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Attorneys for Plaintiff DAVID VARGAS  
individually, and on behalf of others  
similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

DAVID VARGAS, individually, and on behalf  
of others similarly situated and aggrieved

Plaintiff,

vs.

SITECARE LANDSCAPE MAINTENANCE,  
INC., a California corporation; SITEWORKS  
LANDSCAPE, INC., a California Corporation;  
and DOES 1 through 100, inclusive,

Defendants

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

**12/09/2021 at 08:57:58 AM**

By: Cheryl Clark, Deputy Clerk

CASE NO.: **21CV003815**

**COMPLAINT**

**CLASS ACTION:**

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Periods
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay All Wages Due to Discharged and Quitting Employees
6. Failure to Maintain Required Records
7. Failure to Furnish Accurate Itemized Wage Statements
8. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
9. Unfair and Unlawful Business Practices

**REPRESENTATIVE ACTION:**

10. Penalties under the Labor Code Private Attorneys General Act

**DEMAND FOR JURY TRIAL**

## **INTRODUCTION**

PLAINTIFF DAVID VARGAS (“PLAINTIFF”) an individual, demanding a jury trial, on behalf of himself and other persons similarly situated, hereby alleges as follows:

## **JURISDICTION AND VENUE**

1. The Superior Court of the State of California has jurisdiction in this matter because PLAINTIFF is a resident of the State of California, and Defendants SITECARE LANDSCAPE MAINTENANCE, INC. a California corporation; SITEWORKS LANDSCAPE, INC., a California corporation; and DOES 1 through 100 inclusive (collectively “DEFENDANTS”), are qualified to do business in California and regularly conduct business in California. Further, no federal question is at issue because the claims are based solely on California law.

2. Venue is proper in this judicial district and the County of Alameda, California because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS in the County of Alameda, DEFENDANTS maintain offices and facilities and transact business in the County of Alameda, and because DEFENDANTS’ illegal payroll policies and practices which are the subject of this action were applied, at least in part, to PLAINTIFF, and other persons similarly situated, in the County of Alameda.

## **PLAINTIFF**

3. PLAINTIFF is a male resident of the State of California and a former employee of DEFENDANTS.

4. PLAINTIFF, on behalf of himself and other similarly situated current and former non-exempt employees of DEFENDANTS in the State of California at any time during the four years preceding the filing of this action, and continuing while this action is pending, brings this class action to recover, among other things, wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid and illegally calculated overtime compensation, illegal meal and rest period policies, failure to pay all wages due to discharged and quitting employees, failure to indemnify employees for necessary expenditures and/or losses incurred in discharging their duties, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, attorneys’ fees, costs, and expenses.

5. PLAINTIFF brings this action on behalf of himself and the following similarly situated class of individuals (“CLASS MEMBERS”): all current and former non-exempt employees of DEFENDANTS in the State of California at any time within the period beginning four (4) years prior to the filing of this action and ending at the time this action settles or proceeds to final judgment (the “CLASS PERIOD”). PLAINTIFF reserves the right to name additional class representatives.

## DEFENDANTS

6. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT SITECARE LANDSCAPE MAINTENANCE, INC. is, and at all times relevant hereto was, a California corporation organized and existing under the laws of the State of California. PLAINTIFF is further informed and believes, and thereon alleges, that DEFENDANT SITECARE LANDSCAPE MAINTENANCE is authorized to conduct business in the State of California, and does conduct business in the State of California. Specifically, DEFENDANT SITECARE LANDSCAPE MAINTENANCE maintains offices and facilities and conducts business in, and engages in illegal payroll practices or policies in, the County of Alameda, State of California.

7. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT SITEWORKS LANDSCAPE, INC. is, and at all times relevant hereto was, a California corporation organized and existing under the laws of the State of California. PLAINTIFF is further informed and believes, and thereon alleges, that DEFENDANT SITEWORKS LANDSCAPE, INC. is authorized to conduct business in the State of California, and does conduct business in the State of California. Specifically, DEFENDANT SITEWORKS LANDSCAPE, INC. maintains offices and facilities and conducts business in, and engages in illegal payroll practices or policies in, the County of Alameda, State of California.

