failure to provide all wages due at the time of termination.

25 **II.**

26 **JURISDICTION AND VENUE**

27 8. This Court has subject matter jurisdiction over all causes of action asserted herein
28 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure

§ 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

9. This Court has personal jurisdiction over Defendant because Defendant has caused injuries in the County of San Diego and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code § 17200, *et seq.*

10. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California and does business within San Diego County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class Members within the State of California and the county of San Diego.

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

III.

PARTIES

A. PLAINTIFF

12. Plaintiff GRANT WESTBROOK is a resident of California.

13. Plaintiff and all Proposed Class Members, were regularly required to:

- a. Work without being paid for all hours at the appropriate rate;
- b. Work without being provided compliant meal periods where they were free to leave the premises;
- c. Work without being provided accurate itemized wage statements as required by California law.

14. Defendant willfully failed to compensate Plaintiff and all Proposed Class Members for wages at the termination of their employment with Defendant;

1 15. As a result of this conduct, Defendant has engaged in unfair competition and
2 unlawful business practices.

3 16. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA
4 are “aggrieved employees” within the meaning of Labor Code § 2699, et seq. (see Labor Code
5 §2699(c).)

6 **B. DEFENDANTS**

7 17. Defendant C.L.M.P., LTD. is believed to be a San Diego corporation operating
8 within the State of California. Defendant’s corporate address is believed to be 1855 First Ave
9 Suite 300, San Diego, CA 92101. Upon information and belief, Defendant employed Plaintiff and
10 similarly situated persons as hourly employees within California. Defendant has done and does
11 business throughout the State of California.

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

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

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

1 Classes.

2 **IV.**

3 **FACTUAL BACKGROUND**

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

7 22. Upon information and belief, Plaintiff and the Proposed Classes are covered by
8 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
9 Code of Regs. § 11040).

10 23. On a regular and consistent basis, Plaintiff and the Proposed Temperate Check
11 Class members were not paid at the proper rate of compensation. Plaintiff and Proposed Temperate
12 Check Class members were not properly compensated at the regular rate of pay and the overtime
13 rate of pay for hours in excess of eight (8) in one day and/or forty (40) hours in one week. This
14 was because Defendant required Plaintiff and the Proposed Temperate Check Class to wait and
15 receive a temperature check when entering Defendant's facility. This time spent waiting was
16 "clocked out" and as such, Plaintiff and the Proposed Temperate Check Class were not
17 compensated at the applicable rate of pay.

18 24. Plaintiff and all Proposed Hourly Class members have been forced by Defendant
19 to work over five (5) hours in one day without being provided a thirty (30) minute uninterrupted
20 meal break and not being compensated one (1) hour of pay at the regular rate of compensation for
21 each workday that a meal period was not provided or provided after five (5) hours, all in violation
22 of California labor laws, regulations, and Industrial Welfare Commission Wage Orders.
23 Additionally, Defendant failed to inform Plaintiff and the Proposed Hourly Class of their right to
24 take meal periods by way of a lawful policy and failed to permit Plaintiff and the Proposed Hourly
25 Class to leave the premises for their meal periods.

26 25. For at least one (1) year prior to the filing of this action continuing to the present,
27 Defendant has failed to comply with Industrial Welfare Commission ("IWC") Wage Order 4-2001
28 and Labor Code § 226(a). Plaintiff and the Proposed Classes are issued itemized wage statements

1 that do not correctly show all gross wages earned including meal period premiums, if any, or all
2 applicable hourly rates in effect during the pay period and the corresponding number of hours
3 worked at each hourly rate by the employee based on Defendant's failure to compensate at the
4 regular rate of pay when applicable and the overtime rate when applicable.

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

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

9 **V.**

10 **CLASS ACTION ALLEGATIONS**

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

14 All persons who are employed or have been employed as an hourly
15 employee by C.L.M.P., LTD., in the State of California, and who
16 were assigned to work at Adame Landscape, Inc., since four (4)
17 years prior to the filing of this action to the present. ("Proposed
Hourly Class")

18 All persons who were subjected to a temperature check prior to
19 entering the Adame Landscape, Inc., facility, beginning on March
20 19, 2020 to the present. ("Proposed Temperate Check Class")

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

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

27 **A. NUMEROSITY**

28 31. The potential members of the Proposed Classes as defined are so numerous that

joinder of all the members of the Proposed Classes 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 employ, and during the relevant time periods employed over 50 members of the Proposed Classes.

