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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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

ALBERTO VIRAMONTES, individually,
and on behalf of other members of the
general public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

CLS LANDSCAPE MANAGEMENT,
INC., a California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: CIVSB2134798

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226.7, 516, 1198 and California Code of Regulations Title 8, Section 3395 (Failure to Provide Heat Recovery Periods);
- (6) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records);
- (7) Violation of California Labor Code §§ 226(b)-(c), 432, 1198, and 1198.5 (Failure to Produce Employment Records);
- (8) Violation of California Labor Code §§ 201 and 202 (Failure to Timely Pay Final

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- Wages Not Timely Paid Upon Termination);
- (9) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
 - (10) Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) (Failure to Provide Reporting Time Pay);
 - (11) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
 - (12) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
 - (13) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
 - (14) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Alberto Viramontes, individually and on behalf of all other members of the
2 public similarly situated, and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court, because Defendants filed Statement of
5 Information forms with the California Secretary of State designating a principal place of
6 business in Montclair, County of San Bernardino, in accordance with California Corporations
7 Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court
8 because Defendants employ persons in this county, and employed Plaintiff in this county, and
9 thus a substantial portion of the transactions and occurrences related to this action occurred in
10 this county.

11 **THE PARTIES**

12 4. Plaintiff Alberto Viramontes is a resident of Azusa, in Los Angeles County,
13 California. Defendants employed Plaintiff as an hourly paid, non-exempt Landscaper from
14 approximately September 2020 to April 2021. During his employment, Plaintiff typically
15 worked eight (8) hours or more per day, five (5) days per week, from 6:30 a.m. to 2:30 p.m.
16 Plaintiff's primary job duties included, without limitation, operating landscaping equipment,
17 including leaf blowers, lawnmowers, trimmers, and hedge clippers; removing trees; and other
18 debris.

19 5. CLS LANDSCAPE MANAGEMENT, INC. was and is, upon information and
20 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
21 employees are engaged throughout this county, the State of California.

22 6. Plaintiff is unaware of the true names or capacities of the Defendants sued
23 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
24 amend the complaint and serve such fictitiously named Defendants once their names and
25 capacities become known.

26 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
27 were the partners, agents, owners, or managers of CLS LANDSCAPE MANAGEMENT,
28 INC., at all relevant times.

8. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, CLS LANDSCAPE MANAGEMENT, INC. and/or DOES 1 through 10 (collectively, “Defendants” or “CLS LANDSCAPE”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

9. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

10. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

11. Defendants provide full-service landscape management throughout Southern California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Montclair, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

12. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several

documents provided at an employee's time of hire.

13. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Montclair, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiff and class members. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

14. Defendants continue to employ non-exempt or hourly paid employees in California.

15. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class members were not paid for all hours worked because all hours worked were not recorded.

17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and class members were not paid at least minimum wages for work done off-the-clock.

19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to meal periods in

1 accordance with the California Labor Code and applicable IWC Wage Order or payment of
2 one (1) additional hour of pay at their regular rates of pay when they were not provided with
3 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
4 were not provided with all meal periods or payment of one (1) additional hour of pay at their
5 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
6 period.

7 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to rest periods in
9 accordance with the California Labor Code and applicable IWC Wage Order or payment of
10 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
11 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
12 and class members were not authorized and permitted to take compliant rest periods, nor did
13 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
14 pay at their regular rates of pay when they were not authorized and permitted to take a
15 compliant rest period.

16 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to recovery periods in
18 accordance with the Labor Code and applicable General Industry Safety Order or payment of
19 one (1) additional hour of pay at their regular rates of pay when they were not provided a
20 compliant recovery period. In violation of the California Labor Code, Plaintiff and class
21 members were not provided compliant recovery periods, nor did Defendants provide Plaintiff
22 and class members with payment of one (1) additional hour of pay at their regular rates of pay
23 when they were not provided a compliant recovery period.

24 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to receive complete and
26 accurate wage statements in accordance with California law. In violation of the California
27 Labor Code, Plaintiff and class members were not provided complete and accurate wage
28 statements.

1 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that they had a duty to maintain accurate and complete payroll records in
3 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
4 knowingly, and intentionally failed to do so.

5 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that they were required to comply with requests from Plaintiff and class
7 members to inspect or receive a copy of their wage records within 21 days in accordance with
8 the California Labor Code and applicable IWC Wage Order, but willfully, knowingly, and
9 intentionally failed to do so.

10 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to receive copies of
12 instruments that they signed upon request. In violation of the California Labor Code,
13 Defendants denied Plaintiff and class members their right to obtain copies of instruments that
14 they signed.

15 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to receive copies of their
17 personnel records no later than 30 days from the date Defendants receive a written request. In
18 violation of the California Labor Code, Defendants denied Plaintiff and class members their
19 right to obtain copies of their personnel records within the statutory time limits.

20 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and class members were entitled to timely payment of all
22 wages earned upon termination of employment. In violation of the California Labor Code,
23 Plaintiff and class members did not receive payment of all wages due, including, but not
24 limited to, overtime wages; minimum wages; meal, rest, and recovery period premiums;
25 and/or reporting time pay, within permissible time periods.

26 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to timely payment of wages
28 during their employment. In violation of the California Labor Code, Plaintiff and class

1 members did not receive payment of all wages, including, but not limited to, overtime wages;
2 minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay, within
3 permissible time periods.

4 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to receive their full wages
6 due without having to execute a release of claims. In violation of the California Labor Code,
7 Defendants required Plaintiff and class members to release their claims for unpaid wages as a
8 condition to receiving their paychecks.

9 30. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
11 and expenses Plaintiff and class members incurred obtaining mandatory physical examinations
12 and/or drug tests, but failed to do so.

13 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to receive all reporting time
15 pay when they reported to work for their scheduled shift but were put to work for less than
16 half of the regular schedule. In violation of the California Labor Code and applicable IWC
17 Wage Order, Defendants did not pay Plaintiff and class members all reporting time pay.

18 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to receive full
20 reimbursement for all business-related expenses and costs they incurred during the course and
21 scope of their employment and that they did not receive full reimbursement of applicable
22 business-related expenses and costs incurred.

23 33. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
25 and class members with safety devices and safeguards to protect their life, safety, and health
26 in the workplace, but failed to do so.

27 34. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants knew or should have known that they had a duty to compensate

1 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
2 to pay such compensation, but failed to do so, and falsely represented to Plaintiff and class
3 members that they were properly denied wages, all in order to increase Defendants' profits.

4 **PAGA REPRESENTATIVE ALLEGATIONS**

5 35. At all times herein set forth, PAGA provides that any provision of law under
6 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
7 assessed and collected by the LWDA for violations of the California Labor Code and
8 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
9 civil action brought on behalf of themselves and other current or former employees pursuant
10 to procedures outlined in California Labor Code section 2699.3.

11 36. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
12 person who was employed by the alleged violator and against whom one or more of the alleged
13 violations was committed."

14 37. Plaintiff and other current and former employees of Defendants are "aggrieved
15 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current or
16 former employees and one or more of the alleged violations were committed against them.

17 38. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
18 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
19 requirements have been met:

- 20 (a) The aggrieved employee or representative shall give written notice by
21 online filing with the LWDA and by certified mail to the employer of the
22 specific provisions of the California Labor Code alleged to have been
23 violated, including the facts and theories to support the alleged violation.
- 24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(a) and any employer response to that notice shall be accompanied
26 by a filing fee of seventy-five dollars (\$75).
- 27 (c) The LWDA shall notify the employer and the aggrieved employee or
28 representative by certified mail that it does not intend to investigate the

1 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
2 the postmark date of the aggrieved employee’s notice. Upon receipt of
3 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
4 (65) calendar days of the postmark date of the aggrieved employee’s
5 notice, the aggrieved employee may commence a civil action pursuant to
6 California Labor Code section 2699 to recover civil penalties.

7 39. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
8 through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision
9 other than those listed in Section 2699.5 after the following requirements have been met:

- 10 (a) The aggrieved employee or representative shall give written notice by
11 online filing with the LWDA and by certified mail to the employer of the
12 specific provisions of the California Labor Code alleged to have been
13 violated (other than those listed in Section 2699.5), including the facts
14 and theories to support the alleged violation.
- 15 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
16 2699.3(c) and any employer response to that notice shall be accompanied
17 by a filing fee of seventy-five dollars (\$75).
- 18 (c) The employer may cure the alleged violation within thirty-three (33)
19 calendar days of the postmark date of the notice sent by the aggrieved
20 employee or representative. The employer shall give written notice
21 within that period of time by certified mail to the aggrieved employee or
22 representative and by online filing with the LWDA if the alleged
23 violation is cured, including a description of actions taken, and no civil
24 action pursuant to Section 2699 may commence. If the alleged violation
25 is not cured within the 33-day period, the aggrieved employee may
26 commence a civil action pursuant to Section 2699.

27 40. On November 12, 2021, Plaintiff provided written notice by online filing to the
28 LWDA and by certified mail to Defendants of the specific provisions of the California Labor

1 Code alleged to have been violated, including facts and theories to support the alleged
2 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
3 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
4 PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff
5 PAGA Case Number LWDA-CM-852171-21. On January 18, 2022, Plaintiff sent an amended
6 written notice by online filing to the LWDA and by certified mail to Defendants of the specific
7 provisions of the California Labor Code alleged to have been violated, supplementing and
8 clarifying the facts and theories to support the alleged violations set forth in his original LWDA
9 notice, in accordance with California Labor Code section 2699.3. True and correct copies of
10 Plaintiff's written notices to the LWDA and Defendants dated November 12, 2021, and January
11 18, 2022, are attached hereto as "Exhibit 1."

12 41. As of the filing date of this complaint, over 65 days have passed since Plaintiff
13 sent the initial notice described above to the LWDA, and the LWDA has not responded that it
14 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

15 42. Thus, Plaintiff has satisfied the administrative prerequisites under California
16 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
17 violations of California Labor Code sections 201, 202, 204, 206.5, 222.5, 226(a), 226(b)-(c),
18 226.7, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, 6401,
19 and 6403.

20 43. Labor Code section 558(a) provides "[a]ny employer or other person acting on
21 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
22 provision regulating hours and days of work in any order of the Industrial Welfare Commission
23 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
24 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
25 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
26 each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)
27 provides "[t]he civil penalties provided for in this section are in addition to any other civil or
28 criminal penalty provided by law."

44. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees' rights by violating various sections of the California Labor Code as set forth above.

45. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

46. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 206.5, 222.5, 226(a), 226(b)-(c), 226.7, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, 6401, and 6403.

CLASS ACTION ALLEGATIONS

47. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

48. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

49. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California within four years prior to the filing of the initial complaint¹ until the date of trial (“Class”).

50. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial (“Subclass”).

51. Members of the Class and Subclass are referred to herein as “class members.”

¹ Subject to applicable tolling rules and period(s) of tolling, which include, but are not limited to, tolling under Emergency Rule 9 of the California Rules of Court.

1 52. Plaintiff reserves the right to redefine the Class and Subclass and to add
2 additional subclasses as appropriate based on further investigation, discovery, and specific
3 theories of liability.

4 53. There are common questions of law and fact as to class members that
5 predominate over questions affecting only individual members, including, but not limited to:

- 6 (a) Whether Defendants required Plaintiff and class members to work over
7 eight (8) hours per day, over twelve (12) hours per day, or over forty
8 (40) hours per week and failed to pay all legally required overtime
9 compensation to Plaintiff and class members;
- 10 (b) Whether Defendants failed to pay Plaintiff and class members at least
11 minimum wages for all hours worked;
- 12 (c) Whether Defendants failed to provide Plaintiff and class members with
13 meal periods;
- 14 (d) Whether Defendants failed to authorize and permit Plaintiff and class
15 members to take rest periods;
- 16 (e) Whether Defendants failed to provide Plaintiff and class members with
17 heat recovery periods;
- 18 (f) Whether Defendants provided Plaintiff and class members with
19 complete and accurate wage statements as required by California Labor
20 Code section 226(a);
- 21 (g) Whether Defendants maintained accurate payroll records as required by
22 California Labor Code section 1174(d);
- 23 (h) Whether Defendants failed to produce copies or allow inspection of
24 employees' own personnel and other employment records upon written
25 request within the statutory time limits;
- 26 (i) Whether Defendants failed to pay earned overtime wages; minimum
27 wages; meal, rest, recovery period premiums; and/or reporting time pay,
28 due to Plaintiff and class members upon their discharge;

- 1 (j) Whether Defendants failed timely to pay overtime wages; minimum
2 wages; meal, rest, and recovery period premiums; and/or reporting time
3 pay, due to Plaintiff and class members during their employment;
- 4 (k) Whether Defendants unlawfully required Plaintiff and class members to
5 execute releases of claims as a condition to receiving their earned
6 wages;
- 7 (l) Whether Defendants failed to pay Plaintiff and class members for the
8 costs of mandatory physical examinations and/or drug testing;
- 9 (m) Whether Defendants required Plaintiff and class members to report to
10 work, but failed to provide them with work or provided them with less
11 than half their scheduled day's work, without properly compensating
12 them as required by California Code of Regulations, Title 8, section
13 11050, subsection 5;
- 14 (n) Whether Defendants failed to reimburse Plaintiff and class members for
15 necessary and required business-related expenditures and/or losses
16 incurred by them in the scope of their employment;
- 17 (o) Whether Defendants failed to provide Plaintiff and class members with
18 safety devices and safeguards, such as personal protective equipment;
- 19 (p) Whether Defendants engaged in unlawful and unfair business practices
20 in violation of California Business & Professions Code sections 17200,
21 *et seq.*; and
- 22 (q) The appropriate amount of damages, restitution, or monetary penalties
23 resulting from Defendants' violations of California law.

24 54. There is a well-defined community of interest in the litigation and the class
25 members are readily ascertainable:

- 26 (a) Numerosity: The class members are so numerous that joinder of all
27 members would be unfeasible and impractical. The membership of the
28 entire class is unknown to Plaintiff at this time; however, the class is

1 estimated to be greater than one hundred (100) individuals and the
2 identity of such membership is readily ascertainable by inspection of
3 Defendants' employment records.

4 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
5 protect the interests of each class member with whom he has a well-
6 defined community of interest, and Plaintiff's claims (or defenses, if
7 any) are typical of all class members as demonstrated herein.

8 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
9 protect the interests of each class member with whom he has a well-
10 defined community of interest and typicality of claims, as demonstrated
11 herein. Plaintiff acknowledges that he has an obligation to make known
12 to the Court any relationship, conflicts or differences with any class
13 member. Plaintiff's attorneys, the proposed class counsel, are versed in
14 the rules governing class action discovery, certification, and settlement.
15 Plaintiff has incurred, and throughout the duration of this action, will
16 continue to incur costs and attorneys' fees that have been, are, and will
17 be necessarily expended for the prosecution of this action for the
18 substantial benefit of each class member.