8. The true names and capacities of DOES 1 through 100, inclusive, are unknown to PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and that PLAINTIFF and CLASS MEMBERS' injuries and damages, as alleged herein, were proximately

1 caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the court to amend  
2 this Complaint to allege their true names and capacities of such DOE Defendants when ascertained.

3 9. At all relevant times herein, DEFENDANTS were the joint employers of  
4 PLAINTIFF and CLASS MEMBERS. PLAINTIFF is informed and believes, and thereon allege,  
5 that at all times material to this complaint DEFENDANTS were the alter egos, divisions, affiliates,  
6 integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-  
7 conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of  
8 each other. Each Defendant was completely dominated by his, her or its co-Defendant, and each  
9 was the alter ego of the other.

10 10. At all relevant times herein, PLAINTIFF and CLASS MEMBERS were employed  
11 by DEFENDANTS under employment agreements that were partly written, partly oral, and partly  
12 implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them,  
13 acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFF and  
14 CLASS MEMBERS all wages earned and due, through methods and schemes which include, but  
15 are not limited to, failing to pay overtime premiums; failing to provide rest and meal periods; failing  
16 to properly maintain records; failing to provide accurate itemized statements for each pay period;  
17 failing to properly compensate PLAINTIFF and CLASS MEMBERS for necessary expenditures;  
18 and requiring, permitting or suffering the employees to work off the clock, in violation of the  
19 California Labor Code and the applicable Welfare Commission ("IWC") Orders.

20 11. PLAINTIFF is informed and believes, and thereon allege, that each and every one  
21 of the acts and omissions alleged herein were performed by, and/or attributable to, all  
22 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control of,  
23 each of the other DEFENDANTS, and that said acts and failures to act were within the course and  
24 scope of said agency, employment and/or direction and control.

25 12. Pursuant to California Labor Code § 558.1, DEFENDANTS and any person acting  
26 on behalf of any of the DEFENDANTS, are liable for violating, or causing to violate, any provision  
27 regulating minimum wages or hours and days of work in any order of the Industrial Welfare  
28 Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

13. As a direct and proximate result of the unlawful actions of DEFENDANTS, PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

### **CLASS ACTION DESIGNATION**

14. This action is appropriately suited for a Class Action because:

a. The potential class is a significant number. Joinder of all current and former employees individually would be impractical.

b. This action involves common questions of law and fact to the potential class because the action focuses on DEFENDANTS' systematic course of illegal payroll practices and policies, which was applied to all non-exempt employees in violation of the Labor Code, the applicable IWC wage order, and the Business and Professions Code which prohibits unfair business practices arising from such violations.

c. The claims of PLAINTIFF are typical of the class because DEFENDANTS subjected all non-exempt employees to identical violations of the Labor Code, the applicable IWC wage order, and the Business and Professions Code.

d. PLAINTIFF is able to fairly and adequately protect the interests of all members of the class because it is in his best interests to prosecute the claims alleged herein to obtain full compensation due to them for all services rendered and hours worked.

**FIRST CAUSE OF ACTION**

### Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 5-2001 and/or 16-2001, § 11]

**(Against all DEFENDANTS)**

15. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the allegations in the foregoing paragraphs.

16. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies and practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS

1 required, permitted or otherwise suffered PLAINTIFF and CLASS MEMBERS to take less than  
2 the 30-minute meal period, or to work through them, and have failed to otherwise provide the  
3 required meal periods to PLAINTIFF and CLASS MEMBERS pursuant to California Labor Code  
4 § 226.7, 512 and IWC Order No. 5-2001 and/or 16-2001, § 11.

5 17. DEFENDANTS further violated California Labor Code §§ 226.7 and IWC Wage  
6 Order No. 5-2001 and/or 16-2001, § 11 by failing to compensate PLAINTIFF and CLASS  
7 MEMBERS who were not provided with a meal period, in accordance with the applicable wage  
8 order, one additional hour of compensation at each employee's regular rate of pay for each workday  
9 that a meal period was not provided.

10 18. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194, 1197,  
11 and IWC Wage Order No. 5-2001 and/or 16-2001 by failing to compensate PLAINTIFF and  
12 CLASS MEMBERS for all hours worked during their meal periods.

