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Attorneys for Plaintiff, JULIO HURTADO, as a representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and other similarly-situated current and former employees.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF MONTEREY

JULIO HURTADO, as an individual and on
behalf of all similarly situated employees,

Plaintiffs,

v.

BRIGHTVIEW LANDSCAPE SERVICES,
INC., and DOES 1 through 50, inclusive,

Defendant.

Case No.: 22CV003963

COMPLAINT FOR CIVIL PENALTIES

1. Violation of the Private Attorneys General Act, Labor Code § 2698 *et seq.* for Recovery of Unpaid Minimum Wages and Overtime;
2. Violation of the Private Attorneys General Act, Labor Code § 2698 *et seq.* for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys General Act, Labor Code § 2698 *et seq.* for Failure to Provide Rest Periods;
4. Violation of the Private Attorneys General Act, Labor Code § 2698 *et seq.* for Failure to Issue Accurate Itemized Wage Statements; and
5. Violation of the Private Attorneys General Act, Labor Code § 2698 *et seq.* for Failure to Pay Wages Due at Separation of Employment.

1 Plaintiff JULIO HURTADO (“Plaintiff”), as a representative of the State of California
2 and the Labor and Workforce Development Agency, and on behalf of himself and other similarly-
3 situated current and former employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is a representative action brought pursuant to the Private Attorneys General
6 Act, Labor Code section 2698, *et seq.* (“PAGA”) on behalf of Plaintiff and all similarly-aggrieved
7 employees who were subjected to one or more of the violations alleged herein (“Aggrieved
8 Employees”) by Defendant BRIGHTVIEW LANDSCAPE SERVICES, INC. (“Defendant”).

9 2. The term “PAGA Period” is defined as one (1) year and sixty-five (65) days prior
10 to the filing of this complaint. Plaintiff reserves the right to amend this complaint to reflect a
11 different PAGA Period as further discovery is conducted.

12 3. “Aggrieved Employees” is defined as all non-exempt, hourly-paid employees,
13 currently and/or formerly employed by Defendant during the PAGA period.

14 4. Plaintiff, individually and on behalf of the Aggrieved Employees, seeks relief
15 against Defendant for violations of numerous Labor Code provisions, including, but not limited
16 to, sections 201, 203, 204, 226, 226.7, 510, 512, 1174, 1194, and 1197 for: (1) failure to pay all
17 minimum and overtime wages due; (2) failure to provide meal periods or premium compensation
18 in lieu thereof, (3) failure to provide rest periods or premium compensation in lieu thereof; (4)
19 failure to issue accurate itemized wage statements; and (6) failure to pay all wages due at
20 separation of employment.

21 5. At all relevant times herein, Defendant has consistently maintained and enforced
22 the following unlawful policies and practices against Plaintiff:

- 23 a. Willfully refusing to pay for all hours worked, including both minimum and
24 overtime wages;
- 25 b. Willfully refusing to permit off-duty meal periods or provide premium
26 compensation in lieu thereof;
- 27 c. Willfully refusing to permit rest periods or provide premium compensation in
28 lieu thereof;

- d. Willfully refusing to furnish accurate itemized wage statements; and
e. Willfully refusing to pay all wages due upon separation of employment.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over the causes of action alleged in this complaint as a Court of general subject matter jurisdiction and is not otherwise excluded from exercising subject matter jurisdiction over said causes of action. The penalties recoverable for Plaintiff individually do not exceed seventy-five thousand dollars (\$75,000.00), and collectively amongst all Aggrieved Employees do not exceed five million dollars (\$5,000,000.00). Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law, including the Labor Code, Industrial Welfare Commission (“IWC”) Wage Orders, Code of Civil Procedure, and Rules of Court.

7. Defendant is a California Corporation with its principal office in Monterey, California. As such, this Court has personal jurisdiction over Defendant because Defendant resides in, is incorporated in, has its main place of business in, and/or conducts business in the State of California, and a substantial portion of the acts, omissions, events, and transactions constituting the causes of action alleged herein occurred within the State of California, and more specifically, in the County of Monterey. (Code Civ. Proc., § 410.10.)

8. Venue is proper in this judicial district and the County of Monterey pursuant to the California Code of Civil Procedure, sections 295 and 395.5, because the acts that give rise to the causes of action alleged herein occurred in this county.

THE PARTIES

Plaintiff

9. Plaintiff was employed by Defendant from on or about November 2012 until on or about May 2022 at Defendant’s Monterey, California location. At all relevant times herein, Plaintiff was employed by Defendant in a non-exempt, hourly position as a landscaper, and was entitled to compensation for all hours worked, including overtime compensation and penalties from Defendant. Plaintiff was employed by Defendant within the PAGA Period.

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1 10. Plaintiff and Aggrieved Employees consist of identifiable, current, and/or formerly
2 similarly situated persons who worked for Defendant in California during the PAGA Period.

3 **Defendant(s)**

4 11. Plaintiff is informed and believes, and thereupon alleges, that Defendant is a
5 California corporation whose facilities are located in Monterey County, California, and was the
6 employer of Plaintiff. On information and belief, and based thereon, Plaintiff alleges that
7 Defendant is conducting business in good standing in California, and at all times herein mentioned
8 has regularly conducted business in the State of California.

9 12. Plaintiff is further informed and believes that Defendant was the employer of
10 Plaintiff and Aggrieved Employees during the PAGA Period.

11 13. Plaintiff is ignorant of the true names, capacities, relationships and extent of
12 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
13 inclusive, but on information and belief, alleges that said Defendants are legally responsible for
14 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
15 capacities of the DOE Defendants when that information is ascertained.

