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January 21, 2025

VIA ONLINE SUBMISSION

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

Subject: *Abad Cruz Madrigal v. New Image Landscape Company, et al.*

Dear PAGA Administrator:

This office represents Abad Cruz Madrigal in connection with his claims under the California Labor Code. Mr. Cruz Madrigal was an employee of NEW IMAGE LANDSCAPE COMPANY and/or SANSEI GARDENS, INC. For the purpose of this letter, Mr. Cruz Madrigal collectively refers to these entities as "NEW IMAGE."

The employers may be contacted directly at the addresses below:

NEW IMAGE LANDSCAPE COMPANY
3250 DARBY COMMON
FREMONT, CA 94539

SANSEI GARDENS, INC.
3250 DARBY COMMON
FREMONT, CA 94539

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

NEW IMAGE employed Mr. Cruz Madrigal as an hourly paid, non-exempt employee from approximately July 2023 to February 2024. Mr. Cruz Madrigal worked for NEW IMAGE as a Driver out of its facility in Sacramento, California. During his employment, Mr. Cruz Madrigal typically worked eight (8) or more hours per day, and five (5) days per week. By the end of his employment, Mr. Cruz Madrigal was compensated approximately $20.00 per hour. His job duties included, without limitation, driving to various jobsites, performing landscaping duties, and collecting and clearing trash.

NEW IMAGE committed each of the following Labor Code violations against Mr. Cruz Madrigal, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1): [1]

NEW IMAGE's Company-Wide and Uniform Payroll and HR Practices

NEW IMAGE LANDSCAPE COMPANY and SANSEI GARDENS, INC. are California corporations and provide landscape management services and landscape construction to homeowners associations, apartment complexes, commercial buildings, and municipalities. Upon information and belief, NEW IMAGE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Fremont, California, for all non-exempt, hourly paid employees working for NEW IMAGE in California, including Mr. Cruz Madrigal and other aggrieved employees. At all relevant times, NEW IMAGE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Cruz Madrigal and other aggrieved employees, regardless of their location or position.

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

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

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

NEW IMAGE willfully failed to pay all overtime wages owed to Mr. Cruz Madrigal and other aggrieved employees. During the relevant time period, Mr. Cruz Madrigal and other aggrieved

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

employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

During the relevant time period, NEW IMAGE had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Cruz Madrigal and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime led Mr. Cruz Madrigal and other aggrieved employees to work off-the-clock outside of their scheduled shift times. For example, after returning to NEW IMAGE's yard near the end of his scheduled shift, Mr. Cruz Madrigal was required to park his company-provided work truck, unload heavy equipment and machinery, and dispose of trash bags, which could take about 10 minutes. However, Mr. Cruz Madrigal was not permitted to remain clocked in and record this time spent working after his scheduled shift end-time.

Additionally, on information and belief, NEW IMAGE's timekeeping system prevented employees from clocking themselves out after a certain period past their scheduled shift-end times, which, in turn, required NEW IMAGE's managers to manually enter clock-out times for Mr. Cruz Madrigal and other aggrieved employees. But, upon information and belief, NEW IMAGE's management would subsequently shave off some of the time Mr. Cruz Madrigal and other aggrieved employees attempted to log for completing assigned duties after their scheduled shifts, to avoid payment of additional wages. As a result, when Mr. Cruz Madrigal was required to remain at work later than his usual shift end-time to complete his work-related tasks, he was not paid for all of his hours actually worked because NEW IMAGE's managers did not accurately record all hours worked.

Second, NEW IMAGE had, and continues to have, company-wide policies and/or practices of understaffing its jobsites while assigning heavy workloads. NEW IMAGE's policies and/or practices resulted in a failure to provide Mr. Cruz Madrigal and other aggrieved employees with adequate meal period coverage, and thus, Mr. Cruz Madrigal and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. NEW IMAGE also had a practice of failing to adhere to a schedule for meal periods, which further caused Mr. Cruz Madrigal and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, about twice per month, Mr. Cruz Madrigal's meal periods would be interrupted by NEW IMAGE's management calling him on his company-issued cellular phone to discuss work-related matters, such as jobsite location changes, client requests, or work performance. Thus, Mr. Cruz Madrigal and other aggrieved employees worked through meal periods and/or had meal periods cut short or interrupted in order to handle their workloads. NEW IMAGE did not compensate Mr. Cruz Madrigal and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Further, because NEW IMAGE frowned upon employees accruing meal period premiums, NEW IMAGE's management pressured employees to clock out for meal periods, upon threat of discipline, even when they had not received compliant meal periods. For example, on at least one instance, Mr. Cruz Madrigal was instructed by his supervisor to clock out at his scheduled meal period time of 11:30 a.m., but to use some of his unpaid meal period to drive to the next client jobsite before taking a truncated meal period. Further, NEW IMAGE's company-wide timekeeping system prevented Mr. Cruz Madrigal and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Cruz Madrigal and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, NEW IMAGE did not record all hours worked during meal periods, and Mr. Cruz Madrigal and other aggrieved employees performed work during meal periods for which they were not paid.

