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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BENITO

JUL 28 2021
BY 
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BENITO

Daniel Solano, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

THE GROVE, HIGHWAY 156, a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. CU-21-00098

CLASS ACTION

FIRST AMENDED COMPLAINT

1. Failure to Pay Minimum and Overtime Wages
2. Failure to Provide Compliant Meal Periods
3. Failure to Authorize and Permit Compliant Rest Breaks
4. Failure to Provide Accurate Itemized Wage Statements
5. Failure to Pay All Wages Owed Upon Separation
6. Violation of California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*)
7. Violation of the Private Attorneys General Act (Cal. Labor Code §§ 2698, *et seq.*)

DEMAND FOR JURY TRIAL

1 Plaintiff Daniel Solano (hereinafter “Plaintiff” or “Solano”), an individual, on behalf of
2 himself and all other similarly situated current and former employees, alleges on information and
3 belief, except for his own acts and experiences, which are based on personal knowledge, the
4 following:

5 INTRODUCTION

6 1. This is a putative class action brought against Defendant The Grove, Highway 156
7 (hereinafter “Defendant” or “Grove”) for (i) failing to pay minimum and overtime wages at the
8 lawful regular rate of pay for all work performed; (ii) failing to provide compliant, uninterrupted,
9 duty-free meal periods; (iii) failing to provide compliant duty-free rest breaks; (iv) failing to pay all
10 owed wages each and every pay period; (v) failing to provide accurate, compliant, itemized wage
11 statements; (vi) failing to pay all wages owed upon separation of employment; and, (vii) violation
12 of California’s Unfair Competition Law (“UCL”).

13 2. Plaintiff is a Member of and the named representative for the Class, the Separated
14 Employee Subclass, and the Wage Statement Subclass, as defined in Paragraphs 15-17 below. The
15 term “Class” includes Plaintiff and all other persons who are members of the “Class,” and/or the
16 “Separated Employee Subclass,” and/or the “Wage Statement Subclass,” as herein defined.

17 3. The State of California Private Attorneys General Act of 2004 (“PAGA”) allows for
18 a tolling of the limitations period during the period during which the California Labor and
19 Workforce Development Agency (hereinafter the “LWDA”) is assessing, or the employer may be
20 curing, the alleged violations. Cal. Labor Code § 2699.3(d). On May 21, 2021, pursuant to Labor
21 Code § 2699.3(a)(1), counsel for Plaintiff, on behalf of Solano, provided written notice via online
22 filing with the LWDA and via certified mail, with return-receipt, to the employer / Defendant,
23 alleging violations of the Labor Code and the facts and theories that support the alleged violations.
24 (see **Exhibit 1**, attached hereto and incorporated by this reference herein). Additionally, on May
25 21, 2021, pursuant to Labor Code § 2699.3(a)(1)(B), counsel for Plaintiff, on behalf of Solano,
26 submitted the required filing fee of \$75.00 to the LWDA. (see **Ex. 1**).

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5. Venue is proper in this Court, pursuant to Cal. Code of Civ. Proc. §§ 395 and 395.5, because Plaintiff performed work on behalf of Defendant in the County of San Benito, and Defendant committed the wrongful conduct herein alleged in the County of San Benito against Plaintiff and Members of the Class.

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7. Plaintiff and other hourly, non-exempt employees were not advised that they were allowed to leave the premises during meal periods. On certain occasions management would fictitiously insert meal periods into the time records when meal periods were never actually taken, or taken at the end of their shift (after the 5th hour) to show false compliance with California's meal break laws. Further, on multiple occasions meal periods were taken after the 5th hour, or not provided whatsoever and Defendants failed to provide meal period premium wages for these violations. Additionally, due to work demands and insufficient staffing levels Defendants failed to provide rest breaks to all hourly non-exempt employees.

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1 8. Plaintiff and other hourly, non-exempt employees were advised by management that
2 they should clock-out and perform work activities without receiving wages, including cleaning,
3 taking out the trash, and other work-related activities.

4 9. The Members of the Class are similarly situated persons who are presently
5 employed or were formerly employed by Defendants in California as hourly, non-exempt
6 employees who: 1) were not paid minimum and overtime wages at the lawful rate of pay for all
7 time worked; 2) were not paid all wages due each and every pay period; 3) were not provided with
8 uninterrupted, compliant, duty-free 30-minute meal periods away from the worksite before the
9 conclusion of the 5th hour of work; 4) were not authorized and permitted to take compliant, paid,
10 duty-free 10-minute rest breaks; 5) were not provided with all earned wages upon their separation
11 of employment; and 6) were not provided with accurate itemized wage statements.

12 10. The true names and capacities, whether individual, corporate, associate or otherwise
13 of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown to Plaintiff,
14 who therefore sues these Defendants by such fictitious names, pursuant to Cal. Civ. Proc. Code §
15 474. Plaintiff is informed and believes, and based thereon, alleges that each of the Defendants
16 designated herein is legally responsible in some manner for the unlawful acts referred to herein. To
17 the extent required, Plaintiff will seek leave of Court to amend this Complaint to reflect the true
18 names and capacities of these Defendants, when they have been ascertained and become known.

