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ELECTRONICALLY FILED
by Superior Court of CA,
County of Yolo,
on 8/12/2022 3:16 PM
By: S. Martinez, Deputy

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF YOLO

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11
12 AARON WOOSLEY, on behalf of himself and
all other Aggrieved Employees,

13 Plaintiff,

14 v.

15 EVERGREEN ARBORISTS, INC.. and DOES 1
16 through 100, inclusive,

17 Defendants.

) CASE NO. CV2022-1428
)
) **COMPLAINT**
)
) 1. Failure to Pay Hourly and Overtime Wages
) 2. Failure to Provide Compliant Rest Periods
) 3. Failure to Provide Compliant Meal Periods
) 4. Failure to Furnish Itemized Wage
) Statements
) 5. Failure to Pay All Wages Upon Conclusion
) of Employment
) 6. Failure to Reimburse Required Business
) Expenses
) 7. Unlawful and/or Unfair Business Practices
) 8. PAGA Penalties

19
20 Plaintiff Aaron Woosley hereby states his causes of action against Evergreen Arborists, Inc.,
21 and DOES 1 through 100, inclusive, as follows:

22 **RELEVANT PARTIES**

23 1. Aaron Woosley ("Plaintiff") is an adult resident of Yolo County. State of California, and was
24 at all times relevant residing in Esparto, California.

25 2. Defendants Evergreen Arborists, Inc..("Defendants") is a California corporation with its
26 principal place of business located in Yolo County, California.
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1 3. All acts and omissions of Defendants' employees as alleged herein occurred while they were
2 acting within the course and scope of their employment and Defendants is therefore responsible for
3 any damages to Plaintiff under the doctrine of Respondent Superior and/or other doctrines.

4 4. Plaintiff is unaware of the true names or capacities of the Defendants sued herein as DOES 1
5 through 100, inclusive ("Doe Defendants"), and therefore sues said Doe Defendants by such fictitious
6 names. Plaintiff will seek leave of this Court to amend this Complaint to insert the true names and
7 capacities of such Doe Defendants when such information has been obtained. Plaintiff is informed
8 and believes, and based on such information and belief alleges, that each of the fictitiously named
9 Doe Defendants has participated in some way in the wrongful acts and omissions alleged below, and
10 is liable to Plaintiff for damages and other relief to which Plaintiff is entitled.

11 **JURISDICTION AND VENUE**

12 5. This action is properly filed in Yolo County because the acts and omissions that give rise to
13 Plaintiff's claims took place Yolo County, California, as Plaintiff was employed by Defendants in
14 Yolo County, California, and Defendants transacts substantial business in this County.

15 6. This Court has jurisdiction over Defendants because Defendants unlawful conduct as alleged
16 herein occurred in Yolo County, California and Plaintiff suffered damages from such conduct within
17 Yolo County, California.

18 **FACTUAL ALLEGATIONS**

19 7. At all times relevant, Plaintiff was an employee of Defendants where he worked as a tree
20 trimmer.

21 8. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to represent all other employees
22 of Defendants who were employed in California during the PAGA Period, as defined herein.

23 9. The PAGA Period is defined as the time period starting June 6, 2021 through the date of
24 final disposition of this action, LWDA Case No. LWDA-CM-888133-22.

25 10. During the course of their employment, Plaintiff and the Aggrieved Employees were
26 required to arrive at 6:45 am, clock in and begin working. However, the time clock machine
27 rounded their times off to 7:00 am automatically.

1 11. As a result of Employer's unlawful time rounding policy, the Aggrieved Employees were
2 generally paid for less time than they worked.

3 12. Specifically, Aggrieved Employees were not paid for 1.25 hours of work per week.

4 13. Because Plaintiff and the Aggrieved Employees were not paid for this time , Plaintiff and
5 the Aggrieved Employees were denied regular and overtime wages for 15 minutes each day that
6 they worked a shift of 8 hours or more.

7 14. As a result of Plaintiff and the Aggrieved Employees' failure to receive wages for these
8 compensable time periods, Plaintiff and the Aggrieved Employees were underpaid wages in
9 violation of Labor Code sections 510 and 1194.

10 15. In addition, Plaintiff's and the Aggrieved Employees' meal and rest breaks were often late,
11 interrupted or missed due to the demanding work schedules and the pressure to finish all of jobs
12 before incurring overtime.

13 16. Plaintiff and the Aggrieved Employees were required to remain on premises and were not
14 allowed to leave to go where they wanted.

15 17. Plaintiff's and the Aggrieved Employees' rest breaks were regularly missed because in order
16 to take a break Aggrieved Employees had to climb down the trees, take a break and climb back up
17 the trees which was time consuming.

18 18. Defendants therefore did not permit rest breaks in order to get more work done in lesser
19 amount of time and thus avoid paying for more hours worked.

