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11 on behalf of herself and all other aggrieved employees

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

14 SANJUANITA ERICA GARCIA, on behalf of
15 herself and all other aggrieved employees,

16 PLAINTIFF,

17 vs.

18 ARBORWELL, LLC, a California limited
19 liability company; SAVATREE, LLC, a
20 Delaware limited liability company; and DOES 1
21 through 10, inclusive,

22 DEFENDANTS.

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

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By: Xian-xii Bowie,
Deputy Clerk

CASE NO.: **22CV013628**

REPRESENTATIVE ACTION

COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT OF 2004, CALIFORNIA
LABOR CODE § 2698 *et seq.*

1 Plaintiff SANJUANITA ERICA GARCIA (“PLAINTIFF”), on behalf of herself and all other
2 aggrieved employees, alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of herself and all other aggrieved employees of
5 Defendant ARBORWELL, LLC, a California limited liability company and SAVATREE, LLC, a
6 Delaware limited liability company (collectively, “DEFENDANTS”) to recover civil penalties arising
7 from unlawful meal period and rest break policies and practices; failure to timely pay wages during
8 employment; failure to pay all wages due upon separation of employment; failure to provide accurate
9 itemized wage statements; and failure to maintain required records.

10 **THE PARTIES**

11 2. PLAINTIFF is a resident of the State of California. At all times relevant to this action,
12 PLAINTIFF was employed by DEFENDANTS in the State of California as an hourly, non-exempt
13 employee.

14 3. PLAINTIFF is informed and believes, and thereon alleges, that Defendant
15 ARBORWELL, LLC (“ARBORWELL”) is, and all times relevant to this action was, a limited liability
16 company organized and existing under the laws of the State of California. PLAINTIFF is informed and
17 believes, and based thereon alleges, that Defendant ARBORWELL is authorized to transact and conduct
18 business in the State of California and does transact and conduct business in the State of California and
19 in the County of Alameda.

20 4. PLAINTIFF is informed and believes, and thereon alleges, that Defendant SAVATREE,
21 LLC (“SAVATREE”) is, and all times relevant to this action was, a limited liability company organized
22 and existing under the laws of the State of Delaware. PLAINTIFF is informed and believes, and based
23 thereon alleges, that Defendant SAVATREE is authorized to transact and conduct business in the State
24 of California and does transact and conduct business in the State of California and in the County of
25 Alameda.

26 5. PLAINTIFF is informed and believes that Defendants ARBORWELL and SAVATREE
27 are engaged in the business of landscaping, including tree, lawn, and plant care.

6. At all relevant times, ARBORWELL and SAVATREE employed PLAINTIFF and other aggrieved persons in the State of California.

7. At this time, the true names and capacities of DOES 1 through 10, inclusive, are unknown to PLAINTIFF, and PLAINTIFF therefore sues such DEFENDANTS under fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each defendant designated as a DOE is in some manner responsible for the occurrences alleged herein, and that PLAINTIFF and other aggrieved employees' injuries and damages were proximately caused by the conduct of said DOE defendants. PLAINTIFF will seek leave of the court to amend this Complaint to allege the true names and capacities of said DOE defendants when such information is ascertained.

8. PLAINTIFF is informed and believes, and based thereon alleges, that at all relevant times, DEFENDANTS were joint employers of PLAINTIFF and other aggrieved employees. PLAINTIFF is informed and believes, and thereon alleges, that at all times relevant to this action, DEFENDANTS were the alter egos, predecessors, divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each defendant was dominated by his, her, or its codefendants, and each was the alter ego of the other.

9. PLAINTIFF is informed and believes, and based thereon alleges, that in perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFF and other aggrieved employees all wages earned and due, through methods and schemes which include, but are not limited to: failing to provide compliant meal periods and rest breaks; failing to pay premiums in lieu of missed meal periods and rest breaks; failing to timely pay wages during employment, failing to pay all wages due upon separation of employment, failing to maintain required records, and failing to provide accurate itemized wage statements, all in violation of the California Labor Code (“Labor Code”) and applicable Industrial Welfare Commission (“IWC”) Wage Order(s).

10. PLAINTIFF is informed and believes, and thereon alleges, that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS,

1 each acting as agents and/or employees, and/or under the direction and control of, each of the other
2 DEFENDANTS, and that said acts and failures to act were within the course and scope of said agency,
3 employment, and/or direction and control.

4 11. PLAINTIFF is informed and believes, and based thereon alleges, that in accordance with
5 Labor Code Section 558.1, DEFENDANTS and any person acting on behalf of DEFENDANTS are
6 liable for violating, or causing to violate, any provision regulating minimum wages or hours and days
7 of work in any order of the Industrial Welfare Commission, or Labor Code Sections 203, 226, 226.7,
8 1193.6 and/or 1194.