19 11. The agents, servants and/or employees of Defendants and each of them, acting on
20 behalf of the Defendants, acted within the course and scope of his, her or its authority as the agent,
21 servant and/or employee of the Defendants, and personally participated in the conduct alleged
22 herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the
23 acts of each Defendant are legally attributable to the other Defendants and all Defendants are
24 jointly and severally liable to Plaintiff and the other non-exempt hourly employees, for the loss
25 sustained as a proximate result of the conduct of the Defendants' agents, servants and/or
26 employees.

27 **B. Defendants**

28 12. Defendant The Grove, Highway 156 (hereinafter the "Defendant" or "Grove") is an

1 entity created under the laws of the State of California. At all relevant times mentioned herein,
2 Defendant conducted substantial business in the State of California, County of San Benito. Grove
3 employs approximately 190 employees in California (according to their PPP Loan Request to the
4 Federal Government) and provides food, beverage, and event venue services at multiple locations
5 in California. Defendant was the employer of Plaintiff during his employment as evidenced by his
6 paystubs.

7 13. Plaintiff is ignorant of the true names, capacities, relationships and extent of
8 participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50,
9 but is informed and believes and thereon alleges that said Defendants are legally responsible for the
10 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
11 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants
12 when ascertained.

13 14. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
14 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
15 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
16 attributable to the other Defendants.

17 CLASS ACTION ALLEGATIONS

18 15. Plaintiff brings this action on behalf of himself and all other similarly situated
19 persons as a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a
20 Class composed of defined as follows:

21 **All of Defendants' non-exempt, hourly employees working in the State of**
22 **California at any time since May 21, 2017 through the date as determined by**
23 **the Court ("Class Period") ("Class Members").**

24 16. Plaintiff also seeks to bring this action on behalf of himself and all other similarly
25 situated persons in a Subclass of the Plaintiff Class, which is composed of and defined as follows:

26 **All Class Members whose employment ended at any time since May 21, 2018**
27 **("Separated Subclass Members").**

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1 17. Plaintiff also seeks to bring this action on behalf of himself and all other similarly
2 situated persons in a Subclass of the Plaintiff Class, which is composed of and defined as follows:

3 **All Class Members employed at any time since May 21, 2020**
4 **(“Wage Statement Subclass Members”).**

5 18. This action has been brought and may be maintained as a class action pursuant to
6 Code of Civil Procedure § 382, because there is a well-defined community of interest among many
7 persons who comprise a readily ascertainable class.

- 8 a. The Class Members are so numerous that individual joinder of all of them as
9 plaintiffs is impractical. Although the exact number of Class members is unknown
10 to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that
11 there are not less than 100 Class Members.
- 12 b. The identity of Class Members can readily be determined from Defendants’ records.
13 Defendants’ records include the name and address of every person who performed
14 work for them during the Class Period.
- 15 c. Common questions of law and fact exist as to Class Members and predominate over
16 any questions that may affect only individual Class Members. These common
17 questions include, but are not limited to:
- 18 (1) Did Defendants violate Labor Code §§ 510, 1194, and 1197 by failing to pay
19 Class Members for all minimum and overtime wages at the lawful rate of
20 pay owed to them for all hours during which they were subject to
21 Defendants' control?
- 22 (2) Did Defendants violate Labor Code §§ 226.7 and 512, and I.W.C. Wage
23 Order No. 5-2001 by failing to provide compliant duty-free meal periods, as
24 alleged herein?
- 25 (3) Did Defendants violate Labor Code §§ 226.7 and 512, and I.W.C. Wage
26 Order No. 5-2001 by failing to authorize and permit compliant duty-free paid
27 rest breaks, as alleged herein?

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- (4) Did Defendants fail to provide Wage Statement Subclass Members with accurate, compliant, itemized wage statements?
- (5) Are Defendants liable for civil penalties under Labor Code § 226?
- (6) Should Defendants be enjoined under Labor Code § 226(a), requiring them to provide accurate, compliant, itemized wage statements?
- (7) Did Defendants, in violation of Labor Code § 201 or § 202, fail to pay timely all wages owed to Separated Subclass Members upon separation?
- (8) Did Defendants act willfully when they failed to pay timely all wages owed to Separated Subclass Members upon separation?
- (9) Are Defendants liable for penalty wages under Labor Code § 203?
- (10) Did Defendants violate the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, by their unlawful practices, as alleged herein?
- (11) Did Defendants violate the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, (the "UCL") by failing to pay Plaintiff and Class Members all wages earned each pay period, in violation of Labor Code § 204, as alleged herein?
- (12) Are Defendants liable for restitution under Cal. Bus. & Prof. Code § 17203?
- (13) Should Defendants be subject to an injunction under the UCL, directing them to cease all unfair and/or unlawful business practices that do not comply with the requirements of the California Labor Code and therefore put them at an unfair advantage and instead to comply with the requirements to pay all wages earned, to provide compliant meal periods, to authorize and permit compliant rest breaks, to pay all wages due at the time of separation, and to provide accurate, compliant itemized wage statements?
- (14) Should Defendants be subject to an injunction under Labor Code § 226(h) requiring them to provide compliant, accurate, itemized wage statements?
- (15) Are Defendants liable for pre-judgment interest?
- (16) Are Defendants liable for attorney's fees and costs?

