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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

AMADOR ORTIZ, an individual, on behalf
of himself and others similarly situated

PLAINTIFF,

v.

WABO LANDSCAPE & CONSTRUCTION,
INC.; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. MSC21-02423

**[PAGA amendment specifically authorized,
pursuant to Labor Code § 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1194.2 and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Breaks Pursuant to Labor Code § 226.7
4. Violation of Labor Code § 2802
5. Violation of Labor Code § 226(a)
6. Penalties Pursuant to Labor Code § 203
7. Violation of Business & Professions Code § 17200
8. Penalties Pursuant to Labor Code §2699, et seq.

**ELECTRONICALLY
FILED**

05/27/2022

**K. BIEKER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA - MARTINEZ
A.Stewart, DEPUTY CLERK**

1 Plaintiff AMADOR ORTIZ, an individual, on behalf of himself, all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under Labor Code Private Attorneys General Act of 2004, §2699, *et seq.* (hereafter “PAGA”),
4 complains of Defendant WABO LANDSCAPE & CONSTRUCTION, INC. (“Defendant”) and
5 each of them, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382 and Labor Code §2699, *et seq.*, on behalf of Plaintiff and a Proposed Class defined as:

10 All non-exempt employees who are employed or have been
11 employed by WABO LANDSCAPE & CONSTRUCTION, INC.,
12 in the State of California since four (4) years prior to the filing of
13 this action to the present plus any additional time during which the
14 statutes of limitation for the causes of action herein were tolled
15 pursuant to Emergency Rule 9 of the California Rules of Court, the
16 ‘Emergency Rules Related to COVID-19’. (“Proposed Class”)

17 2. Any limitations period referenced in this complaint is extended pursuant to
18 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the
19 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of
20 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
21 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
22 that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the
23 relevant time period or statute of limitations referenced in this complaint is extended into the past
24 by the number of days in which this tolling was in effect.

25 3. From at least four (4) years prior to the filing of this action continuing to the present,
26 Defendant has had a consistent policy of failing to pay wages and/or overtime to all Proposed Class
27 members. Plaintiff and Proposed Class members were not properly compensated for all hours
28 worked because Defendant failed to pay Plaintiff and the Proposed Class for each and every hour
worked. Plaintiff and members of the Proposed Class were routinely required to work “off the
clock” and perform compensable activities, but are not compensated for this time. Additionally,
Defendant maintained an unlawful policy of automatically deducting (“auto-deduct”) for meal

1 periods regardless of whether a meal period was provided at all. This auto-deduct policy resulted
2 in the unlawful withholding of wages and/or overtime for time actually worked. As such,
3 Defendant fails to pay Plaintiff and the Proposed Class for each and every hour worked.

4 4. From at least four (4) years prior to the filing of this action and continuing to the
5 present, Defendant has violated Labor Code §§ 226.7 and 512 for the following reasons:

- 6 a. Defendant failed to apprise Plaintiff and the Proposed Class of their rights
7 associated with meal periods and failed to provide compliant and timely meal
8 periods.
- 9 b. Further, Defendant failed to pay such employees one (1) hour of pay at the
10 employees' regular rate of compensation for each workday that the first meal
11 period was not provided within the first (5) hours of the shift, was not provided
12 in full, or was not provided at all.
- 13 c. Further, as mentioned above, Defendant maintained a policy of automatically
14 deducting 30 minutes from each shift that Plaintiff and the Proposed Class
15 worked. This "auto-deduct" policy was unlawful and did not account for
16 whether the meal periods were actually provided, whether employees were able
17 to take their meal periods at all, whether they were able to take timely meal
18 periods, whether they took meal periods of less than thirty minutes, and whether
19 they were free from interruption for the full 30 minutes.

20 5. From at least four (4) years prior to the filing of this action and continuing to the
21 present, Defendant failed to apprise Plaintiff and the Proposed Class of their rights associated with
22 rest periods and failed to provide compliant rest periods. Defendant maintained a consistent policy
23 of failing to provide Plaintiff and the Proposed Class with rest breaks of not less than ten (10)
24 minutes per four (4) hour work period or major fraction thereof. Plaintiff and the Proposed Class
25 are required to work four hour increments (or major fractions thereof) without being provided with
26 a ten (10) minute uninterrupted rest period. Further, Plaintiff and the Proposed Class were not
27 compensated with one (1) hour of wages at the regular rate of compensation for each missed rest
28 period in violation of Labor Code § 226.7.