19 (d) Superiority: The nature of this action makes the use of class action
20 adjudication superior to other methods. A class action will achieve
21 economies of time, effort, and expense as compared with separate
22 lawsuits, and will avoid inconsistent outcomes because the same issues
23 can be adjudicated in the same manner and at the same time for the
24 entire class.

25 (e) Public Policy Considerations: Employers in the State of California
26 violate employment and labor laws every day. Current employees are
27 often afraid to assert their rights out of fear of direct or indirect
28 retaliation. Former employees are fearful of bringing actions because

1 they believe their former employers might damage their future
2 endeavors through negative references and/or other means. Class
3 actions provide the class members who are not named in the complaint
4 with a type of anonymity that allows for the vindication of their rights
5 while simultaneously protecting their privacy.

6 **FIRST CAUSE OF ACTION**

7 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**
8 **(Against all Defendants)**

9 55. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
10 and every allegation set forth above.

11 56. Labor Code section 1198 makes it illegal to employ an employee under
12 conditions of labor that are prohibited by the applicable wage order. California Labor Code
13 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
14 be the . . . standard conditions of labor for employees. The employment of any employee . . .
15 under conditions of labor prohibited by the order is unlawful.”

16 57. California Labor Code section 1198 and the applicable IWC Wage Order
17 provide that it is unlawful to employ persons without compensating them at a rate of pay
18 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
19 number of hours worked by the person on a daily or weekly basis.

20 58. Specifically, the applicable IWC Wage Order provides that Defendants are and
21 were required to pay Plaintiff and class members working more than eight (8) hours in a day
22 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
23 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
24 workweek.

25 59. The applicable IWC Wage Order further provides that Defendants are and were
26 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
27 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
28 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the

1 employee, including nondiscretionary bonuses and incentive pay.

2 60. California Labor Code section 510 codifies the right to overtime compensation
3 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
4 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
5 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
6 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
7 in a day on the seventh (7th) day of work.

8 61. During the relevant time period, Defendants willfully failed to pay all overtime
9 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
10 class members were not paid overtime premiums for all of the hours they worked in excess of
11 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
12 hours in a week, because all hours worked were not recorded.

13 62. First, during the relevant period, Defendants had a company-wide policy and/or
14 practice of failing to accurately record hours worked by their employees and thus restricted
15 overtime accrual. Defendants did not provide employees with any mechanism, such as a
16 handwritten timesheet, time clock, or electronic timekeeping system, to track and record their
17 hours worked. Instead, Defendants had their supervisors input all employee time through
18 handwritten timesheets only accessible to Defendants' supervisors, and thus maintained
19 exclusive control and discretion over employee punch-in and punch-out times. Moreover, on
20 these timesheets, Defendants' supervisors entered Plaintiff's and class members' shift start-
21 times, shift end-times, meal period start- and end-times, and rest period start- and end-times
22 only with the hours they were scheduled, instead of their actual hours worked. For example,
23 Defendants required Plaintiff and class members to report to the main yard at the end of their
24 scheduled shift for "sign-out," which included unloading gardening equipment from
25 Defendants' gardening trucks, disposing garbage, and cleaning the yard, but Defendants'
26 supervisors would clock out Plaintiff and class members at the designated shift end-time, even
27 when they continued working after they were clocked out. Thus, when Defendants'
28 supervisors required Plaintiff and class members to start working before their scheduled shifts

1 and/or after their scheduled shifts, Plaintiff and class members would not be compensated for
2 the time Defendants' supervisors did not include on the timesheets.

3 63. Second, Defendants' timekeeping practices and/or policies did not permit
4 Plaintiff and class members to accurately track the start and stop times for their meal periods
5 or allow them to report a short, missed, or interrupted meal period. Because Defendants'
6 supervisors logged the start and stop times of meal periods through a handwritten timesheet,
7 to which Plaintiff and class members did not have access, Defendants, upon information and
8 belief, would record that compliant meal periods were taken even if that was not the case. For
9 example, Plaintiff and class members would have their meal periods interrupted and/or cut
10 short twice a week in order to complete their work duties, but were unable to record that their
11 meal periods were shortened. As a result, Defendants' supervisors recorded thirty (30) minute
12 meal periods were taken, even when they were not, and Plaintiff and class members were not
13 paid for all hours worked.

14 64. Third, Defendants have systematically understaffed their jobsites while
15 assigning heavy workloads, thereby failing to provide adequate meal period coverage to
16 permit employees to take compliant meal periods. Because Defendants understaffed their
17 jobsites, there was no one available to relieve employees needing meal period coverage, and
18 Plaintiff and class members were not always afforded uninterrupted thirty (30) minute meal
19 periods during shifts when they were entitled to receive a meal period. Moreover, Defendants
20 had a practice of failing to schedule meal periods or adhere to a schedule for meal periods,
21 which further caused Plaintiff and class members to not be relieved of their duties for
22 compliant meal periods. For example, Plaintiff and class members were required to work
23 through and/or return early from meal periods, in order to complete their assigned tasks.
24 Consequently, Plaintiff and class members performed work during meal periods for which
25 they were not paid.

26 65. In addition, due to the lack of meal period coverage, Defendants required
27 Plaintiff and class members to remain on or near the job site premises for their meal periods.
28 For example, Defendants gave their supervisors exclusive control and discretion over

Defendants' gardening trucks, which restricted Plaintiff and class members from leaving the premises during meal periods. Plaintiff and class members were denied the ability to use meal periods freely for their own purposes, such as picking up food or running personal errands. Thus, Defendants effectively maintained control over Plaintiff and class members during unpaid meal periods.

66. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiff and class members were performing their assigned duties off-the-clock before and/or after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Defendants also knew, or should have known that they did not compensate Plaintiff and class members applicable overtime rates of pay for overtime hours that they worked. Because Plaintiff and class members regularly worked shifts of eight (8) hours or more a day or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class members were not paid overtime wages for all of the overtime hours they actually worked.

67. Defendants' failure to pay Plaintiff and class members the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum Wages (Against all Defendants)

68. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

69. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the

1 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
2 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the
3 time during which an employee is subject to the control of an employer, and includes all the
4 time the employee is suffered or permitted to work, whether or not required to do so.” Cal.
5 Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

6 70. As set forth above, as a result of Defendants’ company-wide policy and/or
7 practice of not permitting employees to record all their hours worked and limiting overtime
8 accrual, Defendants failed to record all hours worked outside of scheduled shifts or during
9 meal periods. Also, as stated above, Defendants maintained a policy and/or practice requiring
10 Plaintiff and class members to perform work off-the-clock before and/or after the end of their
11 shifts. Furthermore, due to Defendants’ policies and/or practices of understaffing while
12 assigning heavy workloads, requiring employees to stay on or near the job site premises
13 during meal periods, and failure to schedule meal periods and/or adhere to a schedule for meal
14 periods, Plaintiff and class members were forced to forego meal periods, have their meal
15 periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal
16 periods.

17 71. Moreover, Defendants maintained and implemented a company-wide policy of
18 requiring all employees to travel to a medical facility on their own time to undergo mandatory
19 drug testing and/or physical examinations. At all times, Defendants were in control of
20 scheduling the date and time for the testing and/or physical examinations, selecting the
21 provider or facility where the testing and/or physical examinations were to take place, and
22 determining the scope of the testing and/or physical examinations. Defendants gave Plaintiff
23 and class members strict instructions to obtain drug testing and/or physical examinations, and
24 class members underwent the testing and/or examinations for the sole benefit of Defendants.
25 For example, Defendants gave Plaintiff strict instructions to obtain a physical examination,
26 and Plaintiff underwent the examination for the sole benefit of Defendants. Plaintiff followed
27 Defendants’ instructions, traveled for approximately 20 minutes roundtrip from his home to a
28 designated medical clinic in Irwindale, California, and spent three (3) hours at the medical

1 clinic waiting and undergoing the mandatory physical examination. However, Defendants did
2 not compensate Plaintiff and class members for the time they spent traveling to and from the
3 medical facilities and undergoing the mandatory drug testing and/or physical examinations.

4 72. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
5 and class members. To the extent that these off-the-clock hours did not qualify for overtime
6 premium payment, Defendants did not pay at least minimum wages for those hours worked
7 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
8 1198.

9 73. Defendants' failure to pay Plaintiff and class members minimum wages violates
10 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
11 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
12 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

13 **THIRD CAUSE OF ACTION**

14 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period** 15 **Violations** 16 **(Against all Defendants)**

17 74. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
18 and every allegation set forth above.

19 75. At all relevant times herein set forth, California Labor Code section 512(a)
20 provides that an employer may not require, cause, or permit an employee to work for a period
21 of more than five (5) hours per day without providing the employee with a meal period of not
22 less than thirty (30) minutes, except that if the total work period per day of the employee is
23 not more than six (6) hours, the meal period may be waived by mutual consent of both the
24 employer and the employee. Under California law, first meal periods must start after no more
25 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

26 76. At all relevant times herein set forth, California Labor Code sections 226.7,
27 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
28 meal period mandated by an applicable order of the IWC.

1 77. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a),
2 and the applicable IWC Wage Order also require employers to provide a second meal period
3 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
4 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
5 total hours worked is no more than twelve (12) hours, the second meal period may be waived
6 by mutual consent of the employer and the employee only if the first meal period was not
7 waived.

8 78. First, as stated above, Defendants did not have a mechanism in place for
9 employees to track and record the start and stop times of their meal periods. Instead,
10 Defendants gave their supervisors exclusive control and discretion over employee punch-in
11 and punch-out times, including meal period start and stop times, through handwritten
12 timesheets. Because Plaintiff and class members did not have access to the timekeeping
13 system, they were unable to record when their meal periods were late, interrupted or cut short.

14 79. Second, as set forth above, Defendants had, and continue to have, company-
15 wide policies and/or practices of understaffing while assigning heavy workloads, and failing
16 to schedule meal periods and/or adhere to a schedule for meal periods, which prevented
17 Plaintiff and class members from taking timely, uninterrupted thirty (30) minute meal periods
18 to which they were entitled. Plaintiff and class members were forced to work in excess of five
19 (5) hours before taking a meal period, had their meal periods interrupted or shortened, and/or
20 had to forgo their meal periods altogether. For example, Plaintiff was required to take his
21 meal periods late after having worked in excess of five (5) hours or more into his shift, and,
22 approximately twice per week, would have his meal periods shortened to complete his work
23 duties or to travel between jobsites.

24 80. Third, as stated above, in conjunction with these policies and/or practices,
25 Defendants required Plaintiff and class members to remain on the premises for their meal
26 periods. Because Defendants gave their supervisors exclusive control and discretion over
27 Defendants' gardening trucks, Plaintiff and class members were restricted from leaving the
28 premises during meal periods and they were denied the ability to use their meal periods freely

1 for their own purposes, such as picking up food or running personal errands. Thus,
2 Defendants effectively maintained control over Plaintiff and class members during meal
3 periods. Plaintiff and class members did not sign valid meal period waivers on days that they
4 were entitled to meal periods and were not relieved of all duties.

5 81. At all times herein mentioned, Defendants knew or should have known that, as
6 a result of these policies, Plaintiff and class members were prevented from being relieved of
7 all duties and required to perform some of their assigned duties during meal periods.
8 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
9 members meal period premiums when meal periods were late, interrupted, shortened, or
10 missed.

11 82. Moreover, Defendants engaged in a company-wide practice and/or policy of
12 not paying all meal period premiums owed when compliant meal periods are not provided.
13 Because of this practice and/or policy, Plaintiff and class members have not received premium
14 pay for all missed, late, and interrupted meal periods. As a result, Defendants failed to
15 provide Plaintiff and class members compliant meal periods in violation of California Labor
16 Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

17 83. Defendants' conduct violates the applicable IWC Wage Order, and California
18 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
19 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
20 rate of compensation for each work day that the meal period was not provided.

21 **FOURTH CAUSE OF ACTION**

22 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 23 **(Against all Defendants)**

24 84. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 85. At all relevant times herein set forth, the applicable IWC Wage Order and
27 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
28 members' employment by Defendants.

1 86. At all relevant times, the applicable IWC Wage Order provides that “[e]very
2 employer shall authorize and permit all employees to take rest periods, which insofar as
3 practicable shall be in the middle of each work period” and that the “rest period time shall be
4 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
5 hours or major fraction thereof” unless the total daily work time is less than three and one-half
6 (3 ½) hours.

7 87. At all relevant times, California Labor Code section 226.7 provides that no
8 employer shall require an employee to work during any rest period mandated by an applicable
9 order of the California IWC. To comply with its obligation to authorize and permit rest
10 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
11 employer must “relinquish any control over how employees spend their break time, and
12 relieve their employees of all duties—including the obligation that an employee remain on
13 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
14 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
15 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover
16 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
17 that a required rest period was not authorized and permitted.

18 88. During the relevant time period, Defendants regularly failed to authorize and
19 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
20 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
21 policies and/or practices, including understaffing and assigning heavy workloads, prevented
22 Plaintiff and class members from being relieved of all duty in order to take compliant rest
23 periods. Additionally, Defendants failed to schedule rest periods, which, coupled with
24 Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and class
25 members not being authorized and permitted to take compliant rest periods.

26 89. Furthermore, Defendants maintained and implemented a company-wide
27 practice and/or policy requiring that Plaintiff and class members remain on the work premises
28 during their rest periods. Because Plaintiff and class members were restricted from leaving

1 the work premises during rest periods, they were denied the ability to use their rest periods
2 freely for their own purposes, such as picking up food or running personal errands. Thus,
3 Defendants effectively maintained control over Plaintiff and class members during rest
4 periods, and, as a result of this rest period policy, Defendants did not relinquish control over
5 Plaintiff and class members during rest periods.

6 90. As a result of Defendants' practices and policies, Plaintiff and class members
7 worked shifts in excess of three and one half (3 ½) hours, in excess of six (6) hours, and/or in
8 excess of ten (10) hours without receiving all uninterrupted ten (10) minute rest periods to
9 which they were entitled. For example, Plaintiff missed rest periods in order to complete all
10 of the work-related duties Defendants' supervisors assigned to him.

11 91. Defendants have also engaged in a company-wide practice and/or policy of not
12 paying all rest period premiums owed when compliant rest periods are not authorized and
13 permitted. As stated, Defendants gave their supervisors exclusive control and discretion over
14 employee punch-in and punch-out times, including rest period start and stop times, through
15 handwritten timesheets. On information and belief, Defendants' supervisors recorded that
16 employees received compliant rest periods regardless of whether they had received a
17 compliant rest period, in order to strictly limit rest period penalties that Defendants would
18 otherwise owe. Because of this practice and/or policy, Plaintiff and class members have not
19 received premium pay for all missed rest periods. As a result, Defendants denied Plaintiff and
20 class members rest periods and failed to pay them rest period premiums due, in violation of
21 California Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

22 92. Defendants' conduct violates the applicable IWC Wage Order and California
23 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
24 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
25 compensation for each work day that a compliant rest period was not authorized and
26 permitted.