16 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
17 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
18 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
19 are legally attributable to the other Defendants. Furthermore, Defendant operates as a joint
20 venture and/or single business enterprise, integrated enterprise, and/or are agents of one another,
21 are alter egos, joint employers, and conspire with one another to increase profits by engaging in
22 the conduct described in this complaint.

23 15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
24 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
25 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
26 below was acting, at least in part, within the course and scope of that authority as such agent,
27 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
28 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant

are legally attributable to the other Defendants.

PAGA ADMINISTRATIVE PREREQUISITE

16. Plaintiff brings this case as a representative action seeking penalties for the State of California in a representative capacity, as provided for under PAGA, Labor Code section 2698 *et seq.*, to the extent permitted by law, as an aggrieved employee who was employed by Defendant and did not receive all regular and overtime wages due, was not provided compliant meal or rest periods or premium compensation in lieu thereof, was not provided accurate itemized wage statements, and did not receive all wages owed upon termination of employment.

17. Pursuant to Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause of action under the PAGA only after giving the Labor Workforce Development Agency (LWDA) and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice from the LWDA.

18. On September 26, 2022, prior to the filing of this complaint, Plaintiff gave written notice of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. This written notice was given via certified mail to Defendant, and to the LWDA by electronically filing the notice via the Department of Industrial Relations website. Plaintiff was given an LWDA case number of LWDA-CM-910205-22. Attached herein as **Exhibit A** is a true and correct copy of Plaintiff's original letter sent to the LWDA on September 26, 2022.

19. More than sixty-five (65) days have elapsed since Plaintiff submitted his September 26, 2022 notice to the LWDA and Defendant of the specific alleged Labor Code violations and the LWDA has not provided notice to Plaintiff of its intent to investigate such alleged violations. Also, Plaintiff has not received notice of Defendant's intent to cure any of the alleged violations. Accordingly, Plaintiff has satisfied the administrative prerequisites for filing this action.

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1 **FACTUAL ALLEGATIONS**

2 20. Plaintiff and Aggrieved Employees are, and at all times during the PAGA Period
3 were, non-exempt employees within the meaning of the California Labor Code, and California
4 Wage Order 16–2001 of the Industrial Welfare Commission (“IWC”). Defendant is, and at all
5 times during the PAGA Period was, an “employer” within the meaning of state law and IWC
6 Wage Order 16–2001.

7 21. Defendant owns and operates a landscaping service in Monterey, California,
8 providing landscaping design, development, maintenance and tree care. (See Brightview
9 Landscaping Services, Inc. “Homepage,” available at www.brightview.com.) Plaintiff and
10 Aggrieved Employees were employees of Defendant, and Plaintiff worked primarily as a
11 landscaper from on or about November 2012 until on or about May 2022.

12 22. During the PAGA Period, Defendant was required to pay Plaintiff and Aggrieved
13 Employees overtime compensation for any and all hours in excess of eight (8) hours in a workday
14 and/or forty (40) hours in a workweek.

15 23. Defendant was required to pay Plaintiff and Aggrieved Employees the proper
16 overtime and double time rates of pay. Defendant failed to factor in shift differentials and non-
17 discretionary bonuses in the regular rate of pay when calculating overtime and double time rates.

18 24. Defendant also required Plaintiff and Aggrieved Employees to work during their
19 meal/rest periods, yet still deducted thirty (30) minutes of pay each day for a meal/rest period.

20 25. Finally, even without the aforementioned unpaid hours, when Plaintiff and
21 Aggrieved Employees’ timesheets reflected that they worked over eight (8) hours in a workday
22 and/or forty (40) hours in a workweek, Defendant failed to compensate them for the overtime
23 hours at the applicable overtime wage rate.

24 26. As a result of Defendant’s policies and practices of failing to pay Plaintiff and
25 Aggrieved Employees all wages due, including minimum and overtime wages, Defendant
26 violated Labor Code sections 204, 510, 1194, and 1197, and the applicable IWC Wage Order, and
27 is subject to penalties under PAGA.

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27. During the PAGA Period, Defendant was required to permit Plaintiff and Aggrieved Employees to take one (1) uninterrupted thirty (30) minute meal period prior to the sixth (6th) hour of work. Defendant was also required to permit Plaintiff and Aggrieved Employees to take one (1) ten (10) minute rest period for every four (4) hours or major fraction thereof worked.

28. Due to the work requirements and demands of Defendant, Plaintiff and Aggrieved Employees were unable to take the meal and rest periods to which they were entitled. Defendant failed to implement meal and rest break policies and prioritized work responsibilities over providing requisite meal and rest breaks to Plaintiff and Aggrieved Employees.

29. Plaintiff and Aggrieved Employees' job duties included working on landscaping projects. Defendant failed to schedule Plaintiff and Aggrieved Employees in such a manner as to ensure that Plaintiff and Aggrieved Employees were able to take an off-duty uninterrupted thirty (30) minute meal period prior to their sixth (6th) hour of work each day, yet thirty (30) minutes were deducted from each day's pay for meal breaks.

30. Further, when Plaintiff and Aggrieved Employees did attempt to take a meal period, Defendant would often contact them during their meal periods and instruct them to stop their lunch break to perform work duties. Defendant would further instruct Plaintiff and Aggrieved Employees to take their meal period at a later time which resulted in their meal periods occurring, if at all, after their sixth hour of work had commenced.

31. Due to the workload and demands of Defendant, Plaintiff and Aggrieved Employees were often precluded from taking compliant rest periods.

32. At times, Defendant instructed Plaintiff and Aggrieved Employees to work through their rest breaks, thereby depriving them of uninterrupted duty-free rest periods as required by law. Plaintiff and the Aggrieved Employees consistently worked over four (4) hours per shift with no rest breaks, or otherwise had their rest breaks interrupted or shortened due to Defendant's understaffing, workload and demands.