1 d. Plaintiff is a Member of the Class and the Subclasses, and his claims are typical of
2 the claims of the other Class Members and Subclass Members. Plaintiff is informed
3 and believes and thereon alleges that Defendants maintain policies or practices of: 1)
4 failing to pay minimum and overtime wages at the lawful rate of pay for all hours
5 worked; 2) failing to provide compliant meal periods; 3) failing to authorize and
6 permit compliant paid rest breaks; 4) failing to pay employees for all wages earned
7 during each pay period; 5) failing to pay employees all earned wages due upon
8 separation of employment; and/or 6) failing to provide employees with accurate,
9 compliant itemized wage statements.

10 e. Plaintiff will adequately and fairly protect the interests of the Class Members and
11 Subclass Members. Plaintiff has no interest adverse to the interests of absent Class
12 Members and Subclass Members. Plaintiff is represented by legal counsel who has
13 substantial class action experience in civil litigation and employment law.

14 19. A class action is superior to other available means for fair and efficient adjudication
15 of the claims of the Class and would be beneficial for the parties and the court. Class action
16 treatment will allow a large number of similarly situated persons to prosecute their common claims
17 in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and
18 expense that numerous individual actions would require. The monetary amounts due to many
19 individual Class Members are likely to be relatively small, and the burden and expense of
20 individual litigation would make it difficult or impossible for individual members of the Class to
21 seek and obtain relief. A class action will serve an important public interest by permitting such
22 individuals to effectively pursue recovery of the sums owed to them. Further, class litigation
23 prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

24 **FIRST CAUSE OF ACTION**
25 **Failure to Pay Minimum and Overtime Wages**
(By Plaintiff and the Class Members against all Defendants)

26 20. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

27 21. At all relevant times, Plaintiff and the Class Members were employees of
28 Defendants covered by Labor Code §§ 510, 1194, 1197 and I.W.C. Wage Order 5-2001.

1 22. By their failure to pay minimum wages and overtime wages for all time worked,
2 Defendants willfully breached their agreement to pay wages, in violation of Labor Code §§ 510,
3 1194 and 1197 and I.W.C. Wage Order 5-2001.

4 23. Plaintiff is informed and believes and thereon alleges that at all relevant times within
5 the applicable limitations period, Defendants maintained and continue to maintain a policy or
6 practice of requiring non-exempt hourly employees to work off-the-clock (including when
7 Defendants inserted false meal periods and required Plaintiff to perform additional work tasks after
8 having clocked out at the end of his shift), performing various work related activities without
9 paying these employees for this time or counting this time as hours worked, thereby failing to
10 compensate employees properly for all the time they actually worked and were under the
11 employer's control.

12 24. As a result of Defendants' unlawful and willful conduct, employees have suffered
13 damages in an amount, subject to proof, to the extent they were not paid all minimum and overtime
14 wages for all hours actually worked and owed to them under Labor Code §§ 510, 1194 and 1197,
15 and I.W.C. Wage Order 5-2001.

16 25. Pursuant to Labor Code §§ 1194, 1194.2 and 1194.3, Plaintiff and the Class
17 Members are entitled to recover the full amount of unpaid wages, liquidated damages, pre-
18 judgment interest, reasonable attorney's fees and costs of suit.

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20 **SECOND CAUSE OF ACTION**

21 **Failure to Provide Compliant Meal Periods**
 (By Plaintiff and the Class Members against all Defendants)

22 26. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

23 27. At all relevant times, Plaintiff and the Class Members were and/or are employees of
24 Defendants, covered by Labor Code §§ 226.7 and 512, and I.W.C. Wage Order No. 5-2001.

25 28. Pursuant to Labor Code §§ 226.7 and 512, and I.W.C. Wage Order No. 5-2001,
26 Plaintiff and the Class Members are entitled to a meal period of at least thirty (30) minutes for each
27 workday that they worked more than five (5) hours, and a second meal period of at least thirty (30)
28 minutes for each workday they worked more than ten (10) hours, and one additional hour of pay for

1 every day that all required, compliant meal periods are not provided.

2 29. Defendants have failed to provide Plaintiff and the Class Members with compliant
3 meal periods in accordance with Labor Code §§ 226.7 and 512, and I.W.C. Wage Order No. 5-
4 2001. As a result of Defendants' failing to provide meal periods within the first 5 hours of a shift,
5 and on certain occasions failing to provide a meal period whatsoever during the shift, Plaintiff and
6 the Class Members were not provided with compliant duty-free meal periods by Defendants, as
7 mandated under the Labor Code. Further, Defendants undertook a policy and practice of inserting
8 false meal periods into the time recording system to show false compliance with California's meal
9 break laws.