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1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226.7 and 1198 & California Code of Regulations**

3 **Title 8, Section 3395—Heat Recovery Period Violations**

4 **(Against all Defendants)**

5 93. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 94. At all relevant times herein set forth, the applicable General Industry Safety
8 Order and California Labor Code sections 226.7 and 1198 were applicable to Plaintiff's and
9 class members' employment by Defendants.

10 95. At all relevant times, California Labor Code section 226.7(a) defines "recovery
11 period" to mean a cooldown period afforded an employee to prevent heat illness. California
12 Labor Code section 226.7 provides that no employer shall require an employee to work during
13 any recovery period mandated by an applicable order of the California IWC, the Occupational
14 Safety and Health Standards Board, or the Division of Occupational Safety and Health. The
15 applicable General Industry Safety Order provides that "[w]hen the outdoor temperature in the
16 work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more
17 areas with shade at all times while employees are present that are either open to the air or
18 provided with ventilation or cooling." Cal. Code of Reg., Title 8, § 3395(d)(1). Furthermore,
19 "[t]he amount of shade present shall be at least enough to accommodate the number of
20 employees on recovery or rest periods, so that they can sit in a normal posture fully in the
21 shade without having to be in physical contact with each other." *Id.* "Employees shall be
22 allowed and encouraged to take a preventative cool-down rest in the shade when they feel the
23 need to do so to protect themselves from overheating. Such access to shade shall be permitted
24 at all times." *Id.*

25 96. During the relevant time period, Defendants violated California Labor Code
26 section 226.7 and California Code of Regulations, Title 8, section 3395(d), because
27 Defendants failed to provide Plaintiff and class members with recovery periods. For example,
28 Plaintiff was not provided a shaded area for recovery and was not permitted to take recovery

1 periods in a shaded area while working at various jobsites.

2 97. Defendants also have engaged in a company-wide practice and/or policy of not
3 paying all recovery period premiums owed when compliant recovery periods are not provided.
4 As a result, Defendants denied Plaintiff and class members recovery periods and failed to pay
5 them recovery period premium wages due, in violation of Labor Code section 226.7 and the
6 applicable General Industry Safety Order.

7 98. Defendants' conduct violates the applicable General Industry Safety Order and
8 California Labor Code sections 226.7 and 1198. Plaintiff and class members are therefore
9 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
10 rate of compensation for each work day that a compliant recovery period was not provided.

11 **SIXTH CAUSE OF ACTION**

12 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**

13 **Statements and Failure to Maintain Accurate Payroll Records**

14 **(Against all Defendants)**

15 99. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

17 100. At all relevant times herein set forth, California Labor Code section 226(a)
18 provides that every employer shall furnish each of his or her employees an accurate and
19 complete itemized wage statement in writing, including, but not limited to, the name and
20 address of the legal entity that is the employer, the inclusive dates of the pay period, total
21 hours worked, and all applicable rates of pay.

22 101. During the relevant time period, Defendants have knowingly and intentionally
23 provided Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage
24 statements. For example, Defendants issued uniform wage statements to Plaintiff and
25 Subclass members that fail to correctly list: gross wages earned; total hours worked; net wages
26 earned; and all applicable hourly rates in effect during the pay period, including rates of pay
27 for overtime wages and/or meal, rest, and recovery period premiums, and the corresponding
28 number of hours worked at each hourly rate. Specifically, Defendants violated sections

1 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

2 102. Because Defendants did not record the time Plaintiff and Subclass members
3 spent working off-the-clock and deducted time from their records for meal periods that were
4 interrupted and/or missed (and therefore time for which they should have been paid),
5 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff
6 and Subclass members, in compliance with section 226(a)(1) and 226(a)(5), respectively. For
7 the same reason, Defendants failed to accurately list the total number of the hours worked by
8 Defendants and Subclass members, in violation of section 226(a)(2), and failed to list the
9 applicable hourly rates of pay in effect during the pay period and the corresponding accurate
10 number of hours worked at each hourly rate, in violation of section 226(a)(9).

11 103. The wage statement deficiencies also include, among other things, failing to list
12 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
13 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
14 for which employees were paid; failing to list the name of the employee and only the last four
15 digits of his or her social security number or an employee identification number other than a
16 social security number; failing to list the name and address of the legal entity that is the
17 employer; and/or failing to state all hours worked as a result of not recording or stating the
18 hours they worked off-the-clock.

19 104. California Labor Code section 1174(d) provides that “[e]very person employing
20 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
21 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
22 plants or establishments at which employees are employed, payroll records showing the hours
23 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
24 applicable piece rate paid to, employees employed at the respective plants or
25 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
26 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
27 members showing the daily hours they worked and the wages paid thereto as a result of failing
28 to record the off-the-clock hours that they worked.

105. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, as stated, Defendants engaged in a company-wide practice and/or policy of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and stop times for Plaintiff and Subclass members, in violation of section 1198.

106. Plaintiff and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code §§ 226(b)-(c), 432, 1198, and 1198.5—Failure to Produce and/or Permit Inspection of Records and Instruments Signed (Against all Defendants)

107. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

108. At all relevant times herein, California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code Section 226(c) provides that an employer must comply with a request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee’s request. California Labor Code section 226(f) states “[a] failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles

1 the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-
2 dollar (\$750) penalty from the employer.” California Labor Code section 226(h) states “[a]n
3 employee may also bring an action for injunctive relief to ensure compliance with this section,
4 and is entitled to an award of costs and reasonable attorney’s fees.”

5 109. At all times relevant herein, California Labor Code section 432 states “[i]f an
6 employee or applicant signs any instrument relating to the obtaining or holding of
7 employment, he shall be given a copy of the instrument upon request.” California Labor Code
8 section 433 states “[a]ny person violating this article is guilty of a misdemeanor.”

9 110. At all times relevant herein, California Labor Code section 1198.5 requires that
10 an employer provide a copy of an employee’s personnel record no later than 30 days from the
11 date the employer receives a written request. If an employer fails to satisfy this written
12 request, the former employee may recover a penalty of \$750 from the employer. Cal. Lab.
13 Code § 1198.5(k). The former employee may also bring an action for injunctive relief and
14 may recover costs and reasonable attorney’s fees. Cal. Lab. Code § 1198.5(l).

15 111. At all times relevant herein, IWC Wage Order No. 5-2001, subdivision 7(A),
16 provides “[e]very employer shall keep accurate information with respect to each employee
17 including the following: (1) Full name, home address, occupation and social security number.
18 (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when
19 the employee begins and ends each work period. Meal periods, split shift intervals and total
20 daily hours worked shall also be recorded. Meal periods during which operations cease and
21 authorized rest periods need not be recorded. (4) Total wages paid each payroll period,
22 including value of board, lodging, or other compensation actually furnished to the employee.
23 (5) Total hours worked in the payroll period and applicable rates of pay. This information
24 shall be made readily available to the employee upon reasonable request.” IWC Wage Order
25 No. 5-2001, subdivision 7(C), also provides “[a]ll required records shall be in the English
26 language and in ink or other indelible form, properly dated, showing month, day and year, and
27 shall be kept on file by the employer for at least three years at the place of employment or at a
28 central location within the State of California. An employee’s records shall be available for

1 inspection by the employee upon reasonable request.”

2 112. During the relevant time period, Plaintiff sent Defendants a reasonable written
3 request for documents and records relating to his employment with Defendants. During the
4 relevant time period, Defendants failed to produce for inspection and copying or otherwise
5 permit inspection and copying of documents and records relating to Plaintiff’s employment.
6 For example, on September 1, 2021, Plaintiff sent a written request to Defendants via FedEx
7 overnight mail. On September 3, 2021, FedEx confirmed Defendants received Plaintiff’s
8 written request for records. Over 21 days passed from the date that Plaintiff sent Defendants a
9 reasonable written request for documents and records relating to his employment, and
10 Defendants failed to comply with the request within the requisite time period, in violation of
11 Labor Code section 226(b) and the applicable IWC Wage Order.

12 113. Plaintiff and class members are therefore entitled to recover statutory penalties
13 of \$750 per employee, injunctive relief, and attorney’s fees and costs, pursuant to California
14 Labor Code sections 226(f) and (h) and/or 1198.5(k) and (l).

15 **EIGHTH CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon**
17 **Termination**
18 **(Against all Defendants)**

19 114. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
20 and every allegation set forth above.

21 115. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
22 that if an employer discharges an employee, the wages earned and unpaid at the time of
23 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
24 her employment, his or her wages shall become due and payable not later than seventy-two
25 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
26 his or her intention to quit, in which case the employee is entitled to his or her wages at the
27 time of quitting.

28 116. On information and belief, Defendants have a company-wide practice or policy

1 of paying departing employees their final wages on the next regular pay cycle, instead of
2 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,
3 Plaintiff was terminated on April 18, 2021, but Defendants did not provide Plaintiff his final
4 wages until approximately 2-3 weeks later. Thus, Defendants failed to pay Plaintiff his final
5 wages immediately, in violation of Labor Code section 201.

6 117. Additionally, Defendants willfully failed to pay Plaintiff and class members
7 who are no longer employed by Defendants the earned and unpaid wages set forth above,
8 including but not limited to, overtime wages; minimum wages; meal, rest, and recovery period
9 premiums; and/or reporting time pay, either at the time of discharge, or within seventy-two
10 (72) hours of their leaving Defendants' employ.

11 118. Defendants' failure to pay Plaintiff and class members who are no longer
12 employed by Defendants their wages earned and unpaid at the time of discharge, or within
13 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
14 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
15 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
16 thirty (30) day maximum pursuant to California Labor Code section 203.

17 **NINTH CAUSE OF ACTION**

18 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 19 **Employment** 20 **(Against all Defendants)**

21 119. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 120. This cause of action is dependent upon, and wholly derivative of, the overtime
24 wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay,
25 that were not timely paid to Plaintiff and those class members.

26 121. At all times relevant herein set forth, Labor Code section 204 provides that all
27 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
28 days, inclusive, of any calendar month, other than those wages due upon termination of an

employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

122. At all times relevant herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

123. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages; minimum wages; meal, rest, recovery period premiums; and/or reporting time pay, within the time periods specified by California Labor Code section 204.

124. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

TENTH CAUSE OF ACTION

Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A)—Failure to Provide Reporting Time Pay (Against all Defendants)

125. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

126. California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor

1 fixed by the commission shall be the . . . standard conditions of labor for employees. The
2 employment of any employee . . . under conditions of labor prohibited by the order is
3 unlawful.”

4 127. The applicable IWC Wage Order, California Code of Regulations, Title 8,
5 section 11050(5)(A), provides that “[e]ach workday an employee is required to report for
6 work and does report, but is not put to work or is furnished less than half said employee’s
7 usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled
8 day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the
9 employee’s regular rate of pay, which shall not be less than the minimum wage.”

10 128. During the relevant time period, Defendants violated California Labor Code
11 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because
12 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
13 work for their scheduled shift but were put to work for less than half of the regular schedule.

14 129. Defendants had a company-wide practice of sending Plaintiff and class
15 members home early from their shifts, including before they had worked at least half of their
16 regular shift, but would not pay Plaintiff and class members for half of their scheduled shift.
17 Although Plaintiff and class members would report to work based on the schedule that
18 Defendants provided to them, Defendants would send them home before they had worked at
19 least half of their scheduled shifts without giving them reporting time pay.

20 130. Accordingly, Plaintiff and class members were not properly compensated with
21 reporting time pay in violation of California Labor Code section 1198 and California Code of
22 Regulations, Title 8, section 11050(5)(A).

23 **ELEVENTH CAUSE OF ACTION**

24 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 25 **(Against all Defendants)**

26 131. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

28 132. At all times herein set forth, California Labor Code section 2802 provides that

1 an employer must reimburse employees for all necessary expenditures and losses incurred by
2 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
3 to prevent employers from passing off their cost of doing business and operating expenses on
4 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
5 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen
6 tools or equipment are required by the employer or are necessary to the performance of a job,
7 such tools and equipment shall be provided and maintained by the employer, except that an
8 employee whose wages are at least two (2) times the minimum wage provided herein may be
9 required to provide and maintain hand tools and equipment customarily required by the trade
10 or craft."

11 133. First, during the relevant time period, Defendants required Plaintiff and class
12 members to wear uniform shirts bearing the company logo and safety vests on a daily basis,
13 but failed to provide Plaintiff and class members with uniform cleaning services or reimburse
14 them for cleaning expenses incurred. For example, due to the nature of his work, Plaintiff's
15 uniforms became stained, acquired unpleasant odors, and/or came in contact with potentially
16 hazardous materials, such that he was unable to mix these clothes in with his other laundry.
17 As a result, Plaintiff was required to wash his uniform items separately from any other
18 clothing items, thus incurring additional laundry expenses, usually at a cost of approximately
19 \$20 per week. Therefore, Defendants failed to maintain uniforms they required Plaintiff and
20 class members to wear during their shifts and forced them to incur the cost of maintaining
21 employee uniforms.

22 134. Second, during the relevant time period, Defendants had a company-wide
23 policy and/or practice of requiring Plaintiff and class members to travel in their own personal
24 vehicles or alternate transportation to medical facilities to undergo mandatory drug testing
25 and/or physical examinations, but did not reimburse them for their travel expenses, including
26 mileage. Defendants maintained and implemented a company-wide policy of requiring
27 employees to travel to a medical facility on their own time and using their own personal
28 vehicles to undergo mandatory drug testing and/or physical examinations. At all times,

1 Defendants were in control of scheduling the date and time for the testing and/or physical
2 examinations, selecting the provider or facility where the testing and/or physical examinations
3 were to take place, and determining the scope of the testing and/or physical examinations. For
4 example, as stated, Defendants gave Plaintiff strict instructions to obtain a physical
5 examination, and Plaintiff underwent the testing for the sole benefit of Defendants. Plaintiff
6 followed Defendants' instructions, traveled 15 miles roundtrip using his personal vehicle to
7 and from the medical facility designated by Defendants in Irwindale, California, and
8 underwent the physical examination. Although Defendants required Plaintiff and class
9 members to undergo drug testing and/or physical examinations, Defendants failed to
10 reimburse them for their travel expenses.

11 135. Moreover, during the relevant time period, Defendants had a company-wide
12 policy of requiring Plaintiff and class members to utilize their own personal vehicles to carry
13 out company business, but failed to reimburse them for all costs of travel, including mileage.
14 For example, after reporting to the main yard for "sign-in," Plaintiff and class members were
15 sometimes required to drive their personal vehicles to and from various jobsites, but were not
16 reimbursed for their travel expenses or mileage.