13 19. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS  
14 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned  
15 and due, interest, penalties, expenses, and costs of suit.

## 16 **SECOND CAUSE OF ACTION**

### 17 **Failure to Provide Required Rest Periods**

18 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 5-2001 and/or 16-2001, § 12]**

19 **(Against all DEFENDANTS)**

20 20. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the  
21 allegations in the foregoing paragraphs.

22 21. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and  
23 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS failed  
24 to provide rest periods to PLAINTIFF and CLASS MEMBERS as required under California Labor  
25 Code §§ 226.7 and 512, and IWC Wage Order No. 5-2001 and/or 16-2001, § 12.

26 22. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage  
27 Order No. 5-2001 and/or 16-2001, § 12 by failing to pay PLAINTIFF and CLASS MEMBERS  
28 who were not provided with a rest period, in accordance with the applicable wage order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday that a rest  
2 period was not provided.

3 23. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS  
4 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned  
5 and due, interest, penalties, expenses, and costs of suit.

6 **THIRD CAUSE OF ACTION**

7 **Failure to Pay Overtime Wages**

8 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001 and/or 16-2001, § 3]**

9 **(Against all DEFENDANTS)**

10 24. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the  
11 allegations in the foregoing paragraphs.

12 25. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 5-2001  
13 and/or 16-2001, § 3, DEFENDANTS are required to compensate PLAINTIFF and CLASS  
14 MEMBERS for all overtime, which is calculated at one and one-half (1 ½) times the regular rate  
15 of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week,  
16 and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours  
17 worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight  
18 (8) hours on the seventh consecutive day of work in any workweek.

19 26. PLAINTIFF and CLASS MEMBERS are current and former non-exempt  
20 employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order  
21 No. 5-2001 and/or 16-2001. During the CLASS PERIOD, DEFENDANTS failed to compensate  
22 PLAINTIFF and CLASS MEMBERS for all overtime hours worked as required under the  
23 foregoing provisions of the California Labor Code and IWC Wage Order by, among other things:  
24 failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by  
25 California Labor Code §§ 510, 1194, and IWC Wage Order No. 5-2001 and/or 16-2001, § 3;  
26 requiring, permitting or suffering PLAINTIFF and CLASS MEMBERS to work off the clock;  
27 requiring, permitting or suffering PLAINTIFF and CLASS MEMBERS to work through meal and  
28 rest breaks; illegally and inaccurately recording time in which PLAINTIFF and CLASS

1 MEMBERS worked; failing to properly maintain PLAINTIFF's and CLASS MEMBERS' records;  
2 failing to provide accurate itemized wage statements to PLAINTIFF for each pay period; and other  
3 methods to be discovered.

4 27. In violation of California law, DEFENDANTS have knowingly and willfully  
5 refused to perform their obligations to compensate PLAINTIFF and CLASS MEMBERS for all  
6 wages earned and all hours worked. As a proximate result, PLAINTIFF and CLASS MEMBERS  
7 have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such  
8 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel  
9 DEFENDANTS to fully perform their obligations under state law, all to their respective damages  
10 in amounts according to proof at time of trial, and within the jurisdiction of this Court.

11 28. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,  
12 1194, 1198 and IWC Wage Order No. 5-2001 and/or 16-2001, § 3. Therefore, pursuant to California  
13 Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the  
14 California Labor Code and IWC Wage Orders, PLAINTIFF and CLASS MEMBERS are entitled  
15 to recover the unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties,  
16 attorneys' fees, expenses, and costs of suit.

17 **FOURTH CAUSE OF ACTION**

18 **Failure to Pay Minimum Wages**

19 **[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 5-2001 and/or 16-2001, § 4]**

20 **(Against all DEFENDANTS)**

21 29. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the  
22 allegations in the foregoing paragraphs.

23 30. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 5-2001  
24 and/or 16-2001, § 4, payment to an employee of less than the applicable minimum wage for all  
25 hours worked in a payroll period is unlawful.