10 30. Defendants failed to provide Plaintiff and the Class Members the additional hour of
11 pay required by Labor Code § 226.7 and I.W.C. Wage Order No. 5-2001. Plaintiff is informed and
12 believes and thereon alleges that at all relevant times within the applicable limitations period,
13 Defendants maintained and continue to maintain a policy or practice of not paying additional pay at
14 the lawful rate of pay to employees for the failure to provide compliant meal periods.

15 31. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
16 suffered damages in an amount, subject to proof, to the extent they were not paid additional wages
17 at the lawful rate of pay owed for the failure to provide compliant meal periods.

18 32. Pursuant to Labor Code § 218, Plaintiff and the Class Members are entitled to
19 recover the full amount of their unpaid additional wages for unprovided meal periods. Pursuant to
20 Labor Code § 218.5, Plaintiff and the Class Members are entitled to recover their reasonable
21 attorney's fees and costs of suit. Pursuant to Labor Code § 218.6 or Civil Code §3287(a), Plaintiff
22 and the Class Members are entitled to recover prejudgment interest on the additional wages owed
23 for missed meal periods at the lawful rate of pay.

24 **THIRD CAUSE OF ACTION**

25 **Failure to Authorize and Permit Compliant Paid Rest Breaks** 26 **(By Plaintiff and the Class Members against all Defendants)**

27 33. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

28 34. At all relevant times, Plaintiff and the Class Members were and/or are employees of
Defendants covered by Labor Code §§ 226.7 and 512, and I.W.C. Wage Order No. 5-2001.

1 35. Pursuant to Labor Code §§ 226.7 and 512 and I.W.C. Wage Order No. 5-2001,
2 Plaintiff and the Class Members are entitled to properly paid duty-free rest breaks of at least ten
3 (10) minutes for each four (4) hour period of work or major fraction thereof and one (1) hour of
4 additional pay for every day that each and every required compliant paid rest break was not
5 authorized and permitted. Further, Plaintiff and the Class Members have been denied their first rest
6 break of at least ten (10) minutes for some shifts worked of at least two and a half (2.5) to four (4)
7 hours, a first and/or second rest break of at least ten (10) minutes for some shifts worked of
8 between six (6) and eight (8) hours, and a first, second, and/or third rest break of at least ten (10)
9 minutes for some shifts worked of ten (10) hours or more.

10 36. Defendants have failed to provide Plaintiff and the Class Members the additional
11 hour of pay required under Labor Code §§ 226.7 and 512 and I.W.C. Wage Order No. 5-2001.
12 Plaintiff is informed and believes and thereon alleges that at times during the applicable limitations
13 period, Defendants maintained and continue to maintain a policy or practice of requiring Plaintiff
14 and Class Members to remain at the assigned worksite location “on-duty” and performing work
15 duties during their supposed “rest breaks.” Defendants failed to provide and continue to fail to
16 properly pay Plaintiff and Class Members at the regular rate of pay for all rest breaks, as required
17 by law.

18 37. As a result of Defendants’ unlawful conduct, Plaintiff and the Class Members have
19 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
20 owed for missed rest breaks at the lawful rate of pay.

21 38. Pursuant to Labor Code § 218, Plaintiff and the Class Members are entitled to
22 recover the full amount of their unpaid additional wages for missed rest breaks. Pursuant to Labor
23 Code § 218.5, Plaintiff and the Class Members are entitled to recover their reasonable attorney’s
24 fees and costs of suit. Pursuant to Labor Code § 218.6 or Civil Code § 3287(a), Plaintiff and the
25 Class Members are entitled to recover prejudgment interest on the additional pay owed for missed
26 rest breaks.

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1 **FOURTH CAUSE OF ACTION**

2 **Failure to Provide Accurate Itemized Wage Statements**

3 (By Plaintiff and the Wage Statement Subclass Members against all Defendants)

4 39. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

5 40. At all relevant times, Plaintiff and the Wage Statement Subclass Members were
6 and/or are employees of Defendants covered by Labor Code § 226.

7 41. Pursuant to Labor Code § 226(a), Plaintiff and the Wage Statement Subclass
8 Members are entitled to receive, semi-monthly or at the time of each payment of wages, an
9 accurate, compliant itemized statement showing gross wages earned; net wages earned; all
10 applicable hourly rates in effect during the pay period; entity employing them with corresponding
11 address; and the corresponding number of hours worked at each hourly rate by the employee.

12 42. Defendants have failed to provide Plaintiff and the Wage Statement Subclass
13 Members accurate, compliant itemized wage statements in accordance with Labor Code §§ 226(a)
14 and 226.2. Plaintiff is informed and believes and thereon alleges that at all relevant times since one
15 (1) year preceding the filing of the Complaint in this action (the "Penalty Period"), Defendants
16 maintained a policy or practice of failing to pay wages for all time actually worked, failing to
17 accurately record all hours actually worked, failing to pay meal break premium payments, and
18 failing to pay rest break premium payments. Defendants' practice resulted and continues to result
19 in the issuance of non-compliant 'wage statements' to Class Members that do not show the correct
20 amount of gross wages earned, the correct amount of net wages earned, the correct number of hours
21 worked, the correct hourly rates of pay in effect for each hour worked, and the correct deductions
22 made thereto for taxing authority purposes.