17 136. Third, during the relevant time period, Defendants, on a company-wide basis,
18 required Plaintiff and class members to purchase tools, supplies, and/or safety equipment that
19 were necessary to complete their assigned work-related duties. For example, Plaintiff spent
20 \$50.00 on scissors and pruners that were needed to perform his job duties. In addition,
21 Plaintiff and class members were required to purchase special safety shoes, such as steel-toed
22 boots, which they were required to wear while at work. Plaintiff spent \$120 out-of-pocket to
23 purchase required steel-toed boots in order to perform his work duties, but was not reimbursed
24 for this cost. Thus, Defendants failed to provide tools, supplies, and/or safety equipment to
25 Plaintiff and class members, forcing them to procure their own, and failed to reimburse
26 Plaintiff and class members for these costs.

27 137. Defendants could have provided Plaintiff and class members with the necessary
28 equipment and tools for use on the job, such as company vehicles; necessary supplies, tools,

1 and safety equipment; and access to laundering services. Or, Defendants could have fully
2 reimbursed employees for the costs of their mileage; travel expenses; tools, supplies, and
3 safety equipment expenses; laundering expenses, or provided a uniform maintenance
4 allowance. Instead, Defendants passed these operating costs off onto Plaintiff and class
5 members. At all relevant times, Plaintiff did not earn at least two (2) times the minimum
6 wage.

7 138. Defendants' company-wide policy and/or practice of passing on their operating
8 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
9 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
10 business-related expenses and costs.

11 139. Plaintiff and class members are entitled to recover from Defendants their
12 business-related expenses incurred during the course and scope of their employment, plus
13 interest.

14 **TWELFTH CAUSE OF ACTION**

15 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

16 **(Against all Defendants)**

17 140. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
18 and every allegation set forth above.

19 141. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
20 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
21 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 206.5, 222.5, 226(a),
22 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
23 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
24 those Labor Code sections not found in section 2699.5, including sections 226(b)-(c), 432, 516,
25 1182.12, 1198.5, 6401, and 6403.

26 142. Defendants' conduct, as alleged herein, violates numerous sections of the
27 California Labor Code, including, but not limited to, the following:

28 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC

- 1 Wage Order for Defendants' failure to compensate Plaintiff and other
2 aggrieved employees with all required overtime pay, as alleged herein;
- 3 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198,
4 and the applicable IWC Wage Order for Defendants' failure to
5 compensate Plaintiff and other aggrieved employees with at least
6 minimum wages for all hours worked, as alleged herein;
- 7 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
8 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
9 and other aggrieved employees with meal periods, as alleged herein;
- 10 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
11 applicable IWC Wage Order for Defendants' failure to authorize and
12 permit Plaintiff and other aggrieved employees to take rest periods, as
13 alleged herein;
- 14 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
15 IWC Wage Order for failure to provide accurate and complete wage
16 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 17 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
18 IWC Wage Order for failure to maintain payroll records, as alleged
19 herein;
- 20 (g) Violation of Labor Code sections 226(b)-(c), 432, 1198, 1198.5, and the
21 applicable IWC Wage Order for failure to produce copies or allow
22 inspection of Plaintiff's and other aggrieved employees' own personnel
23 and other employment records upon written request within the statutory
24 time limits, as alleged herein;
- 25 (h) Violation of Labor Code sections 201 and 202 for failure to pay all earned
26 wages upon termination, as alleged herein;
- 27 (i) Violation of Labor Code section 204 for failure to pay all earned wages
28 during employment, as alleged herein;

- 1 (a) Violation of Labor Code section 206.5 for requiring Plaintiff and other
2 aggrieved employees to execute a release of claims as a condition to
3 receiving wages due to them, as set forth below;
- 4 (j) Violation of Labor Code section 222.5 for failing to compensate Plaintiff
5 and other aggrieved employees for mandatory physical examinations
6 and/or drug testing, as set forth below;
- 7 (k) Violation of Labor Code section 1198 and the applicable IWC Wage
8 Order for failure to pay reporting time pay when Plaintiff and other
9 aggrieved employees were put to work for less than half of their regular
10 scheduled shifts, as alleged herein;
- 11 (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
12 and other aggrieved employees for all business expenses necessarily
13 incurred, as alleged herein; and
- 14 (m) Violation of Labor Code sections 6401 and 6403 for failure to provide
15 Plaintiff and other aggrieved employees with safety devices and
16 safeguards for the workplace, as set forth below.

17 143. California Labor Code section 206.5 prohibits employers from requiring
18 employees to execute releases of a claim or right “on account of wages due, or to become due,
19 or made as an advance on wages to be earned, unless payment of those wages has been made. A
20 release required or executed in violation of the provisions of this section shall be null and void
21 as between the employer and the employee.”

22 144. During the relevant time period, on information and belief, Defendants required
23 Plaintiff and other aggrieved employees to release their claims for unpaid wages as a condition
24 to receiving their paychecks. For example, Defendants required Plaintiff and other aggrieved
25 employees to sign verifications on their timesheets that their timesheets were accurate and
26 correct. Defendants compelled Plaintiff and other aggrieved employees to sign this false
27 verification when they, in fact, had not received all earned and unpaid wages, including
28 overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting

1 time pay.

2 145. Defendants' policy and practice of requiring Plaintiff and other aggrieved
3 employees to release their claims for uncompensated hours worked and/or other pay owed to
4 them is in violation of California Labor Code section 206.5. Plaintiff and other aggrieved
5 employees are therefore entitled to civil penalties pursuant to Labor Code sections 2699(a), (f),
6 and (g).

7 146. At all relevant times herein, California Labor Code section 222.5 requires
8 employers to pay for the costs an employee incurs for obtaining any required medical or
9 physical examination.

10 147. During the relevant time period, Defendants implemented, on a company-wide
11 basis, an employer-imposed requirement that Plaintiff and other aggrieved employees undergo
12 mandatory drug testing and/or physical examinations, but required them to do so at their own
13 expense. As stated, Defendants had a company-wide policy requiring that all employees travel
14 to a specified medical facility on their own time and use their own means of transportation to
15 undergo drug testing and/or physical examinations. At all times, Defendants were in control of
16 scheduling the date and time for the testing and/or examinations, selecting the provider/facility
17 where the testing and/or examinations were to take place, and determining the scope of the
18 testing and/or examinations.

19 148. For example, as stated, Defendants gave Plaintiff strict instructions to obtain a
20 physical examination, and Plaintiff underwent the examination for the sole benefit of
21 Defendants. Plaintiff followed Defendants' instructions, traveled for approximately 15 miles
22 roundtrip (for 20 minutes) from his home to a designated medical clinic in Irwindale, California,
23 and spent three (3) hours at the medical clinic waiting and undergoing the mandatory physical
24 examination.

25 149. However, Defendants did not compensate Plaintiff and other aggrieved
26 employees for the time they spent traveling to and from the medical facilities, for the time they
27 spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel
28 expenses they incurred getting to and from the medical facilities. Defendants' policy and/or

1 practice of not paying for all costs Plaintiff and other aggrieved employees incurred obtaining
2 mandatory drug testing and/or physical examinations is in violation of California Labor Code
3 section 222.5.

4 150. Plaintiff and other aggrieved employees are therefore entitled to recover civil
5 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

6 151. At all relevant times herein, California Labor Code section 6401 provides that
7 employers must furnish and use safety devices and safeguards, and adopt and use practices,
8 means, methods, operations, and processes which are reasonably adequate to render the
9 employment and place of employment safe and healthy. California Labor Code Section 6401
10 further provides that an employer must do everything reasonably necessary to protect the life,
11 safety and health of its employees.

12 152. During the relevant period, as stated, Defendants failed to provide Plaintiff and
13 other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep
14 them safe in the workplace. Despite the fact that Defendants required Plaintiff and other
15 aggrieved employees to wear certain personal protective equipment, including steel-toed boots,
16 while engaged in their work-related duties, Defendants failed to fully provide such reasonably
17 necessary equipment to Plaintiff and other aggrieved employees to keep them safe.

18 153. Defendants' failure to provide Plaintiff and other aggrieved employees with
19 safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403.
20 Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant
21 to Labor Code section 2699(a), (f), and (g).

22 **THIRTEENTH CAUSE OF ACTION**

23 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

24 **Unlawful Business Practices**

25 **(Against all Defendants)**

26 154. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

28 155. Defendants are "persons" as defined by California Business & Professions

Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

156. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unlawful business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

157. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

158. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants' policies and practices have violated state law in at least the following respects:

- (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198 and the applicable IWC Wage Order, as alleged herein;
- (b) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (c) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (d) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;

- 1 (e) Failing to provide recovery periods to Plaintiff and class members in
2 violation of Labor Code sections 226.7 and 1198, and the applicable
3 General Industry Safety Order, as alleged herein;
- 4 (f) Failing to provide Plaintiff and class members with accurate wage
5 statements and failing to maintain accurate payroll records in violation
6 of California Labor Code sections 226(a), 1174(d), and 1198, and the
7 applicable IWC Wage Order, as alleged herein;
- 8 (g) Failing to produce copies or allow inspection of Plaintiff's and class
9 members' own personnel and other employment records upon written
10 request within the statutory time limits, in violation of Labor Code
11 sections 226(b)-(c), 432, 1198, and 1198.5, and the applicable IWC
12 Wage Order, as alleged herein;
- 13 (h) Failing to timely pay all earned wages to Plaintiff and class members in
14 violation of California Labor Code section 204, as alleged herein;
- 15 (i) Requiring Plaintiff and class members to execute releases of claims as a
16 condition to receiving their earned wages, in violation of California
17 Labor Code section 206.5, as set forth below;
- 18 (j) Failing to pay the costs of mandatory physical examinations and/or drug
19 testing in violation of California Labor Code section 222.5, as set forth
20 below;
- 21 (k) Failing to pay reporting time pay in violation of California Labor Code
22 section 1198 and the applicable IWC Wage Order, as alleged herein;
- 23 (l) Failing to reimburse Plaintiff and class members for all business
24 expenses necessarily incurred in violation of California Labor Code
25 sections 2802, as alleged herein; and
- 26 (m) Failing to provide Plaintiff and class members with safety devices and
27 safeguards, such as personal protective equipment, in violation of
28 California Labor Code sections 6401 and 6403 as set forth below.

1 159. At all relevant times herein set forth, California Labor Code section 206.5
2 prohibits employers from requiring employees to execute releases of a claim or right “on
3 account of wages due, or to become due, or made as an advance on wages to be earned, unless
4 payment of those wages has been made. A release required or executed in violation of the
5 provisions of this section shall be null and void as between the employer and the employee.”

6 160. During the relevant time period, Defendants required Plaintiff and class
7 members to release their claims for unpaid wages as a condition to receiving their paychecks.
8 For example, Defendants required Plaintiff and class members to sign verifications on their
9 timesheets that their timesheets were accurate and correct. Defendants compelled Plaintiff
10 and class members to sign this false verification when they, in fact, had not received all earned
11 and unpaid wages, including overtime wages; minimum wages; meal, rest, and recovery
12 period premiums; and/or reporting time pay.

13 161. Defendants’ policy and practice of requiring Plaintiff and class members to
14 release their claims for uncompensated hours worked and/or other pay owed to them as a
15 condition to receiving their wages is in violation of California Labor Code section 206.5.

16 162. At all relevant times herein, California Labor Code section 222.5 requires
17 employers to pay for the costs an employee incurs for obtaining any medical or physical
18 examination taken pursuant to any law or regulation.

19 163. During the relevant time period, Defendants implemented, on a company-wide
20 basis, an employer-imposed requirement that Plaintiff and class members undergo mandatory
21 drug testing and/or physical examinations, but required them to do so at their own expense.
22 As stated, Defendants had a company-wide policy requiring that all employees, including
23 Plaintiff and class members, travel to a specified medical facility on their own time and use
24 their own means of transportation to undergo drug testing and/or physical examinations. At
25 all times, Defendants were in control of scheduling the date and time for the drug testing
26 and/or physical examinations, selecting the provider/facility where the drug testing and/or
27 physical examinations were to take place, and determining the scope of the drug testing and/or
28 physical examinations.

1 164. For example, as stated, Defendants gave Plaintiff strict instructions to obtain a
2 physical examination, and Plaintiff underwent the examination for the sole benefit of
3 Defendants. Plaintiff followed Defendants' instructions, traveled for approximately 15 miles
4 roundtrip (for 20 minutes) from his home to a designated medical clinic in Irwindale,
5 California, and spent three (3) hours at the medical clinic waiting for and undergoing the
6 mandatory physical examination.

7 165. However, Defendants did not compensate Plaintiff and class members for the
8 time they spent traveling to and from the medical facilities, for the time they spent undergoing
9 the drug testing and/or physical examinations, or reimburse them for the travel expenses they
10 incurred getting to and from the medical facilities. Defendants' policy and/or not paying for
11 all costs Plaintiff and class members incurred undertaking mandatory drug testing and/or
12 physical examinations is in violation of California Labor Code section 222.5.

13 166. At all relevant times herein, California Labor Code section 6401 provides that
14 employers must furnish and use safety devices and safeguards, and adopt and use practices,
15 means, methods, operations, and processes which are reasonably adequate to render the
16 employment and place of employment safe and healthy. California Labor Code Section 6401
17 further provides that an employer must do everything reasonably necessary to protect the life,
18 safety, and health of its employees. California Labor Code section 6403(a) requires that
19 employers provide and use safety devices and safeguards reasonably adequate to render the
20 employment and place of employment safe.

21 167. During the relevant time period, Defendants, on a company-wide basis, failed
22 to provide Plaintiff and class members with personal protective equipment, such as steel-toed
23 boots, to keep them safe in the workplace. Despite the fact that Defendants required
24 employees to wear certain protective equipment, including steel-toed boots, while engaged in
25 their work-related duties, Defendants failed to provide such reasonably necessary equipment
26 to Plaintiff and class members to keep them safe. Thus, Defendants' failure to provide
27 Plaintiff and class members with safety devices and safeguards for the workplace violates
28 Labor Code sections 6401 and 6403.

168. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

169. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

FOURTEENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

170. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

171. Defendants are “persons” as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

172. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

173. Defendants' activities, namely Defendants' company-wide practice and/or policy of not paying Plaintiff and class members meal and rest period premiums due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy

provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with Defendants, and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

174. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants’ policies and practices have violated the spirit of California’s meal and rest period laws and constitute acts against the public policy behind these laws.

175. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class members ; an award of attorneys’ fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

Class Certification

2. That this case be certified as a class action;

3. That Plaintiff be appointed as the representative of the Class and Subclass;

4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to pay all overtime wages due to Plaintiff and class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order by willfully failing to pay minimum wages to Plaintiff and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15. For such other and further relief as the Court may deem equitable and appropriate.