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 Classes is not practicable.

B. COMMONALITY

33. There are questions of law and fact common to the Proposed Classes 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 § 226.7, 512 and IWC Wage Order 4-2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Hourly Class of their right to take meal periods by way of a lawful policy, failing to provide required off-premises meal periods throughout the term of employment, and failing to compensate said employees one (1) hours wages in lieu of meal periods;

c. Whether Defendants violated Labor Code § 226(a) and Wage Order 4-2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing to issue itemized wage statements that accurately show gross wages earned including meal period premiums, if any, 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 because of Defendant's failure to compensate at the regular rate of pay when applicable and the overtime rate when applicable.

d. Whether Defendants violated § 203 of Labor Code by failing to pay compensation due and owing at the time that any Proposed Class Member's employment with Defendant terminated;

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

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

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

7 **C. TYPICALITY**

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

12 **D. ADEQUACY OF REPRESENTATION**

13 35. Plaintiff will fairly and adequately represent and protect the interests of the
14 members of the Proposed Classes.

15 36. Counsel who represent Plaintiff and the Proposed Classes are competent and
16 experienced in litigating large employment class actions.

17 **E. SUPERIORITY OF CLASS ACTION**

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

26 38. Class action treatment will allow those similarly situated persons to litigate their
27 claims in the manner that is most efficient and economical for the parties and the judicial system.
28 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this

1 action that would preclude its maintenance as a class action.

2 **VI.**

3 **FIRST CAUSE OF ACTION**

4 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED TEMPERATURE**

5 **CHECK CLASS**

6 **FOR FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

7 **LABOR CODE §§ 510, 1194, AND 1199**

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

10 40. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal
11 minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that
12 eight hours of labor constitutes a day's work and any work in excess of eight hours in one workday
13 and any work in excess of 40 hours in any one workweek must be compensated at the rate of no
14 less than one and one-half times the regular rate of pay for an employee. Any work in excess of
15 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay.
16 California law also requires that any compensation, including non-discretionary bonuses, must be
17 included in the regular rate of pay.

18 41. Plaintiff and the Proposed Temperature Check Class were forced to work on a
19 regular and consistent basis without receiving compensation for all hours worked at the appropriate
20 rate and Plaintiff and the Proposed Temperature Check Class were not paid at the proper overtime
21 rate when they were working more than eight (8) hours in one day or forty (40) hours in one week.

22 42. Defendant required Plaintiff and the Proposed Temperature Check Class to wait
23 and receive a temperature check when entering Defendant's facility. This time spent waiting was
24 "clocked out" and as such, Plaintiff and the Proposed Temperature Check Class were not
25 compensated at the applicable rate of pay. As such, Plaintiff and the Proposed Temperature Check
26 Class were paid at a regular rate less than the rate required under California law for all work in
27 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek.

28 43. By their policy of requiring Plaintiff and members of the Proposed Temperature

1 Check Class to work off the clock and their failure to include non-discretionary compensation
2 when calculating the regular rate of pay, Defendant willfully violated the provisions of Labor Code
3 §§ 510, 1194, 1194.2 and 1199.

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

8 **VII.**

9 **SECOND CAUSE OF ACTION**

10 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED HOURLY CLASS**

11 **FOR FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

12 **LABOR CODE § 226.7 AND LABOR CODE § 512**

13 45. Plaintiff, on behalf of himself and the Proposed Hourly Class, realleges and
14 incorporates by reference all previous paragraphs.

15 46. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
16 compensation for each meal period the employer fails to provide. Employees are entitled to a first
17 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the
18 first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts
19 over ten (10) hours.

20 47. Employees must be permitted to leave the premises for their meal periods.

21 48. Defendant failed to maintain a policy informing Plaintiff and the Proposed Hourly
22 Class of these rights.

23 49. Plaintiff and the Proposed Hourly Class consistently worked shifts over five (5)
24 hours.

25 50. Defendant required Plaintiff and all members of the Proposed Hourly Class to
26 remain on Defendant's premises for all meal periods.

27 51. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Hourly Class are
28 entitled to damages in an amount equal to one (1) hour of wages per missed or late meal break, per

1 day in a sum to be proven at trial.

2
3 **VIII.**

4 **THIRD CAUSE OF ACTION**

5 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASSES**

6 **FOR VIOLATION OF LABOR CODE § 226(A)**

7 52. Plaintiff, on behalf of himself and the Proposed Classes, realleges and incorporates
8 by reference all previous paragraphs.