26 31. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and  
27 CLASS MEMBERS minimum wages for all hours worked by, among other things: requiring,  
28 permitting or suffering PLAINTIFF and CLASS MEMBERS to work off the clock; requiring,

1 permitting or suffering PLAINTIFF and CLASS MEMBERS to work through meal and rest breaks;  
2 illegally and inaccurately recording time in which PLAINTIFF and CLASS MEMBERS worked;  
3 failing to properly maintain PLAINTIFF's and CLASS MEMBERS' records; failing to provide  
4 accurate itemized wage statements to PLAINTIFF and CLASS MEMBERS for each pay period;  
5 and other methods to be discovered.

6 32. DEFENDANTS' conduct described herein violates California Labor Code §§ 1194,  
7 1197, and IWC Wage Order No. 5-2001 and/or 16-2001, § 4. As a proximate result of the  
8 aforementioned violations, PLAINTIFF and CLASS MEMBERS have been damaged in an amount  
9 according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558,  
10 1194, 1197.1, and other applicable provisions under the Labor Code and IWC Wage Orders,  
11 PLAINTIFF and CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to  
12 them by DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

### 13 **FIFTH CAUSE OF ACTION**

#### 14 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

15 **[Cal. Lab. Code §§ 201, 202, 203]**

16 **(Against all DEFENDANTS)**

17 33. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the  
18 allegations in the foregoing paragraphs.

19 34. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are  
20 required to pay all earned and unpaid wages to an employee who is discharged. California Labor  
21 Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued  
22 and unpaid at the time of discharge are due and payable immediately.

23 35. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are required  
24 to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or  
25 her employment, unless the employee provided 72 hours previous notice of his or her intention to  
26 quit, in which case the employee is entitled to his or her wages at the time of quitting.

27 36. California Labor Code § 203 provides that if an employer willfully fails to pay, in  
28 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is

1 discharged or who quits, the employer is liable for waiting time penalties in the form of continued  
2 compensation to the employee at the same rate for up to 30 workdays.

3 37. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay accrued  
4 wages and other compensation to PLAINTIFF and CLASS MEMBERS in accordance with  
5 California Labor Code §§ 201 and 202.

6 38. As a result, PLAINTIFF and CLASS MEMBERS are entitled to all available  
7 statutory penalties, including the waiting time penalties provided in California Labor Code § 203,  
8 together with interest thereon, as well as other available remedies.

9 39. As a proximate result of DEFENDANTS' unlawful actions and omissions,  
10 PLAINTIFF and CLASS MEMBERS have been deprived of compensation in an amount according  
11 to proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery  
12 of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor  
13 Code §§ 1194 and 2699.

#### 14 **SIXTH CAUSE OF ACTION**

##### 15 **Failure to Maintain Required Records**

16 **[Cal. Labor Code §§ 226; IWC Wage Order No. 5-2001 and/or 16-2001, § 7]**

17 **(Against all DEFENDANTS)**

18 40. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the  
19 allegations in the foregoing paragraphs.

20 41. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies and  
21 practices to deprive PLAINTIFF and CLASS MEMBERS of all wages earned and due,  
22 DEFENDANTS knowingly and intentionally failed to maintain records as required under  
23 California Labor Code §§ 226, 1174, and IWC Wage Order No. 5-2001 and/or 16-2001, § 7,  
24 including but not limited to the following records: total daily hours worked by each employee;  
25 applicable rates of pay; all deductions; meal periods; time records showing when each employee  
26 begins and ends each work period; and accurate itemized statements.

27 42. As a proximate result of DEFENDANTS' unlawful actions and omissions,  
28 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at trial,

1 and are entitled to all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and  
2 CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to  
3 civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of  
4 costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in  
5 California Labor Code § 226(e), as well as other available remedies.

## 6 **SEVENTH CAUSE OF ACTION**

### 7 **Failure to Furnish Accurate Itemized Wage Statements**

8 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 5-2001 and/or 16-2001, § 7]**

9 **(Against all DEFENDANTS)**

10 43. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the  
11 allegations in the foregoing paragraphs.

12 44. During the CLASS PERIOD, DEFENDANTS routinely failed to provide  
13 PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage statements in  
14 writing showing each employee's gross wages earned, total hours worked, all deductions made, net  
15 wages earned, the name and address of the legal entity or entities employing PLAINTIFF and  
16 CLASS MEMBERS, and all applicable hourly rates in effect during each pay period and the  
17 corresponding number of hours worked at each hourly rate, in violation of California Labor Code  
18 § 226 and IWC Wage Order No. 5-2001 and/or 16-2001, § 7.

