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

ALEJANDRO GONZALEZ AVALOS, an
individual, on behalf of himself and others
similarly situated, and as a private attorney
general on behalf of the State of California,

PLAINTIFF,

v.

XL LANDSCAPE DEVELOPMENT, a
California Corporation, XL LANDSCAPE
DEVELOPMENT, LLC, a Nevada
Corporation, and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO.: 34-2022-00315272

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Provide Lawful Meal Periods
And Pay Meal Period Premiums Pursuant
to Labor Code §§ 226.7 and 512
2. Failure to Provide Lawful Rest/Recovery
Periods And Pay Rest Period Premiums
Pursuant to Labor Code § 226.7
3. Violations of Labor Code § 226(e)
4. Waiting Time Penalties Pursuant to Labor
Code § 203
5. Failure to Reimburse Business Expenses In
Violation of Labor Code § 2802
6. Violation of Business & Professions Code
§ 17200
7. Penalties Pursuant to Labor Code § 2699,
et seq. for violations of Labor Code §§
201, 202, 203, 204, 210, 226, 226.3, 226.7,
512, 558, 1198, 2802, 6400, 6401, 6401.7,
6402, 6403, 6404 as well as IWC Wage
Order Nos. 5-2001 and 16-2001

BY FAX

1 Plaintiff ALEJANDRO GONZALEZ AVALOS, an individual, on behalf of himself and
2 others similarly situated, and on behalf of the State of California as a private attorney general
3 pursuant to Labor Code section 2698 *et seq.* (“PAGA”) complains of Defendants XL
4 LANDSCAPE DEVELOPMENT AND XL LANDSCAPE DEVELOPMENT, LLC and the other
5 Doe Defendants (collectively hereafter the “Defendants”) and each of them, as follows:

6 I.

7 **INTRODUCTION AND FACTUAL BACKGROUND**

8 1. Plaintiff and the Class members were employed by Defendants, who are alter egos
9 of each other and constitute a single California corporation and any subsidiaries or affiliated
10 companies and Does 1 through 50 (who include individuals acting on behalf an employer within
11 the meaning of Labor Code § 558.1 and whom meaningful relief is sought against pursuant with
12 Labor Code section 558.1),¹ Plaintiff, the Meal Period Class, the Rest Period Class, the Wage
13 Statement Class, and the Waiting Time Penalty Subclasses seek direct significant relief against
14 the Doe Defendants who remain unidentified at this time who managed Defendants operations in
15 San Joaquin and Sacramento such that the local controversy exception applies 28 U.S.C.A. §
16 1332(d)(4)(A). *Christmas v. Union Pac. R.R. Co.*, 698 F. App'x 887 (9th Cir. 2017) (directing the
17 district court to vacate its motion for judgment on the pleadings and remand the case because
18 significant relief was sought from individual defendants); *Hamid v. Nike Retail Servs.*, No. SA
19 CV 17-0600-DOC (JDEx), 2018 U.S. Dist. LEXIS 59384, at *25 (C.D. Cal. Apr. 6, 2018)
20 (finding that the Court lacked CAFA jurisdiction because 20.62% of the putative class was
21 employed within a defendant’s district and significant relief was sought from the individual). “For
22 the purposes of the local controversy exception “the district court is to look to the complaint
23 rather than to extrinsic evidence.” *Coleman v. Estes Express Lines*, 631 F.3d 1010, 1012 (9th Cir.
24 2011).

25
26
27 ¹ Labor Code Section allows an employee to recover directly against “any employer **or other person acting on**
28 **behalf of an employer**, who violates, or causes to be violated...Sections 203, 226, 226.7” and provide that such
individuals “may be held liable as the employer for such violation.”

2. Based upon information and belief, either all of the damages and/or the vast majority of the damages arose from unlawful policies created by Defendants at its headquarters and principal place of business in Rancho Cordova, California.

3. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of Plaintiff and the following classes and subclasses:

- (1) all non-exempt, hourly employees who were employed by XL LANDSCAPE DEVELOPMENT, XL LANDSCAPE DEVELOPMENT, LLC and/or other companies dba XL LANDSCAPE DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT or its predecessor, merged or related entities in California as an employee at any point from August 15, 2017 and continuing into the present. (the “Non-Exempt Class”);²
- (2) all individuals who were employed XL LANDSCAPE DEVELOPMENT LLC, XL LANDSCAPE DEVELOPMENT, and/or other companies dba XL LANDSCAPE DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt, hourly employee or other similar position from August 15, 2017 and continuing into the present. (“First Meal Period Subclass”);
- (3) all individuals who were employed by XL LANDSCAPE DEVELOPMENT LLC, XL LANDSCAPE DEVELOPMENT, and/or other companies dba XL LANDSCAPE DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT or its predecessor, merged or related entities in California who worked one or more shifts of more than ten (10) hours as a non-exempt hourly employee or other similar position from August 15, 2017 and continuing into the present. (“Second Meal Period Subclass”);

Collectively, Subclasses two (2) and three (3) may be referred to as the “Meal Period Subclass.”

- (4) all individuals who were employed by XL LANDSCAPE DEVELOPMENT, XL LANDSCAPE DEVELOPMENT, LLC and/or other companies dba XL LANDSCAPE DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of

² The statute of limitations were tolled for at least sixty (60) days due to Emergency Rule 9 of the California Rules of Court also referred to as the “Emergency Rules Related to COVID-19”).

more than 3.51 hours in length from August 15, 2017 and continuing into the present. (“Second Rest Period Subclass”);

(5) all individuals who were employed by XL LANDSCAPE DEVELOPMENT, XL LANDSCAPE DEVELOPMENT, LLC and/or other companies dba XL LANDSCAPE DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than six (6) hours in length, but less than eight (8) hours in length from August 15, 2017 and continuing into the present. (“Second Rest Period Subclass”);

(6) all individuals who were employed by XL LANDSCAPE DEVELOPMENT, XL LANDSCAPE DEVELOPMENT, LLC and/or other companies dba XL LANDSCAPE DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than ten (10) hours in length from August 15, 2017 and continuing into the present. (“Third Rest Period Subclass”);

Collectively, subclasses four (4), five (5), and six (6) may be referred to as the “Rest Period Subclass.”

(7) all individuals who were employed by XL LANDSCAPE DEVELOPMENT, XL LANDSCAPE DEVELOPMENT, LLC and/or other companies dba XL LANDSCAPE DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position for one or more pay periods from February 9, 2021 and continuing into the present (“Wage Statement Subclass”);

(8) all individuals who were employed by XL LANDSCAPE DEVELOPMENT, XL LANDSCAPE DEVELOPMENT, LLC and/or other companies dba XL LANDSCAPE DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between August 15, 2018 and continuing into the present; (“Late Payment Subclass”);

Collectively, these Classes/Subclasses may also all collectively be referred to herein as the Classes or Class Member(s).³

³ Plaintiff reserves the right to redefine the Classes and Subclasses identified herein.

1 4. This is also a representative action brought pursuant to Labor Code § 2698, *et seq.*,
2 on behalf of the State of California and several groups of aggrieved employees defined as
3 follows:

- 4 (1) all individuals who were employed by XL LANDSCAPE DEVELOPMENT LLC,
5 XL LANDSCAPE DEVELOPMENT, and/or other companies dba XL LANDSCAPE
6 DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT or its predecessor or
7 merged entities in California as a non-exempt, hourly employee for one or more pay
8 periods from February 2, 2021 and continuing into the present (“Non-Exempt
9 Aggrieved Employees”);
- 10 (2) all individuals who were employed XL LANDSCAPE DEVELOPMENT LLC, XL
11 LANDSCAPE DEVELOPMENT, and/or other companies dba XL LANDSCAPE
12 DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT or its predecessor,
13 merged or related entities in California who worked one or more shifts of more than
14 six (6) hours as a non-exempt, hourly employee or other similar position from
15 February 2, 2021 and continuing into the present. (“First Meal Period Aggrieved
16 Employees”);
- 17 (3) all individuals who were employed by XL LANDSCAPE DEVELOPMENT LLC,
18 XL LANDSCAPE DEVELOPMENT, and/or other companies dba XL LANDSCAPE
19 DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT or its predecessor,
20 merged or related entities in California who worked one or more shifts of more than
21 ten (10) hours as a non-exempt hourly employee or other similar position from
22 February 2, 2021 and continuing into the present. (“Second Meal Period Aggrieved
23 Employees”);

24 Collectively, aggrieved employee groups two (2) and three (3) may be referred to as the
25 “Meal Period Aggrieved Employees.”