1 6. From at least four (4) years prior to the filing of this action and continuing to the
2 present, Plaintiff and the Proposed Class members were required to incur substantial expenses in
3 direct consequent of the discharge of their duties for Defendant without reimbursement.
4 Specifically, Defendant has failed to reimburse Plaintiff and the Proposed Class the cost of using
5 their personal cell phones for business related purposes. Defendant required that Plaintiff and the
6 Proposed Class members be available by cell phone and answer/use their cell phones while
7 working. This was necessary to perform their job duties. These cell phones were not provided by
8 Defendant and Defendant failed to reimburse Plaintiff and the Proposed Class members for the
9 costs associated with using their personal cell phones.

10 7. For at least one (1) year prior to the filing of this action and continuing to the
11 present, Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order
12 5-2001 and Labor Code § 226(a) by failing to provide Plaintiff and the Proposed Class accurate
13 itemized wage statements in writing showing the total hours worked and all applicable hourly rates
14 in effect during the pay period and the corresponding number of hours worked at each hourly rate
15 by the employee. Further, Defendant issues Plaintiff and members of the Proposed Class wage
16 statements that do not accurately show meal and rest premiums as a result of the claims alleged
17 above and when they are provided, they are not provided at the proper rate.

18 8. For at least three (3) years prior to the filing of this action continuing to the present,
19 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
20 the Proposed Class.

21 9. Plaintiff, on behalf of himself and all Proposed Class members brings this action
22 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802;
23 Wage Order 5-2001; and California Code of Regulations, Title 8, Section 11050, seeking unpaid
24 wages/overtime, meal and rest period penalties, accurate itemized wage statements, unreimbursed
25 expenses, all wages due upon termination, other penalties, injunctive and other equitable relief,
26 and reasonable attorneys’ fees and costs.

27 10. Plaintiff, on behalf of himself and all Proposed Class members, pursuant to
28 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and

1 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

2 11. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
3 and Development Agency (“LWDA”) and Defendant giving notice of the claims pursuant to
4 PAGA and continuing to the present, and as extended by Emergency Rule 9 referenced in
5 paragraph 2 above, Defendant has violated Labor Code provisions, as detailed below, giving rise
6 to a claim pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved employees presently
7 or formerly employed by Defendant during the liability period as defined in his PAGA notice
8 letter, brings this representative action pursuant to Labor Code §2699, et seq. seeking penalties for
9 Defendant’s violation of Labor Code Sections 201-203, 226(a), 226.7, 510, 512, 1194, 1194.2,
10 1199, and 2802. A true and correct copy of Plaintiff’s notice letter is attached hereto as Exhibit
11 “1”.

12 **II.**

13 **JURISDICTION AND VENUE**

14 12. This Court has subject matter jurisdiction over all causes of action asserted herein
15 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
16 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
17 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
18 State of California or is subject to adjudication in the courts of the State of California.

19 13. This Court has personal jurisdiction over Defendant because Defendant has caused
20 injuries in the County of Contra Costa and the State of California through their acts, and by their
21 violation of the California Labor Code, California state common law, and California Business &
22 Professions Code § 17200, *et seq.*

23 14. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
24 Civil Procedure § 395. Defendant operates within California and does business within Contra
25 Costa County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed
26 Class members within the State of California and the county of Contra Costa.

27 15. This case should be classified as complex according to Rule 3.400 of the California
28 Rules of Court, and assigned to a complex litigation judge and department, as it will involve

substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

16. Plaintiff files this amended complaint adding a claim for penalties under Labor Code §2699, *et seq.* as a matter of right. (*see* Labor Code § 2699.3(a)(2)(C).)

III.

PARTIES

A. PLAINTIFF

17. Plaintiff AMADOR ORTIZ is a resident of California.

18. Plaintiff and all Proposed Class members, were regularly required to:

- a. Work without being paid for all hours at the appropriate rate;
- b. Work without being provided compliant meal periods;
- c. Work without being provided compliant rest periods;
- d. Work without being reimbursed for necessary business-related expenses;

and,

- e. Work without being provided accurate itemized wage statements.

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

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

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

B. DEFENDANTS

22. Defendant WABO LANDSCAPE & CONSTRUCTION, INC. is believed to be a California corporation operating within the State of California. Defendant’s corporate address is believed to be 726 Alfred Nobel Drive, Hercules, CA 94547. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within

1 California. Defendant has done and does business throughout the State of California.

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

9 24. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
10 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
11 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
12 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
13 employer and/or joint employer of Plaintiff and the Proposed Class members.

14 25. Furthermore, Defendants acted in all respects as the employers or joint employers
15 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
16 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
17 engaged, thereby creating a common law employment relationship, with the Proposed Class.
18 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

19 **IV.**

20 **FACTUAL BACKGROUND**

21 26. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
22 classified as non-exempt employees by Defendant. Defendant hires employees who work as
23 hourly employees and are paid on an hourly basis.