23 43. Defendants have failed to provide Plaintiff and Wage Statement Subclass Members
24 with accurate wage statements accurately indicating the address of the legal entity that is the
25 employer. The issued wage statements state an employer address of: 7511 Pacheco Pass Hwy,
26 Hollister, CA 95023. However, the California Secretary of State website states that Defendant's
27 entity address is: 200 Maranatha Drive, Hollister, CA 95023.

28 44. Defendants' failure to provide Plaintiff and the Wage Statement Subclass Members
with accurate itemized wage statements was and is knowing and intentional. Defendants have had

1 the ability to provide Plaintiff and Wage Statement Subclass Members with accurate wage
2 statements, but intentionally provided ‘wage statements’ that Defendants knew were not accurate or
3 compliant.

4 45. As a result of Defendants’ conduct, Plaintiff and the Wage Statement Subclass
5 Members have suffered injury. The absence of accurate and complete information on their wage
6 statements has prevented timely challenges to Defendants’ unlawful pay practices, has and will
7 require discovery and mathematical computations to determine the amount of wages owed, and led
8 to the submission of inaccurate information about wages and deductions to State and Federal
9 government agencies.

10 46. Pursuant to Labor Code § 226(e), Plaintiff and the Wage Statement Subclass
11 Members are entitled to recover fifty dollars (\$50) for the initial pay period during the Penalty
12 Period in which a violation of Labor Code § 226 occurred and one hundred dollars (\$100) for each
13 violation of Labor Code § 226 in a subsequent pay period, not to exceed an aggregate penalty of
14 four thousand dollars (\$4,000) per employee.

15 47. Pursuant to Labor Code § 226(h), Plaintiff and the Wage Statement Subclass
16 Members are entitled to bring an action for injunctive relief to ensure Defendants’ compliance with
17 Labor Code § 226(a). Injunctive relief is warranted because Defendants continue to provide
18 currently employed Wage Statement Subclass Members with inaccurate, deficient, non-compliant
19 ‘wage statements’ in violation of Labor Code § 226(a) and currently employed Wage Statement
20 Subclass Members have no adequate legal remedy for the continuing injuries that will be suffered
21 as a result of Defendants’ ongoing unlawful conduct. Injunctive relief is the only remedy available
22 for ensuring Defendants’ compliance with Labor Code § 226(a).

23 48. Pursuant to Labor Code §§ 226(e) and 226(h), Plaintiff and the Wage Statement
24 Subclass Members are entitled to recover the full amount of penalties due under Labor Code
25 §226(e), reasonable attorney’s fees, and costs of suit.

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1 **FIFTH CAUSE OF ACTION**

2 **Failure to Pay All Wages Owed Upon Separation**

(By Plaintiff and the Separated Subclass Members against all Defendants)

3 49. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

4 50. At all relevant times, Plaintiff and the Separated Subclass Members, were
5 employees of Defendants covered by Labor Code §§ 201 and/or 202.

6 51. Pursuant to Labor Code §§ 201 and 202, Plaintiff and the Separated Subclass
7 Members were entitled upon separation to timely payment of all wages earned and unpaid prior to
8 separation. Discharged employees were entitled to payment of all wages earned and unpaid prior
9 to discharge immediately upon termination. Employees who resigned were entitled to payment of
10 all wages earned and unpaid prior to resignation within 72-hours after giving notice of resignation
11 or, if they gave 72-hours previous notice, they were entitled to payment of all wages earned and
12 unpaid prior to resignation at the time of resignation.

13 52. Defendants have failed to pay Plaintiff and the Separated Subclass Members all
14 wages earned and unpaid prior to separation, in accordance with Labor Code §§ 201 and/or 202.
15 Plaintiff is informed and believes and thereon alleges that during the three (3) year limitations
16 period applicable to this cause of action, Defendants maintained and continue to maintain a policy
17 or practice of failing to pay all minimum and overtime wages at the lawful rate of pay, all meal
18 break premium payments, and all rest break premium payments owed at the time of separation
19 from employment.

20 53. Defendants' failure to pay Plaintiff and the Separated Subclass Members all wages
21 earned prior to separation in accordance with Labor Code § 201 and/or § 202 was and is willful.
22 Defendants have had the ability to pay all wages earned by employees – including but not limited
23 to all minimum and overtime wages – but intentionally have adopted policies or practices
24 incompatible with the requirements of Labor Code §§ 510, 1194, and 1197, and I.W.C. Wage
25 Order No. 5-2001. Defendants have had the ability to pay all meal period and rest break premium
26 payments earned by employees, but intentionally adopted policies or practices incompatible with
27 the requirements of Labor Code §§ 226.7 and 512, and I.W.C. Wage Order No. 5-2001. When
28 Defendants failed to pay upon separation all wages earned prior to separation, Defendants knew

1 what they were doing and intended to do what they did.

