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**SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO**

MICHAEL URIBE, individually and on behalf  
of all other similarly situated employees,

Plaintiff,

vs.

ECOGUARD PEST MANAGEMENT, INC.,  
a California Corporation; and  
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2021-00300650

**CLASS ACTION**

**FIRST AMENDED COMPLAINT FOR  
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Meal Period Violations
3. Rest Period Violations
4. Wage Statement Violations
5. Waiting Time Penalties
6. Failure to Reimburse Expenses
7. Unfair Competition
8. Violation of Right to Privacy
9. Private Attorneys General Act

**DEMAND FOR JURY TRIAL**

1 Plaintiff MICHAEL URIBE ("Plaintiff"), on behalf of himself and all other similarly situated  
2 employees, hereby files this Complaint against Defendants ECOGUARD PEST MANAGEMENT,  
3 INC., a California Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to  
4 as "Defendants"). On information and belief, Plaintiff alleges the following:

### 5 INTRODUCTION

6 1. This is a class action and Private Attorneys General Act ("PAGA") representative lawsuit  
7 brought by Plaintiff for failure to pay overtime, meal and rest period violations, wage statement  
8 violations, failure to pay final wages, failure to reimburse expenses, unfair competition, and right to  
9 privacy violations.

### 10 JURISDICTION AND VENUE

11 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to  
12 California Code of Civil Procedure section 410.10 to determine alleged violations of the California  
13 Labor Code, California Business and Professions Code, and Wage Order No. 5.

14 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of  
15 the wrongful acts and violations of law asserted herein occurred within Sacramento County, and  
16 Defendants' obligation to pay wages arose in Sacramento County pursuant to *Madera Police Officers*  
17 *Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

18 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the  
19 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself  
20 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written  
21 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on  
22 approximately April 28, 2021. Plaintiff provided facts and legal bases for his claims within the notice to  
23 the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff  
24 submitted the \$75.00 filing fee. The April 28, 2021 notice was also sent via certified mail to Defendants  
25 on the same day. Plaintiff is informed and believes, that to date, the LWDA has not provided any  
26 response to Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and believes that he  
27 has exhausted all administrative remedied pursuant to the Private Attorneys General Act and may bring  
28 this action on behalf of himself and all similarly situated employees. *See* Cal. Labor Code §

1 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19  
2 (2005).

3 **PARTIES**

4 5. MICHAEL URIBE is an individual over the age of eighteen (18) and is a resident of  
5 the State of California.

6 6. On information and belief, Plaintiff alleges, ECOGUARD PEST MANAGEMENT,  
7 INC., is now and/or at all times mentioned in this Complaint was a California Corporation and the  
8 owner and operator of an industry, business and/or facility doing business in the State of California.

9 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the  
10 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and  
11 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true  
12 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned  
13 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within  
14 the course and scope of such agency or employment. The Defendants are jointly and severally liable to  
15 Plaintiff.

16 8. At all times mentioned herein, each Defendant was the agent or employee of each of the  
17 other Defendants and was acting within the course and scope of such agency or employment. The  
18 Defendants are jointly and severally liable to Plaintiff.

19 9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint  
20 were members of and/or engaged in a joint employment, joint venture, partnership and common  
21 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,  
22 joint venture, partnership and common enterprise.

23 10. Defendants, and each of them, now and/or at all times mentioned in this Complaint  
24 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

25 11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,  
26 wrongs, complaints, injuries and/or damages alleged in this Complaint.

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**CLASS ALLEGATIONS**

12. Plaintiff brings the First through Eighth Causes of Action on behalf of himself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

all of Defendants' non-exempt employees who have worked, or continue to work, for Defendants in California from May 12, 2017 to the present.

all of Defendants' non-exempt employees who have worked, or continue to work, for Defendants in California whose calls were recorded by Defendants through the use of the RingCentral app during calls initiated by Defendants by and through their employees from May 12, 2020 to the present.

13. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as fifty (50) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants had a policy or practice to incorporate the value of bonuses and other nondiscretionary remuneration into Plaintiff's and putative class members' regular rates of pay;
- (2) Whether Defendants failed to pay all overtime wages as a result of their failure to correctly calculate Plaintiff's and putative class members' regular rates of pay;

- 1 (3) Whether Defendants failed to pay all sick time as a result of their failure to  
2 correctly calculate Plaintiff's and putative class members' regular rates of pay;  
3 (4) Whether Defendants failed to provide paid sick time in accordance with Labor  
4 Code 246, which provides that employers must provide employees with at least  
5 24 hours of accrued paid sick time by employees' 120<sup>th</sup> day of employment;  
6 (5) Whether Defendants failed to authorize Plaintiff and putative class members to  
7 take all meal periods;  
8 (6) Whether Defendants failed to authorize Plaintiff and putative class members to  
9 take all rest periods;  
10 (7) Whether Defendants failed to reimburse Plaintiff and putative class members for  
11 expenses incurred for the use of their personal cellphones, car washes for  
12 Defendants' vehicles and laundering uniforms;  
13 (8) Whether Defendants secretly recorded Plaintiff's and putative class members  
14 phone calls;  
15 (9) Whether as a result of Defendants' policies and practices Plaintiff's and putative  
16 class members received all wages, due and owing, at the time of their termination  
17 or separation; and  
18 (10) Whether Defendants provided Plaintiff's and putative class members with wage  
19 statements that complied with Labor Code section 226.

20 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative  
21 class. The putative class also sustained damages arising out of Defendants' common  
22 course of conduct in violation of the law as complained of herein. Plaintiff and all  
23 members of the putative class did not receive all wages owed to them as a result of  
24 Defendants failure to accurately calculate regular rates of pay to include all  
25 nondiscretionary remuneration, did not receive legally compliant meal and rest periods,  
26 were not reimbursed for work expenses incurred, were not paid all final wages owed  
27 upon termination or separation, and had their phones conversations secretly recorded.  
28 Additionally, Defendants issued Plaintiff and all members of the putative class wage

statements that did not comply with Labor Code section 226. As a result, Plaintiff and each member of the putative class will have suffered the same type of harm and seek the same type of recovery based on the same legal theories.

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. For all relevant times, Plaintiff resided in California and worked for Defendants in California. Moreover, Plaintiff is an adequate representative of the putative class as Plaintiff has no interests that are adverse to those of putative class members. Additionally, Plaintiff has retained counsel who has substantial experience in complex civil litigation and wage and hour matters.

(e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the putative class is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the class may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

14. 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.

#### **GENERAL ALLEGATIONS**

15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully set forth herein.

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1           16. Plaintiff worked for Defendants, a pest control company, from approximately July 8,  
2 2020 to February 23, 2021. Plaintiff traveled between multiple of Defendants' customer's homes each  
3 day performing pest control services or pest elimination.

4           17. Defendants paid Plaintiff and similarly situated employees an hourly rate in addition to  
5 bonuses, commissions, and other nondiscretionary remuneration. However, Defendants failed to  
6 incorporate the value of these bonuses, commissions, and other nondiscretionary remuneration into  
7 Plaintiff's and similarly situated employees' regular rates of pay for the purpose of paying overtime  
8 wages and paid sick time. For example, during Defendants' 9/14/20 to 9/27/20 pay period, Defendants'  
9 paystub reflects that Defendants paid Plaintiff a flat sum bonus of \$250 and that he worked 30.95  
10 overtime hours and 1.5 double time hours. Defendants paid Plaintiff's overtime wages at exactly 1.5x  
11 his base hourly rate and his double time wages at exactly 2x his base hourly rate, which does not include  
12 any adjustment for the value of the \$250 flat sum bonus. This resulted in unpaid overtime and unpaid  
13 sick leave for Plaintiff and similarly situated employees.

14           18. Defendants did not authorize and permit Plaintiff and similarly situated employees to take  
15 all meal and rest periods owed to them. Defendants scheduled Plaintiff and similarly situated employees  
16 for back-to-back pest control appointments without providing any breaks in the schedule to take meal  
17 and rest periods. Defendants required Plaintiff and similarly situated employees to clock out for lunch  
18 even on occasions when they did not receive an uninterrupted full thirty (30) minute meal period.  
19 Additionally, Defendants did not have any policy for employees to take a second lunch or third rest  
20 break when they worked shifts longer than ten (10) hours. Additionally, Defendants did not have any  
21 policy for employees to take a second lunch when working longer than ten (10) hours or a rest break for  
22 every four (4) hours or major fraction thereof. Defendants' policies stated employees were only  
23 authorized to take one 30-minute meal period if they worked longer than five (5) hours in a workday and  
24 that employees were authorized for up to two rest periods a day, one (1) for every four hours (not every  
25 four (4) hours or major fraction thereof).