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33. When Plaintiff and Aggrieved Employees were prevented from taking compliant meal and rest periods, Defendant failed to compensate them with premium pay for every missed meal period and failed to compensate them with premium pay on all workdays on which one or more rest periods were missed.

34. As a result of Defendant's policies and practices of failing to provide Plaintiff and Aggrieved Employees with meal or rest breaks, or premium pay in lieu thereof, Defendant violated Labor Code sections 226.7, 512, 1194, 1197, and the applicable IWC Wage Order, and is subject to penalties under PAGA.

35. During the PAGA Period, Defendant was required to provide Plaintiff and Aggrieved Employees with complete and accurate wage statements.

36. As discussed above, Plaintiff and Aggrieved Employees were not paid for all hours worked. Specifically, they were not compensated for the proper overtime and double-time rates of pay. Defendant failed to include all remuneration in calculating Plaintiff and Aggrieved Employees' overtime and double-time. Further, thirty (30) minutes of pay was deducted on days when Plaintiff and Aggrieved Employees did not receive a meal period. Finally, Plaintiff and Aggrieved Employees were not paid premium pay for non-compliant meal and rest periods.

37. Accordingly, Plaintiff and Aggrieved Employees were provided inaccurate wage statements as they omitted the aforementioned hours of work and rates of pay. Therefore, Defendant furnished Plaintiff and Aggrieved Employees wage statements with an inaccurate number of hours worked, inaccurate gross and net wages, and inaccurate corresponding number of hours worked at each hourly rate.

38. Defendant's failure to pay Plaintiff and Aggrieved Employees timely upon termination of their employment is in violation of Labor Code sections 226 and 1174, and is subject to penalties under PAGA.

39. At the time of Plaintiff's and any of the Aggrieved Employees' separation from employment, Defendant was required to compensate them for all wages earned and owed.

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40. Defendant failed to compensate Plaintiff and Aggrieved Employees for all wages owed at the time their employment ended as Plaintiff and Aggrieved Employees were not compensated for all hours worked, nor at the proper overtime rate and double-time rate for applicable overtime hours and double-time hours they were owed at the time their employment ended. Plaintiff and Aggrieved Employees were also owed compensation in the form of premium pay for the times they did not receive compliant meal and rest periods.

41. Defendant's failure to pay Plaintiff and Aggrieved Employees timely upon termination of their employment is in violation of Labor Code sections 201-203, and is subject to penalties under PAGA.

42. Plaintiff, by virtue of his employment with Defendant, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

FIRST CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PAY ALL WAGES

(Lab. Code, §§ 204, 510, 1194, and 1197)

(Plaintiff Against All Defendants)

43. Plaintiff and Aggrieved Employees reallege and incorporate by reference all preceding paragraphs as if fully set forth herein.

44. Pursuant to Labor Code section 204, subdivision (a), “[a]ll wages ... earned by any person in any employment are due and payable twice during each calendar month.”

45. Labor Code section 1194 mandates that employers pay employees no less than the minimum wage for each hour worked, and Labor Code section 1197 holds that “the payment of a lower wage than the minimum so fixed is unlawful.”

46. Pursuant to Labor Code section 510, subdivision (a), “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

1 47. Defendant failed to compensate Plaintiff and Aggrieved Employees for all wages
2 worked. Specifically, Defendant failed to include all remuneration when calculating Plaintiff and
3 the Aggrieved Employees' overtime and double-time. Where an employee receives a higher wage
4 or rate because of undesirable hours or disagreeable work, such wage represents a shift differential
5 or higher wages because of the character of work done or the time at which he is required to
6 labor.... Such payments enter into the determination of the regular rate of pay.” *Huntington*
7 *Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 910.

8 48. As a consequence, Defendant failed to pay Plaintiff and the Aggrieved Employees
9 all minimum, regular, overtime, and/or double-time wages for all hours worked, including hours
10 in excess of over eight (8) per day and forty (40) per workweek.

11 49. Defendant also required Plaintiff and Aggrieved Employees to work during their
12 meal periods even though they were off-the-clock. Defendant often interrupted Plaintiff and
13 Aggrieved Employees during their meal periods or informed Plaintiff and the Aggrieved
14 Employees that they were required to work or postpone their meal periods until a later time.
15 However, Plaintiff and Aggrieved Employees were not compensated for the thirty (30) minutes
16 during which they were clocked out for their meal period yet still performing work duties.

17 50. By virtue of Defendant's failure to pay Plaintiff and Aggrieved Employees all
18 wages due, Plaintiff and Aggrieved Employees suffered, and continue to be subject to ongoing
19 violations incurring civil penalties, the amount of which are presently unknown, but will be
20 ascertained according to proof at trial.

21 51. Labor Code section 558, subdivision (a), imposes civil penalties on employers for
22 violating “any provision regulating hours and days of work” of fifty dollars (\$50) for the initial
23 violation and one hundred dollars (\$100) for each subsequent violation “for each underpaid
24 employee for each pay period for which the employee was underpaid in addition to an amount
25 sufficient to recover underpaid wages.”

26 52. Labor Code section 1197.1 provides that “[a]ny employer ... who pays or causes
27 to be paid to any employee a wage less than the minimum fixed by an applicable state or local
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1 law, or by an order of the commission shall be subject to a civil penalty ... as follows: (1) For any
2 initial violation that is intentionally committed, one hundred dollars (\$100.00) for each underpaid
3 employee for each pay period for which the employee is underpaid ... (2) For each subsequent
4 violation for the same specific offense, two hundred fifty dollars (\$250.00) for each underpaid
5 employee for each pay period for which the employee is underpaid regardless of whether the
6 initial violation is intentionally committed.”