2 54. Pursuant to Labor Code § 201 or § 202, Plaintiff and the Separated Subclass
3 Members are entitled to all wages earned prior to separation that Defendants did not pay them.

4 55. Pursuant to Labor Code § 203, Plaintiff and the Separated Subclass Members are
5 entitled to penalty wages, from the day their earned and unpaid wages were due upon separation
6 until paid, up to a maximum of 30 days.

7 56. As a result of Defendants' conduct, Plaintiff and the Separated Subclass Members
8 have suffered damages in an amount, subject to proof, to the extent they were not paid for all wages
9 earned prior to separation in violation of Labor Code § 201 or § 202.

10 57. As a result of Defendants' conduct, Plaintiff and the Separated Subclass Members
11 have suffered damages in an amount, subject to proof, to the extent they were not paid wages on at
12 least a weekly basis in violation of Labor Code § 201.3.

13 58. As a result of Defendants' conduct, Plaintiff and the Separated Subclass Members
14 have suffered damages in an amount, subject to proof, to the extent they were not paid all penalty
15 wages owed to them in violation of Labor Code § 203.

16 59. Pursuant to Labor Code §§ 218 and 218.5, Plaintiff and the Separated Subclass
17 Members are entitled to recover the full amount of their unpaid wages, unpaid penalty wages, and
18 reasonable attorney's fees and costs of suit. Plaintiff and the Separated Subclass Members are
19 entitled to recover pre-judgment interest on all due and unpaid wages and penalty wages under
20 Labor Code § 218.6 and/or Civil Code § 3287(a).

21
22 **SIXTH CAUSE OF ACTION**
23 **Violation of California's Unfair Competition Law ("UCL")**
24 **[Cal. Bus. & Prof. Code § 17200, *et seq.*]**
25 **(By Plaintiff and the Class Members against all Defendants)**

26 60. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

27 61. Plaintiff brings this claim on behalf of himself and all others similarly situated in his
28 representative capacity against Defendants and Does 1 through 50, for their unlawful business acts
and/or practices, pursuant to Cal. Bus. & Prof. Code § 17200, *et seq.* (the "UCL"), which prohibits
all unlawful and/or unfair business acts and/or practices.

1 62. Defendants are each a “person,” as that term is defined under Cal. Bus. & Prof.
2 Code § 17021.

3 63. The UCL defines unfair competition as any unlawful, unfair, or fraudulent business
4 act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with
5 respect to unfair competition as follows:

6 Any person who engages, has engaged, or proposes to engage in unfair
7 competition may be enjoined in any court of competent jurisdiction. The court
8 may make such orders or judgments, including the appointment of a receiver, as
9 may be necessary to prevent the use or employment by any person of any practice
which constitutes unfair competition, as defined in this chapter, or as may be
necessary to restore to any person in interest any money or property, real or
personal, which may have been acquired by means of such unfair competition.

10 Cal. Bus. & Prof. Code § 17203.

11 64. By the conduct alleged herein, Defendants have engaged and continue to engage in
12 business practices that violate California law, including but not limited to, I.W.C. Wage Order No.
13 5-2001, the California Code of Regulations, and the California Labor Code, including §§ 201, 202,
14 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, and 1198, thereof, for which this Court should
15 issue declaratory and other equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, as may be
16 necessary to prevent and remedy the conduct held to constitute unfair competition, including
17 restitution of wages and premium pay wrongfully withheld.

18 65. By the conduct alleged herein, Defendants’ practices were and are unlawful and
19 unfair in that these practices have violated public policy, are immoral, unethical, oppressive,
20 unscrupulous, or substantially injurious to employees, and are without valid justification or utility,
21 for which this Court should issue equitable and injunctive relief pursuant to Cal. Bus. & Prof. Code
22 § 17203, including restitution of wages and premium pay wrongfully withheld.

23 66. By the conduct alleged herein, Defendants’ practices were and are deceptive and
24 fraudulent, in that Defendants’ uniform policy and practices have failed to pay Plaintiff and the
25 Class Members minimum and overtime wages at the lawful rate of pay, have failed to provide
26 lawful meal periods and to authorize and permit compliant rest breaks, have failed to pay wages
27 earned each and every pay period, have failed to provide accurate itemized wage statements, , and
28 have failed to pay all wages owed upon separation of employment, as alleged herein, pursuant to

1 the applicable Cal. Lab. Code, and I.W.C. requirements in violation of Cal. Bus. & Prof. Code §
2 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to
3 Cal. Bus. & Prof. Code § 17203, including restitution of wages and premium pay wrongfully
4 withheld.

5 67. By the conduct alleged herein, Defendants' practices are also unlawful, unfair and
6 deceptive, in that Defendants' employment practices have caused Plaintiff and the Class Members
7 to be underpaid during their employment with Defendants.

8 68. By the conduct alleged herein, Defendants' practices are also unfair and deceptive,
9 in that Defendants' uniform policies, practices and procedures have failed to provide compliant
10 meal periods and/or to authorize and permit compliant rest breaks to Plaintiff and the Class
11 Members.