9 **JURISDICTION AND VENUE**

10 12. The Superior Court of the State of California has jurisdiction in this matter because
11 PLAINTIFF is a resident of the State of California, and DEFENDANTS are qualified to do business in
12 the State of California and regularly conduct business in the State of California.

13 13. No federal question is at issue in this action as the claims are based exclusively on
14 California state law.

15 14. Venue is proper in this judicial district and the County of Alameda, California because
16 among other things, PLAINTIFF and the other aggrieved employees performed work for
17 DEFENDANTS in the County of Alameda; DEFENDANTS maintain grounds, facilities, and offices,
18 and transact business in the County of Alameda; DEFENDANTS' unlawful policies, procedures, and
19 practices, which are the subject of this action were applied to PLAINTIFF and other aggrieved
20 employees in the County of Alameda; and DEFENDANTS' unlawful acts and omissions occurred in
21 the County of Alameda.

22 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

23 15. In accordance with Labor Code Section 2699.3, on or about April 25, 2022, PLAINTIFF
24 gave written notice to the California Labor and Workforce Development Agency ("LWDA"), by filing
25 a PAGA Notice online and paying the \$75 filing fee. Plaintiff's PAGA Notice was sent by certified
26 mail to DEFENDANTS notifying them of the specific provisions of the Labor Code and applicable IWC
27

1 Wage Order(s) alleged to have been violated, including the facts and theories to support the alleged
2 violations.

3 16. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
4 violations within sixty-five (65) days from the date of PLAINTIFF'S PAGA Notice. Since PLAINTIFF
5 has waited more than sixty-five (65) days from the date of PLAINTIFF's PAGA Notice before filing
6 this Civil Action, PLAINTIFF has complied with all of the requirements set forth in Labor Code Section
7 2699.3 to commence a representative action under the PAGA.

8 17. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Labor Code
9 Sections 2698-2699.5, PLAINTIFF brings this action on behalf of herself and all current and former
10 non-exempt aggrieved employees of DEFENDANTS in the State of California beginning from April
11 25, 2021 and ending at the time this action settles or proceeds to final judgment (the "PAGA PERIOD").

12 **PREDICATE LABOR CODE VIOLATIONS**

13 **Failure to Provide Compliant Meal Periods and Failure to Pay Premium Wages**

14 **(Labor Code §§ 226.7, 512)**

15 18. Labor Code Section 512 provides in relevant part, "An employer shall not employ an
16 employee for a work period of more than five hours per day without providing the employee with a meal
17 period of not less than 30 minutes, except that if the total work period per day of the employee is no
18 more than six hours, the meal period may be waived by mutual consent of both the employer and
19 employee. An employer shall not employ an employee for a work period of more than 10 hours per day
20 without providing the employee with a second meal period of not less than 30 minutes, except that if the
21 total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent
22 of the employer and the employee only if the first meal period was not waived."

23 19. Under California law, when an employee works for a work period of more than five (5)
24 hours, a meal period must be provided no later than the end of the employee's fifth hour of work, *i.e.*,
25 no later than the start of the employee's sixth hour of work. When an employee works for a period of
26 more than 10 hours, a second meal period must be provided no later than the end of the employee's tenth
27

1 hour of work, *i.e.*, no later than the start of the employee’s eleventh hour of work. *Brinker Restaurant*
2 *Corp. v. Superior Court*, 53 Cal.4th 1004 (2012).

3 20. Labor Code Section 226.7, subdivision (a) states, “An employer shall not require an
4 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
5 or applicable regulation, standard, or order of the Industrial Welfare Commission”

6 21. During the PAGA PERIOD, as part of DEFENDANTS’ policies, procedures, and
7 practices, DEFENDANTS failed to provide timely, compliant, off-duty meal periods to PLAINTIFF
8 and other aggrieved employees under Labor Code Sections 226.7 and 512 and applicable IWC Wage
9 Order(s).

10 22. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
11 PERIOD, DEFENDANTS did not have any policy or practice pertaining to meal period violations.

12 23. PLAINTIFF is informed and believes, and based thereon alleges, that DEFENDANTS
13 further violated Labor Code Sections 226.7 and 512 by failing to compensate PLAINTIFF and other
14 aggrieved employees who were not provided with a meal period one (1) additional hour of compensation
15 at each employee’s regular rate of pay for each workday that a compliant meal period was not provided.