7 53. Since the LWDA has not indicated that it will be investigating and more than sixty-
8 five (65) days has passed since Plaintiff provided notice, and because Defendant took no
9 corrective action to remedy the allegations set forth above, Plaintiff, as a representative of the
10 people of the State of California, will seek any and all penalties otherwise capable of being
11 collected by the Labor Commission, the LWDA and/or the DLSE. This includes each of the
12 following, as set forth in Labor Code section 2699.5, which provides that section 2699.3,
13 subdivision (a), applies to any alleged violation of the following provisions: Labor Code sections
14 204, 510, 1194, and 1197.

15 54. Plaintiff is informed and believes that Defendant has violated, and continues to
16 violate, provisions of the Labor Code and applicable Wage Orders related to the payment of
17 minimum wages.

18 55. Plaintiff, as a personal representative of the general public, will and does seek to
19 recover any and all penalties for each and every violation shown to exist or to have occurred
20 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise
21 only available to public agency enforcement actions. Funds recovered will be distributed in
22 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered
23 being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all
24 Aggrieved Employees.

25 56. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys’ fees
26 and costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

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SECOND CAUSE OF ACTION
VIOLATION OF PAGA FOR FAILURE TO PROVIDE MEAL PERIODS OR
PREMIUM COMPENSATION IN LIEU THEREOF
(Lab. Code, §§ 226.7 and 512)
(Plaintiff Against All Defendants)

57. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

58. Labor Code sections 226.7 and 512 and Industrial Welfare Commission (IWC) Wage Order No. 16–2001, section 11, provide that no employer shall employ any person for a work period of more than five (5) hours without providing an uninterrupted meal period of at least thirty (30) minutes.

59. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided in accordance with this section.

60. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked more than five (5) hours in a workday.

61. Plaintiff alleges that Defendant failed or refused to provide legally compliant meal periods by failing to relieve Plaintiff and Aggrieved Employees from all work duties to allow for timely and uninterrupted meal periods. Defendant’s intentional conduct denied Plaintiff and Aggrieved Employees their lawfully required meal periods.

62. IWC Wage Order No. 16–2001 section 11(A), provides that if an employee is not relieved of all duties during a thirty (30) minute meal period, the meal period is considered “on duty” and counts as time worked. “On duty” meal periods are only permitted when the nature of the work prevents an employee from being relieved of all duties, in which case a written agreement between the employer and employee for an on duty paid meal period is required.

63. Here, neither of those requirements are met. Defendant failed or refused to provide legally compliant meal periods by failing to schedule Plaintiff and Aggrieved Employees in such

1 a manner as to ensure that they could take proper meal periods as required by law. When Plaintiff
2 and Aggrieved Employees did attempt to stop and take a meal period, Defendant would often
3 interrupt their meal period by contacting them and instructing them to work. This resulted in
4 Plaintiff and Aggrieved Employees being required to take their meal periods after their sixth (6th)
5 hour of work or forego them altogether.

6 64. Further, Plaintiff and Aggrieved Employees never agreed to waive their meal
7 periods, nor were they asked by Defendant to sign a waiver.

8 65. Defendant had a practice of deducting thirty (30) minutes pay from Plaintiff and
9 Aggrieved Employees hours, presumably for a meal period, even when no compliant meal periods
10 were provided.

11 66. Defendant failed to provide premium compensation (one hour of regular pay) to
12 Plaintiff and Aggrieved Employees in lieu of their missed or noncompliant meal periods as
13 required by law.

14 67. As such, Defendant intentionally and improperly denied meal periods to Plaintiff
15 and Aggrieved Employees in violation of Labor Code sections 226.7 and 512 and IWC Wage
16 Order No. 16–2001, and is subject to penalties under PAGA.

17 68. By virtue of Defendant’s violation of the provisions of Labor Code sections 226.7
18 and 512, Plaintiff and Aggrieved Employees suffered, and continue to be subject to ongoing
19 violations incurring civil penalties, the amount of which are presently unknown, but will be
20 ascertained according to proof at trial.

21 69. Pursuant to Labor Code section 2699, subdivision (f)(2), Plaintiff and Aggrieved
22 Employees are entitled to civil penalties in the amount of one hundred dollars (\$100.00) for the
23 first initial violations and two hundred dollars (\$200.00) per pay period for each subsequent
24 violation.

25 70. More than sixty-five (65) days have elapsed since Plaintiff provided notice to the
26 LWDA, and the LWDA has indicated no intention to investigate. Further, Defendant has provided
27 no cure notice, and has not taken any steps of corrective action to remedy the allegations set forth
28 above. Accordingly, pursuant to Labor Code sections 2699 and 2699.3, Plaintiff, individually and

on behalf of the Aggrieved Employees and the State of California, seeks penalties for violations of Labor Code sections 226.7 and 512 during the PAGA Period, in an amount according to proof, that would otherwise only be collected through public agency enforcement actions by the Labor Commission, the LWDA and/or the DLSE.

71. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all Aggrieved Employees.

72. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

THIRD CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR PREMIUM COMPENSATION IN LIEU THEREOF

(Lab. Code, § 226.7)

(Plaintiff Against All Defendants)

73. Plaintiff and Aggrieved Employees reallege and incorporate by reference all preceding paragraphs as if fully set forth herein.

74. Labor Code section 226.7 and IWC Wage Order No. 16–2001, section 12, require that employers permit all employees to take a ten (10) minute rest period for every four (4) hours worked, or major fraction thereof. Further, when an employer fails to provide an employee with required rest periods, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a required rest period is not provided.