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As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 1198 and applicable General Industry Safety Orders by willfully failing to provide all recovery periods to Plaintiff and class members;

31. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a recovery period was not provided;

32. For all actual, consequential, and incidental losses and damages, according to proof;

33. For premiums pursuant to California Labor Code section 226.7(c);

34. For pre-judgment interest on any unpaid recovery period premiums from the date such amounts were due, or as otherwise provided by law;

35. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

36. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

37. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and class members, and willfully failed to provide accurate itemized wage statements thereto;

38. For all actual, consequential, and incidental losses and damages, according to proof;

39. For injunctive relief pursuant to California Labor Code section 226(h);

1 40. For statutory penalties pursuant to California Labor Code section 226(e);

2 41. For attorneys' fees and costs pursuant to California Labor Code section
3 226(e)(1); and

4 42. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Seventh Cause of Action**

7 43. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 226(b)-(c), 432, 1198, and 1198.5 and the applicable IWC Wage Order
9 by failing to produce for inspection and copying or otherwise permit inspection and copying
10 of records relating to Plaintiff's employment with Defendants;

11 44. For statutory penalties pursuant to California Labor Code section 226(f) and
12 1198.5 (k);

13 45. For general and special damages as may be appropriate;

14 46. For injunctive relief pursuant to California Labor Code section 226(h) and
15 1198.5(l) including, but not limited to, an order requiring Defendants to produce for
16 inspection and copying or otherwise permit inspection and copying of records relating to
17 Plaintiff's employment with Defendants as soon as reasonably practical;

18 47. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
19 California Labor Code section 226(h) and 1198.5(l); and

20 48. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Eighth Cause of Action**

23 49. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code sections 201 and 202 by willfully failing to pay overtime wages; minimum wages;
25 meal, rest, and recovery period premiums; and/or reporting time pay owed at the time of
26 termination of the employment of Plaintiff and other terminated class members;

27 50. For all actual, consequential and incidental losses and damages, according to
28 proof;

1 51. For waiting time penalties according to proof pursuant to California Labor
2 Code section 203 for all employees who have left Defendants' employ;

3 52. For pre-judgment interest on any unpaid wages from the date such amounts
4 were due, or as otherwise provided by law;

5 53. For attorneys' fees pursuant to California Code of Civil Procedure section
6 1021.5, or as otherwise provided by law; and

7 54. For such other and further relief as the Court may deem equitable and
8 appropriate.

9 **As to the Ninth Cause of Action**

10 55. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
12 overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting
13 time pay during their employment;

14 56. For all actual, consequential and incidental losses and damages, according to
15 proof;

16 57. For statutory penalties according to proof pursuant to California Labor Code
17 section 210;

18 58. For pre-judgment interest on any unpaid wages from the date such amounts
19 were due, or as otherwise provided by law;

20 59. For attorneys' fees pursuant to California Code of Civil Procedure section
21 1021.5, or as otherwise provided by law; and

22 60. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Tenth Cause of Action**

25 61. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A) by
27 failing to provide Plaintiff and class members with reporting time pay;

28 62. For all actual, consequential and incidental losses and damages, according to

1 proof;

2 63. For pre-judgment interest on any unpaid wages from the date such amounts
3 were due, or as otherwise provided by law; and

4 64. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Eleventh Cause of Action**

7 65. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
9 related expenses and costs incurred by Plaintiff and class members;

10 66. For unpaid business-related expenses and such general and special damages as
11 may be appropriate;

12 67. For pre-judgment interest on any unpaid business-related expenses from the
13 date such amounts were due, or as otherwise provided by law;

14 68. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 69. For attorneys' fees and costs pursuant to California Labor Code section
17 2802(c), or as otherwise provided by law; and

18 70. For such other and further relief as the Court may deem equitable and
19 appropriate.

20 **As to the Twelfth Cause of Action**

21 71. That the Court declare, adjudge and decree that Defendants violated the
22 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
23 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
24 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
25 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
26 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
27 statements and maintain accurate payroll records); 226(b)-(c), 432, 1198, and 1198.5 (by
28 failing to produce copies or allow inspection of records and instruments signed); 201 and 202

(by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 206.5 (by requiring employees to execute a release of claims for wages due); 222.5 (by failing to pay the costs of mandatory physical examinations and/or drug testing); 1198 and the applicable IWC Wage Order (by failing to provide reporting time pay); 2802 (by failing to reimburse business expenses); and 6401 and 6403 (by failing to provide safety devices and safeguards);

72. For civil penalties pursuant to California Labor Code sections 210, 226(f), 226.3, 256, 558, 1174.5, 1197.1, 1198.5(k), and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 204, 206.5, 222.5, 226(a), 226(b)-(c), 226.7, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, 6401, and 6403;

73. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 204, 206.5, 222.5, 226(a), 226(b)-(c), 226.7, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, 6401, and 6403;

74. For pre-judgment and post-judgment interest as provided by law; and

75. For such other and further relief as the Court may deem equitable and appropriate.

As to the Thirteenth Cause of Action

76. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members all recovery periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to produce copies or allow inspection of records and instruments signed, failing to timely pay Plaintiff and class members all earned wages during employment, requiring employees to release claims as a condition to receive paychecks, failing to pay the costs of mandatory physical examinations

1 and/or drug testing, failing to pay Plaintiff and class members reporting time pay, failing to
2 reimburse Plaintiff and class members for business-related expenses, and failing to provide
3 Plaintiff and class members with safety devices and safeguards, constitutes an unlawful
4 business practice in violation of California Business and Professions Code sections 17200, *et*
5 *seq.*;

6 77. For restitution of unpaid wages to Plaintiff and all class members and
7 prejudgment interest from the day such amounts were due and payable;

8 78. For the appointment of a receiver to receive, manage, and distribute any and all
9 funds disgorged from Defendants and determined to have been wrongfully acquired by
10 Defendants as a result of violations of California Business & Professions Code sections
11 17200, *et seq.*;

12 79. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
13 California Code of Civil Procedure section 1021.5; and

14 80. For such other and further relief as the Court may deem equitable and
15 appropriate.

16 **As to the Fourteenth Cause of Action**

17 81. That the Court declare, adjudge and decree that Defendants' conduct of denying
18 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
19 an unfair business practice in violation of California Business and Professions Code sections
20 17200, *et seq.*;

21 82. For restitution of the statutory benefits under section 226.7 unfairly withheld
22 from Plaintiff and class members and prejudgment interest from the day such amounts were
23 due and payable;

24 83. For the appointment of a receiver to receive, manage, and distribute any and all
25 funds disgorged from Defendants and determined to have been wrongfully acquired by
26 Defendants as a result of violations of California Business & Professions Code sections
27 17200, *et seq.*;

28 84. For reasonable attorneys' fees and costs of suit incurred herein pursuant to

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California Code of Civil Procedure section 1021.5;
85. For pre-judgment and post-judgment interest as provided by law; and
For such other and further relief as the Court may deem equitable and appropriate.

Dated: February 10, 2022

Respectfully submitted,
Capstone Law APC

By: 
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Brandon K. Brouillette
John E. Stobart
Joseph Hakakian

Attorneys for Plaintiff Alberto Viramontes

EXHIBIT 1



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November 12, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Alberto Viramontes v. CLS Landscape Management, Inc.*

Dear PAGA Administrator:

This office represents Alberto Viramontes in connection with his claims under the California Labor Code. Mr. Viramontes was an employee of CLS LANDSCAPE MANAGEMENT, INC. ("CLS LANDSCAPE").

The employer may be contacted directly at the address below:

CLS LANDSCAPE MANAGEMENT, INC.
4329 STATE STREET UNIT B
MONTCLAIR, CA 91763

Mr. Viramontes intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Viramontes seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CLS LANDSCAPE in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

CLS LANDSCAPE employed Mr. Viramontes as a non-exempt, hourly paid Landscaper from approximately September 2020 to April 2021. Mr. Viramontes worked for CLS LANDSCAPE out of its facility in Montclair, California. During his employment, Mr. Viramontes typically worked eight (8) hours or more per day, five (5) days per week, from 6:30 a.m. to 2:30 p.m. Mr. Viramontes's primary job duties included, without limitation, operating landscaping equipment, including leaf blowers, lawnmowers, trimmers, and hedge clippers; removing trees; and other debris.

CLS LANDSCAPE has committed one or more of the following Labor Code violations against Mr. Viramontes, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

CLS LANDSCAPE’s Company-Wide and Uniform Payroll and HR Practices

CLS LANDSCAPE MANAGEMENT, INC. is a California corporation and provides full-service landscape management throughout Southern California. Upon information and belief, CLS LANDSCAPE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Montclair, California, for all non-exempt, hourly paid employees working for CLS LANDSCAPE in California, including Mr. Viramontes and other aggrieved employees. At all relevant times, CLS LANDSCAPE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Viramontes and other aggrieved employees, regardless of their location or position.

Upon information and belief, CLS LANDSCAPE maintains a centralized Payroll department at its corporate headquarters in Montclair, California, which processes payroll for all non-exempt, hourly paid employees working for CLS LANDSCAPE in California, including Mr. Viramontes and other aggrieved employees. Further, CLS LANDSCAPE issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Viramontes and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, CLS LANDSCAPE utilized the same methods and formulas when calculating wages due to Mr. Viramontes and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

CLS LANDSCAPE willfully failed to pay all overtime wages owed to Mr. Viramontes and other aggrieved employees. During the relevant time period, Mr. Viramontes and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8)

¹ These facts, theories, and claims are based on Mr. Viramontes’s experience and counsel’s review of those records currently available relating to Mr. Viramontes’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Viramontes reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, CLS LANDSCAPE had and continues to have, a company-wide policy and/or practice of failing to accurately record hours worked by its employees and thus restricted overtime accrual. CLS LANDSCAPE did not provide employees with any mechanism, such as a handwritten timesheet, time clock, or electronic timekeeping system, to track and record their hours worked. Instead, CLS LANDSCAPE had its supervisors input all employee time through handwritten timesheets only accessible to CLS LANDSCAPE supervisors, and thus maintained exclusive control and discretion over employee punch-in and punch-out times. Moreover, on these timesheets, CLS LANDSCAPE's supervisors only entered Mr. Viramontes's and other aggrieved employees' shift start-times, shift end-times, meal period start- and end-times, and rest period start- and end-times with the hours they were scheduled, instead of their actual hours worked. For example, CLS LANDSCAPE required Mr. Viramontes and other aggrieved employees to report to the main yard at the end of their scheduled shift for "sign-out," which included unloading gardening equipment from CLS LANDSCAPE's gardening trucks, disposing garbage, and cleaning the yard, but CLS LANDSCAPE's supervisors would clock out Mr. Viramontes and other aggrieved employees at the designated shift end-time, even when they continued working after they were clocked out. Thus, when CLS LANDSCAPE's supervisors required Mr. Viramontes and other aggrieved employees to start working before their scheduled shifts and/or after their scheduled shifts, Mr. Viramontes and other aggrieved employees would not be compensated for the time CLS LANDSCAPE's supervisors did not include on the timesheets.

Second, CLS LANDSCAPE's timekeeping practices and/or policies did not permit Mr. Viramontes and other aggrieved employees to accurately track the start and stop times for their meal periods or allow them to report a short, missed, or interrupted meal period. Because CLS LANDSCAPE's supervisors logged the start and stop times of meal periods through a hand written timesheet, which Mr. Viramontes and other aggrieved employees did not have access to, CLS LANDSCAPE, upon information and belief, would record compliant meal periods taken even if that was not the case. For example, Mr. Viramontes and other aggrieved employees would have their meal periods interrupted and/or cut short two (2) times a week in order to complete their work duties but were unable to record that their meal periods were shortened. As a result, CLS LANDSCAPE's supervisors recorded thirty (30) minute meal periods were taken, even when they were not, and Mr. Viramontes and other aggrieved employees were not paid for all hours worked.

Third, CLS LANDSCAPE has systematically, understaffed its job sites while assigning heavy workloads, thereby failing to provide adequate meal period coverage to permit employees to take compliant meal periods. Because CLS LANDSCAPE understaffed its job sites, there was no one available to relieve employees needing meal period coverage, and Mr. Viramontes and other aggrieved employees were not always afforded uninterrupted thirty (30) minute meal periods during shifts when they were entitled to receive a meal period. Moreover, CLS LANDSCAPE had a practice of failing to schedule meal periods or adhere to a schedule for meal periods, which further caused Mr. Viramontes and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Viramontes and other aggrieved employees were required to work through and/or return early from meal periods, in order to complete their assigned tasks. Consequently, Mr. Viramontes and other aggrieved employees performed work during meal periods for which they were not paid.

In addition, due to the lack of meal period coverage, CLS LANDSCAPE required Mr. Viramontes and other aggrieved employees to remain on or near the job site premises for their meal periods. For example, CLS LANDSCAPE gave its supervisors exclusive control and discretion over CLS LANDSCAPE's gardening trucks, which restricted Mr. Viramontes and other aggrieved employees from leaving the premises during meal periods. Mr. Viramontes and other aggrieved employees were denied the ability to use meal periods freely for their own purposes, such as picking up food or running personal errands. Thus, CLS LANDSCAPE effectively maintained control over Mr. Viramontes and other aggrieved employees during meal periods. CLS LANDSCAPE also had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Viramontes and other aggrieved employees to not be relieved of their duties for compliant meal periods.

CLS LANDSCAPE knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Viramontes and other aggrieved employees were performing work off-the-clock before and/or after their shifts and during their meal periods, and were suffered or permitted to perform work for which they were not paid. CLS LANDSCAPE also knew, or should have known, that it did not compensate Mr. Viramontes and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Mr. Viramontes and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Viramontes and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. CLS LANDSCAPE's failure to pay Mr. Viramontes and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, on information and belief, CLS LANDSCAPE did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, CLS LANDSCAPE paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, CLS LANDSCAPE failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, CLS LANDSCAPE failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As set forth above, as result of CLS LANDSCAPE's company-wide policy and/or practice of not permitting employees to record all their hours worked and limiting overtime accrual, CLS LANDSCAPE failed to record all hours worked outside scheduled shifts or during meal periods. Also, as stated above, CLS LANDSCAPE maintained a policy and/or practice requiring Mr. Viramontes and other aggrieved employees to perform work off-the-clock before and/or after the end of their shifts. Furthermore, due to CLS LANDSCAPE's policies and/or practices of understaffing while assigning heavy workloads, requiring employees to stay on or near the job site premises during meal periods, and failure to schedule meal periods and/or adhere to a schedule for meal periods, Mr. Viramontes and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

Moreover, CLS LANDSCAPE maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time to undergo mandatory drug testing and/or physical examinations. At all times, CLS LANDSCAPE was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. CLS LANDSCAPE gave Mr. Viramontes and other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of CLS LANDSCAPE. For example, CLS LANDSCAPE gave Mr. Viramontes strict instructions to obtain a physical examination, and Mr. Viramontes underwent the examination for the sole benefit of CLS LANDSCAPE. Mr. Viramontes followed CLS LANDSCAPE's instructions, traveled for approximately 20 minutes roundtrip from his home to a designated medical clinic in Irwindale, California, and spent three (3) hours at the medical clinic waiting and undergoing the mandatory physical examination. However, CLS LANDSCAPE did not compensate Mr. Viramontes and other aggrieved employees for the time they spent traveling to and undergoing the mandatory drug testing and/or physical examinations.