- 26 (4) all individuals who were employed by XL LANDSCAPE DEVELOPMENT LLC,
27 XL LANDSCAPE DEVELOPMENT, and/or other companies dba XL LANDSCAPE
28 DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT or its predecessor,
merged or related entities for one or more pay periods in California and whose
employment concluded at any time between on February 2, 2021 and continuing into
the present; (“Late Payment Aggrieved Employee”);
- (5) all individuals who were employed by XL LANDSCAPE DEVELOPMENT LLC,
XL LANDSCAPE DEVELOPMENT, and/or other companies dba XL LANDSCAPE
DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT or its predecessor or
merged entities in California for one or more pay periods from February 2, 2021 and
continuing into the present (“Wage Statement Aggrieved Employees”);

1 These groups may all collectively be referred to herein as aggrieved employees and/or all
2 aggrieved employees where appropriate.

3 5. Plaintiff, the Class members, and the aggrieved employees were employed by
4 Defendants and any subsidiaries or affiliated and Does 1 through 50 (who include individuals
5 acting on behalf an employer within the meaning of Labor Code § 558.1) within the State of
6 California as a non-exempt, hourly employees between August 15, 2017 and continuing into the
7 present.

8 6. At all times relevant hereto, Defendants operated as a single integrated enterprise,
9 including but not limited to using the same officers or business locations, procuring labor for each
10 other, sharing a common corporate headquarters, common policies and practices, common
11 advertisements, and held themselves out as a single integrated enterprise to the public and its
12 employees.

13 7. Labor Code § 558.1 provides that “[a]ny employer or other person acting on behalf
14 of an employer, who violates, or causes to be violated, any provision regulating minimum wages
15 or hours and days of work in any order of the Industrial Welfare Commission, or violates, or
16 causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
17 employer for such violation.” Plaintiff alleges, based upon information and belief, that and any
18 Doe Defendants who are individuals were/are persons acting on behalf of an employer within the
19 meaning of Labor Code § 558.1 as it relates to all of the alleged allegations in this action.

20 8. At all times relevant hereto, Defendants except for the individual Doe Defendants
21 who are humans served as alter egos of each other.

22 9. Plaintiff is a former employee of Defendants who worked for Defendants and/or
23 experienced Labor Code violations that were caused by Defendants during the statutory period
24 until in or around late January 2022.

25 10. At times throughout her employment with Defendants between August 15,
26 2017 and within the past year, Plaintiff, the Class members, and the aggrieved employees worked
27 some shifts in excess of five (5) hours per day, but less than six (6) hours in a day, shifts in excess
28

1 of eight (8) hours in a day, and shifts in excess of ten (10) hours in a day and/or twelve (12) hours
2 in a day.

3 11. At times between August 15, 2017 and the present and within the past year,
4 Plaintiff, the class members, and the aggrieved employees worked more than forty (40) hours per
5 week.

6 12. Defendants hire employees to work within the state of California who are covered
7 by California Industrial Welfare Commission Occupational Wage Order Nos. 5-2001 and 16-
8 2001. Based upon information and belief, Defendants classified Plaintiff, the class members, and
9 the aggrieved employees as non-exempt for the purposes of overtime, meal periods, and rest
10 periods.

11 13. Plaintiff and the Wage Statement Class received at least one wage statement
12 between February 9, 2021 and continuing into the present. These wage statements did not include
13 the inclusive dates of the period for which the employee is paid in violation of Labor Code § 226.

14 14. Labor Code § 512 requires employers to provide employees with thirty (30)
15 minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover,
16 an employee who works more than ten (10) hours per day is entitled to receive a second thirty
17 (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer
18 may not employ an employee for a work period of more than ten (10) hours, without providing
19 the employee with a second meal period of not less than thirty (30) minutes. Moreover, the
20 second meal period may not be waived if the total hours worked is more than twelve (12) hours.

21 15. Similarly, IWC Wage Order Nos. 5-2001 and 16-2001 prohibit an employer from
22 “employ[ing] any person for a work period of more than five (5) hours without a meal period of
23 not less than 30 minutes. IWC Wage Order Nos. 5-2001 and 16-2001 further obligate employers
24 to provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate
25 of compensation for each workday that the meal period is not provided. Labor Code section 1198
26 prohibits an employer from requiring an employee to work beyond the “standard conditions of
27 labor fixed by the commission...or under conditions of labor prohibited by the order.”
28

1 16. At times between August 15, 2017 and the present and within the past year and
2 including the pay periods in January 2022, Defendants failed to authorize and permit Plaintiff, the
3 Class, and the aggrieved employees to receive lawful meal periods, failed to advise them of their
4 right to such meal periods, failed to authorize and permit them to take timely first meal periods
5 within the first five (5) hours of their shift, failed to authorize and permit them to take a meal
6 period when working a shift in excess of five (5) hours, but less than six (6) hours, and failed to
7 authorize and permit them to take a second meal period when working a shift in excess of ten (10)
8 hours. This includes, but is not limited to, failing to have a lawful meal period policy authorizing
9 second meal periods and/or permitting Plaintiff, the Meal Period Class, and the aggrieved
10 employees to take a second meal period.

11 17. At times between August 15, 2017 and the present including the pay periods in
12 January 2022, Defendants' meal period policies and practices also disincentivized and
13 discouraged Plaintiff, the Class, and the other aggrieved employees from taking timely first meal
14 periods within the first five (5) hours of their shift. Defendants' understaffing policies and
15 practices also pressured, coerced, and forced employees to forgo second meal periods due to a
16 lack of sufficient staffing and the time sensitive nature of projects on some instances.

17 18. During the statutory periods applicable to this action and within the past year,
18 Defendants also failed to provide shade recovery periods as required by California Law, IWC
19 Wage Order Nos. 5-2001 and 16-2001

20 19. Labor Code § 226.7 provides "an employer shall not require an employee to work
21 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
22 regulation, standard, or order of the Industrial Welfare Commission ("IWC").

23 20. Similarly, IWC Wage Order Nos. 5-2001 and 16-2001 obligate employers to
24 provide an employee to "pay the employee one (1) hour of pay at the employee's regular rate of
25 compensation for each workday that the meal period is not provided.

26 21. At times between August 15, 2017 and the present and within the past year,
27 Defendants also failed to pay Plaintiff, the Class, and the aggrieved employees meal period
28 premiums for each workday that the employees did not receive a compliant meal period and/or at

1 the proper rate. Accordingly, for each day that Plaintiff, the Class, and all aggrieved employees
2 did not receive compliant meal periods, they are entitled to receive meal period premiums
3 pursuant to Labor Code § 226.7 and IWC Wage Order Nos. 5-2001 and 16-2001. Unfortunately,
4 Plaintiff, the Class, and the aggrieved employees were not compensated with one (1) hours' worth
5 of pay at their regular rate of compensation when they were not provided with a compliant meal
6 period in violation of Labor Code § 226.7 and IWC Wage Order Nos. 5-2001 and 16-2001.

7 22. Further, on the rare occasions, that Defendants paid meal period premiums since
8 August 15, 2017 and within the past year, Defendants had a common policy and practice of
9 failing to include compensation associated with incentive payments, shift differentials,
10 compensation associated with prevailing wages, non-discretionary bonuses, production bonuses,
11 efficiency bonuses, attendance bonuses, and other non-discretionary income aside from Plaintiff,
12 the Class, and aggrieved employees' hourly base rates when calculating and paying meal period
13 premiums. Instead of paying meal/rest period premiums at employees' regular rates, on the rare
14 occasions that Plaintiff, the Class, and the aggrieved employees received a meal period premium,
15 Defendants improperly paid the premium at their hourly base rate instead of at their regular rate.
16 Plaintiff contends that Defendants' policies and practices as alleged above violated Labor Code §
17 226.7 and seeks penalties pursuant to PAGA related thereto consistent with the California
18 Supreme Court's decision in *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021)
19 ("we hold that the term 'regular rate of compensation' in section 226.7(c) has the same meaning
20 of regular rate of pay' in section 510(a) and encompasses not only hourly wages, but all
21 nondiscretionary payments for work performed by the employee.").

22 23. Labor Code § 558 imposes a penalty upon employers "who violates, or causes to
23 be violated...any provision regulating hours and days of work in any order of the Industrial
24 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
25 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was
26 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each
27 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
28 period for which the employee was underpaid in addition to an amount sufficient to recover

1 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected
2 employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only
3 the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and
4 not any underpaid wages.

5 24. Labor Code § 226.7 provides “an employer shall not require an employee to work
6 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
7 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
8 Order Nos. 5-2001 and 16-2001, an employer must authorize and permit all employees to take ten
9 (10) minute duty free rest periods for every major fraction of four hours worked.