75. During the PAGA Period, Plaintiff and Aggrieved Employees worked more than four (4) hours in a workday.

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1 76. Plaintiff alleges that Defendant failed or refused to provide legally compliant rest
2 periods by failing to relieve Plaintiff and Aggrieved Employees from all work duties to allow for
3 timely and uninterrupted rest periods. Defendant failed to reasonably make available rest breaks
4 to Plaintiff and Aggrieved Employees due to their understaffing, workload, and demands.

5 77. Defendant's intentional conduct denied Plaintiff and Aggrieved Employees their
6 lawfully required rest periods. Moreover, Defendant did not compensate Plaintiff and Aggrieved
7 Employees for their missed rest periods with one hour of regular pay as required by law.

8 78. Further, Defendant failed to provide premium compensation (one hour of regular
9 pay) to Plaintiff and Aggrieved Employees in lieu of their missed or noncompliant rest periods as
10 required by law.

11 79. As such, Defendant intentionally and improperly denied rest periods to Plaintiff
12 and Aggrieved Employees in violation of Labor Code section 226.7 and IWC Wage Order No.
13 16-2001, and is subject to penalties under PAGA.

14 80. By virtue of Defendant's violation of the provisions of Labor Code section 226.7,
15 Plaintiff and Aggrieved Employees suffered, and continue to be subject to ongoing violations
16 incurring civil penalties, the amount of which are presently unknown, but will be ascertained
17 according to proof at trial.

18 81. Pursuant to Labor Code section 2699, subdivision (f)(2), Plaintiff and Aggrieved
19 Employees are entitled to civil penalties in the amount of one hundred dollars (\$100.00) for the
20 initial violations and two hundred dollars (\$200.00) per pay period for each subsequent violation.

21 82. More than sixty-five (65) days have elapsed since Plaintiff provided notice to the
22 LWDA, and the LWDA has indicated no intention to investigate. Further, Defendant has provided
23 no cure notice, and has not taken any steps of corrective action to remedy the allegations set forth
24 above. Accordingly, pursuant to Labor Code sections 2699 and 2699.3, Plaintiff, individually and
25 on behalf of the Aggrieved Employees and the State of California, seeks penalties for violations
26 of Labor Code sections 2699 and 2699.3. Plaintiff, individually and on behalf of the Aggrieved
27 Employees and the State of California, seeks penalties for violations of Labor Code section 226.7
28 during the PAGA Period, in an amount according to proof, that would otherwise only be collected

1 through public agency enforcement actions by the Labor Commission, the LWDA and/or the
2 DLSE.

3 83. Plaintiff, as a personal representative of the general public, will and does seek to
4 recover any and all penalties for each and every violation shown to exist or to have occurred
5 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise
6 only available to public agency enforcement actions. Funds recovered will be distributed in
7 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered
8 being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all
9 Aggrieved Employees.

10 84. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
11 and costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

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13 **FOURTH CAUSE OF ACTION**
14 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE ACCURATE ITEMIZED**
15 **WAGE STATEMENTS**
16 **(Lab. Code, §§ 226 and 1174)**
17 **(Plaintiff Against All Defendants)**

18 85. Plaintiff and Aggrieved Employees reallege and incorporate by reference all
19 preceding paragraphs as if fully set forth herein.

20 86. Labor Code section 1174 requires employers to keep accurate payroll records.
21 Labor Code section 226, subdivision (a), requires that "at the time of each payment of wages,"
22 employers furnish employees with "an accurate itemized statement" that includes, *inter alia*,
23 gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect
24 during the pay period and the corresponding number of hours worked at each hourly rate.

25 87. An employee is deemed to suffer injury if the employer fails to provide a wage
26 statement containing all of the required information set forth in Labor Code section 226,
27 subdivision (a). (Lab. Code § 226, subd. (e)(2)). Plaintiff alleges that Defendant knowingly and
28 intentionally failed to provide Plaintiff and Aggrieved Employees wage statements in compliance

1 with Labor Code section 226, because said statements contained inaccurate gross wages earned,
2 an inaccurate total number of hours worked, inaccurate net wages earned, inaccurate applicable
3 hourly rates in effect during the pay period, and an inaccurate number of hours worked at each
4 hourly rate.

5 88. In particular, Defendant failed to include the appropriate hours, wages, and
6 remuneration for its failure to provide Plaintiff and Aggrieved Employees meal and rest periods
7 or premium compensation in lieu thereof, overtime compensation pursuant to the provisions of
8 Labor Code section 510 and double time.

9 89. To the extent that Plaintiff and Aggrieved Employees worked more than eight (8)
10 hours in a workday, they were entitled to overtime wages that were not included on their wage
11 statements.

12 90. Plaintiff and Aggrieved Employees also had thirty (30) minutes deducted from
13 their total hours worked each workday even though they worked continuously throughout the
14 workday with no meal period.

15 91. Consequently, Plaintiff and Aggrieved Employees' wage statements reflected an
16 inaccurate total number of hours worked at each hourly rate, and inaccurate gross and net wages
17 earned in violation of Labor Code sections 226 and 1174, and subject to penalties under PAGA.

18 92. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
19 of Section 226 shall be subject to a civil penalty in the amount of two hundred and fifty dollars
20 (\$250.00) per employee per violation in an initial citation and one thousand dollars (\$1,000.00)
21 per employee for each violation in a subsequent citation, for which the employer fails to provide
22 the employee a wage deduction statement or fails to keep the records required in subdivision (a)
23 of Section 226. The civil penalties provided for in this section are in addition to any other penalty
24 provided by law.