9 53. As a result of Defendant's failure to pay wages at the proper regular rate of pay as
10 described above, Defendant violated Labor Code § 226(a) by failing to provide accurate itemized
11 wage statements.

12 54. Labor Code § 226(a)(1) requires that every employer shall semimonthly or at the
13 time of each payment of wages, furnish each of his or her employees, an accurate itemized
14 statement in writing showing all gross wages earned including meal period premiums paid.

15 55. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the
16 time of each payment of wages, furnish each of his or her employees, an accurate itemized
17 statement in writing showing all applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate by the employee.

19 56. Defendant issues Plaintiff and the Proposed Class Members wage statements that
20 do not properly indicate gross wages earned or all applicable hourly rates in effect during the pay
21 period and the corresponding number of hours worked at each hourly rate by the employee because
22 the wage statements fail to include the applicable regular and overtime rates and the number of
23 hours worked at the corresponding rate in violation of Labor Code § 226(a).

24 57. Defendants' failure to provide accurate itemized wages statements according to
25 Labor Code § 226(a) was all done on a regular and consistent basis.

26 58. An employee suffering injury as a result of a knowing and intentional failure by an
27 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
28 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred

1 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
2 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
3 reasonable attorneys' fees.

4 **VIII.**

5 **FOURTH CAUSE OF ACTION**

6 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASSES**

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

8 59. Plaintiff, on behalf of himself and the Proposed Classes, reallege and incorporate
9 by reference all previous paragraphs.

10 60. Numerous members of the Proposed Classes, including Plaintiff GRANT
11 WESTBROOK, are no longer employed by Defendant. He was either fired or quit Defendant's
12 employ.

13 61. Defendant's failure to pay wages, as alleged above was willful in that Defendant
14 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Classes to
15 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
16 penalty until paid for a period of up to thirty (30) days from the time they were due. Defendant has
17 failed to pay Plaintiff and others a sum certain at the time of termination or within seventy-two
18 (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter.
19 Pursuant to the provisions of Labor Code § 203, Plaintiff and the Proposed Classes are entitled to
20 a penalty in the amount of Plaintiffs' and the Proposed Class Members' daily wage multiplied by
21 thirty (30) days.

22 **X**

23 **FIFTH CAUSE OF ACTION**

24 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASSES**

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

26 62. Plaintiff, on behalf of himself and the Proposed Classes, realleges and incorporates
27 by reference all previous paragraphs.

28 63. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,

1 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
2 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
3 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
4 public, and the Proposed Classes. Plaintiff seeks to enforce important rights affecting the public
5 interest within the meaning of Code of Civil Procedure § 1021.5.

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

9 65. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
10 practices.

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

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

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

26 69. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
27 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
28 § 17200, *et seq.* of the Business & Professions Code.

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

71. Unless restrained, Defendant will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendant, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and members of the Proposed Classes the money Defendant has unlawfully failed to pay.

XI

SIXTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.

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

73. As a result of the acts alleged above and specifically incorporated herein, Plaintiff seeks penalties under Labor Code §2699, et seq use of Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199; Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, which call for civil penalties.

74. Plaintiff brings this 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 C.L.M.P., LTD., in the State of California, and assigned to work at Adame Landscape, Inc., who worked one or more pay periods since April 29, 2020 to the present. (“aggrieved employees”).

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

- a. For statutes that specifically provide for a civil penalty, the amount of the penalty provided for by such statute;
- b. For statutes that do not specifically provide for a civil penalty:

i.. \$100 for the initial violation per employee per pay period.

ii. \$200 for each subsequent violation per employee per pay period.

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

77. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the LWDA¹ and mailed a letter by certified mail to Defendant C.L.M.P., LTD.'s entity address, which is 1855 First Ave Suite 300, San Diego, CA 92101, as proscribed by the Code on April 29, 2021, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, and 1199. (see Exhibit "1.") Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice (see Exhibit "2").

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

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

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

2. For compensatory damages in the amount of Plaintiff's and each Proposed Hourly Class Members' hourly wage for each meal period missed or taken late from at least four (4) years prior to the filing of this action to the present as may be proven;

3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)

¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California Labor and Workforce Development Agency / Department of Industrial Relations website (<https://dir.tfaforms.net/308>).