10 25. At times between August 15, 2017 and the present and within the past year
11 including the pay periods in January 2022, Defendants failed to provide Plaintiff, the Class, and
12 the aggrieved employees with rest periods of not less than ten (10) minutes for every major
13 fraction of four (4) hours worked. Instead, Defendants at times required Plaintiff, the Class, and
14 the aggrieved employees to forgo a second rest period when they worked shifts in excess of six
15 (6) hours—including, but not limited to when Plaintiff, the Class, and the aggrieved employees
16 worked shifts in excess of six (6) hours, but less than eight (8) hours—and failed to authorize and
17 permit employees who worked more than ten (10) hours to receive/take a third rest period.

18 26. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the
19 Class, and the aggrieved employees were not compensated with one (1) hours’ worth of pay at
20 their regular rate of compensation when they were not provided with a compliant rest period
21 and/or their rest period was interrupted in accordance with Labor Code § 226.7(b).

22 27. Further, on the rare occasions, that Defendants paid rest period premiums since
23 August 15, 2017 and within the past year, Defendants had a common policy and practice of
24 failing to include compensation associated with incentive payments, shift differentials,
25 compensation associated with prevailing wages, non-discretionary bonuses, production bonuses,
26 efficiency bonuses, attendance bonuses, and other non-discretionary income aside from the
27 aggrieved employees’ hourly base rates when calculating and paying rest period premiums.
28 Instead of paying meal/rest period premiums at employees’ regular rates, on the rare occasions

1 that Plaintiff, the Class, and the aggrieved employees received a rest period premium, Defendants
2 improperly paid the premium at their hourly base rate instead of at their regular rate. Plaintiff
3 contends that Defendants' policies and practices as alleged above violated Labor Code § 226.7
4 and seeks penalties pursuant to PAGA related thereto consistent with the California Supreme
5 Court's decision in *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021) ("we hold
6 that the term 'regular rate of compensation' in section 226.7(c) has the same meaning of regular
7 rate of pay' in section 510(a) and encompasses not only hourly wages, but all nondiscretionary
8 payments for work performed by the employee.").

9 28. As to Plaintiff, the Wage Statement Subclass, and the aggrieved employees,
10 Defendants also failed to provide accurate itemized wage statements in accordance with Labor
11 Code § 226(a)(1, 2, 5, 6, and 9). Labor Code § 226 obligates employers, semi-monthly or at the
12 time of each payment to furnish an itemized wage statement in writing showing:

- 13 (1) gross wages earned;
- 14 (2) total hours worked by the employee;
- 15 (3) the number of piece-rate units earned and any applicable piece rate if the
employee is paid on a piece rate;
- 16 (4) all deductions, provided that all deductions made on written orders of the employee
may be aggregated and shown as one item;
- 17 (5) net wages earned;
- 18 (6) the inclusive dates of the period for which the employee is paid;
- 19 (7) 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;
- 20 (8) the name and address of the legal entity that is the employer...;
- 21 (9) all applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee...

22 Similarly, Labor Code § 226(e) provides:

23 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
24 employer to comply with subdivision (a) is entitled to recover the greater of all actual
25 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
26 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
27 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
award of costs and reasonable attorney's fees.

28 (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide accurate and complete information as required by any one or
more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
and easily determine from the wage statement alone one or more of the following:

- (i) The amount of the gross wages or net wages paid to the employee during the
pay period or any of the other information required to be provided on the itemized

1 wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
2 (a).
3 (ii) Which deductions the employer made from gross wages to determine the net
4 wages paid to the employee during the pay period. Nothing in this subdivision
5 alters the ability of the employer to aggregate deductions consistent with the
6 requirements of item (4) of subdivision (a).
7 (iii) The name and address of the employer and, if the employer is a farm labor
8 contractor, as defined in subdivision (b) of Section 1682, the name and address of
9 the legal entity that secured the services of the employer during the pay period.
10 (iv) The name of the employee and only the last four digits of his or her social
11 security number or an employee identification number other than a social security
12 number.

13 29. Due to Defendants' failure to pay Plaintiff, the Wage Statement Subclass and the
14 aggrieved employees all meal period premiums and rest period premiums, the wage statements
15 issued by Defendants do not indicate the correct amount of gross wages earned, the total hours
16 worked, the net wages earned, all applicable hourly rates in effect during the pay period and the
17 corresponding number of hours worked at each hourly rate. Defendants also issued itemized wage
18 statements to Plaintiff, the Wage Statement Subclass, and the aggrieved employees that did not
19 include the start date of the pay period. As such, the wage statements issued to Plaintiff and the
20 other aggrieved employees did not contain "the inclusive dates of the period for which the
21 employee is paid." Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and
22 Defendant has violated Labor Code §226(a)(1), (2), (5), (6), and (9) with respect to Plaintiff, the
23 Wage Statement Subclass, and all aggrieved employees.

24 30. Plaintiff, the Wage Statement Subclass, and the aggrieved employees also suffered
25 legal "injury" for purposes of Labor Code section 226(e) insofar as they were unable to readily
26 and easily determine from the wage statements themselves the information required to be set forth
27 by Section 226(a), the information provided by Defendants was inaccurate and made it difficult to
28 determine and ascertain the information required by Labor Code section 226(a). However,
Plaintiff does not allege any injury aside from the statutory violation and therefore there would be
no Article III standing, which is not required in state courts.

31. In addition, Plaintiff, the Wage Statement Class, and the aggrieved employees
were unable to determine at all the total hours worked by the employee, the gross wages earned,
the net wages earned, and all applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate by the employee for the reasons
2 discussed above.

3 32. As described in detail above, Defendants failed to pay the Late Payment Subclass
4 members whose employment concluded between August 15, 2018 and continuing into the present
5 all wages owed, including but not limited to meal period premiums and rest period premiums
6 within the time constraints proscribed in Labor Code §§ 201-202 at the time of their
7 termination/separation. Separate and independent of the foregoing Defendants also failed to
8 Plaintiff, the Late Payment Subclass, and the aggrieved employees any wages whatsoever within
9 the time constraints of Labor Code section 201-202. For instance, Plaintiff did not receive his
10 final wages on the day of his termination in January 2022. This may be as a result of Defendants'
11 policy and practice of processing final pay checks at the same time as all employees pay checks,
12 but is not limited to such instances. Thus, as result of Defendant's faulty policies described above,
13 the Late Payment Subclass and the Late Payment Aggrieved Employees left their employment
14 with Defendants all wages owed and within the proper time constraints in violation of Labor
15 Code §§ 201, 202, and 203.

16 33. Labor Code § 204 expressly requires that "[a]ll wages...earned by any person in
17 any employment are due and payable twice during each calendar month, on days designated in
18 advance by the employer as the regular paydays." Defendant pays Plaintiff and all aggrieved
19 employees on a basis other than semi-monthly such that it is covered by Labor Code § 204(d).

20 34. Due to Defendants' failure to pay Plaintiff and all aggrieved employees all meal
21 period premiums and rest period premiums for the reasons discussed above, Defendants failed to
22 timely pay Plaintiff and all aggrieved employees all wages owed within seven (7) days of the
23 close of the payroll period in accordance with Labor Code § 204(d) on a regular and consistent
24 basis.

25 35. Labor Code § 210 provides that "in addition to, an entirely independent and apart
26 from, any other penalty provided in this article, every person who fails to pay the wages of each
27 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
28 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For

1 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
2 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of
3 the faulty compensation policies and practices described in detail above, Plaintiff and the other
4 aggrieved employees are entitled to recover penalties under Labor Code § 210 through PAGA.
5 *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of
6 Labor Code section 210 penalties under PAGA due to the employer’s failure to timely pay wages
7 at the proper rate in accordance with a local wage ordinance).

8 36. Labor Code §2802 provides that “[a]n employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct consequence
10 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
11 even though unlawful, unless the employee, at the time of obeying the directions, believed them
12 to be unlawful.”

13 37. Since the onset of the COVID-19 pandemic, Defendants failed to provide Plaintiff,
14 the Class, and the aggrieved employees with masks during the COVID-19 pandemic and instead
15 expected Plaintiff, the Class, and the aggrieved employees to provide their own masks at their
16 expense. By requiring Plaintiff, the Class, and the aggrieved employees to provide masks at their
17 own expense, Defendants caused Plaintiff, the Class, and the aggrieved employees to incur
18 expense in order to perform their job and comply with State, Local, and/or other applicable laws
19 and health orders and regulations. Accordingly, Defendant has violated Labor Code § 2802.