24 27. Upon information and belief, Plaintiff and the Proposed Class are covered by
25 California Industrial Welfare Commission Occupational Wage Order No. 5-2001 (Title 8 Cal.
26 Code of Regs. § 11050).

27 28. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid
28 all wages at the proper rate of pay. Plaintiff and Proposed Class members were not properly

1 compensated for all hours worked due to the fact that Defendant required Plaintiff and Proposed
2 Class members to perform compensable activities while “off the clock” for which no pay was
3 provided. Plaintiff and the Proposed Class members are not paid any wages for this time worked.
4 Additionally, Defendant maintained an unlawful policy of automatically deducting (“auto-
5 deduct”) for meal periods regardless of whether a meal period was provided at all. This auto-
6 deduct policy resulted in the unlawful withholding of wages and/or overtime for time actually
7 worked.

8 29. Plaintiff and all Proposed Class members have been forced by Defendant to work
9 over five (5) hours in one day without being provided a compliant and timely thirty (30) minute
10 uninterrupted meal break and not being compensated one (1) hour of pay at their regular rate of
11 compensation for each workday that a meal period was not provided, not provided in full, or
12 provided after five (5) hours, all in violation of California labor laws, regulations, and Industrial
13 Welfare Commission Wage Orders. Defendant also failed to inform Plaintiff and the members of
14 the Proposed Class of their right to take compliant and timely meal periods by way of a lawful
15 policy. Plaintiff and the Proposed Class were not compensated with one (1) hour of wages at the
16 regular rate of compensation for each missed meal period as required. Further, Defendant
17 maintained a policy of automatically deducting 30 minutes from each shift that Plaintiff and the
18 Proposed Class worked. This “auto-deduct” policy was unlawful and did not account for whether
19 the meal periods were actually provided, whether employees were able to take their meal periods
20 at all, whether they were able to take timely meal periods, whether they took meal periods of less
21 than thirty minutes, and whether they were free from interruption for the full 30 minutes.

22 30. Defendant failed to provide Plaintiff and the Proposed Class members with
23 compliant rest breaks of not less than ten (10) minutes per four (4) hour work period or major
24 fraction thereof. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class
25 of this right. Plaintiff and the Proposed Class have been required to work four-hour increments
26 (or major fractions thereof) without being provided with compliant ten (10) minute uninterrupted
27 rest periods. Further, Plaintiff and the Proposed Class were not compensated with one (1) hour
28 of wages at the regular rate of compensation for each missed rest period as required.

31. Defendant failed to reimburse Plaintiff and the Proposed Class the cost of using their personal cell phones for business related purposes. Defendant required Plaintiff and the Proposed Class to be available by cell phone and answer/use their cell phones while working to perform their job duties. Despite being required, these cell phones were not provided by Defendant and Defendant failed to reimburse Plaintiff and the Proposed Class for the costs associated with using their personal cell phones.

32. Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 5-2001(7) and Labor Code § 226(a) by failing to provide accurate itemized statements that include the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate for Plaintiff and the Proposed Class. Further, Defendant failed to issue Plaintiff and the Proposed Class accurate itemized wage statements that accurately include meal and rest premiums as a result of the claims alleged above and when they are provided, they are not provided at the accurate rate.

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

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

V.

CLASS ACTION ALLEGATIONS

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

All non-exempt employees who are employed or have been employed by WABO LANDSCAPE & CONSTRUCTION, INC., in the State of California since four (4) years prior to the filing of this action to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“Proposed Class”)

36. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to

1 amend or modify the class description with greater specificity, by division into subclasses, or by
2 limitation to particular issues.

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

6 **A. NUMEROSITY**

7 38. The potential members of the Proposed Class as defined are so numerous that
8 joinder of all the members of the Proposed Class is impracticable. While the precise number of
9 proposed Class Members has not been determined at this time, Plaintiff is informed and believes
10 that Defendant currently employ, and during the relevant time periods employed over 50 members
11 of the Proposed Class.

12 39. Plaintiff alleges that Defendant's employment records would provide information
13 as to the number and location of all Proposed Class members. Joinder of all members of the
14 Proposed Class is not practicable.