19 45. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed to  
20 provide PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage statements  
21 in accordance with California Labor Code § 226(a).

22 46. As a proximate result of DEFENDANTS' unlawful actions and omissions,  
23 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at trial,  
24 and seek all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and CLASS  
25 MEMBERS are entitled to all available statutory penalties, including but not limited to civil  
26 penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs,  
27 expenses, and reasonable attorneys' fees, including but not limited to those provided in California  
28 Labor Code § 226(e), as well as other available remedies.

1 **EIGHTH CAUSE OF ACTION**

2 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of**  
3 **Duties**

4 **[Cal. Lab. Code § 2802]**

5 **(Against all DEFENDANTS)**

6 47. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the  
7 allegations in the foregoing paragraphs.

8 48. California Labor Code § 2802(a) requires an employer to indemnify an employee  
9 for all necessary expenditures or losses incurred by the employee in direct consequence of the  
10 discharge of his or her duties, or of his or her obedience to the directions of the employer.

11 49. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to  
12 indemnify PLAINTIFF and CLASS MEMBERS for all business expenses and/or losses incurred  
13 in direct consequence of the discharge of their duties while working under the direction of  
14 DEFENDANTS, including but not limited to expenses for uniforms, cell phone usage, and other  
15 employment-related expenses, in violation of California Labor Code § 2802.

16 50. As a proximate result of DEFENDANTS' unlawful actions and omissions,  
17 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at trial,  
18 and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to California  
19 Labor Code § 2802(b). Additionally, PLAINTIFF and CLASS MEMBERS are entitled to all  
20 available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees,  
21 including those provided in California Labor Code § 2802(c), as well as other available remedies.

22 **NINTH CAUSE OF ACTION**

23 **Unfair and Unlawful Business Practices**

24 **[Cal. Bus. & Prof. Code §§ 17200 et. seq.]**

25 **(Against all DEFENDANTS)**

26 51. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the  
27 allegations in the foregoing paragraphs.

28 52. Each and every one of DEFENDANTS' acts and omissions in violation of the

1 California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not  
2 limited to DEFENDANTS' failure and refusal to provide required meal periods, DEFENDANTS'  
3 failure and refusal to provide required rest periods, DEFENDANTS' failure and refusal to pay  
4 overtime compensation, DEFENDANTS' failure and refusal to pay minimum wages,  
5 DEFENDANTS' failure and refusal to pay all wages due to discharged or quitting employees,  
6 DEFENDANTS' failure and refusal to furnish accurate itemized wage statements;  
7 DEFENDANTS' failure and refusal to maintain required records, DEFENDANTS' failure and  
8 refusal to indemnify PLAINTIFF and CLASS MEMBERS for necessary expenditures and/or losses  
9 incurring in discharging their duties, constitutes an unfair and unlawful business practice under  
10 California Business and Professions Code § 17200 et seq.

11 53. DEFENDANTS' violations of California wage and hour laws constitute a business  
12 practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over a  
13 significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and CLASS  
14 MEMBERS.

15 54. DEFENDANTS have avoided payment of wages, overtime wages, meal periods,  
16 rest periods, and other benefits as required by the California Labor Code, the California Code of  
17 Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to record,  
18 report, and pay the correct sums of assessment to the state authorities under the California Labor  
19 Code and other applicable regulations.

20 55. As a result of DEFENDANTS' unfair and unlawful business practices,  
21 DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the expense  
22 of PLAINTIFF, CLASS MEMBERS, and members of the public. DEFENDANTS should be made  
23 to disgorge their ill-gotten gains and to restore them to PLAINTIFF and CLASS MEMBERS.

24 56. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFF and  
25 CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not limited  
26 to orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFF and CLASS  
27 MEMBERS the wages and other compensation unlawfully withheld from them. PLAINTIFF and  
28 CLASS MEMBERS are entitled to restitution of all monies to be disgorged from DEFENDANTS

1 in an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court.