20 38. Labor Code § 6400 provides that “[e]very employer shall furnish employment and
21 a place of employment that is safe and healthful for the employees therein.” In addition, Labor
22 Code § 6401 requires employers to “furnish and use safety devices and safeguards, and shall
23 adopt and use practices, means, methods, operations, and processes which are reasonably
24 adequate to render such employment and place of employment safe and healthful.” It further
25 requires employers to “do every other thing reasonably necessary to protect the life, safety, and
26 health of employees.”

1 39. In order to protect the health of employee's, employers must also "establish,
2 implement, and maintain an effective injury prevention program. Lab. Code § 6401.7. Pursuant to
3 Labor Code § 6401.7, employers must promulgate an injury prevention program that includes:

- 4 (1) Identification of the person or persons responsible for implementing the program.
5 (2) The employer's system for identifying and evaluating workplace hazards, including
6 scheduled periodic inspections to identify unsafe conditions and work practices.
7 (3) The employer's methods and procedures for correcting unsafe or unhealthy conditions
8 and work practices in a timely manner.
9 (4) An occupational health and safety training program designed to instruct employees in
10 general safe and healthy work practices and to provide specific instruction with respect to
11 hazards specific to each employee's job assignment.
12 (5) The employer's system for communicating with employees on occupational health and
13 safety matters, including provisions designed to encourage employees to inform the
14 employer of hazards at the worksite without fear of reprisal.
15 (6) The employer's system for ensuring that employees comply with safe and healthy
16 work practices, which may include disciplinary action.
17 (b) The employer shall correct unsafe and unhealthy conditions and work practices in a
18 timely manner based on the severity of the hazard.
19 (c) The employer shall train all employees when the training program is first established,
20 all new employees, and all employees given a new job assignment, and shall train
21 employees whenever new substances, processes, procedures, or equipment are introduced
22 to the workplace and represent a new hazard, and whenever the employer receives
23 notification of a new or previously unrecognized hazard. An employer in the construction
24 industry who is required to be licensed under Chapter 9 (commencing with Section 7000)
25 of Division 3 of the Business and Professions Code may use employee training provided
26 to the employer's employees under a construction industry occupational safety and health
27 training program approved by the division to comply with the requirements of subdivision
28 (a) relating to employee training, and shall only be required to provide training on hazards
specific to an employee's job duties.
(d) The employer shall keep appropriate records of steps taken to implement and maintain
the program. An employer in the construction industry who is required to be licensed
under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and
Professions Code may use records relating to employee training provided to the employer
in connection with an occupational safety and health training program approved by the
division to comply with this subdivision, and shall only be required to keep records of
those steps taken to implement and maintain the program with respect to hazards specific
to an employee's job duties.

40. Moreover, Labor Code § 6402 prohibits an employer from requiring and/or
permitting "any employee to go or be in any place of employment which is not safe and

1 healthful.” Similarly, Labor Code § 6403 prohibits employers from “fail[ing] or neglect[ing] to do
2 any of the following: (a) To provide and use safety devices and safeguards reasonably adequate to
3 render the employment and place of employment safe; (b) To adopt and use methods and
4 processes reasonably adequate to render the employment and place of employment safe; (c) To do
5 every other thing reasonably necessary to protect the life, safety, and health of employees.”
6 Relatedly, Labor Code § 6404 expressly prohibits employers from “occupy[ing] or maintain[ing]
7 any place of employment that is not safe and healthful.” Further, Labor Code § 1198 provides that
8 “the standard of conditions of labor fixed by the commission shall be the maximum hours of work
9 and the standard conditions of labor for employees. The employment of any employee...under
10 conditions of labor prohibited by the order is unlawful.”

11 41. In addition, 8 Cal. Code Regs. § 3395(c) provides that all employees at outdoor
12 places of employment must have access to potable water that is “fresh, pure, suitably cool,” and
13 provided to employees free of charge. The water shall be located as close as practicable to the
14 areas where employees are working. If not plumbed or otherwise continuously supplies, *it must*
15 *be furnished at the beginning of the shift in sufficient quantity to provide one quart per employee*
16 *per hour for the entire shift.* 8 Cal. C. Regs. § 3395(c).

17 42. Pursuant to 8 Cal. C. Regs. § 3395(d)(1), an employer must also provide shade to
18 employees who work outdoors and in outdoor conditions:

19 (1) Shade shall be present when the temperature exceeds 80 degrees Fahrenheit. When the
20 outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer
21 shall have and maintain one or more areas with shade at all times while employees are
22 present that are either open to the air or provided with ventilation or cooling. The
23 amount of shade present shall be at least enough to accommodate the number of
24 employees on recovery or rest periods, so that they can sit in a normal posture fully in
25 the shade without having to be in physical contact with each other. The shade shall be
26 located as close as practicable to the areas where employees are working. Subject to
the same specifications, the amount of shade present during meal periods shall be at
least enough to accommodate the number of employees on the meal period who
remain onsite.

27 (2) Shade shall be available when the temperature does not exceed 80 degrees Fahrenheit.
28 When the outdoor temperature in the work area does not exceed 80 degrees Fahrenheit

1 employers shall either provide shade as per subsection (d)(1) or provide timely access
2 to shade upon an employee's request.

3 (3) Employees shall be allowed and encouraged to take a preventative cool-down rest in
4 the shade when they feel the need to do so to protect themselves from overheating. Such
5 access to shade shall be permitted at all times. An individual employee who takes a
6 preventative cool-down rest (A) shall be monitored and asked if he or she is experiencing
7 symptoms of heat illness; (B) shall be encouraged to remain in the shade; and (C) shall not
8 be ordered back to work until any signs or symptoms of heat illness have abated, but in no
9 event less than 5 minutes in addition to the time needed to access the shade.

10 (4) If an employee exhibits signs or reports symptoms of heat illness while taking a
11 preventative cool-down rest or during a preventative cool-down rest period, the employer
12 shall provide appropriate first aid or emergency response according to subsection (f) of
13 this section.

14 43. Defendants failed to provide its employees with masks and other personal
15 protective equipment required under state, local laws, and the California Department of Health,
16 failed to promulgate a COVID-19 Prevention Program, and the COVID-19 Prevention
17 Emergency Temporary Standards and continue to do so. At no point did Defendants provide
18 Plaintiff or the other aggrieved employees with masks for use during their shifts. Defendants also
19 failed to provide adequate shade on hot days and failed to provide and/or advise employees of
20 their right to recovery periods within the meaning of IWC Wage Order Nos. 5-2001 and 16-2001
21 as well as Labor Code § 226.7, and failed to provide a safe and healthful work environment to
22 Plaintiff and the other aggrieved employees. Defendants violated Labor § 6400 in that by failing
23 to provide access to water and shade and/or to implement sufficient safeguards to prevent
24 employees from suffering from dehydration and heat stroke. Further, by failing to provide masks
25 during the COVID-19 pandemic and/or to promulgate, implement, and follow a lawful COVID-
26 19 Prevention Plan as required by California law during the pandemic, Defendants failed to
27 provide a healthful and safe working environment in violation of Labor Code § 6400. By
28 engaging in the above described conduct, Defendants failed to implement adequate safeguards
including but not limited to protecting employees from COVID-19 during a pandemic. By
engaging in the above described conduct, Defendants failed to include adequate safeguards that
ensure the safety of the workplace and “[t]o do every other thing reasonably necessary to protect

1 the life, safety, and health of employees.” Lab. Code §§ 226.7, 1198, 6400, 6401, 6402, 6403,
2 6404, and 6401.7.

3
4 44. Despite the fact that Defendants were aware of the unsafe working conditions and
5 the fact that its work environments were not healthful, Defendants failed to establish, implement,
6 and maintain an effective injury prevention in violation of Labor Code § 6401.7. Further,
7 although Labor Code § 6401.7 requires employers to create and implement an effective injury
8 prevention plan, Defendants failed to promulgate an injury prevention program that met the
9 code’s strict requirements, advise Plaintiff and the aggrieved employees of their right to recovery
10 periods and to masks at the employer’s expense and of their availability, failed to advise
11 employee’s of the identity of the persons responsible for implementing such program, failed to
12 correct the unsafe conditions and practices including providing employees with breaks where they
13 could leave the premises, access to water, recovery periods, access to masks and to implement
14 other appropriate safety measures, failed to create a health and safety program (Injury Illness
15 Prevention Program and COVID-19 Prevention Program that advised employees of the hazards
16 specific to each employee’s job assignment including as required by Labor Code § 6401.7, failed
17 to take aggrieved employees complaints seriously, failed to train each employee when given a
18 new job assignment in violation of Labor Code § 6401.7(c), and based upon information and
19 belief failed to keep records of the program with respect to hazard’s specific to each employee’s
20 job duties in violation of Labor Code § 6401.7(d). Defendants also failed to provide training
21 and/or maintain record of any trainings given to aggrieved employees related to Injury Illness
22 Prevention Programs and COVID-19 Prevention Programs. Nor did Defendant implement
23 effective measures as required by Labor Code § 6401.7 because it did not disclose any such
24 measures to employees.