Thus, CLS LANDSCAPE did not pay minimum wages for all hours worked by Mr. Viramontes and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, CLS LANDSCAPE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, CLS LANDSCAPE regularly failed to pay at least minimum wages to Mr. Viramontes and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law,

first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated above, CLS LANDSCAPE did not have a mechanism in place for employees to track and record the start and stop times of their meal periods. Instead, CLS LANDSCAPE gave its supervisors exclusive control and discretion over employee punch-in and punch-out times, including meal period start and stop times, through handwritten timesheets. Because Mr. Viramontes and other aggrieved employees did not have access to the timekeeping system, they were unable to record when their meal periods were late, interrupted or cut short.

Second, as set forth above, CLS LANDSCAPE had, and continues to have, company-wide policies and/or practices of under staffing while assigning heavy workloads, and failing to schedule meal periods and/or adhere to a schedule for meal periods, which prevented Mr. Viramontes and other aggrieved employees from taking timely, uninterrupted thirty (30) minute meal periods to which they were entitled. As a result, Mr. Viramontes and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted or shortened, and/or had to forgo their meal periods altogether. For example, Mr. Viramontes was required to take his meal periods late after having worked in excess of five (5) hours or more into his shift, and, approximately twice per week, would have his meal periods shortened to complete his work duties or to travel between jobsites.

Third, as stated above, in conjunction with these policies and/or practices, CLS LANDSCAPE required Mr. Viramontes and other aggrieved employees to remain on the premises for their meal periods. Because CLS LANDSCAPE gave its supervisors exclusive control and discretion over CLS LANDSCAPE's gardening trucks Mr. Viramontes and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes such as picking up food or running personal errands. Thus, CLS LANDSCAPE effectively maintained control over Mr. Viramontes and other aggrieved employees during meal periods.

Fourth, CLS LANDSCAPE did not provide other aggrieved employees with second thirty (30) minute meal period on days that they worked in excess of ten (10) hours in one day. Mr. Viramontes and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, CLS LANDSCAPE knew or should have known that, as a result of these policies, Mr. Viramontes and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. CLS LANDSCAPE further knew or should have known that CLS LANDSCAPE did not pay Mr. Viramontes and other aggrieved employees meal period premium wages when meal periods were late, interrupted, shortened, or missed.

Furthermore, CLS LANDSCAPE engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this

practice and/or policy, Mr. Viramontes and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods. Alternatively, to the extent that CLS LANDSCAPE did pay other aggrieved employees for missed, late, and interrupted meal periods, CLS LANDSCAPE did not pay other aggrieved employees at the correct rate of pay for premium wages because CLS LANDSCAPE systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration in the regular rate of pay.

Accordingly, CLS LANDSCAPE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Viramontes and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, CLS LANDSCAPE regularly failed to authorize and permit Mr. Viramontes and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, CLS LANDSCAPE's company-wide policies and/or practices, including understaffing and assigning heavy workloads, prevented Mr. Viramontes and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, CLS LANDSCAPE failed to schedule rest periods, which, coupled with CLS LANDSCAPE's failure to provide adequate rest period coverage, further led to Mr. Viramontes and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, CLS LANDSCAPE maintained and implemented a company-wide practice and/or policy requiring that Mr. Viramontes and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Viramontes and other aggrieved employees were restricted from leaving the work premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as picking up food or running personal errands. Thus, CLS LANDSCAPE effectively maintained control over Mr. Viramontes and other aggrieved

employees during rest periods, and, as a result of this rest period policy, CLS LANDSCAPE did not relinquish control over Mr. Viramontes and other aggrieved employees during rest periods.

As a result of CLS LANDSCAPE's practices and policies, Mr. Viramontes and other aggrieved employees worked shifts in excess of three and one half (3 ½) hours, in excess of six (6) hours, and/or in excess of ten (10) hours without receiving all uninterrupted ten (10) minute rest periods to which they were entitled. For example, Mr. Viramontes missed rest periods in order to complete all of the work-related duties CLS supervisors assigned to him.

CLS LANDSCAPE also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. As stated, CLS LANDSCAPE gave its supervisors exclusive control and discretion over employee punch-in and punch-out times, including rest period start and stop times, through handwritten timesheets. On information and belief, CLS LANDSCAPE's supervisors recorded that employees received compliant rest periods regardless of whether they had received a compliant rest period, in order to strictly limit rest period penalties that CLS LANDSCAPE would otherwise owe. Because of this practice and/or policy, Mr. Viramontes and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that CLS LANDSCAPE did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, CLS LANDSCAPE did not pay other aggrieved employees at the correct rate of pay for premium wages because CLS LANDSCAPE failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CLS LANDSCAPE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Viramontes and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 & California Code of Regulations Title 8, Section 3395 – Failure to Provide Heat Recovery Periods

California Labor Code section 226.7(a) defines "recovery period" to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety Order provides that "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code of Reg., Title 8, § 3395(d)(1). Furthermore, "[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other." *Id.* "Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times." *Id.*

During the relevant time period, CLS LANDSCAPE violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because CLS LANDSCAPE failed to provide Mr. Viramontes and other aggrieved employees with recovery periods. For example, Mr.

Viramontes was not provided a shaded area for recovery, was not permitted to take recovery periods in a shaded area while working at various job sites.

CLS LANDSCAPE also has engaged in a company-wide practice and/or policy of not paying all recovery period premiums owed when compliant recovery periods are not provided. Because of this practice and/or policy, Mr. Viramontes and other aggrieved employees have not received premium pay for all missed recovery periods. Alternatively, to the extent that CLS LANDSCAPE did pay other aggrieved employees for missed recovery periods, CLS LANDSCAPE did not pay other aggrieved employees at the correct rate of pay, because CLS LANDSCAPE systematically failed to include all compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CLS LANDSCAPE failed to authorize and permit all recovery periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Viramontes and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, CLS LANDSCAPE has knowingly and intentionally provided Mr. Viramontes and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CLS LANDSCAPE issued uniform wage statements to Mr. Viramontes and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal, rest, and recovery period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, CLS LANDSCAPE violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because CLS LANDSCAPE did not record the time Mr. Viramontes and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), CLS LANDSCAPE did not list the correct amount of gross wages and net wages earned by Mr. Viramontes and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, CLS LANDSCAPE failed to accurately list the total number of the hours worked by Mr. Viramontes and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Also, because CLS LANDSCAPE did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal, rest, and recovery period premiums, CLS LANDSCAPE did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). CLS LANDSCAPE also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal, rest, and recovery period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), CLS LANDSCAPE willfully failed to maintain accurate payroll records for Mr. Viramontes and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, as stated, CLS LANDSCAPE engaged in a company-wide practice and/or policy of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and stop times for Mr. Viramontes and other aggrieved employees, in violation of section 1198. Furthermore, in light of CLS LANDSCAPE's failure to provide other aggrieved employees with a second thirty (30) minute meal periods to which they were entitled, CLS LANDSCAPE kept no records of meal start and end times for second meal periods.

Since CLS LANDSCAPE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Viramontes and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Viramontes and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(b)-(c), 432, 1198, and 1198.5 – Failure to Produce and/or Permit Inspection of Records and Instruments Signed

California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code Section 226(c) provides that an employer must comply with a request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee's request. California Labor Code section 226(f) states "[a] failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer." California Labor Code section 226(h) states "[a]n employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees."

California Labor Code section 432 states "[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request." California Labor Code section 433 states "[a]ny person violating this article is guilty of a misdemeanor."

California Labor Code section 1198.5 requires that an employer provide a copy of an employee's personnel record no later than 30 days from the date the employer receives a written request. If an employer fails to satisfy this written request, the former employee may recover a penalty of \$750 from the employer. Cal. Lab. Code § 1198.5(k). The former employee may also bring an action for injunctive relief and may recover costs and reasonable attorney's fees. Cal. Lab. Code § 1198.5(l).

IWC Wage Order No. 5-2001, subdivision 7(A), provides "[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request." IWC Wage Order No. 5-2001, subdivision 7(C), also provides "[a]ll required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request."

During the relevant time period, Mr. Viramontes sent CLS LANDSCAPE a reasonable written request for documents and records relating to his employment with CLS LANDSCAPE. During the relevant time period, CLS LANDSCAPE failed to produce for inspection and copying or otherwise permit inspection and copying of documents and records relating to other Mr. Viramontes's employment. For example, on September 01, 2021, Mr. Viramontes sent a written request to CLS

LANDSCAPE via FedEx overnight mail. On September 03, 2021, FedEx confirmed CLS LANDSCAPE received Mr. Viramontes's written request for records. To date, CLS LANDSCAPE has failed to even respond to Mr. Viramontes's written request for his records. Thus, over 21 days have passed from the date that Mr. Viramontes sent CLS LANDSCAPE a reasonable written request for documents and records relating to his employment, and CLS LANDSCAPE has failed to comply with the request in violation of Labor Code section 226(b) and the applicable IWC Wage Order.

Ms. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226(f) and (h), 1198.5(k)-(l), and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, CLS LANDSCAPE failed to pay Mr. Viramontes and other aggrieved employees all wages due to them, including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premium wages; and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, CLS LANDSCAPE has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Viramontes was terminated on April 18, 2021, but CLS LANDSCAPE did not provide Mr. Viramontes his final wages until approximately 2-3 weeks later. Thus, CLS LANDSCAPE failed to pay Mr. Viramontes his final wages immediately, in violation of Labor Code section 201.

Additionally, CLS LANDSCAPE willfully failed to pay Mr. Viramontes and other aggrieved employees who are no longer employed by CLS LANDSCAPE all their earned wages, including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery premium wages; and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving CLS LANDSCAPE's employ.

Mr. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, CLS LANDSCAPE implemented, on a company-wide basis, an employer-imposed requirement that Mr. Viramontes and other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, CLS LANDSCAPE had a company-wide policy requiring that all employees travel to a specified medical facility on their own time and using their own means of transportation to undergo drug testing and/or physical examinations. At all times, CLS LANDSCAPE was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider/facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations.

For example, as stated, CLS LANDSCAPE gave Mr. Viramontes strict instructions to obtain a physical examination, and Mr. Viramontes underwent the examination for the sole benefit of CLS LANDSCAPE. Mr. Viramontes followed CLS LANDSCAPE's instructions, traveled for approximately 15 miles roundtrip (for 20 minutes) from his home to a designated medical clinic in Irwindale, California, and spent three (3) hours at the medical clinic waiting and undergoing the mandatory physical examination. However, CLS LANDSCAPE did not compensate Mr. Viramontes and other aggrieved employees for the time they spent traveling to and from their drug testing and/or physical examinations, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. CLS LANDSCAPE's policy and/or not paying for all costs Mr. Viramontes and other aggrieved employees incurred undertaking mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

Mr. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that "... the standard conditions of labor fixed by the commission shall

be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

Upon information and belief, CLS LANDSCAPE violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because CLS LANDSCAPE failed to pay Mr. Viramontes and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule.

CLS LANDSCAPE had a company-wide practice of sending Mr. Viramontes and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Viramontes and other aggrieved employees for half of their scheduled shift. Although Mr. Viramontes and other aggrieved employees would report to work based on the schedule that CLS LANDSCAPE provided to them, CLS LANDSCAPE would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. When this occurred, CLS LANDSCAPE did not pay Mr. Viramontes for at least half of his scheduled day’s work or the required minimum reporting time pay. Accordingly, Mr. Viramontes and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5).

Mr. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, CLS LANDSCAPE required Mr. Viramontes and other aggrieved employees to wear uniform shirts bearing the company logo and safety vests on a daily basis, but failed to provide Mr. Viramontes and other aggrieved employees with uniform cleaning services or reimburse them for cleaning expenses incurred. For example, due to the nature of his

work, Mr. Viramontes's uniforms became stained, acquired unpleasant odors, and/or came in contact with potentially hazardous materials such that he was unable to mix these clothes in with his other laundry. As a result, Mr. Viramontes was required to wash his uniform items separately from any other clothing items, thus incurring additional laundry expenses, usually at a cost of approximately \$20 per week. Therefore, CLS LANDSCAPE failed to maintain uniforms it required Mr. Viramontes and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Second, during the relevant time period, CLS LANDSCAPE had a company-wide policy and/or practice of requiring Mr. Viramontes and other aggrieved employees to travel in their own personal vehicles or alternate transportation to medical facilities to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. CLS LANDSCAPE maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, CLS LANDSCAPE was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. For example, as stated, CLS LANDSCAPE gave Mr. Viramontes strict instructions to obtain a physical examination, and Mr. Viramontes underwent the testing for the sole benefit of CLS LANDSCAPE. Mr. Viramontes followed CLS LANDSCAPE's instructions, traveled 15 miles roundtrip using his personal vehicle to and from the medical facility designated by CLS LANDSCAPE in Irwindale, California, and underwent the physical examination. Although CLS LANDSCAPE required Mr. Viramontes and other aggrieved employees to undergo drug testing and/or physical examinations, CLS LANDSCAPE failed to reimburse them for their travel expenses.

Third, during the relevant time period, CLS LANDSCAPE, on a company-wide basis, required Mr. Viramontes and other aggrieved employees to purchase tools, supplies, and/or safety equipment that were necessary to complete their assigned work-related duties. For example Mr. Viramontes spent \$50.00 on scissors and pruners that were needed to perform his job duties. In addition, Mr. Viramontes and other aggrieved employees were required to purchase special safety shoes, such as steel-toed boots, which they were required to wear while at work. Mr. Viramontes spent \$120 out-of-pocket to purchase required steel-toed boots in order to perform his work duties, but was not reimbursed for this cost. Thus, CLS LANDSCAPE failed to provide tools, supplies, and/or safety equipment to Mr. Viramontes and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Viramontes and other aggrieved employees for the cost of these costs.