26           19. Defendants required Plaintiff and similarly situated employees to enter into employment  
27 contracts that included illegal terms of employment. For instance, Defendants required Plaintiff and  
28 similarly situated employees to agree not to compete with Defendants even after their employment

1 ended and agree to offsets and deductions against wages for unreturned property at the time of  
2 termination or separation, for paying fines, or for paying other assessments without regard for whether  
3 they were caused by a dishonest or willful act, or by the gross negligence of the employee. Defendants  
4 knew these terms were illegal as California law clearly prohibits noncompete agreements, offsets against  
5 final wages, and charges against the employee in the absence of a dishonest or willful act or gross  
6 negligence.

7 20. Defendants paid sick time policy did not provide Plaintiff and similarly situated  
8 employees with at least 24 hours of accrued sick time by their 120<sup>th</sup> day of employment. For example,  
9 Plaintiff's first day of employment was 7/8/20. 120 days after 7/8/20 is 11/5/20. Defendants did not  
10 provide Plaintiff with a full 24 hours of paid sick time until his 12/21/20 to 1/3/21 pay period.

11 21. Defendants required Plaintiff and similarly situated employees to incur expenses for work  
12 without paying reimbursement for such expenses. For instance, Defendants required Plaintiff and  
13 similarly situated employees to use their personal cellphones for work, pay for car washes for  
14 Defendants' vehicles and pay to launder uniforms provided by Defendants. Plaintiff and similarly  
15 situated employees were specifically told that any company credit card was not for paying for car  
16 washes and that employees were expected to cover that cost. Additionally, Plaintiff and similarly  
17 situated employees were told they should use their personal cell phone to run company required  
18 applications because the available company tablets would regularly be unresponsive or experience  
19 substantial delays in running the pest route application that would cause employees to be substantially  
20 late to their next scheduled appointments. Defendants did not reimburse Plaintiff or similarly situated  
21 employees for these expenses.

22 22. Defendants required Plaintiff and similarly situated employees to download an app onto  
23 their personal cellphones called RingCentral. Defendants required Plaintiff and similarly situated  
24 employees to use this app to keep track of their time and to contact Defendants' customers. No  
25 notifications about the calls being recorded were given when the calls were outgoing to customers.  
26 Defendants used the RingCentral app to secretly record Plaintiff's and putative class members' calls.  
27 Defendants did not inform Plaintiff, its employees, or its customers that such calls were being recorded.  
28 Plaintiff and Defendants' employees used their personal cellphones to make these calls.

23. Defendants failed to provide Plaintiff and similarly situated employees with accurate wage statements. The wage statements Defendants provided did not accurately itemize employees' gross and net wages, meal and rest period premiums, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

24. At the time of Plaintiff's and similarly situated employees' termination or separation, Plaintiff and similarly situated employees had overtime, sick time, and meal and rest period premiums owing to them. As of the date of this letter, Defendants have not paid Plaintiff and similarly situated employees these wages they are owed.

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION** **FAILURE TO PAY OVERTIME WAGES** **(As to all Defendants)**

25. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 24 as though fully set forth herein.

26. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 5, section (3)(A); Cal. Lab. Code §§ 510, 1194.*

27. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours worked at their regular rate of pay.

28. Plaintiff and similarly situated employees were not exempt from overtime protections employees under the California Wage Orders and Labor Code.

29. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

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**SECOND CAUSE OF ACTION**  
**MEAL PERIOD VIOLATIONS**  
**(As to all Defendants)**

30. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 29 as though fully set forth herein.

31. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

32. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 5, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

33. California Labor Code section 512 and Wage Order No. 5 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

34. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and similarly situated employees to take their second meal period before the completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods throughout their employment.

35. Defendants further failed to pay Plaintiff and similarly situated employees the applicable meal period premiums for any such missed meal breaks.

36. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

**THIRD CAUSE OF ACTION**  
**REST PERIOD VIOLATIONS**  
**(As to all Defendants)**

37. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 36 as though fully set forth herein.

38. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

39. California Labor Code section 226.7 and Wage Order No. 5, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

40. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

41. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods.

42. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

**FOURTH CAUSE OF ACTION**  
**WAGE STATEMENT VIOLATIONS**  
**(As to all Defendants)**

43. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 42 as though fully set forth herein.

44. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

*(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and*

1 *the last four digits of his or her social security number or an employee*  
2 *identification number other than a social security number, (8) the name*  
3 *and address of the legal entity that is the employer and, if the employer is*  
4 *a farm labor contractor, as defined in subdivision (b) of Section 1682, the*  
5 *name and address of the legal entity that secured the services of the*  
6 *employer, and (9) all applicable hourly rates in effect during the pay*  
7 *period and the corresponding number of hours worked at each hourly rate*  
8 *by the employee. The deductions made from payment of wages shall be*  
9 *recorded in ink or other indelible form, properly dated, showing the*  
10 *month, day, and year, and a copy of the statement and the record of the*  
11 *deductions shall be kept on file by the employer for at least three years at*  
12 *the place of employment or at a central location within the State of*  
13 *California.*

14 45. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an  
15 itemized statement or failed to provide an accurate and complete itemized statement showing the  
16 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not  
17 accurately itemize all applicable hourly rates in effect during the pay period, all overtime and double  
18 time hours worked and corresponding rates of pay, and gross and net wages earned. Plaintiff and  
19 similarly situated employees were not able to promptly and easily determine whether they were paid  
20 correctly from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered  
21 confusion over whether they received all wages owed and were prevented from effectively  
22 challenging information on their wage statements.

23 46. As a proximate result of Defendants' conduct, Plaintiff and similarly situated  
24 employees have been damaged as stated in the section below entitled "DAMAGES," which is  
25 incorporated here to the extent pertinent as if set forth here in full.

26 **FIFTH CAUSE OF ACTION**  
27 **WAITING TIME PENALTIES**  
28 **(As to all Defendants)**

47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully  
set forth herein.

48. An employer must pay an employee who is terminated all unpaid wages immediately  
upon termination. *See Cal. Lab. Code § 201.*

49. An employer must pay an employee who resigns all unpaid wages within seventy-two  
(72) hours of their resignation. *See Cal. Lab. Code § 202.*

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1       50. Plaintiff and similarly situated employees did not receive all wages, including overtime  
2 wages, meal and rest period premiums, or all sick leave pay owed at their termination or within the  
3 required time after their separation from employment.

4       51. An employer who willfully fails to pay an employee wages in accordance with California  
5 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)  
6 days. *See* Cal. Lab. Code § 203.

7       52. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'  
8 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff  
9 and similarly situated employees were being paid bonuses and overtime and paid sick time without  
10 being paid the correct regular rate of pay. Such conduct shows Defendants had knowledge of earned,  
11 but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages  
12 owed.

13       53. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees  
14 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by  
15 thirty (30) days for Defendants' failure to pay all wages due.

16  
17                   **SIXTH CAUSE OF ACTION**  
                  **FAILURE TO REIMBURSE EXPENSES**  
                  **(As to all Defendants)**

18       54. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 53 as though fully  
19 set forth herein.

20       55. California Labor Code section 2802(a) states that "An employer shall indemnify his or  
21 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of  
22 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even  
23 though unlawful, unless the employee, at the time of obeying the directions, believed them to be  
24 unlawful."

25       56. Defendants required Plaintiff and similarly situated employees to use their personal  
26 phones, get Defendants' cars washed, and launder uniforms but failed to reimburse them for such  
27 expenses.

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57. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

**SEVENTH CAUSE OF ACTION**  
**UNFAIR COMPETITION**  
**(As to ECOGUARD PEST MANAGEMENT, INC. and DOES 1 to 100)**

58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 57 as though fully set forth herein.

59. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions (“B&P”) Code § 17200.

60. Plaintiff and similarly situated employees were not paid all wages owed, including overtime wages, and meal and rest period premiums, and paid sick leave during their employment or any time thereafter.

61. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

62. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

**EIGHTH CAUSE OF ACTION**  
**VIOLATION OF RIGHT TO PRIVACY**  
**(As to ECOGUARD PEST MANAGEMENT, INC. and DOES 1 to 100)**

63. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 62 as though fully set forth herein.

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64. California Penal Code section 630 *et seq.* provides that it is illegal to eavesdrop (monitor) and record telephonic communications or to record without consent cell phone communications. *See* California Penal Code §§ 632, 632.7, 637.2.

65. Defendants used the RingCentral app to secretly record phone conversations between its employees and its customers. Defendants' recording of these conversations was intentional as Defendants utilized these recordings to monitor phone conversations between its employees and customers. Plaintiff and putative class members reasonably expected their phone conversations to be private as Plaintiff and Defendants' employees used their personal cellphones to contact Defendants' customers and Plaintiff and putative class members were not informed that the calls were being monitored or recorded. Plaintiff and putative class members did not consent to Defendants recording their calls.

66. As a proximate result of Defendants' conduct, Plaintiff and putative class members have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

**NINTH CAUSE OF ACTION**  
**PRIVATE ATTORNEYS GENERAL ACT**  
**(As to all Defendants)**

67. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 66 as though fully set forth herein.

68. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with him and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code § 432.5 (Requiring Agreement In Writing to Illegal Employment Terms)
- Violation of Labor Code §§ 221, 223, 225 (Failure to Pay Contract Wages and Unlawful Deductions)

69. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

70. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

### **DAMAGES**

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
  - a. Wages in an amount to be proven at trial;
  - b. Interest for the wages due pursuant to California Labor Code section 1194;
  - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
  - a. Wages in an amount to be proven at trial;
  - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
4. As to the Third Cause of Action:
  - a. Wages in an amount to be proven at trial;

- 1                   b.     Attorney's fees, costs and interest pursuant to California Code of Civil Procedure  
2                         section 1021.5;
- 3       5.     As to the Fourth Cause of Action:
- 4             a.     Penalties as provided for in Labor Code section 226, including the greater of all  
5                         actual damages or fifty dollars (\$50.00) for the initial pay period in which the  
6                         violation occurred and one hundred dollars (\$100.00) per employee for each  
7                         violation in the subsequent pay periods, but not to exceed four thousand dollars  
8                         (\$4,000.00);
- 9             b.     For reasonable attorney's fees and costs incurred pursuant to Labor Code section  
10                         226(e);
- 11       6.     As to the Sixth Cause of Action:
- 12             a.     An amount to be proven at trial;
- 13             b.     For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);
- 14       7.     As to the Eighth Cause of Action:
- 15             a.     An amount to be proven at trial;
- 16             b.     The greater of five thousand dollars (\$5,000.00) per violation or three times the  
17                         amount of actual damages sustained;
- 18       8.     As to the Ninth Cause of Action:
- 19             a.     For civil penalties as provided for in the Labor Code for each enumerated  
20                         violation in an amount proven at trial;
- 21             b.     For those Labor Code sections, the violation of which there is no civil penalty  
22                         provided, the default penalty provided in Labor Code section 2699(f): for any  
23                         initial violation, one hundred dollars (\$100) for each aggrieved employee per pay  
24                         period; For any subsequent violation, two hundred dollars (\$200) for each  
25                         aggrieved employee per pay period;
- 26             c.     Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 27             d.     For any other remedies as allowed by law and/or deemed appropriate by the  
28                         Court;

- 1           9.     For such other and further relief as this Court may deem just and proper,  
2                 including, but not limited to:  
3                 a.     Wages as proved at trial;  
4                 b.     Injunctive and Declaratory relief;  
5                 c.     Attorney's fees and costs as provided for by law; and  
6                 d.     Interest.

7  
8     Dated: August 27, 2021

**Shimoda Law Corp.**

9  
10  
11     By: \_\_\_\_\_

Galen T. Shimoda  
Justin P. Rodriguez  
Brittany V. Berzin  
Attorneys for Plaintiff

1 *Uribe v Ecoguard Pest Management, Inc.*  
2 *Sacramento County Superior Court of California 34-2021-00300650*

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**  
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Erika F. Collazo, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the  
7 within above-entitled action.

8 On August 30, 2021, I served the following documents on the party below:

- 9 • First Amended Complaint for Damages

|                                                                                                                                                                                                               |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 10 Coby Turner (SBN: 266298)<br>11 Seyfarth Shaw LLP<br>12 400 Capitol Mall Ste. 2350<br>13 Sacramento, California 95814<br>Phone: (916) 448-0159<br>Facsimile: (916) 288-6333<br>Email: cturner@seyfarth.com |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

14 [XXX] [By Mail] I am familiar with my employer's practice for the collection and  
15 processing of correspondence for mailing with the United States Postal  
16 Service and that each day's mail is deposited with the United States Postal  
17 Service that same day in the ordinary course of business. On the date set forth  
18 above, I served the aforementioned document(s) on the parties in said action  
by placing a true copy thereof enclosed in a sealed envelope with postage  
thereon fully prepaid, for collection and mailing on this date, following  
ordinary business practices, at Elk Grove, California, addressed as set forth  
above.

19 [ ] [By Personal Service] By personally delivering a true copy thereof to the  
20 office of the addressee above.

21 [ ] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown  
22 above. No error was reported by the e-mail service that I used.

23 [ ] [By Overnight Courier] By causing a true copy and/or original thereof to be  
24 personally delivered via the following overnight courier service: \_\_\_\_\_.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
26 true and correct, and that this declaration was executed on August 30, 2021, at Elk Grove, California.

27   
28 Erika F. Collazo