25 45. Based upon the foregoing, Defendants also violated Labor Code § 6403 because
26 despite being aware of unsafe working conditions, it failed to adopt and use methods and
27 processes reasonably adequate to render the employment and place of employment safe.
28

1 46. Defendants failed “[t]o do every other thing reasonably necessary to protect the
2 life, safety, and health of employees” and certainly failed to take adequate measures and
3 safeguards to render the employment environment safe in violation of Labor Code §§ 226.7,
4 1198, 6400, 6401, 6401.7, 6402, 6403, and 6404.

5 47. In addition, Labor Code § 1198 provides that “the standard of conditions of labor
6 fixed by the commission shall be the maximum hours of work and the standard conditions of
7 labor for employees. The employment of any employee...under conditions of labor prohibited by
8 the order is unlawful.” By failing to follow 8 Cal. C. Regs. § 3395(c) and 3395(d)(1), Defendants
9 violated California Labor Code § 1198. *Bright vs. 99 Cents Only Stores*, 189 Cal.App.4th 1472
10 (2010).

11 48. Moreover, although 8 Cal. C. Regs. § 3395(d)(1) requires employers to
12 “encourage” employees to take a preventative cool down rest in the shade when they feel the need
13 to do so to protect themselves from overheating and that “access to shade shall be permitted at all
14 times” Defendants failed to advise Plaintiff and all aggrieved employees of their right to recovery
15 periods and did not encourage employee to take preventative cool-down rests. Instead,
16 Defendants omitted and concealed the fact that employees were entitled to such recovery periods
17 and made employees stay on-the-premises and on-duty at all times including during meal and rest
18 periods. Accordingly, Defendants violated Labor Code §§ 226.7, 1198, 6400, 6401, 6401.7, 6402,
19 6403, and 6404.

20 49. Due to Defendants’ unlawful practices detailed above, Defendant failed to afford
21 recovery periods to prevent heat illness in violation of Labor Code § 226.7. Labor Code 226.7
22 specifies that “if an employer fails to provide an employee a meal or rest or recovery period in
23 accordance with a state law, including, but not limited to, an applicable statute or applicable
24 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
25 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
26 pay the employee one additional hour of pay at the employee’s regular rate of compensation for
27 each workday that the meal or rest or recovery period is not provided. In express violation of
28 Labor Code § 226.7, Defendants at times failed to pay Plaintiff and the aggrieved employees

1 recovery period premiums within the meaning of Labor Code § 226.7 when it failed to advise
2 and/or provide each with a lawful recovery period. This includes recovery periods necessary to
3 ensure a safe and healthful workplace in accordance with Labor Code §§ 6400, 6401, 6401.7,
4 6402, 6403, and 6404.

5 II.

6 **JURISDICTION AND VENUE**

7 50. This Court has subject matter jurisdiction over all causes of action asserted herein
8 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
9 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
10 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
11 laws of the State of California or is subject to adjudication in the courts of the State of California.

12 51. This Court has personal jurisdiction over Defendants XL LANDSCAPE
13 DEVELOPMENT AND XL LANDSCAPE DEVELOPMENT, LLC because Defendants have
14 caused injuries in the County of Sacramento and State of California through their acts, and by
15 their violation of the California Labor Code and California law in Sacramento County.

16 52. Defendants also engaged and suffered and/or permitted the Class Members, and
17 aggrieved employees to perform work in Sacramento County during the statutory period
18 applicable to their claims resulting in injuries within Sacramento County. *Battaglia Enterprises,*
19 *Inc. v. Sup. Ct.*, 215 Cal.App.4th 309, 313 (2013) (holding that if “venue is proper in more than
20 one county, a plaintiff may choose among the available options.”); *accord Crestwood Behavioral*
21 *Health, Inc. v. Superior Court*, 60 Cal. App. 5th 1069 (2021) (affirming that the Plaintiff’s choice
22 of venue in a PAGA case was proper in Alameda County even though the employee only worked
23 for the defendant in Solano County and the defendant’s principal office was in Sacramento
24 County). Defendants principal office is located in Rancho Cordova in Sacramento County.

25 53. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
26 Civil Procedure §395. Defendants operates within California and do business within Sacramento
27 County. The unlawful acts alleged herein have a direct effect on the Class, the State of California,
28 and the aggrieved employees within the State of California and Sacramento County.

54. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

III.

PARTIES

A. PLAINTIFF

55. Plaintiff ALEJANDRO GONZALEZ AVALOS is a former employee of Defendants who worked for Defendants and/or experienced Labor Code violations that were caused by Defendants during the statutory period until in or around late January 2022.

56. Plaintiff and the Class were regularly required to:

- a. Work without being provided lawful meal periods;
- b. Work without being provided lawful rest periods;
- c. Work without being provided an accurate itemized wage statement that accurately indicate the gross wages earned, total hours worked by the employee, the inclusive dates of the pay period, the net wages earned, as well as all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;
- d. Were deprived of wages that Defendants knew were due and owing, yet failed to pay at the time of termination and/or within 72 hours of resignation for those former employees who did not provide advance notice.
- e. Whether Defendants violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that the Late Payment Subclass employment with Defendants concluded;
- f. Whether Defendants violated Labor Code § 2802 by failing to provide Plaintiff and the Class with all tools and implements needed to discharge his or her duties;

g. Whether Defendants violated § 17200 et seq. of the Business & Professions Code by engaging in the acts previously alleged against the Class;

B. DEFENDANTS

57. Defendant XL LANDSCAPE DEVELOPMENT, is a California corporation, with a current principal place of business of 3666 Omec Park Dr., Rancho Cordova, CA 95742 Defendant employed Class Members in Sacramento County and within California. Defendant has done and does business throughout the State of California and in Sacramento County.

58. Defendant XL LANDSCAPE DEVELOPMENT, LLC, claims it is a Nevada Corporation, but Plaintiff alleges that it is an alter ego and/or dba for California Corporation XL LANDSCAPE DEVELOPMENT and that its current principal place of business is 3666 Omec Park Dr., Rancho Cordova, CA 95742 Defendant employed Class Members in Sacramento County and within California. Defendant has done and does business throughout the State of California and in Sacramento County.

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

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

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1 IV.

2 **CLASS ACTION ALLEGATIONS**

3 61. Plaintiff brings this action on behalf of himself and all others similarly situated as
4 a Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent
5 several Classes and Subclasses composed of and defined as follows:

- 6 (1) all non-exempt, hourly employees who were employed by XL LANDSCAPE
7 DEVELOPMENT, XL LANDSCAPE DEVELOPMENT, LLC and/or other
8 companies dba XL LANDSCAPE DEVELOPMENT LLC or XL LANDSCAPE
9 DEVELOPMENT or its predecessor, merged or related entities in California as
10 an employee at any point from August 15, 2017 and continuing into the present.
(the “Non-Exempt Class”);⁴
- 11 (2) all individuals who were employed XL LANDSCAPE DEVELOPMENT LLC,
12 XL LANDSCAPE DEVELOPMENT, and/or other companies dba XL
13 LANDSCAPE DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT
14 or its predecessor, merged or related entities in California who worked one or
15 more shifts of more than six (6) hours as a non-exempt, hourly employee or
other similar position from August 15, 2017 and continuing into the present.
 (“First Meal Period Subclass”);
- 16 (3) all individuals who were employed by XL LANDSCAPE DEVELOPMENT
17 LLC, XL LANDSCAPE DEVELOPMENT, and/or other companies dba XL
18 LANDSCAPE DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT
19 or its predecessor, merged or related entities in California who worked one or
20 more shifts of more than ten (10) hours as a non-exempt hourly employee or
other similar position from August 15, 2017 and continuing into the present.
 (“Second Meal Period Subclass”);

21 Collectively, Subclasses two (2) and three (3) may be referred to as the “Meal Period
22 Subclass.”

- 23 (4) all individuals who were employed by XL LANDSCAPE DEVELOPMENT,
24 XL LANDSCAPE DEVELOPMENT, LLC and/or other companies dba XL
25 LANDSCAPE DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT
26 or its predecessor, merged or related entities in California as a non-exempt
hourly employee, or other similar position, who worked one or more shifts of

27
28 ⁴ The statute of limitations were tolled for at least sixty (60) days due to Emergency Rule 9 of the California Rules of Court also referred to as the “Emergency Rules Related to COVID-19”).

more than 3.51 hours in length from August 15, 2017 and continuing into the present. (“Second Rest Period Subclass”);

(5) all individuals who were employed by XL LANDSCAPE DEVELOPMENT, XL LANDSCAPE DEVELOPMENT, LLC and/or other companies dba XL LANDSCAPE DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than six (6) hours in length, but less than eight (8) hours in length from August 15, 2017 and continuing into the present. (“Second Rest Period Subclass”);

(6) all individuals who were employed by XL LANDSCAPE DEVELOPMENT, XL LANDSCAPE DEVELOPMENT, LLC and/or other companies dba XL LANDSCAPE DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than ten (10) hours in length from August 15, 2017 and continuing into the present. (“Third Rest Period Subclass”);

Collectively, subclasses four (4), five (5), and six (6) may be referred to as the “Rest Period Subclass.”