20 19. On the rare occasion when Plaintiff and the Aggrieved Employees could take a break between
21 trimming trees, they were not allowed to leave the worksite to go anywhere they wanted.

22 20. Therefore, Defendants imposed restraints on Plaintiff's and the Aggrieved Employees' rest
23 periods and did not relinquish control over how employees spend their time during their rest periods.
24

25 21. At all times relevant, Defendants maintained and enforced a uniform policy by which it
26 regularly and consistently failed to provide Plaintiff and the Aggrieved Employees with complete
27 and accurate itemized wage statements because the wage statements issued did not accurately
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1 reflect the number of hours worked during each day or the premium pay that has to be paid for non-
2 compliant meal and rest breaks.

3 22. Plaintiff is informed and believes, and based on such information and belief alleges, that
4 Defendants knew, or should have known, that Plaintiff and the Aggrieved Employees were entitled
5 to receive complete and accurate wage statements in accordance with California law, and that, in
6 violation of the California Labor Code, Plaintiff and the Aggrieved Employees were not provided
7 complete and accurate wage statements in violation of Labor Code section 226.

8 23. Aggrieved Employees incurred out of pocket expenses in connection with their employment,
9 but these expenses were not reimbursed by Employer.

10 24. Specifically: spikes, special shoes, harness, rope, clips karabiners, helmet, glasses, face
11 shield, gloves, anti-cut sleeves, Kevlar thigh protectors.

12 25. Plaintiff's employment ended on December 20, 2021.

13 **PAGA ALLEGATIONS**

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15 26. Pursuant to Labor Code section 2699 subdivision (a), any provision of the Labor Code
16 which provides for a civil penalty to be assessed and collected by the Labor and Workforce
17 Development Agency ("LWDA") for violations of the Labor Code may, as an alternative, be
18 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself
19 and other current or former employees pursuant to the procedures outlined in Labor Code section
20 2699.3.

21 27. Pursuant to Labor Code section 2699 subdivision (g), an aggrieved employee may recover
22 the civil penalty on behalf of himself or herself and other current or former employees against
23 whom one or more of the alleged violations was committed.

24 28. Furthermore, any employee who prevails in any such action shall be entitled to an award of
25 reasonable attorney's fees and costs.

26 29. Pursuant to Labor Code section 2699.3, an aggrieved employee may pursue a civil action
27 under the PAGA after the following requirement have been met:

28 a. The aggrieved employee has provided written notice by online filing to the LWDA and by

1 certified mail to the employer (hereinafter “Employee’s Notice”) of the specific provisions of the
2 Labor Code alleged to have been violated, including the facts and theories to support the alleged
3 violations; and

4 b. The LWDA has provided notice (hereinafter “LWDA’s Notice”) to the employer and the
5 aggrieved employee by certified mail that it does not intend to investigate the aggrieved
6 employee’s claims. Upon receipt of the LWDA’s Notice, or if the LWDA does not provide such
7 Notice within 65 calendar days of the postmark date of the Employee’s Notice, the aggrieved
8 employee may commence a civil action pursuant to Labor Code section 2699 to recover civil
9 penalties in addition to any other penalties to which the employee may be entitled.

10 30. On June 6 2022, Plaintiff Woosley provided written notice by online filing to the LWDA
11 and by certified mail to Defendants of specific provisions of the Labor Code alleged to have been
12 violated by Defendant, including the facts and theories to support the alleged violations.

13 31. As of the date of the filing of this complaint, the LWDA has not provided Plaintiff Woosley
14 with written notice that it intends to investigate the alleged violations of the Labor Code.
15 Accordingly, Plaintiff Woosley has satisfied the administrative prerequisites under Labor Code
16 section 2699.3 to bring a civil action to recover civil penalties under the PAGA, in addition to other
17 remedies.

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

20 **(Against All Defendants)**

21 32. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the
22 paragraphs above.

23 33. Labor Code section 510 provides that “any work in excess of eight (8) hours in one
24 workday and any work in excess of forty (40) hours in any one workweek [...] shall be
25 compensated at the rate of no less than one and one-half times the *regular rate of pay* for an
26 employee.” (emphasis added).

27 34. Labor Code section 1197 provides that “[...] any employee receiving less than the legal
28 minimum wage or the legal overtime compensation applicable to the employee is entitled to

1 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
2 compensation, including interest thereon, reasonable attorneys' fees, and costs of suit."

3 35. Plaintiff therefore requests recovery of all unpaid wages, unpaid meal breaks, prejudgment
4 interest on any unpaid wages from the date such amounts were due, for an award of attorney fees,
5 and for all legally authorized penalties and costs of suit.