16 **Failure to Provide Compliant Rest Periods and Failure to Pay Premium Wages**

17 **(Labor Code §§ 226.7; IWC Wage Order No. 5-2001, § 12)**

18 24. IWC Wage Order No. 5-2001, § 12(A) provides, in relevant part, “Every employer shall
19 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
20 middle of each work period. The authorized rest period time shall be based on the total hours worked
21 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

22 25. At all relevant times, as part of DEFENDANTS’ illegal policies, procedures, and
23 practices to deprive their current and former non-exempt employees all wages earned and due,
24 DEFENDANTS failed to provide compliant rest periods to PLAINTIFF and other aggrieved employees
25 as required pursuant to Labor Code Section 226.7, and applicable IWC Wage Order(s).

26 26. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
27 PERIOD, DEFENDANTS did not have any policy or practice pertaining to rest break violations.

27. PLAINTIFF is informed and believes, and based thereon alleges, that DEFENDANTS further violated Labor Code Section 226.7 and IWC Wage Order No. 5-2001, § 12 by failing to pay PLAINTIFF and other aggrieved employees who were not provided with a compliant rest period, in accordance with the applicable IWC Wage Order(s), one (1) additional hour of compensation at each employee's regular rate of pay for each workday that a compliant rest period was not provided.

Failure to Timely Pay Wages During Employment

(Labor Code § 204)

28. Under Labor Code Section 204, for all compensable time and labor performed between the 1st and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt employees between the 16th and 26th day of the month during which the labor was performed. Labor Code Section 204 provides that for all labor performed between the 16th and 26th days of any calendar month, DEFENDANTS are required to pay their nonexempt employees between the 1st and 10th day of the following calendar month.

29. Labor Code Section 204 further provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday of the next regular payroll period.

30. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PERIOD, DEFENDANTS knowingly and willfully failed to timely pay PLAINTIFF and other aggrieved employees all the wages, including meal and rest premiums for noncompliant meal periods and rest breaks, by the next regular payroll period as required by Labor Code Section 204. *See, Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93.

Failure to Pay All Wages Due Upon Separation of Employment

(Labor Code §§ 201, 202, 203)

31. Under Labor Code Sections 201, 202 and 203, DEFENDANTS are required to pay all earned and unpaid wages to an employee who is discharged. Labor Code Section 201 provides that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

1 32. Under Labor Code Section 202, DEFENDANTS are required to pay all accrued wages
2 due to an employee no later than 72 hours after the employee quits, unless the employee provided 72
3 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or
4 wages at the time of quitting.

5 33. Labor Code Section 203 provides that if an employer willfully fails to pay, in accordance
6 with Labor Code sections 201 and 202, any wages of an employee who is discharged or who quits, the
7 employer is liable for waiting time penalties in the form of continued wages to the employee for up to
8 thirty (30) days.

9 34. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
10 PERIOD and in violation of Labor Code Sections 201 and 202, DEFENDANTS willfully failed to timely
11 pay accrued wages and other compensation, including meal and rest premiums for noncompliant meal
12 periods and rest breaks, to PLAINTIFF and other aggrieved employees who were discharged or who
13 quit. *See, Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93.

14 **Failure to Furnish Accurate Itemized Wage Statements**
15 **(Labor Code § 226(a))**

16 35. During the PAGA PERIOD, DEFENDANTS routinely failed to provide PLAINTIFF
17 and other aggrieved employees with timely and accurate itemized wage statements in writing showing
18 each employee's gross wages earned, total hours worked, the number of piece-rate units earned and any
19 applicable piece rate if the employee is paid on a piece-rate basis, all deductions made, net wages earned,
20 the inclusive dates of the period for which the employee is paid, the name of the employee and only the
21 last four digits of his or her social security number or employee identification number, the name and
22 address of the legal entity or entities employing PLAINTIFF and other aggrieved employees, and all
23 applicable hourly rates in effect during each pay period and the corresponding number of hours worked
24 at each hourly rate, in violation of Labor Code Section 226, subdivision (a) and IWC Wage Order No.
25 5-2001 § 7.

26 36. During the PAGA PERIOD, and as a result of DEFENDANTS' unlawful policies and
27 practices and failure to pay all earned wages, DEFENDANTS knowingly and intentionally failed to

1 provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage statements
2 in accordance with Labor Code Section 226, subdivision (a). *See, Naranjo v. Spectrum Security*
3 *Services, Inc.* (2022) 13 Cal.5th 93.

4 37. Further, and on information and belief, the wage statements issued by DEFENDANTS
5 failed to put the correct name of the legal entity that is the employer in accordance with paragraph (8)
6 of subdivision (a) of Labor Code Section 226. On information and belief, Employer's wage statements
7 identified "Arborwell, Inc." despite the fact that according to the California Secretary of State, the entity
8 "Arborwell, Inc." was converted out as of December 2020. DEFENDANTS' failure to comply with its
9 wage statement obligations was knowing and intentional, and PLAINTIFF and all other aggrieved
10 employees have suffered injury as a result.