25 93. Since the LWDA has not indicated that it will be investigating and more than sixty-
26 five (65) days has passed since Plaintiff provided notice, and because Defendant took no
27 corrective action to remedy the allegations set forth above, Plaintiff, as a representative of the
28 people of the State of California, will seek any and all penalties otherwise capable of being

collected by the Labor Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: Labor Code sections 226 and 1174.

94. Plaintiff is informed and believes that Defendant has violated, and continues to violate, provisions of the Labor Code and applicable Wage Orders related to the provision of accurate itemized wage statements.

95. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all Aggrieved Employees.

96. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

FIFTH CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PAY ALL WAGES DUE UPON TERMINATION OF EMPLOYMENT

(Lab. Code, §§ 201, 203)

(Plaintiff Against All Defendants)

97. Plaintiff and Aggrieved Employees reallege and incorporate by reference all preceding paragraphs as if fully set forth herein.

98. Labor Code section 201, subdivision (a), states that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

99. Pursuant to Labor Code section 202, subdivision (a), "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become

1 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
2 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
3 wages at the time of quitting.”

4 100. At the time that Plaintiff and any of the Aggrieved Employees’ employment ended,
5 they were entitled to timely compensation of regular and overtime wages for all hours worked,
6 overtime compensation, and premium compensation for all missed meal and rest periods, but
7 Defendant failed or refused to do so. As a result, Plaintiff and Aggrieved Employees have suffered,
8 and continue to suffer, injury which will be ascertained according to proof at trial.

9 101. Plaintiff is informed and believes that Defendant has violated, and continues to
10 violate, provisions of the Labor Code related to the requirement to pay all wages due upon
11 termination of employment.

12 102. Pursuant to Labor Code section 2699, subdivision (f)(2), Plaintiff and Aggrieved
13 Employees are entitled to civil penalties in the amount of one hundred dollars (\$100.00) for the
14 initial violations and two hundred dollars (\$200.00) per pay period for each subsequent violation.

15 103. Pursuant to Labor Code section 203, subdivision (a), “[i]f an employer willfully
16 fails to pay ... any wages of any employee who is discharged or who quits, the wages of the
17 employee shall continue as a penalty from the due date thereof at the same rate until paid or until
18 an action therefor is commenced; but the wages shall not continue for more than 30 days.” Labor
19 Code section 256 provides for civil penalties not exceeding 30 days pay at the employees’ same
20 rate of pay.

21 104. Since the LWDA has not indicated that it will be investigating and more than sixty-
22 five (65) days has passed since Plaintiff provided notice, and because Defendant took no
23 corrective action to remedy the allegations set forth above, Plaintiff, as a representative of the
24 people of the State of California, will seek any and all penalties otherwise capable of being
25 collected by the Labor Commission, the LWDA and/or the DLSE. This includes each of the
26 following, as set forth in Labor Code section 2699.5, which provides that section 2699.3,
27 subdivision (a), applies to any alleged violation of the following provisions: Labor Code sections
28 201 and 203.

1 105. Plaintiff, as a personal representative of the general public, will and does seek to
2 recover any and all penalties for each and every violation shown to exist or to have occurred
3 during the PAGA Period, in an amount according to proof, as to those penalties that are otherwise
4 only available to public agency enforcement actions. Funds recovered will be distributed in
5 accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered
6 being reimbursed to the LWDA and twenty-five percent (25%) to be paid to Plaintiff and all
7 Aggrieved Employees.

8 106. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
9 and costs pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis.

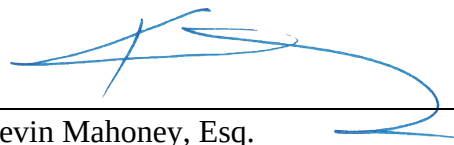
10 **PRAYER FOR RELIEF**

11 **WHEREFORE,** Plaintiff and Aggrieved Employees pray for judgment as follows:

- 12 1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee as
13 provided by law, including, but not limited to, those civil penalties provided by
14 statute and provided by PAGA, and for unpaid wages;
- 15 2. For costs of suit and expenses incurred herein pursuant to Labor Code section 2699,
16 subdivision (g), and any other statutory basis or pursuant to the California Rules of
17 Court;
- 18 3. For reasonable attorneys' fees pursuant to Labor Code section 2699, subdivision (g),
19 and any other statutory basis; and
- 20 4. For all such other and further relief as the Court may deem just and proper.

21
22 Dated: December 20, 2022

MAHONEY LAW GROUP, APC

23
24 

25 Kevin Mahoney, Esq.
26 Attorneys for Plaintiff JULIO HURTADO
27
28

EXHIBIT A



Kevin Mahoney, Esq.
562.590.5550 phone
562.590.8400 facsimile
kmahoney@mahoney-law.net

September 26, 2022

VIA ELECTRONIC FILING

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

<http://dir.tfaforms.net/128>

VIA CERTIFIED MAIL #7019 2970 0000 2983 3581

Brightview Landscape Services, Inc.

980 Jolly Road, Ste 300

Blue Bell, PA 19422

VIA CERTIFIED MAIL #7019 0700 0001 7572 0260

Brightview Landscape Services, Inc.

c/o C T Corporation System – Agent for Service of Process

330 N Brand Blvd, Ste 700

Glendale, CA 91203

**Re: NOTICE OF INTENT TO FILE SUIT (Labor Code § 2699.3)
*HURTADO v. BRIGHTVIEW LANDSCAPE SERVICES, INC***

Dear Gentilepersons:

This letter is the written notice required by the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Section 2698 *et seq.*, including without limitation California Labor Code Sections 2699.33 (a)(1), 2699.3(b)(1), and/or 2699.3(c)(1), and any other applicable provision of statute, rule, or law. This letter is being sent simultaneously via online filing to the California Labor and Workforce Development Agency. This letter is an important formal legal notice which may lead to action against you and your company in a court of law and in administrative proceedings, or both and the imposition of substantial penalties and other order and remedies against you and your company.