(7) all individuals who were employed by XL LANDSCAPE DEVELOPMENT, XL LANDSCAPE DEVELOPMENT, LLC and/or other companies dba XL LANDSCAPE DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position for one or more pay periods from February 9, 2021 and continuing into the present (“Wage Statement Subclass”);

(8) all individuals who were employed by XL LANDSCAPE DEVELOPMENT, XL LANDSCAPE DEVELOPMENT, LLC and/or other companies dba XL LANDSCAPE DEVELOPMENT LLC or XL LANDSCAPE DEVELOPMENT or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between August 15, 2018 and continuing into the present; (“Late Payment Subclass”);

Collectively, these Classes/Subclasses may also all collectively be referred to herein as the Classes or Class Member(s).⁵

⁵ Plaintiff reserves the right to redefine the Classes and Subclasses identified herein.

1 62. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
2 amend or modify the class description with greater specificity, by division into subclasses, or by
3 limitation to particular issues.

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

7 **A. Numerosity**

8 64. The potential members of the Proposed Classes as defined are each so numerous
9 that joinder of all the members of the Proposed Classes is impracticable. While the precise
10 number of proposed Class Members in each Class has not been determined at this time, Plaintiff
11 is informed and believes that Defendants currently employ, and during the relevant time periods
12 employed to be more than 100 members or more of the Proposed Class and Subclasses at any
13 given time.

14 65. Plaintiff alleges that Defendants' employment records would provide information
15 as to the number and location of all Proposed Class members. Joinder of all members of the
16 Proposed Class and Subclasses is not practicable.

17 **B. Commonality**

18 66. There are questions of law and fact common to the Proposed Classes⁶ that
19 predominate over any questions affecting only individual Proposed Class Members. These
20 common questions of law and fact include, without limitation:

21 a. Whether Defendants violated Labor Code §§ 226.7 and IWC Wage Order
22 Nos. 5-2001 and 16-2001, by failing to authorize and permit the Class and the Meal Period
23 Subclass to take a timely meal period within the first five (5) hours of their shift, failed to
24 authorize and permit first meal periods when employees worked shifts in excess of five (5) hours,
25 but less than six (6) hours, and/or failed to authorize and permit second meal periods for shifts
26 worked in excess of ten (10) hours as well as their failure to pay the Meal Period Subclass one

27 _____
28 ⁶ Plaintiff reserves his right to designate subclasses within the Classes including designating an Unfair Competition subclass for each class.

1 additional hour of pay at the employees' at their regular rate of compensation when they did not
2 receive a compliant meal period;

3 b. Whether Defendants violated Labor Code § 226.7 and IWC Nos. 5-2001
4 and 16-2001, by failing to authorize and permit Plaintiff, the Class and the Rest Period Subclass
5 of their right to receive a ten (10) minute duty-free rest period for every four hours of work or
6 major fraction thereof, including a second rest period on shifts in excess of six (6) hours, but less
7 than eight (8) hours, failed to authorize and permit them to take a third rest period when they
8 worked shifts in excess of ten (10) hours in a day, and by failing to compensate said employees
9 one (1) additional hour of pay at the employee's regular rate of compensation in lieu of such rest
10 periods;

11 c. Whether Defendants violated Labor Code § 226(a) and (e) by failing to
12 provide the Wage Statement Class with accurate itemized wage statements that accurately
13 indicate, the gross wages earned, all deductions from wages, the net wages earned, as well as all
14 applicable hourly rates in effect during the pay period and the corresponding number of hours
15 worked at each hourly rate by the employee, and failed to include the inclusive dates of the pay
16 period;

17 d. Whether Defendants violated Labor Code § 2802 by failing to provide
18 Plaintiff and the Class with all tools and implements needed to discharge his or her duties;

19 e. Whether Defendants violated §§ 201-203 of the Labor Code by failing to
20 pay compensation due and owing at the time that the Late Payment Subclass employment with
21 Defendants concluded;

22 f. Whether Defendants violated § 17200 et seq. of the Business & Professions
23 Code by engaging in the acts previously alleged against the Class;

24 **C. Typicality**

25 67. The claims of Plaintiff are typical of the claims of the Proposed Class and
26 Subclasses. Plaintiff and all members of the Proposed Class and Subclasses sustained injuries and
27 damages arising out of and caused by Defendants' common course of conduct in violation of
28 laws, regulations that have the force and effect of law, and statutes as alleged herein.

1 **D. Adequacy of Representation**

2 68. Plaintiff will fairly and adequately represent and protect the interests of the
3 members of the proposed Classes. Counsel who represents Plaintiff and the Proposed Classes is
4 competent and experienced in litigating large employment class actions, and have the financial
5 resources to litigate the claims at issue.

6 **E. Superiority of Class Action**

7 69. A class action is superior to other available means for the fair and efficient
8 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
9 practicable, and questions of law and fact common to the Proposed Class predominate over any
10 questions affecting only individual members of the Proposed Class. Each member of the
11 Proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal
12 policy and/or practice of failing to pay all wages due, failing to provide meal periods, failing to
13 provide rest periods, failing to provide accurate itemized wage statements, and failing to pay all
14 wages upon resignation or termination.

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

19 **V.**

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PROVIDE LAWFUL MEAL PERIODS PURSUANT TO LABOR CODE**
22 **§§ 226.7 and 512; IWC WAGE ORDER NOS. 5-2001 and 16-2001 § 11**
23 **[Against All Defendants by Plaintiff, the Class, and the Meal Period Subclass]**

24 71. Plaintiff, on behalf of himself, realleges and incorporates by reference all previous
25 paragraphs.

26 72. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
27 compensation for each non-compliant meal period an employer fails to provide. Employees are
28 entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be
provided within the first five (5) hours of the shift and a second meal period of at least thirty (30)
minutes for shifts over ten (10) hours.

73. At points during the statutory period applicable to this claim including within the past year, Plaintiff, the Class, and the Meal Period Subclass worked shifts over five (5) hours, but less than six (6) hours, shifts in excess of six (6) hours where were not authorized and permitted to take a meal period within the first five (5) hours, did not receive a timely first meal period within the first five (5) hours of their shift, and worked shifts in excess of ten (10) hours without being authorized and permitted nor receiving a second meal period.

74. During the statutory period applicable to their claims, Plaintiff, the Non-Exempt Class, and the Meal Period Subclass were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant meal period or at the proper rate based upon Defendants' unlawful compensation policies detailed above. Instead, on the rare occasions where Defendants paid meal period premiums, Defendants underpaid meal period premiums.

75. Pursuant to Labor Code §226.7, Plaintiff, the Class, and the Meal Period Subclass are entitled to damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum to be proven at trial.

VI.
SECOND CAUSE OF ACTION
FAILURE TO PROVIDE LAWFUL REST PERIODS AND PAY NON-COMPLIANT
REST PERIOD PREMIUMS PURSUANT TO LABOR CODE § 226.7 AND IWC WAGE
ORDER NO. 5-2001, § 12
[Against All Defendants by Plaintiff, the Non-Exempt Class, and the Rest Period Subclass]

76. Plaintiff, on behalf of himself, the Class, and the Rest Period Subclass, realleges and incorporates by reference all previous paragraphs.

77. Plaintiff, the Class, and the Rest Period Subclass, worked shifts more than four (4) hours or a major fraction thereof, including shifts of more than ten (10) hours in a day without receiving rest periods and/or the proper amount of rest periods during the statutory period applicable to their claims.

78. At times between August 15, 2017 and the present and within the past year, Defendant failed to provide Plaintiff, the Class, and the Rest Period Subclass rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. Instead, Defendant at times required Plaintiff, the Class, and the Rest Period Subclass to forgo a second rest period

1 when they worked shifts in excess of six (6) hours—including, but not limited to when Plaintiff,
2 the Class, and the Rest Period Subclass worked shifts in excess of six (6) hours, but less than
3 eight (8) hours—and failed to authorize and permit employees who worked more than ten (10)
4 hours a third rest period.