6 **SECOND CAUSE OF ACTION**

7 **Failure to Provide Compliant Rest Periods**

8 **By Plaintiff Against All Defendants**

9 36. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the
10 paragraphs above.

11 37. Labor Code section 226.7 provides that no employer shall require an employee to work during
12 any rest period mandated by an applicable order of the California Industrial Welfare Commission.
13 Labor Code section 226.7 further provides that if an employer fails to provide an employee with a
14 rest period in accordance with an applicable order of the Industrial Welfare Commission, the
15 employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of
16 compensation for each workday that a rest period is not provided.

17 38. Plaintiff was not provided with compliant rest breaks as set forth above and incorporated by
18 reference herein.

19 39. Furthermore, Defendants failed to pay Plaintiff rest period premiums due pursuant to Labor
20 Code section 226.7 for each day that a compliant rest break was not given.

21 40. Plaintiff therefore requests recovery of all unpaid premium pay for missed rest breaks.

22 **THIRD CAUSE OF ACTION**

23 **Failure to Provide Compliant Meal Periods**

24 **By Plaintiff Against All Defendants**

25 41. Plaintiff incorporates by reference the paragraphs above.

26 42. IWC Wage Order 4-2001 and Labor Code section 512 require employers to provide its
27 employees with compliant meal periods.

28 43. Plaintiff was not provided with compliant meal breaks as set forth above and incorporated

1 by reference herein.

2 44. As a result, Defendants are required to remit premium pay pursuant to Labor Code section
3 226.7(c) for each missed break, which is one additional hour of pay at their regular rate of
4 compensation for each day that a meal period was not allowed.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO FURNISH ITEMIZED WAGE STATEMENTS**

7 **(Against All Defendants)**

8 45. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the
9 paragraphs above.

10 46. Labor Code section 226(a) required Defendants to itemize in Plaintiff's wage statements,
11 among other things, premium pay paid, hours worked, total gross and net wages earned.

12 47. Defendants has knowingly and intentionally failed to comply with Labor Code section
13 226(a) with respect to Plaintiff's wage statements.

14 48. The information that Defendants did not include on Plaintiffs wage statements include,
15 among other things, Plaintiff's hours worked, and all wages earned, including all overtime wages
16 and premium pay.

17 49. Pursuant to Labor Code section 226(e), Plaintiff is entitled to recover the greater of all
18 actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100.00 for
19 each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000.00, and is
20 entitled to an award of costs and reasonable attorneys' fees.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PAY ALL WAGES UPON CONCLUSION OF EMPLOYMENT**

23 **(Against All Defendants)**

24 50. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the
25 paragraphs above.

26 51. Labor Code section 203 provides that if an employer willfully fails to pay wages owed in
27 accordance with Labor Code sections 201 and 202, then the wages of the employee shall continue
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1 as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for
2 more than thirty (30) days.

3 52. Labor Code section 201 provides if an employer discharges an employee, the wages earned
4 and unpaid at the time of discharge are due and payable immediately.

5 53. Labor Code section 202 provides that an employee is entitled to receive all unpaid wages no
6 later than seventy-two (72) hours after an employee quits his or her employment, unless the
7 employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which
8 case the employee is entitled to his or her wages at the time of quitting.

9 54. At all times relevant, Defendants willfully failed to pay Plaintiff all his wages due upon the
10 conclusion of his employment within the times prescribed by Labor Code sections 201 and 202 and
11 is therefore subject to a waiting time penalty. Plaintiff is therefore entitled to recover from
12 Defendants the statutory penalty for each day he were not paid his owed wages, up to a thirty (30)
13 day maximum pursuant to California Labor Code section 203.

14 **SIXTH CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE REQUIRED BUSINESS EXPENSES**

16 **(Against All Defendants)**

17 55. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the
18 paragraphs above.

19 56. Pursuant to Labor Code section 2802, an employer shall indemnify his or her employee for
20 all necessary expenditures or losses incurred by the employee in direct consequence of the
21 employee's discharge of his or her duties.

22 57. At all times relevant, Defendants regularly and consistently violated Labor Code sections
23 2802 by failing to reimburse Plaintiff for expenses incurred in the performance of his duties
24 including, but not limited to, the costs associated with the costs of maintaining his work uniform.

25 58. As a direct result of Defendants' unlawful wage practices as alleged herein, Plaintiff asks
26 that the Court award reimbursement for Plaintiff's expenditures, plus interest, reasonable attorneys'
27 fees, and costs, in an amount to be determined at trial.

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1 **SEVENTH CAUSE OF ACTION**

2 **UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES**

3 **(Against All Defendants)**

4 59. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the
5 paragraphs above.