15 **B. COMMONALITY**

16 40. There are questions of law and fact common to the Proposed Class that predominate
17 over any questions affecting only individual Proposed Class members. These common questions
18 of law and fact include, without limitation:

19 a. Whether Defendant failed to pay wages and/or overtime compensation at
20 the appropriate rate for all hours worked as required by the Labor Code and Wage Orders under
21 Labor Code §§ 510, 1194, 1194.2, and 1199;

22 b. Whether Defendant violated Labor Code §§ 226.7 and 512 and IWC Wage
23 Order 5-2001 or other applicable IWC Wage Orders by failing to provide required meal periods
24 throughout the term of employment and/or failing to compensate said employees one (1) hour of
25 wages at their regular rate of compensation in lieu of meal periods;

26 c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 5-
27 2001 or other applicable IWC Wage Orders by failing to provide required rest periods throughout
28 the term of employment and/or failing to compensate said employees one (1) hour of wages at

1 their regular rate of compensation in lieu of rest periods;

2 d. Whether Defendant violated Labor Code § 2802 by failing to reimburse
3 Plaintiff and the Proposed Class out of pocket expenses for the cost of personal cell phones;

4 e. Whether Defendant violated Labor Code § 226(a) and Wage Order 5-2001
5 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11050 by failing to
6 provide accurate itemized wage statements to Plaintiff and the members of the Proposed Class;

7 f. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
8 compensation due and owing at the time that any Proposed Class member's employment with
9 Defendant terminated;

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

12 h. Whether Plaintiff and the members of the Proposed Class are entitled to
13 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

14 i. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
15 acts alleged herein.

16 **C. TYPICALITY**

17 41. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
18 all members of the Proposed Class sustained injuries and damages arising out of and caused by
19 Defendant's common course of conduct in violation of laws, regulations that have the force and
20 effect of law, and statutes as alleged herein.

21 **D. ADEQUACY OF REPRESENTATION**

22 42. Plaintiff will fairly and adequately represent and protect the interests of the
23 members of the Proposed Class.

24 43. Counsel who represent Plaintiff and the Proposed Class are competent and
25 experienced in litigating large employment class actions.

26 **E. SUPERIORITY OF CLASS ACTION**

27 44. A class action is superior to other available means for the fair and efficient
28 adjudication of this controversy. Individual joinder of all Proposed Class members is not

1 practicable, and questions of law and fact common to the Proposed Class predominate over any
2 questions affecting only individual members of the Proposed Class. Each member of the Proposed
3 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
4 practice of failing to pay all wages due, failing to provide meal and rest periods, failing to provide
5 accurate itemized wage statements, failing to reimburse business-related expenses, and failing to
6 pay all wages upon resignation or termination.

7 45. Class action treatment will allow those similarly situated persons to litigate their
8 claims in the manner that is most efficient and economical for the parties and the judicial system.
9 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
10 action that would preclude its maintenance as a class action.

11 **VI.**

12 **FIRST CAUSE OF ACTION**

13 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

14 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

15 **LABOR CODE §§ 510, 1194, 1194.2, AND 1199**

16 46. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
17 by reference all previous paragraphs.

18 47. Labor Code §§ 510, 1194, and 1199 require an employer to compensate its
19 employees at the minimum wage rate for all hours worked and compensate its employees at the
20 rate of no less than one and one-half times the regular rate of pay for any work in excess of eight
21 (8) hours in one workday and any work in excess of forty (40) hours in any one workweek.

22 48. Plaintiff and the Proposed Class were forced to work on a regular and consistent
23 basis without receiving compensation for all hours worked at the proper rate. Plaintiff and
24 Proposed Class members were not properly compensated for all hours worked due to the fact that
25 Defendant required Plaintiff and Proposed Class members to perform compensable activities while
26 "off the clock" for which no pay was provided. Plaintiff and Proposed Class members are not paid
27 any wages for this time worked. Defendant has a policy and practice of not paying for hours
28 worked over 40 in one week despite being required to perform compensable activities while "off

1 the clock”. Defendant thus fails to pay Plaintiff and the Proposed Class members for each and
2 every hour worked.

3 49. Defendant also maintained an unlawful policy of automatically deducting (“auto-
4 deduct”) for meal periods regardless of whether a meal period was provided at all. This auto-
5 deduct policy resulted in the unlawful withholding of wages and/or overtime for time actually
6 worked.

7 50. By their policy of requiring Plaintiff and members of the Proposed Class to work
8 without being paid all wages at their appropriate regular rate of pay and to work in excess of eight
9 (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the
10 rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor
11 Code §§ 510, 1194, 1194.2, and 1199.

12 51. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
13 members have been deprived of wages and/or overtime in amounts to be determined at trial, and
14 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and
15 costs.

16 **VII.**

17 **SECOND CAUSE OF ACTION**

18 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

19 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

20 **LABOR CODE § 226.7 AND LABOR CODE § 512**

21 52. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
22 by reference all previous paragraphs.

23 53. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
24 compensation for each meal period the employer fails to provide. Employees are entitled to a first
25 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the
26 first five (5) hours of the shift.

27 54. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of
28 these rights.