5 79. Labor Code § 226.7 provides “an employer shall not require an employee to work
6 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
7 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
8 Order Nos. 5-2001 and 16-2001 an employer must authorize and permit all employees to take ten
9 (10) minute duty free rest periods for every major fraction of four hours worked.

10 80. Defendants also failed to provide Plaintiff, the Non-Exempt Class, and the Rest
11 Period Subclass with rest periods of not less than ten (10) minutes for every major fraction of four
12 (4) hours worked. Instead, Defendants at times required Plaintiff, the Non-Exempt Class, and the
13 Rest Period Subclass, to forgo rest periods.

14 81. Moreover, Defendants’ understaffing policies and practices also pressured,
15 coerced, and forced employees to take untimely first meal periods due to a lack of sufficient
16 coverage.

17 82. Defendants also failed to provide Plaintiff and the Rest Period Subclass with
18 recovery periods and shade breaks as required by California law and in violation of Labor Code
19 section 226.7.

20 83. Based upon the foregoing, at all times pertinent hereto, Defendants failed to
21 authorize and permit Plaintiff, the Non-Exempt Class, and the Rest Period Subclass to take duty-
22 free rest periods of not less than ten (10) minutes net for every major fraction of four (4) hours
23 worked. For the same reasons, Defendants also failed to provide such breaks.

24 84. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the
25 Non-Exempt Class and the Rest Period Subclass, were not compensated with one (1) hours’
26 worth of pay at their regular rate of compensation when they were not provided with a compliant
27 rest period and/or their rest period was interrupted in accordance with Labor Code § 226.7(b).
28

1 Instead, on the rare occasions where Defendants paid rest period premiums, Defendants
2 underpaid rests period premiums.

3 85. Pursuant to Labor Code § 226.7, Plaintiff the Non-Exempt Class, and the Rest
4 Period Subclass are entitled to damages in an amount equal to one (1) hour of wages per missed
5 rest period, in a sum to be proven at trial.

6 **VII.**
7 **THIRD CAUSE OF ACTION**
8 **VIOLATIONS OF LABOR CODE § 226(e)**
9 **[Against all Defendants on behalf of Plaintiff and the Wage Statement Subclass]**

10 86. Plaintiff, on behalf of himself and the Wage Statement Subclass, realleges and
11 incorporates by reference all previous paragraphs and all subsequent paragraphs.

12 87. From one (1) year prior to the filing of this action and continuing into the present,
13 Defendants knowing and intentionally failed to provide accurate itemized wage statements to
14 Plaintiff and the Wage Statement Class in accordance with Labor Code § 226(a)(1, 2, 5, and 9).
15 Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an
16 itemized wage statement in writing showing:

- 17 (1) gross wages earned;
18 (2) total hours worked by the employee;
19 (3) the number of piece-rate units earned and any applicable piece rate if the
20 employee is paid on a piece rate;
21 (4) all deductions, provided that all deductions made on written orders of the employee
22 may be aggregated and shown as one item;
23 (5) net wages earned;
24 (6) the inclusive dates of the period for which the employee is paid;
25 (7) the name of the employee and only the last four digits of his or her social security
26 number or an employee identification number other than a social security number;
27 (8) the name and address of the legal entity that is the employer...;
28 (9) all applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee...

Similarly, Labor Code § 226(e) provides:

- (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.
(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.
(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or

1 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
2 and easily determine from the wage statement alone one or more of the following:

3 (i) The amount of the gross wages or net wages paid to the employee during the
4 pay period or any of the other information required to be provided on the itemized
5 wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
6 (a).

7 (ii) Which deductions the employer made from gross wages to determine the net
8 wages paid to the employee during the pay period. Nothing in this subdivision
9 alters the ability of the employer to aggregate deductions consistent with the
10 requirements of item (4) of subdivision (a).

11 (iii) The name and address of the employer and, if the employer is a farm labor
12 contractor, as defined in subdivision (b) of Section 1682, the name and address of
13 the legal entity that secured the services of the employer during the pay period.

14 (iv) The name of the employee and only the last four digits of his or her social
15 security number or an employee identification number other than a social security
16 number.

17 88. Due to Defendants' failure to pay Plaintiff and the Wage Statement Subclass
18 members all rest period premiums, and meal period premiums, the wage statements issued by
19 Defendants do not indicate the correct amount of gross wages earned, the total hours worked, the
20 net wages earned, all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate. The wage statements issued by Defendants to
22 Plaintiff and the Wage Statement Subclass members also did not include the start date of the pay
23 period, including those issued in January 2022, such that they did not contain the inclusive dates
24 of the period for which the employee is paid in violation of Labor Code section 226(a)(6). Thus,
25 Defendant has violated Labor Code §226(a)(1), (2), (5), (6), and (9) with respect to Plaintiff and
26 the Wage Statement Subclass.

27 89. Defendants also knowingly and intentionally failed to pay Plaintiff and the Classes
28 meal period premiums and rest periods premiums. Moreover, Plaintiff and the Wage Statement
Class also suffered legal "injury" for purposes of Labor Code section 226(e) insofar as they were
unable to readily and easily determine from the wage statements themselves the information
required to be set forth by Section 226(a), the information provided by Defendants was
inaccurate, Plaintiff and the Wage Statement Subclass were unable to determine at all the total
hours worked by the employee, the gross wages earned, the net wages earned, all applicable
hourly rates in effect during the pay period and the corresponding number of hours worked at

1 each hourly rate by the employee, and the inclusive dates of the pay period, for the reasons
2 discussed above.

3 90. Defendants also failed to both comply with and create a policy that complied with
4 Labor Code § 226 prior to the filing of this lawsuit. Labor Code § 226(e)(3) provides that when
5 determining whether or not an employer's violation of Labor Code § 226(a) was knowing and
6 intentional, "the relevant factor [is] whether the employer, prior to an alleged violation, has
7 adopted and is in compliance with a set of policies, procedures, and practices that fully comply
8 with this section." Accordingly, Defendants' conduct was knowing and intentional within the
9 meaning of Labor Code § 226(e).

10 91. An employee suffering injury as a result of a knowing and intentional failure by an
11 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
12 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
13 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
14 an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
15 reasonable attorneys' fees. *See* Lab. Code § 226(e). Plaintiff and the Wage Statement Subclass
16 seek penalties under Labor Code § 226(e) in amounts to be determined at trial, and are entitled to
17 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

18 **VIII.**

19 **FOURTH CAUSE OF ACTION**

20 **WAITING TIME PENALTIES PURSUANT TO LABOR CODE §§201-203** 21 **[Against all Defendants on behalf of Plaintiff and the Late Payment Subclass]**

22 92. Plaintiff on behalf of himself and the Late Payment Subclass Class re-alleges and
23 incorporates by reference each and every allegation set forth in the preceding paragraphs.

24 93. Sections 201 and 202 of the California Labor Code requires Defendants to pay all
25 compensation due and owing to former employees in the Class during the actionable period for
26 this cause of action, at or around the time that their employment is terminated.

27 94. Section 203 of the California Labor Code provides that if an employer willfully
28 fails to pay compensation promptly upon discharge or resignation, as required by Sections 201
and 202, then the employer is liable for penalties in the form of continued compensation up to
thirty (30) workdays.

95. As described in detail above, Defendants failed to pay Plaintiff and the other Class Members whose employment concluded all wages owed, including but not limited to minimum wages, overtime wages, meal period premiums, and rest period premiums within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants' faulty policies described above, Plaintiff and all Class Members' left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

96. At the time of Plaintiff, the other members of the Late Payment Class' separation from Defendants, these sums were certain and known to Defendants.

97. As a result, Defendants are liable to Plaintiff and the Late Payment Subclass Members who are no longer employed by Defendants for waiting time penalties amounting to thirty (30) days wages for Plaintiff and each Class Member pursuant to California Labor Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

IX.
FIFTH CAUSE OF ACTION
FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
(LABOR CODE § 2802)

[Against all Defendants on behalf of Plaintiff, the Non-Exempt Class and the Non-Exempt Hourly Class]

98. Plaintiffs on behalf of himself and the Class re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

99. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

100. Since the onset of the COVID-19 pandemic, Defendants failed to provide Plaintiff, the Class, and the aggrieved employees with masks during the COVID-19 pandemic and instead expected Plaintiff, the Class, and the aggrieved employees to provide their own masks at their expense. By requiring Plaintiff, the Class, and the aggrieved employees to provide masks at their

own expense, Defendants caused Plaintiff, the Class, and the aggrieved employees to incur expense in order to perform their job and comply with State, Local, and/or other applicable laws and health orders and regulations. Accordingly, Defendant has violated Labor Code § 2802.