12 69. By and through the unlawful and unfair business practices described herein,
13 Defendants have obtained valuable property, money and services from Plaintiff and the Class
14 Members, including earned wages for all minimum and overtime worked and meal and rest break
15 premium wages, and have deprived them of valuable rights and benefits guaranteed by law and
16 contract, all to the detriment of these employees and to the benefit of Defendants, so as to allow
17 Defendants to unfairly compete against competitors who comply with the law.

18 70. All of the acts described herein as violations of, among other things, the I.W.C.
19 Wage Orders, the California Code of Regulations, and the Cal. Labor Code, are unlawful and in
20 violation of public policy, are immoral, unethical, oppressive and unscrupulous, are deceptive, and
21 thereby constitute unlawful, unfair, and/or deceptive business practices, in violation of Cal. Bus. &
22 Prof. Code § 17200, *et seq.*

23 71. Plaintiff and the Class Members are entitled to, and do, seek such relief as may be
24 necessary to restore to them the money and property that Defendants have acquired, or of which
25 Plaintiff and the Class Members have been deprived, by means of the above described unlawful
26 and unfair business practices, including earned but not limited to unpaid wages for all time worked.

27 72. Plaintiff and the Class Members are further entitled to, and do, seek a declaration
28 that the described business practices are unlawful, unfair and deceptive, and that injunctive relief

1 should be issued, restraining Defendants from engaging in any such unlawful and unfair business
2 practices in the future.

3 73. Plaintiff and the Class Members have no plain, speedy and/or adequate remedy at
4 law that will end the unlawful and unfair business practices of Defendants. Further, the practices
5 herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business
6 practices described herein, Plaintiff and the Class Members have suffered and will continue to
7 suffer irreparable legal and economic harm unless Defendants are restrained from continuing to
8 engage in these unlawful and unfair business practices.

9 74. Wherefore, Plaintiff and the other Class Members are entitled to equitable relief,
10 including restitution, attorney's fees and costs, declaratory relief, and a permanent injunction
11 enjoining Defendants from their unlawful and/or unfair activity.

12 **SEVENTH CAUSE OF ACTION**
Violation of the Private Attorneys General Act
[Cal. Bus. & Prof. Code §§ 2698, *et seq.*]

13 (By Plaintiff on behalf of all aggrieved employees against all Defendants)

14 75. Plaintiff and all aggrieved employees of all Defendants incorporate all the preceding
15 paragraphs as though fully set forth herein.

16 76. PAGA is a mechanism by which the State of California itself can enforce state labor
17 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
18 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
19 a law enforcement action designed to protect the public and not to benefit private parties. The
20 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
21 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
22 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
23 private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch.
24 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

25 77. Plaintiff brings this Representative Action on behalf of the State of California with
26 respect to himself and other non-exempt hourly employees of Defendant who worked at restaurant
27 and event venue locations in the State of California at any time since May 21, 2020, and who are
28 Class Members (the "Aggrieved Employees").

78. On May 21, 2021, Counsel for Plaintiff on behalf of Solano gave written notice by online filing to the LWDA and the employer via U.S. Certified Mail, Return-Receipt of the specific code provisions alleged to have been violated as required by Labor Code § 2699.3. (See **Exhibit 1**). The statutory waiting period to commence this action has expired. As a result, pursuant to § 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to § 2699 *et seq.* as the proxy of the State of California with respect to all Aggrieved Employees as herein defined.

79. The policies, acts, and practices heretofore described were and are an unlawful business act or practice because of Defendants failure to pay all owed minimum and overtime wages owed at the lawful rate of pay for all work performed, failure to provide compliant duty-free meal breaks, failure to provide compliant duty-free rest periods, failure to pay all wages owed each and every pay period, failure to provide accurate itemized wage statements, and failure to pay all wages owed upon separation of employment and thereby gives rise to statutory penalties as a result of such conduct. Plaintiff hereby seeks recovery of civil penalties as prescribed by PAGA as the representatives of the State of California for the illegal conduct perpetrated on Plaintiff and the other Aggrieved Employees, against whom one or more of the violations of the California Labor Code was committed.

PRAYER FOR RELIEF

WHEREFORE, on behalf of himself and all others similarly situated, Plaintiff prays for judgment against Defendants as follows:

- A. An order certifying this case as a class action;
- B. An order appointing Plaintiff as representative for the Class;
- C. An order appointing Plaintiff's counsel as counsel for the Class;
- D. Damages for unpaid minimum and overtime wages;
- E. Damages for unpaid premium wages owed for meal periods that Defendants failed to provide, pursuant to Labor Code § 226.7;
- F. Damages for unpaid premium wages owed for rest breaks that Defendants failed to authorize and permit, pursuant to Labor Code § 226.7;

- 1 G. Civil Penalties under Labor Code § 226(e);
2 H. Damages for unpaid final wages, under Labor Code § 201 and/or § 202;
3 I. Penalty continuation wages, under Labor Code § 203;
4 J. Restitution for unpaid wages, under Cal. Bus. & Prof. Code § 17203;
5 K. Injunctive relief, under Labor Code § 226(h) and Cal. Bus. & Prof. Code § 17200, *et*
6 *seq.*, requiring that Defendants provide compliant, itemized wage statements and
7 cease and desist from their other unlawful and/or unfair employment practices;
8 L. Recovery of civil penalties as prescribed by PAGA;
9 M. An award of penalties, attorneys' fees, and costs of suit pursuant to Labor Code §
10 2699(g);
11 N. Prejudgment interest at the maximum legal rate;
12 O. Reasonable attorneys' fees;
13 P. Costs of suit; and,
14 Q. Such other relief as the Court may deem just and proper.