CLS LANDSCAPE could have provided Mr. Viramontes and other aggrieved employees with the necessary equipment and tools for use on the job, such as company vehicles; necessary supplies, tools, and safety equipment; and access to laundering services. Or, CLS LANDSCAPE could have reimbursed employees for the costs of their mileage; travel expenses; tools, supplies, and safety equipment expenses; land laundering expenses or a uniform maintenance allowance. Instead, CLS LANDSCAPE passed these operating costs off onto Mr. Viramontes and other aggrieved employees. At all relevant times, Mr. Viramontes did not earn at least two (2) times the minimum wage.

Thus, CLS LANDSCAPE had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

CLS LANDSCAPE failed to provide Mr. Viramontes and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). CLS LANDSCAPE's failure to provide Mr. Viramontes and other aggrieved employees with written notice of basic information regarding their employment with CLS LANDSCAPE is in violation of Labor Code section 2810.5.

Mr. Viramontes and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

During the relevant period, as stated above, CLS LANDSCAPE failed to provide Mr. Viramontes and other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that CLS LANDSCAPE required Mr. Viramontes and other aggrieved employees to wear certain personal protective equipment, including steel-toed boots, while engaged in their work-related duties, CLS LANDSCAPE failed to provide such reasonably necessary equipment to Mr. Viramontes and other aggrieved employees to keep them safe.

CLS LANDSCAPE's failure to provide Mr. Viramontes and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Viramontes and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” CLS LANDSCAPE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Viramontes’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Viramontes seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Viramontes, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against CLS LANDSCAPE for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Viramontes seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Viramontes’s reasonable attempt to settle his dispute with CLS LANDSCAPE prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform CLS LANDSCAPE of Mr. Viramontes’s aforementioned grievances and the proposed remedies as detailed below, while affording CLS LANDSCAPE a reasonable opportunity to satisfy Mr. Viramontes’s demands.

Demand is hereby made that CLS LANDSCAPE shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. CLS LANDSCAPE shall pay Mr. Viramontes and all other aggrieved employees employed by CLS LANDSCAPE at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. CLS LANDSCAPE shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal, rest, and recovery periods.
3. CLS LANDSCAPE shall conduct a survey or interview all current and former aggrieved employees in California who worked for CLS LANDSCAPE in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited

to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; the number of recovery periods which were not provided; and the number of employees who were required to pay for mandatory medical examinations; travel expenses, tools, supplies, and/or equipment; uniform maintenance expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. CLS LANDSCAPE shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. CLS LANDSCAPE also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198. Additionally, CLS LANDSCAPE also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more recovery periods, as required by Labor Code sections 226.7, 516, and 1198.
5. CLS LANDSCAPE shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for CLS LANDSCAPE's benefit, including, but not limited to, costs of mandatory drug tests; travel expenses, tools, supplies, and/or equipment; and uniform maintenance or laundering expenses, as required by Labor Code sections 222.5 and 2802.
6. CLS LANDSCAPE shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. CLS LANDSCAPE shall provide Mr. Viramontes and all aggrieved employees employed by CLS LANDSCAPE at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. CLS LANDSCAPE shall implement and maintain one or more work areas with shade at all times while aggrieved employees are present that are either open to the air or provided with ventilation or cooling and shall provide heat recovery periods to aggrieved employees.
9. CLS LANDSCAPE shall compensate other aggrieved employees for the time they spent traveling to and from medical facilities and undergoing mandatory drug tests and/or physical examinations, and shall reimburse all costs other aggrieved employees incurred obtaining mandatory physical examinations and/or drug testing as required by California Labor Code section 222.5.
10. CLS LANDSCAPE shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
11. CLS LANDSCAPE shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

12. CLS LANDSCAPE shall provide all aggrieved employees with safety devices and safeguards reasonably adequate to render the employment and place of employment safe, pursuant to Labor Code sections 6401 and 6403.
13. CLS LANDSCAPE shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
14. CLS LANDSCAPE shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 5-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Jezzette Ron
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in dark ink, appearing to read "J. Ron", is placed over a light gray rectangular background.

Jezzette Ron

Copy: CLS LANDSCAPE MANAGEMENT, INC. (via U.S. Certified Mail)

JEZZETTE RON
310.712.8142 Direct
Jezzette.Ron@capstonelawyers.com

January 18, 2022

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/310>)

Subject: *Alberto Viramontes v. CLS Landscape Management, Inc.*
LWDA Case No. LWDA-CM-852171-21-AMENDED NOTICE

Dear PAGA Administrator:

This office represents Alberto Viramontes in connection with his claims under the California Labor Code. Mr. Viramontes was an employee of CLS LANDSCAPE MANAGEMENT, INC. (“CLS LANDSCAPE”). We previously provided notice of Mr. Viramontes’s claims to the California Labor and Workforce Development Agency (“LWDA”) on November 12, 2021, and submitted the applicable filing fee pursuant to Labor Code section 2699.3(a)(1)(B). This amended notice supplements Mr. Viramontes’s prior LWDA notice and is intended to clarify the facts and theories supporting his claims.

The employer may be contacted directly at the address below:

CLS LANDSCAPE MANAGEMENT, INC.
4329 STATE STREET UNIT B
MONTCLAIR, CA 91763

Mr. Viramontes intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. Viramontes seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CLS LANDSCAPE in California as a non-exempt, hourly paid employee and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

CLS LANDSCAPE employed Mr. Viramontes as a non-exempt, hourly paid Landscaper from approximately September 2020 to April 2021. Mr. Viramontes worked for CLS LANDSCAPE out of its facility in Montclair, California. During his employment, Mr. Viramontes typically worked eight (8) hours or more per day, five (5) days per week, from 6:30 a.m. to 2:30 p.m. Mr. Viramontes’s

primary job duties included, without limitation, operating landscaping equipment, including leaf blowers, lawnmowers, trimmers, and hedge clippers; removing trees; and other debris. CLS LANDSCAPE has committed one or more of the following Labor Code violations against Mr. Viramontes, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

CLS LANDSCAPE’s Company-Wide and Uniform Payroll and HR Practices

CLS LANDSCAPE MANAGEMENT, INC. is a California corporation and provides full-service landscape management throughout Southern California. Upon information and belief, CLS LANDSCAPE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Montclair, California, for all non-exempt, hourly paid employees working for CLS LANDSCAPE in California, including Mr. Viramontes and other aggrieved employees. At all relevant times, CLS LANDSCAPE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Viramontes and other aggrieved employees, regardless of their location or position.

Upon information and belief, CLS LANDSCAPE maintains a centralized Payroll department at its corporate headquarters in Montclair, California, which processes payroll for all non-exempt, hourly paid employees working for CLS LANDSCAPE in California, including Mr. Viramontes and other aggrieved employees. Further, CLS LANDSCAPE issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Viramontes and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, CLS LANDSCAPE utilized the same methods and formulas when calculating wages due to Mr. Viramontes and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Mr. Viramontes’s experience and counsel’s review of those records currently available relating to Mr. Viramontes’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Viramontes reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

CLS LANDSCAPE willfully failed to pay all overtime wages owed to Mr. Viramontes and other aggrieved employees. During the relevant time period, Mr. Viramontes and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, CLS LANDSCAPE had and continues to have, a company-wide policy and/or practice of failing to accurately record hours worked by its employees and thus restricted overtime accrual. CLS LANDSCAPE did not provide employees with any mechanism, such as a handwritten timesheet, time clock, or electronic timekeeping system, to track and record their hours worked. Instead, CLS LANDSCAPE had its supervisors input all employee time through handwritten timesheets only accessible to CLS LANDSCAPE supervisors, and thus maintained exclusive control and discretion over employee punch-in and punch-out times. Moreover, on these timesheets, CLS LANDSCAPE's supervisors only entered Mr. Viramontes's and other aggrieved employees' shift start-times, shift end-times, meal period start- and end-times, and rest period start- and end-times with the hours they were scheduled, instead of their actual hours worked. For example, CLS LANDSCAPE required Mr. Viramontes and other aggrieved employees to report to the main yard at the end of their scheduled shift for "sign-out," which included unloading gardening equipment from CLS LANDSCAPE's gardening trucks, disposing garbage, and cleaning the yard, but CLS LANDSCAPE's supervisors would clock out Mr. Viramontes and other aggrieved employees at the designated shift end-time, even when they continued working after they were clocked out. Thus, when CLS LANDSCAPE's supervisors required Mr. Viramontes and other aggrieved employees to start working before their scheduled shifts and/or after their scheduled shifts, Mr. Viramontes and other aggrieved employees would not be compensated for the time CLS LANDSCAPE's supervisors did not include on the timesheets.

Second, CLS LANDSCAPE's timekeeping practices and/or policies did not permit Mr. Viramontes and other aggrieved employees to accurately track the start and stop times for their meal periods or allow them to report a short, missed, or interrupted meal period. Because CLS LANDSCAPE's supervisors logged the start and stop times of meal periods through a hand written timesheet, which Mr. Viramontes and other aggrieved employees did not have access to, CLS LANDSCAPE, upon information and belief, would record compliant meal periods taken even if that was not the case. For example, Mr. Viramontes and other aggrieved employees would have their meal periods interrupted and/or cut short two (2) times a week in order to complete their work duties but were unable to record that their meal periods were shortened. As a result, CLS LANDSCAPE's supervisors recorded thirty (30) minute meal periods were taken, even when they were not, and Mr. Viramontes and other aggrieved employees were not paid for all hours worked.

Third, CLS LANDSCAPE has systematically, understaffed its job sites while assigning heavy workloads, thereby failing to provide adequate meal period coverage to permit employees to take compliant meal periods. Because CLS LANDSCAPE understaffed its job sites, there was no one available to relieve employees needing meal period coverage, and Mr. Viramontes and other aggrieved employees were not always afforded uninterrupted thirty (30) minute meal periods during shifts when they were entitled to receive a meal period. Moreover, CLS LANDSCAPE had a practice of failing to schedule meal periods or adhere to a schedule for meal periods, which further caused Mr. Viramontes and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Viramontes and other aggrieved employees were required to work through and/or return early from meal periods, in order to complete their assigned tasks.

Consequently, Mr. Viramontes and other aggrieved employees performed work during meal periods for which they were not paid.

In addition, due to the lack of meal period coverage, CLS LANDSCAPE required Mr. Viramontes and other aggrieved employees to remain on or near the job site premises for their meal periods. For example, CLS LANDSCAPE gave its supervisors exclusive control and discretion over CLS LANDSCAPE's gardening trucks, which restricted Mr. Viramontes and other aggrieved employees from leaving the premises during meal periods. Mr. Viramontes and other aggrieved employees were denied the ability to use meal periods freely for their own purposes, such as picking up food or running personal errands. Thus, CLS LANDSCAPE effectively maintained control over Mr. Viramontes and other aggrieved employees during meal periods. CLS LANDSCAPE also had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Viramontes and other aggrieved employees to not be relieved of their duties for compliant meal periods

CLS LANDSCAPE knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Viramontes and other aggrieved employees were performing work off-the-clock before and/or after their shifts and during their meal periods, and were suffered or permitted to perform work for which they were not paid. CLS LANDSCAPE also knew, or should have known, that it did not compensate Mr. Viramontes and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Mr. Viramontes and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Viramontes and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. CLS LANDSCAPE's failure to pay Mr. Viramontes and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, on information and belief, CLS LANDSCAPE did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, CLS LANDSCAPE paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, CLS LANDSCAPE failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, CLS LANDSCAPE failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the

employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

As set forth above, as result of CLS LANDSCAPE’s company-wide policy and/or practice of not permitting employees to record all their hours worked and limiting overtime accrual, CLS LANDSCAPE failed to record all hours worked outside scheduled shifts or during meal periods. Also, as stated above, CLS LANDSCAPE maintained a policy and/or practice requiring Mr. Viramontes and other aggrieved employees to perform work off-the-clock before and/or after the end of their shifts. Furthermore, due to CLS LANDSCAPE’s policies and/or practices of understaffing while assigning heavy workloads, requiring employees to stay on or near the job site premises during meal periods, and failure to schedule meal periods and/or adhere to a schedule for meal periods, Mr. Viramontes and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

Moreover, CLS LANDSCAPE maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time to undergo mandatory drug testing and/or physical examinations. At all times, CLS LANDSCAPE was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. CLS LANDSCAPE gave Mr. Viramontes and other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of CLS LANDSCAPE. For example, CLS LANDSCAPE gave Mr. Viramontes strict instructions to obtain a physical examination, and Mr. Viramontes underwent the examination for the sole benefit of CLS LANDSCAPE. Mr. Viramontes followed CLS LANDSCAPE’s instructions, traveled for approximately 20 minutes roundtrip from his home to a designated medical clinic in Irwindale, California, and spent three (3) hours at the medical clinic waiting and undergoing the mandatory physical examination. However, CLS LANDSCAPE did not compensate Mr. Viramontes and other aggrieved employees for the time they spent traveling to and undergoing the mandatory drug testing and/or physical examinations.

Thus, CLS LANDSCAPE did not pay minimum wages for all hours worked by Mr. Viramontes and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, CLS LANDSCAPE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, CLS LANDSCAPE regularly failed to pay at least minimum wages to Mr. Viramontes and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without

providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated above, CLS LANDSCAPE did not have a mechanism in place for employees to track and record the start and stop times of their meal periods. Instead, CLS LANDSCAPE gave its supervisors exclusive control and discretion over employee punch-in and punch-out times, including meal period start and stop times, through handwritten timesheets. Because Mr. Viramontes and other aggrieved employees did not have access to the timekeeping system, they were unable to record when their meal periods were late, interrupted or cut short.

Second, as set forth above, CLS LANDSCAPE had, and continues to have, company-wide policies and/or practices of under staffing while assigning heavy workloads, and failing to schedule meal periods and/or adhere to a schedule for meal periods, which prevented Mr. Viramontes and other aggrieved employees from taking timely, uninterrupted thirty (30) minute meal periods to which they were entitled. As a result, Mr. Viramontes and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted or shortened, and/or had to forgo their meal periods altogether. For example, Mr. Viramontes was required to take his meal periods late after having worked in excess of five (5) hours or more into his shift, and, approximately twice per week, would have his meal periods shortened to complete his work duties or to travel between jobsites.

Third, as stated above, in conjunction with these policies and/or practices, CLS LANDSCAPE required Mr. Viramontes and other aggrieved employees to remain on the premises for their meal periods. Because CLS LANDSCAPE gave its supervisors exclusive control and discretion over CLS LANDSCAPE's gardening trucks Mr. Viramontes and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes such as picking up food or running personal errands. Thus, CLS LANDSCAPE effectively maintained control over Mr. Viramontes and other aggrieved employees during meal periods.

Fourth, CLS LANDSCAPE did not provide other aggrieved employees with second thirty (30) minute meal period on days that they worked in excess of ten (10) hours in one day. Mr. Viramontes and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, CLS LANDSCAPE knew or should have known that, as a result of these policies, Mr. Viramontes and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. CLS LANDSCAPE further knew or should have known that CLS LANDSCAPE did not pay Mr. Viramontes and other aggrieved employees meal period premium wages when meal periods were late, interrupted, shortened, or missed.