101. By failing to provide Plaintiff, the Class, and aggrieved employees with masks, Defendants caused Plaintiff and the Class to make expenditures and incur losses in the direct consequence of the discharge of their job duties.

102. Defendants' conduct in requiring Plaintiff to engage in the above described activities caused them to incur losses as a direct consequence of their duties in violation of Labor Code § 2802.

103. Defendants' failure to pay for or reimburse the work-related business expenses of Plaintiff and the Class violated non-waivable rights secured to Plaintiff and Field Non-Exempt Class by Labor Code §2802. See Labor Code §2804. Plaintiff and the Class are entitled to reimbursement for these necessary expenditures, plus interest and attorneys' fees and costs, under Labor Code § 2802.

X.
SIXTH CAUSE OF ACTION
UNFAIR COMPETITION PURSUANT TO
BUSINESS & PROFESSIONS CODE § 17200
[Against all Defendants on behalf of Plaintiff, the Class, and all Subclasses except the
Itemized Wage Statement and Late Payment Subclasses]

104. Plaintiff, on behalf of herself, the Class, and the Subclasses except for the Itemized Wage Statement and Late Payment Subclasses realleges and incorporates by reference all previous paragraphs.

105. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of herself, on behalf of the general public, and on behalf of the Proposed Classes, bring this claim pursuant to Business & Professions Code § 17200, et seq. The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and the Proposed Classes. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5. Plaintiff is a "person" within the

1 meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause
2 of action for injunctive relief, restitution, and other appropriate equitable relief.

3 106. Defendants have engaged in unlawful and unfair business practices that violate
4 fundamental public policies of the state of California and the United States of America As a result
5 of its unlawful and unfair business practices, Defendants have forced employees to work under
6 substandard and unlawful conditions in an effort to gain a competitive advantage over law-
7 abiding employers who comply with California's Labor Code.

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

14 108. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
15 violation of § 17200 et seq. of the Business & Professions Code.

16 109. Defendants, by engaging in the conduct herein alleged, either knew or in the
17 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
18 violation of § 17200 et seq. of the Business & Professions Code.

19 110. As a proximate result of the above-mentioned acts of Defendants, Plaintiff, the
20 Unfair Competition Class, others similarly situated, other businesses, and the general public have
21 been damaged in a sum as may be proven.

22 111. As part of their claims against Defendant, Plaintiff seeks not only the unpaid
23 wages, but also the market value of the loss of the statutory protections and the cost to other
24 employers of providing proper pay, breaks, reimbursement/tools, and wages for all hours worked.
25 See e.g. Safeway, Inc. v. Sup. Ct., 238 Cal.App.4th 1138, 1162 (2015).

26 112. Unless restrained, Defendants will continue to engage in the unlawful conduct as
27 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
28 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or

1 employment by Defendants, its agents, or employees, of any unlawful or deceptive practices
2 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
3 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
4 Proposed Classes the money Defendants have unlawfully failed to pay.

5 **XI.**

6 **SEVENTH CAUSE OF ACTION**

7 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
8 **FOR PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS**
9 **OF LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512, 558, 1198, 2802, 6400,**
10 **6401, 6401.7, 6402, 6403, 6404 as well as IWC Wage Order Nos. 5-2001 and 16-2001**

11 113. Plaintiff, on behalf of the State of California, realleges and incorporates by
12 reference all previous paragraphs.

13 114. Plaintiff filed his PAGA Notice online with the Labor Workforce Development
14 Agency (“LWDA”) as well as the Division of Occupational Safety and Health, and sent a letter
15 by certified mail to Defendants setting forth the facts and theories of the violations alleged against
16 Defendants, as prescribed by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff
17 submitted the \$75.00 filing fee to the LWDA. Pursuant to Labor Code § 2699.3(a)(2)(A), no
18 notice was received and/or will have been received by Plaintiff from the LWDA evidencing its
19 intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA
20 notice. Plaintiff is therefore, entitled to commence and proceed with a civil action pursuant to
21 Labor Code § 2699.

22 115. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
23 § 2698, et seq. because of Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 210, 226,
24 226.3, 226.7, 512, 558, 1198, 2802, 6400, 6401, 6401.7, 6402, 6403, 6404 as well as IWC Wage
25 Order Nos. 5-2001 and 16-2001.

26 116. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
27 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of
28 trial subject to the following formula unless a civil penalty is already proscribed under the Labor
Code:

\$100 for the initial violation per employee per pay period; and

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

117. These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees.

118. There is currently a split of authority regarding which PAGA penalties apply to violations of Labor Code § 226(a). *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355 (2021) (holding that such violations give rise to a 2699.3 penalty) *cf.*; *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to a Labor Code § 226.3 penalty). Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendant failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, to the extent it applies, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 or 2699 penalties for Defendant’s violations of Labor Code § 226(a).

119. Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.”

120. As a result of the faulty compensation policies and practices described in detail above, the State of California is entitled to recover penalties under Labor Code § 210 through PAGA.

121. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...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

1 employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For
2 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
3 period for which the employee was underpaid...” Based upon the above factual allegations
4 related to overtime, meal period, and rest period violations, Plaintiff and the aggrieved employees
5 are entitled to recover civil penalties under Labor Code § 558 and not any underpaid wages under
6 PAGA. *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019).

7 **RELIEF REQUESTED**

8 **WHEREFORE**, Plaintiff prays for the following relief:

9 1. An Order that this action may proceed and be maintained as a Class Action on
10 behalf of the Classes;

11 2. For compensatory damages in the amount of unpaid wages not paid to Plaintiff and
12 the Classes and from four (4) years prior to the filing of this action and continuing into the present
13 as may be proven;

14 3. For compensatory damages in the amount of unpaid overtime wages not paid to
15 Plaintiff, each Class Member, and each Overtime Subclass Member from four (4) years prior to
16 the filing of this action and continuing into the present as may be proven;

17 4. For compensatory damages in the amount of Plaintiff, each Class Member, and
18 each Meal Period Subclass Members’ unpaid meal period premiums from four (4) years prior to
19 the filing of this action and continuing into the present as may be proven;

20 5. For compensatory damages in the amount of Plaintiff, each Class Members, and
21 each Rest Period Subclass Members’ unpaid rest period premiums from four (4) years prior to the
22 filing of this action and continuing into the present as may be proven;

23 6. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
24 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
25 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
26 exceeding an aggregate penalty of four thousand dollars (\$4,000) for the inaccurate itemized
27 wage statements issued to Plaintiff and the Wage Statement Class from March 29, 2020 and
28 continuing into the present;

1 7. For restitution for unfair competition pursuant to Business & Professions Code
2 § 17200 to Plaintiff and the Class, and the Subclasses except for the Itemized Wage Statement
3 Subclass and the Late Payment Subclass including disgorgement of profits, in an amount as may
4 be proven;

5 8. An order enjoining Defendants and its agents, servants, and employees, and all
6 persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class
7 Members proper compensation for meal period premiums, rest period premiums, from failing to
8 provide timely first meal periods within the first five (5) hours of an employees shift, from failing
9 to authorize and permit meal periods when employees worked shifts of more than five (5) hours,
10 but less than six (6) hours, to provide second meal periods when employees worked shifts in
11 excess of ten (10) hours, from failing to permit second rest periods when employees work shifts
12 in excess of six (6) hours, but less than eight (8) hours, and third rest periods when employees
13 worked shifts in excess of ten (10) hours;

14 9. An order enjoining Defendants and its agents, servants, and employees, and all
15 persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class
16 Members with expense reimbursement for masks;

17 10. That the Court award to Plaintiff and Class Members all unreimbursed business
18 expenses, and interest thereon, that they are owed, pursuant to Labor Code § 2802, in an amount
19 to be proved at trial;

20 11. An award to Plaintiff and the Late Payment Subclass of waiting time penalties in
21 the amount of up to 30 days' wages;

22 12. For penalties under Labor Code § 2698, et seq. for Plaintiff and all aggrieved
23 employees because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226,
24 226.3, 226.7, 512, 558, 1198, 2802, 6400, 6401, 6401.7, 6402, 6403, 6404 as well as IWC Wage
25 Order Nos. 5-2001 and 16-2001.

26 13. An award of prejudgment and post judgment interest;

27 14. An award providing for payment of costs of suit;

28 15. An award of attorneys' fees; and

1 16. Such other and further relief as this Court may deem proper and just.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law, which does
4 not include causes of action six (6) or seven (7).

5 DATED: April 5, 2022

WINSTON LAW GROUP, P.C.

6
7 By: David S. Winston
8 DAVID S. WINSTON
9 Attorneys for Plaintiff, the Proposed
10 Class, and the aggrieved employees