15 Dated: July 28, 2021

DYCHTER LAW OFFICES, APC

16
17 By: 
18 Alexander I. Dychter
Attorneys for Plaintiff Solano

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff demands a trial by jury for himself and the Class on all claims so triable.

21 Dated: July 28, 2021

DYCHTER LAW OFFICES, APC

22
23 By: 
24 Alexander I. Dychter
Attorneys for Plaintiff Solano

EXHIBIT 1



**DYCHTER
LAW OFFICES**
A PROFESSIONAL CORPORATION

180 BROADWAY, SUITE 1835, SAN DIEGO, CALIFORNIA 92101
TEL 619.487.0777 | FAX 619.330.1827

May 21, 2021

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**
[7012 2920 0000 5541 2417]

The Grove, Highway 156
c/o: Tiffany Morales
101 Maranatha Drive
Hollister, CA 95023

VIA ONLINE FILING ONLY
California Labor & Workforce Development Agency ("LWDA")

Re: Notice of Violation of California Labor Code Sections 201-204, 226, 226.7, 510, 512, 1194, 1197; Industrial Welfare Commission Wage Order(s), And Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam,

Our office represents Plaintiff Daniel Solano (the "Plaintiff" or "Barnes"), and other aggrieved employees in a class action lawsuit against THE GROVE, HIGHWAY 156 ("Defendant" or "Grove"), a California Corporation. Plaintiff and other non-exempt hourly employees were employed at restaurant and event venue locations in California. Defendant has failed to pay all owed minimum and overtime wages at the lawful rate of pay for all work performed, failed to provide compliant duty-free meal breaks, failed to provide compliant duty-free rest periods, failed to pay all wages owed every pay period, failed to provide accurate itemized wage statements, and failed to pay all wages owed upon separation of employment in violation of the California Labor Code, and are therefore actionable under California Labor Code Section 2699.3.

A true and correct copy of the Complaint filed by Plaintiff on May 21, 2021 in the Superior Court of California – County of San Benito is attached hereto as **Exhibit 1**, which **(i)** identifies the alleged violations, **(ii)** details the facts and theories which support the alleged violations, **(iii)** details the specific work performed by Plaintiff, **(iv)** sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and **(v)** sets forth the illegal practices used by Defendant. This information provides notice to the Labor and Workforce Development Agency ("LWDA") of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint (**Ex. 1**) into this letter as if fully set forth herein. If the LWDA needs any further information, please do not hesitate to ask. Attachment of **Ex. 1** herein is **NOT** meant to act as "service" of the Complaint on Defendant. Service of the attached **Ex. 1** will be conducted by Plaintiff on Defendant in the near future.

NOTE: The attached Complaint as **Exhibit 1** is **NOT** meant to act as “service” on Defendant.

This notice is provided to enable the Plaintiff to proceed with the Complaint filed in the Superior Court of California – County of San Benito on May 21, 2021, against Grove as authorized by California Labor Code Section 2699, *et seq.* The pending class action lawsuit consists of a class of other aggrieved non-exempt hourly employees who worked for Grove in the State of California. As class counsel, our intention is to vigorously prosecute the class-wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorneys General Statute of 2004 on behalf of Plaintiff and all aggrieved Class Members.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully Submitted,

DYCHTER LAW OFFICES, APC

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Alexander I. Dychter, Esq.
Attorneys for Plaintiff Solano

encl: Exhibit 1 = copy of Complaint filed on 5/21/2021

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Alexander Dychter](#)
Subject: Thank you for submission of your PAGA Case.
Date: Friday, May 21, 2021 4:37:26 PM

5/21/2021

LWDA Case No. LWDA-CM-832947-21
Law Firm : Dychter Law Offices, APC
Plaintiff Name : Daniel Solano
Employer: The Grove, Highway 156
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

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Alexander Dychter](#)
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation
Date: Friday, May 21, 2021 4:37:37 PM

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-832947-21

Order Number: ORD-000107990

Total:\$75.00

Card Type: Visa

Date: 5/21/2021

Billing Information

Name: Alexander Dychter

Email: alex@dychterlaw.com

Billing Address:

180 Broadway, Ste. 1835

San Diego, California

92101

7012 2920 0000 5541 2417

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Return Receipt Fee (Endorsement Required)	
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THE GROVE, HIGHWAY 156 c/o TIFFANY MORALES
Street, Apt. No.,
or PO Box No. **101 MARANATHA DRIVE**
City, State, ZIP+4
HOLLISTER, CA 95023

PS Form 3800, August 2006

See Reverse for Instructions