6 60. As alleged herein, Plaintiff has suffered direct injury as a result of Defendants' conduct and
7 brings this action under Code of Civil Procedure section 382. Defendants' deprivation of Plaintiff's
8 right to receive accurate wage statements, and the timely payment wages at the conclusion of his
9 employment all constitute unlawful business practices within the meaning of Business and
10 Professions Code section 17200, et seq. including, but not limited to, a violation of the Wage
11 Orders, regulations, and statutes. Further, these practices are otherwise unfair.

12 61. Under Business and Professions Code section 17200, et seq., including, but not limited to,
13 sections 17201, 17203, and 17208, Plaintiff seeks amongst other things, restitution of compensation
14 due throughout his employment.

15 62. These unlawful and unfair business practices defeat the public interest purposes of the
16 State's labor laws, as set forth in the sections of the California Labor Code, the California Code of
17 Regulation, and the Wage Orders referenced elsewhere in this Complaint, all of which promote
18 compliance with labor laws and employment regulations by participants in Defendants' industry.

19 63. Defendants' unfair and unlawful business practices thus have violated the sections of the
20 Labor Code, California Code of Regulation and IWC Wage Orders referenced in this Complaint
21 and have imposed harm on their employees and their competitors and will continue to do so until
22 abated.

23 64. As a result of these unfair and unlawful business practices, Defendants has retained monies
24 belonging to Plaintiff and has been unjustly enriched at Plaintiff's expense. Plaintiff is entitled to
25 restitution of the wages and monies withheld and retained by Defendants at all times relevant to
26 this action.

27 65. This action will result in the enforcement of an important right affecting the public interest.
28 The conduct of Defendants as alleged herein has been and continues to be unfair, unlawful and

harmful to Plaintiff and the general public. Accordingly, under Code of Civil Procedure section 1021.5, Plaintiff is entitled to an award of reasonable attorneys' fees and costs.

EIGHTH CAUSE OF ACTION

PRIVATE ATTORNEY GENERAL ACT

(By Plaintiff and the Aggrieved Employees Against All Defendants)

66. Plaintiff and the Aggrieved Employees re-allege and incorporate by reference each and every allegation contained in the paragraphs above and, to the extent necessary, plead this cause of action in the alternative.

67. PAGA permits Plaintiff and the Aggrieved Employees to recover civil penalties for the violation(s) of the Labor Code Sections enumerated in Labor Code section 2699.

68. As alleged herein, Defendants' conduct violates numerous sections of the California Labor.

69. With respect to violations of Labor Code sections 226.7 and 512(a) for Defendants' failure to provide Plaintiff and the Aggrieved Employees with rest and meal periods or compensation at their proper regular rate in lieu thereof, the penalties in Labor Code section 2699 apply.

70. With respect to violations of Labor Code section 510, for failure to provide overtime wages for all overtime hours worked, the penalties in Labor Code sections 558 apply.

71. With respect to violations of Labor Code section 226(a) for failure to provide accurate wage statements to Plaintiff and the Aggrieved Employees, the penalties in Labor Code sections 226.3 or 2699 apply.

72. With respect to violations of Labor Code sections 201, and 202, for failure to timely pay all wages to Plaintiff and the Aggrieved Employees upon the conclusion of employment, the penalties in Labor Code section 2699 apply.

73. Additionally, Plaintiff and the Aggrieved Employees are entitled to reasonable attorney's fees and costs pursuant to Labor Code section 2699(g).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

First Cause of Action

1. Unpaid regular and overtime wages, including interest thereon

- 1 2. Attorney's fees and costs
2 3. Other relief the court deems proper
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4 Second Cause of Action

- 5 1. Rest break premium pay;
6 2. Attorney's fees and costs; and
7 3. Other relief the court deems proper.
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9 Third Cause of Action

- 10 1. Meal break premium pay;
11 2. Attorney's fees and costs; and
12 3. Other relief the court deems proper.
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14 Fourth Cause of Action

- 15 1. Wage statement penalties
16 2. Attorney's fees and costs
17 3. Other relief the court deems proper
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19 Fifth Cause of Action

- 20 1. Waiting time penalties pursuant to Labor Code section 203
21 2. Other relief the court deems proper
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23 Sixth Cause of Action

- 24 1. Reimbursement of expenses, including interest thereon
25 2. Attorney's fees and costs
26 3. Other relief the court deems proper
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1 Seventh Cause of Action

2 1. Restitution of unpaid wages and premium pay

3 2. Attorney's fees and costs

4 3. Other relief the court deems proper

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6 Eighth Cause of Action

7 1. For penalties pursuant to Labor Code sections 203, 226.3, 558, 1197.1, and 2699.

8 2. Attorney's fees and costs

9 3. Other relief the court deems proper

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11 Date: August 12, 2022

FRONTIER LAW CENTER

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/s/ Daniel Ginzburg

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Daniel V. Ginzburg
Attorney for Plaintiff
Aaron Woosley

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