2  
3 **TENTH CAUSE OF ACTION**

4 **Representative Enforcement Action Under the Private Attorneys General Act**

5 **[Cal. Lab. Code §§ 2698–2699.5]**

6 **(Against All DEFENDANTS)**

7 57. PLAINTIFF incorporates herein by specific reference as though fully set forth the  
8 allegations in all preceding paragraphs, with exception of the allegations in paragraph 17 and the  
9 subparagraphs thereto.

10 58. PLAINTIFF is an “aggrieved employee” within the meaning of California Labor  
11 Code § 2699(c), and a proper representative to bring a civil action on behalf of himself and other  
12 current and former employees of DEFENDANTS pursuant to the procedures specified in California  
13 Labor Code § 2699.3, because PLAINTIFF and CLASS MEMBERS were employed by  
14 DEFENDANTS and the alleged violations of the California Labor Code were committed against  
15 PLAINTIFF and CLASS MEMBERS.

16 59. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor  
17 Code §§ 2698–2699.5, PLAINTIFF and CLASS MEMBERS seeks to recover civil penalties,  
18 including but not limited to penalties under California Labor Code §§ 2699, 210, 226.3, 558,  
19 1174.5, 1197.1, and IWC Wage Order No. 5-2001 and/or 16-2001, § 20, from DEFENDANTS in  
20 a representative action for the violations set forth above, including but not limited to violations of  
21 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and  
22 2802. PLAINTIFF and CLASS MEMBERS are also entitled to an award of reasonable attorneys’  
23 fees and costs pursuant to California Labor Code § 2699(g)(1).

24 60. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice on  
25 April 13, 2021 by online filing to the California Labor and Workforce Development Agency  
26 (“LWDA”) and by certified mail to DEFENDANTS of the specific provisions of the California  
27 Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories  
28 to support the alleged violations. More than sixty-five (65) days have passed and the LWDA has

1 not provided notice to PLAINTIFF that it intends to investigate the alleged violations.

2 61. Therefore, PLAINTIFF has complied with all of the requirements set forth in  
3 California Labor Code § 2699.3 to commence a representative action under PAGA.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other persons similarly  
6 situated, respectfully prays for relief against DEFENDANTS and DOES 1 through 100, inclusive,  
7 and each of them, as follows:

- 8 1. For compensatory damages in an amount to be ascertained at trial;
- 9 2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well  
10 as disgorged profits from DEFENDANTS' unfair and unlawful business practices;
- 11 3. For meal and rest period compensation pursuant to California Labor Code § 226.7  
12 and IWC Wage Order No. 5-2001 and/or 16-2001;
- 13 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 14 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from  
15 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from  
16 engaging in the unlawful business practices complained of herein;
- 17 6. For waiting time penalties pursuant to California Labor Code § 203;
- 18 7. For statutory and civil penalties according to proof, including but not limited to all  
19 penalties authorized by the California Labor Code §§ 226(e) and §§ 2698–2699.5;
- 20 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor  
21 Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable  
22 provision providing for pre-judgment interest;
- 23 9. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 1194,  
24 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions providing for  
25 attorneys' fees and costs;
- 26 10. For declaratory relief;
- 27 11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,  
28 Seventh, Eighth, and Ninth Causes of Action as a class action;

1           12.     For an order appointing PLAINTIFF as class representative, and PLAINTIFF's  
2 counsel as class counsel; and

3           13.     For such further relief that the Court may deem just and proper.

4  
5     DATED: December 9, 2021

Respectfully submitted,

6           **MATERN LAW GROUP, PC**

7  
8     By: \_\_\_\_\_



9           Matthew J. Matern  
10          Joshua D. Boxer  
11          Sara B. Tosdal  
12          Attorneys for Plaintiff  
13          DAVID VARGAS, individually, and on  
14          behalf of other persons similarly situated and  
15          aggrieved

**DEMAND FOR JURY TRIAL**

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

DATED: December 9, 2021

Respectfully submitted,

**MATERN LAW GROUP, PC**

By:



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Matthew J. Matern  
Joshua D. Boxer  
Sara B. Tosdal  
Attorneys for Plaintiff  
DAVID VARGAS, individually, and on  
behalf of other persons similarly situated and  
aggrieved