This office, along with our co-counsel, Amir Seyedfarshi, from Employment Rights Law Group, APC, represents Plaintiff Julio Hurtado, (“Plaintiff”) and a proposed group (and subgroups) of current and former Aggrieved Employees of Brightview Landscape Services, Inc. a California corporation and its co-employers, successors in interest, and/or merged entities (“Defendants”) in connection with his individual, class action and PAGA representative claims for civil penalties, based on, without limitation, Defendant’s:

- (1) failure to provide timely and duty-free meal periods within the first five (5) hours and to provide lawful second meal periods for shifts worked in excess of ten (10) hours and/or pay meal period premiums for late meal breaks in violation of Labor Code §§ 226.7 and 512 and Section 11 of the applicable IWC Wage Order;
- (2) failure to provide timely, duty-free rest periods for every four hours of work or major fraction thereof in violation of Labor Code § 226.7 and Section 12 of the applicable IWC Wage Order;
- (3) failure to provide accurate itemized wage statements in violation of Labor Code § 226 based upon Defendants' failure to include meal and rest break premiums in stating the total gross and net wages earned;
- (4) failure to pay for overtime wages in violation of Labor Code 510;
- (5) unfair competition in violation of Bus. & Prof. Code § 17200 based upon the foregoing meal and rest break premium claims; and
- (6) statutory penalties under California's Private Attorney General Act ("PAGA") based upon the foregoing under Labor Code sections 2698 et seq.

In connection with his PAGA claims, Plaintiff seeks PAGA penalties from one (1) year prior to the date of this Notice and ongoing (the "PAGA Period"). Plaintiff seeks to represent the following groups of aggrieved employees:

a. The "Aggrieved Employees":

All non-exempt individuals who are or were employed by Brightview Landscape Services, Inc. in the State of California and who worked one or more shifts of five (5) hours or longer during the PAGA Period.

DEFENDANTS' MEAL PERIOD VIOLATIONS

Labor Code § 512 requires employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of an employee's shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of duty-free mealtime on or before the fifth hour of work as called for under the law (as specified in the applicable Wage Order), "it has violated the wage order and is liable." As described above, the *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy.

Here, Plaintiff and the aggrieved employees were in charge of *landscape duties*. During each of their shifts, Plaintiff and the aggrieved employees were precluded from taking their breaks and were required to continue working.

Moreover, Defendant has put in place a rounding policy for all meal periods' entries, rounding the time. The rounding policy affects the correct time keeping of the employees, and therefore their

meal breaks are not correctly registered. See Donohue v. AMN Services, LLC (SC S253677 February 25, 2021) holding that “Under California law, employers must generally provide employees with one 30-minute meal period that begins no later than the end of the fifth (5) hour of work and another 30-minute meal period that begins no later than the end of the tenth (10th) hour of work. (Lab. Code, § 512, subd. (a); Industrial Welfare Commission (IWC) wage order No. 4-2001, § 11(A) (Wage Order No. 4).) If an employer does not provide an employee with a compliant meal period, then ‘the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal . . . period is not provided.’ (Lab. Code, § 226.7, subd. (c); Wage Order No. 4, § 11(B).)”

Defendants violated and continue to violate Labor Code § 512 and IWC Wage Order 5-2002 § 11 by, among other things, failing to provide and schedule duty-free meal breaks on or before the fifth (5th) hour of work to Meal Break Aggrieved Employees and failed to advise all other Meal Break Aggrieved Employees of their meal break rights with respect to the timing of meal breaks, failed to provide Meal Break Aggrieved Employees with thirty-minute, uninterrupted meal periods within the first five (5) hours of their shifts, and failed to pay meal break premiums for late meal breaks. As a result of Defendants’ failure to authorize or permit lawful and timely meal periods, Plaintiff and the other Class members and Meal Period Aggrieved Employees frequently did not receive compliant duty-free meal periods within the first five (5) hours of their work.

DEFENDANT’S REST PERIOD VIOLATIONS

Under Labor Code § 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time on the schedule called for under the law (as specified in Section 12 of the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

Here, Defendant did not authorize Plaintiff and the Rest Break Aggrieved Employees to take their ten-minute rest breaks during each four (4) hours of work or major fraction thereof during their shifts. Because of the workload, Plaintiff and other aggrieved employees were precluded from receiving their rest breaks.

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DEFENDANTS' WAGE STATEMENT VIOLATIONS

Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (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;
- (8) the name and address of the legal entity that is the employer...; and,
- (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...

Due to, *inter alia*, Defendants' failure to pay Plaintiff and the other Aggrieved Employees for all meal and rest break premiums), the wage statements issued by Defendants to Plaintiff and the other Wage Statement Aggrieved Employees do not indicate the correct amount of gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

Defendants' violation of Labor Code § 226 was knowing and intentional. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement").

Labor Code § 226(e) provides that an employee is entitled to recover fifty dollars (\$50.00) for initial pay period in which a violation of Section 226 occurs and one hundred dollars (\$100.00) for each subsequent pay period, not to exceed four thousand dollars (\$4,000.00), as well as an award of costs and reasonable attorney's fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury.