11 **Failure to Maintain Accurate Records**

12 **(Labor Code §§ 226(a), 1174(d))**

13 38. During the PAGA PENALTY PERIOD, as part of DEFENDANTS' illegal payroll
14 policies and practices to deprive PLAINTIFF and other aggrieved employees of all wages earned and
15 due, DEFENDANTS knowingly and intentionally failed to maintain records as required under Labor
16 Code Sections 226, subdivision (a) and 1174, subdivision (d) and Section 7 of the applicable IWC Wage
17 Order(s) including but not limited to the following records: total daily hours worked by each employee;
18 applicable rates of pay; all deductions; meal periods; time records showing when each employee begins
19 and ends each work period; and accurate itemized statements.

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

22 **(Labor Code §§ 2698 *et seq.*)**

23 **(AGAINST ALL DEFENDANTS)**

24 39. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of
25 the allegations in paragraphs 1 through 38, above.

26 40. PLAINTIFF is an "aggrieved employee" within the meaning of Labor Code Section
27 2699, subdivision (c), and a proper representative to bring a civil action on behalf of herself and other

1 current and former non-exempt employees of DEFENDANTS under the procedures specified in Labor
2 Code sections 2699.3, because PLAINTIFF was employed by DEFENDANTS and one or more of the
3 alleged Labor Code violations was committed against PLAINTIFF during the PAGA PERIOD.

4 41. PLAINTIFF seeks to recover civil penalties through a representative action permitted by
5 PAGA.

6 42. Pursuant to Labor Code Sections 2698 through 2699.5, PLAINTIFF seeks to recover
7 civil penalties from DEFENDANTS in a representative action for the violations set forth above which
8 include, but are not limited to, violations of Labor Code Sections 201, 202, 203, 204, 226, 226.7, 1174,
9 and 1198.

10 43. Under Labor Code Section 2699, subdivision (a), PLAINTIFF seeks civil penalties based
11 on DEFENDANTS' violations of Labor Code provisions for which a civil penalty is specifically
12 provided which include, but are not limited to, the following:

- 13 a. Under Labor Code Section 210, DEFENDANTS are subject to a civil penalty in the
14 amount of one hundred dollars (\$100.00) for the initial violation and two hundred
15 dollars (\$200.00) per employee for violations in subsequent pay periods for violations
16 of Labor Code Section 204;
- 17 b. Under Labor Code Section 226.3, DEFENDANTS are subject to a civil penalty in
18 the amount of two hundred and fifty dollars (\$250.00) per aggrieved employee for
19 the initial pay period where a violation occurs and one thousand dollars (\$1,000.00)
20 per aggrieved employee for violations in subsequent pay periods for violations of
21 Labor Code Section 226, subdivision (a); and
- 22 c. Under Labor Code Section 558, DEFENDANTS are subject to a civil penalty in the
23 amount fifty dollars (\$50.00) per aggrieved employee for the initial pay period where
24 a violation occurs and one hundred dollars (\$100.00) per aggrieved employee for
25 violations in subsequent pay periods for violations of Labor Code Section 512.

26 55. PLAINTIFF further seeks civil penalties based on DEFENDANTS' violations of Labor
27 Code provisions for which a civil penalty is not specifically provided. Labor Code Section 2699,

subdivision (f) provides that for all Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties apply: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation.

56. PLAINTIFF seeks penalties in accordance with Labor Code Section 2699(f) based on DEFENDANTS' violations of Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to, Labor Code Sections 201, 202, 203, 226.7, 1174, and 1198.

57. PLAINTIFF further seeks reasonable attorneys' fees and costs as allowed by law including under Labor Code Section 2699, subdivision (g)(1).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, individually and on behalf of all other aggrieved employees, prays for relief against DEFENDANTS, and each of them jointly and severally, as follows:

1. For civil penalties according to proof and all penalties authorized under the PAGA including under Labor Code Sections 210, 226.3, 558, and 2699, subdivisions (a) and (f);
2. For reasonable attorneys' fees and costs as allowed by law including pursuant to Labor Code Section 2699, subdivision (g) and any other applicable provisions providing for attorneys' fees and costs; and
3. For such further and additional relief as allowed by law or which the Court deems just and proper.

DATED: June 30, 2022

PROXY LAW FIRM LLP



Hengameh Safaei
Counsel for Plaintiff SANJUANITA
ERICA GARCIA on behalf of herself and
all other aggrieved employees