1 55. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.
2 Defendant failed to provide Plaintiff and the Proposed Class with proper meal periods of not less
3 than thirty (30) minutes as required by the Labor Code during the relevant time period. Meal
4 periods were generally not provided at all, but if they were provided they were after the 5th hour
5 (late), not a full 30 minutes in length (short), and/or were interrupted.

6 56. In addition to failing to provide meal periods altogether, Defendant maintained a
7 policy of automatically deducting 30 minutes from each shift that Plaintiff and the Proposed Class
8 worked. This “auto-deduct” policy was unlawful and did not account for whether the meal periods
9 were actually provided, whether Plaintiff and members of the Proposed Class were able to take
10 their meal periods at all, whether they were able to take timely meal periods, whether they took
11 meal periods of less than thirty minutes, and whether they were free from interruption for the full
12 30 minutes.

13 57. Defendant has had a consistent policy of failing to pay Plaintiff and the Proposed
14 Class one (1) hour of pay at the employees’ regular rate of compensation for each workday that
15 the first meal period was not provided within the first (5) hours of the shift. On July 15, 2021, in
16 *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for
17 calculating the one extra hour of premium pay that employees are owed if an employer fails to
18 provide a compliant meal period or rest break. Specifically, the Court held that those premium
19 payments must include the hourly value of any nondiscretionary earnings (such as a
20 nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. Here,
21 when meal period premiums are provided, Defendant has had a consistent policy of paying meal
22 period premiums at the base rate and not the appropriate blended rate in violation of Labor Code
23 §§ 226.7 and 512.

24 58. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
25 damages in an amount equal to one (1) hour of wages at the regular rate of compensation per
26 missed meal break, per day in a sum to be proven at trial.

27 ///

1 **VIII.**

2 **THIRD CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **FAILURE TO PROVIDE REST PERIODS PURSUANT TO**

5 **LABOR CODE § 226.7**

6 59. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
7 by reference all previous paragraphs.

8 60. Labor Code § 226.7 and IWC Wage Order 5 require an employer to provide rest
9 periods or to pay an additional one (1) hour of wages for each rest period the employer fails to
10 provide. Employees are entitled to a ten (10) minute rest break for every four (4) hours worked or
11 major fraction thereof.

12 61. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of
13 this right.

14 62. Defendant maintained a consistent policy of failing to provide Plaintiff and the
15 Proposed Class with rest breaks of not less than ten (10) minutes per four (4) hour work period or
16 major fraction thereof. Plaintiff and the Proposed Class have been required to work four-hour
17 increments (or major fractions thereof) without being provided with compliant ten (10) minute
18 uninterrupted rest periods. Rest periods were generally not provided at all, but if they were
19 provided they were late, short, and/or interrupted. Defendant failed to provide second rest periods
20 at all.

21 63. Plaintiff and the Proposed Class were not compensated with one (1) hour of wages
22 at the regular rate of compensation for each missed rest period as required by Labor Code § 226.7.
23 *Ferra v. Loews Hollywood Hotel, LLC* requires the rest period premium payments must include the
24 hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be
25 paid at an employee's base hourly rate.

26 64. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
27 damages in an amount equal to one (1) hour of wages at the regular rate of compensation per
28 missed rest break, per day in a sum to be proven at trial.

1 **IX.**

2 **FOURTH CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO**

5 **LABOR CODE § 2802**

6 65. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
7 by reference all previous paragraphs.

8 66. Labor Code § 2802 requires employers to indemnify employees for all necessary
9 expenditures incurred by employees in the discharge of their duties.

10 67. Plaintiff and the Proposed Class members were required to incur substantial
11 expenses in direct consequent of the discharge of their duties for Defendant without
12 reimbursement.

13 68. On a regular and consistent basis, Defendant has failed to reimburse Plaintiff and
14 the Proposed Class for the cost of using their personal cell phones for business related purposes.
15 Defendant required that Plaintiff and the Proposed Class be available by cell phone and answer/use
16 their cell phones while working as necessary to perform their job duties.

17 69. These cell phones were not provided by Defendant and Defendant failed to
18 reimburse Plaintiff and the Proposed Class for the costs associated with using their personal cell
19 phones.

20 70. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have
21 been deprived of reimbursement in the amounts to be determined at trial, and are entitled to
22 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

23 **X.**

24 **FIFTH CAUSE OF ACTION**

25 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

26 **VIOLATION OF LABOR CODE § 226(A)**

27 71. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
28 by reference all previous paragraphs.

72. California Labor Code § 226(a) requires employers to furnish accurate itemized wage statements that show the total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. (Labor Code §§ 226(a)(2) and (9).)