NEW IMAGE knew or should have known that as a result of these company-wide practices and/or policies, Mr. Cruz Madrigal and other aggrieved employees were performing assigned duties off-the-clock, after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Cruz Madrigal and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Cruz Madrigal and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

NEW IMAGE's failure to pay Mr. Cruz Madrigal and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Cruz Madrigal and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NEW IMAGE into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

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

As set forth above, upon information and belief, as a result of NEW IMAGE's policy of limiting the amount of overtime employees could accrue, NEW IMAGE required Mr. Cruz Madrigal and other aggrieved employees to perform work off-the-clock outside of their scheduled shift times, such as parking company-provided trucks, unloading heavy equipment and machinery, and disposing of trash bags, but they were not permitted to remain clocked in and/or record this time spent working outside of scheduled shifts. As also stated, on information and belief, due to NEW IMAGE's implementation of a timekeeping system that prevented employees from clocking themselves out after a certain amount of time after their scheduled shifts (which led to management altering and/or falsifying time records to shave off time worked), Mr. Cruz Madrigal and other aggrieved employees were prevented from recording the entire time worked after their scheduled shifts, and thus were not compensated for this time.

Moreover, as also stated, due to NEW IMAGE's policies and/or practices of understaffing its jobsites while assigning heavy workloads, and failing to adhere to a schedule for meal periods, Mr. Cruz Madrigal and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as also stated, in order to prevent employees from accruing meal period premiums, NEW IMAGE's management pressured employees to clock out for meal periods upon threat of discipline, even when meal periods were missed, short, and/or interrupted. Additionally, as stated, NEW

IMAGE's company-wide timekeeping system prevented Mr. Cruz Madrigal and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Cruz Madrigal and other aggrieved employees for a full 30 minutes. Thus, NEW IMAGE systematically failed to pay Mr. Cruz Madrigal and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

NEW IMAGE did not pay at least minimum wages for all hours worked by Mr. Cruz Madrigal and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, NEW IMAGE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, NEW IMAGE regularly failed to pay at least minimum wages to Mr. Cruz Madrigal and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Cruz Madrigal and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NEW IMAGE into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

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

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, NEW IMAGE had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, which has resulted in a lack of meal period coverage and prevented Mr. Cruz Madrigal and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, NEW IMAGE had a company-wide practice and/or policy of failing to adhere to a schedule for meal periods, which further caused Mr. Cruz Madrigal and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Cruz Madrigal and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Mr. Cruz Madrigal was instructed to clock out for a meal period, drive to the next jobsite, and then use only the time remaining in his meal period to actually eat his lunch, resulting in noncompliant, shortened meal periods. As another example, as stated, about twice per month, Mr. Cruz Madrigal's meal periods would be interrupted by NEW IMAGE's management calling him to discuss work-related matters, such as jobsite changes, client requests, or work performance. Additionally, Mr. Cruz Madrigal sometimes took his meal periods late, after the fifth hour of work, due to the lack of coverage.

Also, as stated, because NEW IMAGE frowned upon employees accruing meal period premiums, NEW IMAGE's management pressured employees to clock out for meal periods upon threat of discipline, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal period premiums that would need to be paid by NEW IMAGE. As also stated, NEW IMAGE's company-wide timekeeping system prevented Mr. Cruz Madrigal and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Mr. Cruz Madrigal and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Mr. Cruz Madrigal other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, NEW IMAGE knew or should have known that as a result of its company-wide policies and/or practices, Mr. Cruz Madrigal and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. NEW IMAGE further knew or should have known that it did not pay Mr. Cruz Madrigal and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, NEW IMAGE engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Cruz Madrigal and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

Accordingly, NEW IMAGE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Cruz Madrigal and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NEW IMAGE into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

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

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc*., 2 Cal. 5th 257, 273 (2016).