Furthermore, CLS LANDSCAPE engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Viramontes and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods. Alternatively, to the extent that CLS LANDSCAPE did pay other aggrieved employees for missed, late, and interrupted meal periods, CLS LANDSCAPE did not pay other aggrieved employees at the correct rate of pay for premium wages because CLS LANDSCAPE systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration in the regular rate of pay.

Accordingly, CLS LANDSCAPE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Viramontes and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, CLS LANDSCAPE regularly failed to authorize and permit Mr. Viramontes and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, CLS LANDSCAPE's company-wide policies and/or practices, including understaffing and assigning heavy workloads, prevented Mr. Viramontes and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, CLS LANDSCAPE failed to schedule rest periods, which, coupled with CLS LANDSCAPE's failure to provide adequate rest period coverage, further led to Mr. Viramontes and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, CLS LANDSCAPE maintained and implemented a company-wide practice and/or policy requiring that Mr. Viramontes and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Viramontes and other aggrieved employees were restricted

from leaving the work premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as picking up food or running personal errands. Thus, CLS LANDSCAPE effectively maintained control over Mr. Viramontes and other aggrieved employees during rest periods, and, as a result of this rest period policy, CLS LANDSCAPE did not relinquish control over Mr. Viramontes and other aggrieved employees during rest periods.

As a result of CLS LANDSCAPE's practices and policies, Mr. Viramontes and other aggrieved employees worked shifts in excess of three and one half (3 ½) hours, in excess of six (6) hours, and/or in excess of ten (10) hours without receiving all uninterrupted ten (10) minute rest periods to which they were entitled. For example, Mr. Viramontes missed rest periods in order to complete all of the work-related duties CLS supervisors assigned to him.

CLS LANDSCAPE also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. As stated, CLS LANDSCAPE gave its supervisors exclusive control and discretion over employee punch-in and punch-out times, including rest period start and stop times, through handwritten timesheets. On information and belief, CLS LANDSCAPE's supervisors recorded that employees received compliant rest periods regardless of whether they had received a compliant rest period, in order to strictly limit rest period penalties that CLS LANDSCAPE would otherwise owe. Because of this practice and/or policy, Mr. Viramontes and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that CLS LANDSCAPE did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, CLS LANDSCAPE did not pay other aggrieved employees at the correct rate of pay for premium wages because CLS LANDSCAPE failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CLS LANDSCAPE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Viramontes and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 & California Code of Regulations Title 8, Section 3395 – Failure to Provide Heat Recovery Periods

California Labor Code section 226.7(a) defines "recovery period" to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety Order provides that "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code of Reg., Title 8, § 3395(d)(1). Furthermore, "[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other." *Id.* "Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times." *Id.*

During the relevant time period, CLS LANDSCAPE violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because CLS LANDSCAPE failed to provide Mr. Viramontes and other aggrieved employees with recovery periods. For example, Mr. Viramontes was not provided a shaded area for recovery, was not permitted to take recovery periods in a shaded area while working at various job sites.

CLS LANDSCAPE also has engaged in a company-wide practice and/or policy of not paying all recovery period premiums owed when compliant recovery periods are not provided. Because of this practice and/or policy, Mr. Viramontes and other aggrieved employees have not received premium pay for all missed recovery periods. Alternatively, to the extent that CLS LANDSCAPE did pay other aggrieved employees for missed recovery periods, CLS LANDSCAPE did not pay other aggrieved employees at the correct rate of pay, because CLS LANDSCAPE systematically failed to include all compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CLS LANDSCAPE failed to authorize and permit all recovery periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Viramontes and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, CLS LANDSCAPE has knowingly and intentionally provided Mr. Viramontes and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CLS LANDSCAPE issued uniform wage statements to Mr. Viramontes and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal, rest, and recovery period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, CLS LANDSCAPE violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because CLS LANDSCAPE did not record the time Mr. Viramontes and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), CLS LANDSCAPE did not list the correct amount of gross wages and net wages earned by Mr. Viramontes and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, CLS LANDSCAPE failed to accurately list the total number of

the hours worked by Mr. Viramontes and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Also, because CLS LANDSCAPE did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal, rest, and recovery period premiums, CLS LANDSCAPE did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). CLS LANDSCAPE also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal, rest, and recovery period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), CLS LANDSCAPE willfully failed to maintain accurate payroll records for Mr. Viramontes and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, as stated, CLS LANDSCAPE engaged in a company-wide practice and/or policy of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and stop times for Mr. Viramontes and other aggrieved employees, in violation of section 1198. Furthermore, in light of CLS LANDSCAPE's failure to provide other aggrieved employees with a second thirty (30) minute meal periods to which they were entitled, CLS LANDSCAPE kept no records of meal start and end times for second meal periods.

Since CLS LANDSCAPE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Viramontes and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Viramontes and other aggrieved

employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(b)-(c), 432, 1198, and 1198.5 – Failure to Produce and/or Permit Inspection of Records and Instruments Signed

California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code Section 226(c) provides that an employer must comply with a request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee's request. California Labor Code section 226(f) states "[a] failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer." California Labor Code section 226(h) states "[a]n employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees."

California Labor Code section 432 states "[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request." California Labor Code section 433 states "[a]ny person violating this article is guilty of a misdemeanor."

California Labor Code section 1198.5 requires that an employer provide a copy of an employee's personnel record no later than 30 days from the date the employer receives a written request. If an employer fails to satisfy this written request, the former employee may recover a penalty of \$750 from the employer. Cal. Lab. Code § 1198.5(k). The former employee may also bring an action for injunctive relief and may recover costs and reasonable attorney's fees. Cal. Lab. Code § 1198.5(l).

IWC Wage Order No. 5-2001, subdivision 7(A), provides "[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request." IWC Wage Order No. 5-2001, subdivision 7(C), also provides "[a]ll required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request."

During the relevant time period, Mr. Viramontes sent CLS LANDSCAPE a reasonable written request for documents and records relating to his employment with CLS LANDSCAPE. During the

relevant time period, CLS LANDSCAPE failed to produce for inspection and copying or otherwise permit inspection and copying of documents and records relating to other Mr. Viramontes's employment. For example, on September 1, 2021, Mr. Viramontes sent a written request to CLS LANDSCAPE via FedEx overnight mail. On September 03, 2021, FedEx confirmed CLS LANDSCAPE received Mr. Viramontes's written request for records. Over 21 days passed from the date that Mr. Viramontes sent CLS LANDSCAPE a reasonable written request for documents and records relating to his employment, and CLS LANDSCAPE failed to comply with the request within the requisite time period, in violation of Labor Code section 226(b) and the applicable IWC Wage Order.

Ms. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226(f) and (h), 1198.5(k)-(l), and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, CLS LANDSCAPE failed to pay Mr. Viramontes and other aggrieved employees all wages due to them, including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premium wages; and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, CLS LANDSCAPE has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Viramontes was

terminated on April 18, 2021, but CLS LANDSCAPE did not provide Mr. Viramontes his final wages until approximately 2-3 weeks later. Thus, CLS LANDSCAPE failed to pay Mr. Viramontes his final wages immediately, in violation of Labor Code section 201.

Additionally, CLS LANDSCAPE willfully failed to pay Mr. Viramontes and other aggrieved employees who are no longer employed by CLS LANDSCAPE all their earned wages, including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery premium wages; and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving CLS LANDSCAPE's employ.

Mr. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 206.5 – Release of Claims for Wages Due

California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

During the relevant time period, CLS LANDSCAPE required Mr. Viramontes and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks. For example, CLS LANDSCAPE required Mr. Viramontes and other aggrieved employees to sign verifications on their timesheets that their timesheets were accurate and correct. CLS LANDSCAPE compelled Mr. Viramontes and other aggrieved employees to sign these false verifications when they, in fact, had not received all earned and unpaid wages, including overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay. CLS LANDSCAPE's policy and practice of requiring Mr. Viramontes and other aggrieved employees to release their claims for uncompensated hours worked and/or other pay owed to them as a condition to receiving their wages is in violation of California Labor Code section 206.5.

Mr. Viramontes and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, CLS LANDSCAPE implemented, on a company-wide basis, an employer-imposed requirement that Mr. Viramontes and other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, CLS LANDSCAPE had a company-wide policy requiring that all employees travel to a specified medical facility on their own time and using their own means of transportation to undergo drug testing and/or physical examinations. At all times, CLS LANDSCAPE was in control of scheduling the date and time for the testing and/or physical examinations, selecting the

provider/facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations.

For example, as stated, CLS LANDSCAPE gave Mr. Viramontes strict instructions to obtain a physical examination, and Mr. Viramontes underwent the examination for the sole benefit of CLS LANDSCAPE. Mr. Viramontes followed CLS LANDSCAPE's instructions, traveled for approximately 15 miles roundtrip (for 20 minutes) from his home to a designated medical clinic in Irwindale, California, and spent three (3) hours at the medical clinic waiting and undergoing the mandatory physical examination. However, CLS LANDSCAPE did not compensate Mr. Viramontes and other aggrieved employees for the time they spent traveling to and from their drug testing and/or physical examinations, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. CLS LANDSCAPE's policy and/or not paying for all costs Mr. Viramontes and other aggrieved employees incurred undertaking mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

Mr. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

Upon information and belief, CLS LANDSCAPE violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because CLS LANDSCAPE failed to pay Mr. Viramontes and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule.

CLS LANDSCAPE had a company-wide practice of sending Mr. Viramontes and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Viramontes and other aggrieved employees for half of their scheduled shift. Although Mr. Viramontes and other aggrieved employees would report to work based on the schedule that CLS LANDSCAPE provided to them, CLS LANDSCAPE would send them home before they had worked at least half of their scheduled shifts without giving them

reporting time pay. When this occurred, CLS LANDSCAPE did not pay Mr. Viramontes for at least half of his scheduled day's work or the required minimum reporting time pay. Accordingly, Mr. Viramontes and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5).

Mr. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, CLS LANDSCAPE required Mr. Viramontes and other aggrieved employees to wear uniform shirts bearing the company logo and safety vests on a daily basis, but failed to provide Mr. Viramontes and other aggrieved employees with uniform cleaning services or reimburse them for cleaning expenses incurred. For example, due to the nature of his work, Mr. Viramontes's uniforms became stained, acquired unpleasant odors, and/or came in contact with potentially hazardous materials such that he was unable to mix these clothes in with his other laundry. As a result, Mr. Viramontes was required to wash his uniform items separately from any other clothing items, thus incurring additional laundry expenses, usually at a cost of approximately \$20 per week. Therefore, CLS LANDSCAPE failed to maintain uniforms it required Mr. Viramontes and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Second, during the relevant time period, CLS LANDSCAPE had a company-wide policy and/or practice of requiring Mr. Viramontes and other aggrieved employees to travel in their own personal vehicles or alternate transportation to medical facilities to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. CLS LANDSCAPE maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, CLS LANDSCAPE was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. For example, as stated, CLS LANDSCAPE gave Mr. Viramontes strict instructions to obtain a physical examination, and Mr. Viramontes underwent the testing for the sole benefit of CLS LANDSCAPE. Mr. Viramontes followed CLS LANDSCAPE's instructions, traveled 15 miles roundtrip using his personal vehicle to and from the medical facility designated by CLS LANDSCAPE in Irwindale, California, and underwent the physical examination. Although CLS LANDSCAPE required Mr. Viramontes and other aggrieved employees to undergo

drug testing and/or physical examinations, CLS LANDSCAPE failed to reimburse them for their travel expenses.

Moreover, during the relevant time period, CLS LANDSCAPE, on a company-wide basis, required Mr. Viramontes and other aggrieved employees to utilize their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, after reporting to the main yard for “sign in,” Mr. Viramontes and other aggrieved employees were sometimes required to drive their personal vehicles to and from various jobsites, but were not reimbursed for their travel expenses or mileage.

Third, during the relevant time period, CLS LANDSCAPE, on a company-wide basis, required Mr. Viramontes and other aggrieved employees to purchase tools, supplies, and/or safety equipment that were necessary to complete their assigned work-related duties. For example Mr. Viramontes spent \$50.00 on scissors and pruners that were needed to perform his job duties. In addition, Mr. Viramontes and other aggrieved employees were required to purchase special safety shoes, such as steel-toed boots, which they were required to wear while at work. Mr. Viramontes spent \$120 out-of-pocket to purchase required steel-toed boots in order to perform his work duties, but was not reimbursed for this cost. Thus, CLS LANDSCAPE failed to provide tools, supplies, and/or safety equipment to Mr. Viramontes and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Viramontes and other aggrieved employees for the cost of these costs.

CLS LANDSCAPE could have provided Mr. Viramontes and other aggrieved employees with the necessary equipment and tools for use on the job, such as company vehicles; necessary supplies, tools, and safety equipment; and access to laundering services. Or, CLS LANDSCAPE could have reimbursed employees for the costs of their mileage; travel expenses; tools, supplies, and safety equipment expenses; land laundering expenses or a uniform maintenance allowance. Instead, CLS LANDSCAPE passed these operating costs off onto Mr. Viramontes and other aggrieved employees. At all relevant times, Mr. Viramontes did not earn at least two (2) times the minimum wage.

Thus, CLS LANDSCAPE had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Viramontes and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

During the relevant period, as stated above, CLS LANDSCAPE failed to provide Mr. Viramontes and other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that CLS LANDSCAPE required Mr. Viramontes and other aggrieved employees to wear certain personal protective equipment, including steel-toed boots,

while engaged in their work-related duties, CLS LANDSCAPE failed to provide such reasonably necessary equipment to Mr. Viramontes and other aggrieved employees to keep them safe.

CLS LANDSCAPE's failure to provide Mr. Viramontes and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Viramontes and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." CLS LANDSCAPE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Viramontes's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Viramontes seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Viramontes, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against CLS LANDSCAPE for violations of California Labor Code sections 201, 202, 204, 206.5, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Viramontes seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Jezzette Ron
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Jezzette Ron

Copy: CLS LANDSCAPE MANAGEMENT, INC. (via U.S. Certified Mail)

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I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067. My electronic address is matthew.krout@capstonelawyers.com.

FIRST AMENDED COMPLAINT
on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof
[] to interested parties as follows [or] [✓] as stated on the attached service list:

[] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

[✓] **VIA PROCESS SERVER:** I caused the document to be delivered to the offices of the addressee(s) named herein via a licensed Process Server employed by ProLegal Attorney Service, who will file a Proof of Service with the court upon completion of service.

Executed this **FEBRUARY 10, 2022**, at Los Angeles, California.


Signature