73. Here, Defendant has failed to furnish accurate itemized wage statements that show the total hours worked by the employee under Labor Code § 226(a)(2) and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee under Labor Code § 226(a)(9).

74. Further, Plaintiff and the Proposed Class members are issued wage statements that do not accurately show meal and rest premiums as a result of the claims alleged above and when they are provided, they are not provided at the proper rate.

75. Defendant's failure to provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a regular and consistent basis.

76. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and is entitled to an award of costs and reasonable attorneys' fees.

XI.

SIXTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

WAITING TIME PENALTIES UNDER LABOR CODE § 203

77. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

78. Numerous members of the Proposed Class including the Plaintiff are no longer employed by Defendant. They were either fired or quit Defendant's employ.

79. Defendant's failure to pay wages, as alleged above was willful in that Defendant

1 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
2 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
3 penalty until paid for a period of up to thirty (30) days from the time they were due.

4 80. Defendant has failed to pay Plaintiff and others a sum certain at the time of
5 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
6 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
7 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class
8 members' daily wage multiplied by thirty (30) days.

9 **XII.**

10 **SEVENTH CAUSE OF ACTION**

11 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

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

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

15 82. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
16 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
17 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
18 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
19 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
20 interest within the meaning of Code of Civil Procedure § 1021.5.

21 83. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,
22 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
23 appropriate equitable relief.

24 84. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
25 practices.

26 85. California's wage and hour laws express fundamental public policies. Providing
27 employees with proper wages and compensation are fundamental public policies of this State and
28 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce

1 vigorously minimum labor standards, to ensure that employees are not required or permitted to
2 work under substandard and unlawful conditions, and to protect law-abiding employers and their
3 employees from competitors who lower their costs by failing to comply with minimum labor
4 standards.

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

11 87. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
12 violation of § 17200, *et seq.* of the Business & Professions Code.

13 88. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
14 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
15 § 17200, *et seq.* of the Business & Professions Code.

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

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

25 **XIII.**

26 **EIGHTH CAUSE OF ACTION**

27 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

28 91. Plaintiff, on behalf of himself and all aggrieved employees, realleges and

incorporates by reference all previous paragraphs.

92. As a result of the acts alleged above and specifically incorporated herein, Plaintiff seeks penalties under Labor Code §2699, *et seq.* use of Defendant’s violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802; Wage Order 5-2001; and California Code of Regulations, Title 8, Section 11050, which call for civil penalties.

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

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

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

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

95. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the LWDA¹ and mailed a letter by certified mail to Defendant’s entity address, which is 726 Alfred Nobel Drive Hercules, CA 94547, as proscribed by the Code on November 24, 2021, describing Defendant’s conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802. (*see* Exhibit “1”.) Plaintiff also mailed his notice letter by certified mail to Patrick J. McNeil, A Professional Corporation, the listed Agent for Service of Process for Defendant on the California Secretary of State website² on November 24, 2021. (*see also* Exhibit “1”.) Plaintiff obtained an e-filing confirmation from the LWDA confirming receipt of the notice and a signed green return receipt from Defendant indicating that it also received Plaintiff’s notice letter, true and correct copies of which are attached hereto as Exhibit “2” and Exhibit “3”, respectively.

96. As no letter evidencing the LWDA’s intention to investigate was received by Plaintiff’s Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil action as though the LWDA had not chosen to investigate pursuant to Labor Code

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

² <https://businesssearch.sos.ca.gov/>

§2699.3(a)(2)(A).

97. Plaintiff will also provide the LWDA with a filed-stamped copy of the First Amended Class and Representative Action Complaint immediately.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

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

2. For liquidated damages in the amount of unpaid minimum wages not paid to Plaintiff and each Proposed Class member from at least four (4) years prior to the filing of this action to the present as may be proven;

3. For compensatory damages in the amount of Plaintiff's and each Proposed Class members' hourly wage at the appropriate regular rate of compensation for each meal period that Defendant failed to provide from at least four (4) years prior to the filing of this action to the present as may be proven;

4. For compensatory damages in the amount of Plaintiff's and each Proposed Class members' hourly wage at the appropriate regular rate of compensation for each rest period that Defendant failed to provide from at least four (4) years prior to the filing of this action to the present as may be proven;

5. For compensatory damages in the amount of Plaintiff's and each Proposed Class Members' unreimbursed out of pocket expenses as a requirement of employment;

6. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000);

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

8. An award of prejudgment and post judgment interest;

1 9. An order enjoining Defendant and its agents, servants, and employees, and all
2 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
3 overtime, meal and rest periods, accurate itemized wage statements, reimbursement of expenses,
4 and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7,
5 510, 512, 1194, 1199, 1194.2, 2802, and IWC 5-2001;