1 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
2 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
3 an aggregate penalty of four thousand dollars (\$4,000);

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

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

7 6. An order enjoining Defendant and its agents, servants, and employees, and all
8 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
9 overtime, meal periods, accurate itemized wage statements, and wages upon
10 termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194,
11 1194.2, 1199, and IWC 4-2001;

12 7. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
13 Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199; Wage Order 4-2001; and California
14 Code of Regulations, Title 8, Section 11040.

15 8. For restitution for unfair competition pursuant to Business & Professions Code
16 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

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

18 10. An award of attorneys' fees; and

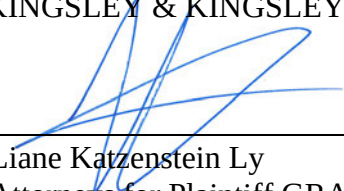
19 11. Such other and further relief as this Court may deem proper and just.

20 **DEMAND FOR JURY TRIAL**

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

22
23 DATED: April 27, 2023

KINGSLEY & KINGSLEY, APC

24
25 By: 

26 Liane Katzenstein Ly
27 Attorneys for Plaintiff GRANT WESTBROOK and
28 the Proposed Classes

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

April 29, 2021

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

C.L.M.P., LTD.
1855 First Ave Suite 300
San Diego, CA 92101

Re: GRANT WESTBROOK v. C.L.M.P., LTD.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents GRANT WESTBROOK (“Plaintiff”) and a proposed group of current and former employees working for C.L.M.P., LTD. (“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 class 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 C.L.M.P., LTD., 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, 1194.2 and 1199. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that eight hours of labor constitutes a day’s work and any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek must be compensated at the rate of no less than one and one-half times the *regular rate of pay* for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the *regular rate of pay*.

Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Defendant required Plaintiff and the aggrieved employees to wait and receive a temperature check when entering Defendant’s facility. This time spent waiting was “clocked out” and as such, Plaintiff and the aggrieved employees were not compensated at the regular rate of pay when applicable and the overtime rate when applicable.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

April 29, 2021

Page 2 of 3

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work. Defendant failed to maintain a policy informing Plaintiff and the Aggrieved Employees of these rights. Likewise, the Wage Orders (4-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Specifically, Defendant maintains an unlawful policy of requiring Plaintiff and the aggrieved employees to remain on Defendant's premises for all meal periods. As such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant meal periods.

As a result of the allegations above, Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which 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 statement in writing showing all gross wages earned and applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant issued Plaintiff and the aggrieved employees itemized wage statements that did not show all gross wages earned including meal period premiums, if any, 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 because of Defendant's failure to compensate at the regular rate of pay when applicable and the overtime rate when applicable. Defendant has violated Labor Code § 226(a) with respect to Plaintiff and all aggrieved employees.

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 upon their separation from Defendant's employ. As such, Plaintiff are aggrieved employees and Defendant failed to pay Plaintiff and all aggrieved employees 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.

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LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

April 29, 2021

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

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), 226.7, 510, 512, 1194, and 1199 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.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Liane Katzenstein Ly

LKL/gm

- Cc: 1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. C.L.M.P., LTD. via USPS Certified Mail #7018 1130 0001 5815 0249

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 *

Liane

Your Last Name *

Ly

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 Blvd Ste 12

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

GRANT WESTBROOK

Plaintiff/Aggrieved Employee Occupation *

Hourly Employee

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Corporation

Employer Name *

C.L.M.P., LTD.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

1855 FIRST AVE SUITE 300

Employer City

SAN DIEGO

Employer State

California



Employer Zip/Postal Code

92101

Employer Industry *

Other



Employer Industry for "Other" *

Asset Management

Add additional defendants

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

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.

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.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

Credit Card Number *

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

 PAGA Letter –P., LTD..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; personal addresses, personal telephone numbers, personal email addresses, 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.

[Previous Page](#)[Submit](#)

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

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Service Email](#)
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation
Date: Thursday, April 29, 2021 10:53:39 AM

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-830713-21

Order Number: ORD-000103917

Total:\$75.00

Card Type: XXXXXXXXXX

Date: 4/29/2021

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Suite 1200

Encino, California

91436

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Service Email](#)
Subject: Thank you for submission of your PAGA Case.
Date: Thursday, April 29, 2021 10:53:26 AM

4/29/2021

LWDA Case No. LWDA-CM-830713-21
Law Firm : Kingsley & Kingsley
Plaintiff Name : GRANT WESTBROOK
Employer: C.L.M.P., LTD.
Filing Fee : \$75.00
IFP Claimed : No

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