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

Furthermore, upon information and belief, during the relevant time period, NEW IMAGE maintained a company-wide on-premises rest period policy, which effectively required that Mr. Cruz Madrigal and/or other aggrieved employees remain on the work premises during their rest periods. Because Mr. Cruz Madrigal and/or other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, NEW IMAGE effectively maintained control over Mr. Cruz Madrigal and/or other aggrieved employees during rest periods.

As a result of NEW IMAGE's practices and policies, Mr. Cruz Madrigal and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Cruz Madrigal's rest periods were sometimes interrupted or cut short because NEW IMAGE's managers required him to discuss with them the status of completing assignments.

NEW IMAGE also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Cruz Madrigal and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, NEW IMAGE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Cruz Madrigal and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NEW IMAGE into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

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

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

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

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

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable

IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, NEW IMAGE engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Cruz Madrigal and other aggrieved employees, in violation of section 1198.

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

Mr. Cruz Madrigal and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NEW IMAGE into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

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

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

During the relevant time period, NEW IMAGE failed to pay Mr. Cruz Madrigal and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Cruz Madrigal and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NEW IMAGE into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

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

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

NEW IMAGE willfully failed to pay Mr. Cruz Madrigal and other aggrieved employees who are no longer employed by NEW IMAGE all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving NEW IMAGE's employ.

Mr. Cruz Madrigal and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NEW IMAGE into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

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

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

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

During the relevant time period, NEW IMAGE violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because NEW IMAGE failed to pay Mr. Cruz Madrigal and other aggrieved employees reporting time pay when they reported to work for their usual or scheduled shift but were put to work for less than half of their usual or scheduled day's work.

NEW IMAGE had a company-wide practice of sending Mr. Cruz Madrigal and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Mr. Cruz Madrigal and other aggrieved employees for half of their scheduled shift. For example, when scheduled to work a shift of eight (8) hours, NEW

IMAGE's managers sent Mr. Cruz Madrigal home 20 minutes after the start of his shift due to inclement weather. However, on information and belief, Mr. Cruz Madrigal was only paid for the time he had worked. Although Mr. Cruz Madrigal and other aggrieved employees reported to work based on the schedule that was provided to them, NEW IMAGE would send them home before they worked at least half of their usual or scheduled shifts. When this occurred, NEW IMAGE did not pay Mr. Cruz Madrigal and other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay.

Accordingly, Mr. Cruz Madrigal and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A). Mr. Cruz Madrigal and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NEW IMAGE into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc*., 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

During the relevant time period, NEW IMAGE required Mr. Cruz Madrigal and other aggrieved employees to wear uniform items, including shirts, bearing the company logo. However, NEW IMAGE did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, NEW IMAGE only provided Mr. Cruz Madrigal with one (1) shirt at the time of hire. Because NEW IMAGE failed to provide Mr. Cruz Madrigal with an adequate number of uniform items, Mr. Cruz Madrigal had to wash his uniform more frequently than he would otherwise do laundry, and incurred expenses in doing so. Further, due to the nature of nature of landscaping work, Mr. Cruz Madrigal's uniform shirts would become stained, soiled, sweaty, and/or acquire an unpleasant odor such that he was unable to mix these clothes in with his other laundry. As a result, he had to wash his uniform shirts separately from his regular clothing, and would spend additional money on utilities for the upkeep of his uniform. Thus, NEW IMAGE failed to maintain the uniforms they required Mr. Cruz Madrigal and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

NEW IMAGE could have provided Mr. Cruz Madrigal and other aggrieved employees with an adequate number of uniform items or access to laundering services, or, NEW IMAGE could have reimbursed employees for the costs of their laundering expenses or provided a uniform maintenance allowance. Instead, NEW IMAGE passed these operating costs onto Mr. Cruz Madrigal and other aggrieved employees.

Thus, NEW IMAGE had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Cruz Madrigal and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NEW

IMAGE into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code section 2699(a), (f), and (k).

California Labor Code § 558(a)

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

Accordingly, Mr. Cruz Madrigal seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Cruz Madrigal, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against NEW IMAGE for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

Best Regards,

Alexander Lima

Copy: NEW IMAGE LANDSCAPE COMPANY (via U.S. Certified Mail); SANSEI GARDENS, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
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FREMONT, CA 94539

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