6 10. For restitution for unfair competition pursuant to Business & Professions Code
7 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

8 11. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
9 Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, 2802, and Wage Order 5-
10 2001;

11 12. An award providing for payment of costs of suit;

12 13. An award of attorneys' fees; and

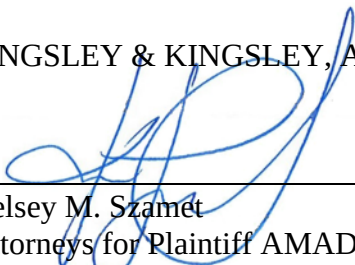
13 14. Such other and further relief as this Court may deem proper and just.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

16
17 DATED: May 27, 2022

KINGSLEY & KINGSLEY, APC

18
19 By: 

Kelsey M. Szamet
Attorneys for Plaintiff AMADOR ORTIZ and the
Proposed Class

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

November 24, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

WABO LANDSCAPE & CONSTRUCTION, INC.
726 Alfred Nobel Drive
Hercules, CA 94547
Via USPS Certified Mailing #7020 0640 0002 1439 7892

WABO LANDSCAPE & CONSTRUCTION, INC.
c/o Agent for Service of Process
Patrick J. McNeil, A Professional Corporation
55 Professional Center Parkway, Ste. A
San Rafael, CA 94903
Via USPS Certified Mailing #7020 0640 0002 1439 7885

Re: AMADOR ORTIZ v. WABO LANDSCAPE & CONSTRUCTION, INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents AMADOR ORTIZ (“Plaintiff”) and a proposed group of current and former employees working for WABO LANDSCAPE & CONSTRUCTION, INC. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All non-exempt employees who are employed or have been employed by WABO LANDSCAPE & CONSTRUCTION, INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court,

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

November 24, 2021

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adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees.

Plaintiff and other aggrieved employees were not properly compensated for all hours worked at the appropriate regular rate of pay and were not paid for all overtime hours worked at the proper overtime rate when they were working more than eight (8) hours in one day or forty (40) hours in one week. Plaintiff and all aggrieved employees were not properly compensated for all hours worked due to the fact that Defendant required Plaintiff and all aggrieved employees to perform compensable activities while “off the clock” for which no pay was provided. Plaintiff and the aggrieved employees are not paid any wages for this time worked. Defendant has a policy and practice of not paying for hours worked over 40 in one week despite being required to perform compensable activities while “off the clock”. Additionally, Defendant maintained an unlawful policy of automatically deducting (“auto-deduct”) for meal periods regardless of whether Defendant provided a meal period. This auto-deduct policy resulted in the unlawful withholding of wages and/or overtime for time actually worked. As such, Defendant fails to pay Plaintiff and the aggrieved employees for each and every hour worked.

Defendant has engaged in practices that violate Labor Code §§ 226.7 and 512 with respect to Plaintiff and all aggrieved employees. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant and timely meal periods. In addition, Defendant has had a consistent policy of: (1) failing to provide Plaintiff and the aggrieved employees compliant and timely meal periods; and (2) failing to pay such employees one (1) hour of pay at the

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

November 24, 2021

Page 3 of 4

employees' regular rate of compensation for each workday that the complaint meal period was not provided. Meal periods were generally not provided at all, but if they were provided they were after the 5th hour (late), not a full 30 minutes in length (short), and/or were interrupted.

Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, when meal period premiums are provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Further, as mentioned above, Defendant maintained a policy of automatically deducting 30 minutes from each shift that Plaintiff and the aggrieved employees worked. This "auto-deduct" policy was unlawful and did not account for whether the meal periods were actually provided, whether employees were able to take their meal periods at all, whether they were able to take timely meal periods, whether they took meal periods of less than thirty minutes, and whether they were free from interruption for the full 30 minutes.

Pursuant to Labor Code § 226.7 and Wage Order 5-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period or major fraction thereof. Defendant failed to maintain a policy informing Plaintiff and the aggrieved employees of this right. Plaintiff and all aggrieved employees have been required to work four-hour increments (or major fractions thereof) without being provided with a ten (10) minute uninterrupted rest period. Rest periods were generally not provided at all, but if they were provided they were late, short, and/or interrupted. Defendant failed to provide second rest periods at all. As such, Defendant failed to provide Plaintiff and the Proposed Class with compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period in violation of *Ferra*. As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. As with meal periods, when rest premiums are provided, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7.

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones for business related purposes. Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones while working and this was necessary to perform their job duties. These cell phones were not provided by

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

November 24, 2021

Page 4 of 4

Defendant and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones.

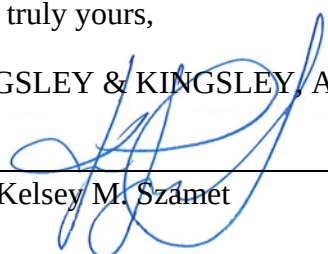
Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each employee an accurate itemized statement in writing showing a number of specific items, including total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Defendant has failed to furnish accurate itemized wage statements that show total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee under Labor Code §§ 226(a)(2) and (9). Further, Plaintiff and the aggrieved employees are issued wage statements that do not accurately show meal and rest premiums as a result of the claims alleged above and when they are provided, they are not provided at the proper rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/km

Cc: 1. Abramson Labor Group 3580 Wilshire Blvd Ste 1260 Los Angeles, CA 90010-2513 via Electronic Mail Transmission: wza@abramsonlabor.com; dani@abramsonlabor.com

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Ste 1

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California ▼

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Amador Ortiz

Plaintiff/Aggrieved Employee Occupation *

truck driver and laborer

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select... ▼

Employer Name *

WABO LANDSCAPE & CONSTRUCTION, INC.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

Employer City *

Employer State ***Employer Zip/Postal Code *****Employer Industry *****Employer Industry for "Other" *****Add additional defendants**☒ Add any entity other than an individual☐ Add an individual/sole proprietor employer**Additional Employer Information (Corporation/General Partnership)****Employer Entity Type****Employer Name ***

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt ***Employer City *****Employer State *****Employer Zip/Postal Code *****Employer Industry *****Employer Industry for "Other" ***[Add Additional Employers](#)**Notice General Information****Estimated Number of Employees Impacted by Violations ***

Notice Violations – Check All that Apply ***Child Labor – Specify Ages**

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.c

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

[REDACTED]

Credit Card Number *

[REDACTED]

CVV Number *

[REDACTED]

Credit Card Expiration Month *

[REDACTED]

mm

Credit Card Expiration Year *

[REDACTED]

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

 LWDA Letter - ...ction, Inc.pdf

Other Attachment – (if any) (must be a .pdf)

 No file chosen[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ **I understand that, if I file, I must comply with the redaction rules consistent with this notice.**

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

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Wednesday, November 24, 2021 1:14 PM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

External Email!

11/24/2021

LWDA Case No. LWDA-CM-854463-21
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : Amador Ortiz
Employer: WABO LANDSCAPE & CONSTRUCTION, INC.
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:
https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=04%7C01%7CKimberly%40kingsleykingsley.com%7Ced344fecb20f474ea18708d9af8f5137%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C0%7C0%7C637733852351737683%7CUnknown%7CTWFPbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikh1haWwiLCJXVCi6Mn0%3D%7C3000&sdata=B8zlil6hNeDAe2gpZyRkfnBkr4J9Nbs3keA4JPdSzuk%3D&reserved=0

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Wednesday, November 24, 2021 1:14 PM
To: Service Email
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-854463-21

Order Number: ORD-000143789

Total:\$75.00

Card Type: 

Date: 11/24/2021

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Suite 1200

Encino, California

91436

EXHIBIT "3"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

WABO Landscape & Construction, Inc.
726 Alfred Nobel Drive
Hercules, CA 94547

9590 9402 7019 1225 1722 56



2. Article Number (Transfer from service label)
7020 0640 0002 1439 7892

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Agent
[Signature]

☒ Agent
☐ Addressee

B. Received by (Printed Name)

Murphy

C. Date of Delivery

11/29/21

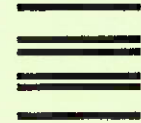
D. Is delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below:

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

USPS TRACKING #



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

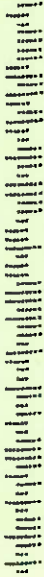
9590 9402 7019 1225 1722 5b

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY
A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER
WABO LANDSCAPE & CONSTRUCTION, INC.



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

WABO Landscape & Construction, Inc.
c/o Agent for Service of Process
Patrick J. McNeil, A Professional
Corporation
55 Professional Center Parkway, Ste. A
San Rafael, CA 94903



9590 9402 7019 1225 1722 49

2. Article Number (Transfer from service label)

7020 0640 0002 1439 7885

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
☒ Agent
☐ Addressee
B. Received by (Printed Name) C. Date of Delivery
STE. A McNeil 11/09/21
D. Is delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below:

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

USPS TRACKING#



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 7019 1225 1722 49

United States
Postal Service

* Sender: Please print your name, address, and ZIP+4® in this box*

KINGSLEY & KINGSLEY
A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER
WABO LANDSCAPE & CONSTRUCTION, INC.