Further and in addition to the penalties outlined above, 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 (\$250.00) per employee per violation in an initial violation and one thousand dollars (\$1,000.00) 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, Defendants failed to

provide Plaintiff and the other Wage Statement Aggrieved Employees with accurate itemized wage statements. Accordingly, Defendants are additionally liable for Labor Code § 226.3 penalties for their violations of Labor Code § 226(a).

DEFENDANT'S FAILURE TO PAY WAGES ON A TIMELY BASIS

Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

Due to Defendants’ failure to pay Plaintiff and the other Aggrieved Employees all meal and rest break period premiums owed, Defendants violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular and consistent basis.

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 (\$100.00) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200.00) for each failure to pay each employee, plus twenty-five percent (25%) of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail above, Plaintiff and the other Aggrieved Employees are entitled to recover penalties under Labor Code § 210.

DEFENDANT'S OVERTIME VIOLATIONS

Labor Code § 510 provides that any work in excess of eight (8) hours on any day, as well as all hours worked on the seventh (7th) consecutive day of a workweek, shall be compensated at the rate of no less than one and a half (1.5) times the regular rate of pay. See also Section 3(A) of IWC Wage Order No. 4.

Concerning Labor Code section 510 and Section 3(A) of IWC Wage Order No. 4, Defendant did not pay Plaintiff and the Overtime Aggrieved Employees any overtime wages corresponding to the accurate calculation of one and a half times (1.5) the regular rate of pay of Plaintiff and the Overtime Aggrieved Employees for all hours over eight (8) in a day. Defendant violated Labor Code § 510 by failing to pay Plaintiff and Aggrieved Employees the accurate overtime wages, including daily overtime and night shifts’ overtime.

Here, the overtime rate received by Plaintiff and the Aggrieved employees was not an adjusted rate. Plaintiff and the aggrieved employees receive frequently bonus, and the rate of overtime did not include the calculation of the bonus in violation of *Ferra v. Lowes*. See Attached, Exhibit A.

///

DEFENDANT’S FAILURE TO PAY ALL WAGES DUE UPON TERMINATION

Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

Due to Defendant’s faulty policies described above, including its failure to pay for meal and rest break premiums, Defendant violated Labor Code § 203, for those employees whose employment ended within the last one (1) year and ongoing (i.e., the Waiting Time Aggrieved Employees) by willfully failing to pay them all wages due upon the termination of their employment.

This notice is hereby given to and is made against Defendants, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors managers, managing agents, or entities who are or may be liable under law for any of those alleges violations as to any locations or employees who worked at any time in the state of California.

This notice is hereby given to and is made against Defendants, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors managers, managing agents, or entities who are or may be liable under law for any of those alleges violations as to any locations or employees who worked at any time in the state of California.

RESERVATION OF RIGHTS

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred Plaintiff or by any other aggrieved employee of the Employer, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action (and a class action) against Defendants seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the Plaintiff individually and on behalf of the Aggrieved Employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the aggrieved employees.

September 26, 2022
Brightview Landscape Services, Inc.
Page 7 of 7

If Defendants are interested in attempting to resolve this matter, including the PAGA claims, please have counsel contact us by November 24, 2022, so that we may discuss an informal discovery plan and the possibility of early mediation.

Very truly yours,



Kevin Mahoney
MAHONEY LAW GROUP, APC

Cc: Amir Seyedfarshi

Enclosures: Exhibit A

EXHIBIT A

Historical Payroll Register
Summary per Check Date
Employees Sorted by Address Number

Home Company: 00300 BrightView Landscape Svcs-CA
Business Unit: 31080 BVLS San Jose North

Pay Code	Description	Current Hours	Current Dollars	YTD Dollars	YTD Hours	DBA Code	Description	Tax Code	Current Amount	YTD Amount	Taxable Amount	Taxable Amount
2882 Life AD&D			.65	5.20			CA Unemployment Ins.			252.00		7,000.00
2883 LTD			.74	5.92			CA ETT			7.00		7,000.00
3882 Life Taxed			.09	.72		1872 DEN EE+Fam			23.04	184.32		
3883 LTD Taxed			.74	5.92		1878 VIS EE+Fam			5.09	40.72		
3899 ClearImpInc			.83-	6.64-		9010 Ded. 9010			69.23	553.84		
Current Employee: Hurtado, Julio Cesar												
*** Total Pay/Hours	Gross:	41.25	1,099.41	10,237.56	333.10	Check Date: 2/23/2018						
	Taxbl:		1,072.11	10,019.16		*** Total Employee Deductions						
						*** Net Pay						
1 Regular		40.00	1,040.00	7,674.68	295.18	***	Gross Wages		1,235.39	11,472.95		
4 Regular -Int				832.00	32.00		FED Income Tax		72.68	979.87	1,208.09	11,227.25
100 Overtime		5.01	195.39	415.35	10.65		FED FICA w/h		74.90	696.09	1,208.09	11,227.25
130 OT NonExempt				10.92	.28		FED Medicare w/h		17.52	162.80	1,208.09	11,227.25
540 ReferralBonu				1,500.00			CA Employment Development Dept		16.37	195.90	1,208.09	11,227.25
805 Holiday Pay				624.00	24.00		CA SDI-Employee		12.08	112.27	1,208.09	11,227.25
830 Vacation				416.00	16.00		FED Unemp Insurance			129.46		7,000.00
2872 DEN ER FAM			12.10	108.90			FED FICA Company Contrib.		74.90	696.09	1,208.09	11,227.25
2881 EAP			.21	1.89			FED Medicare Co. Contrib.		17.52	162.80	1,208.09	11,227.25
2882 Life AD&D			.65	5.85			CA Unemployment Ins.			252.00		7,000.00
2883 LTD			.74	6.66			CA ETT			7.00		7,000.00
3882 Life Taxed			.09	.81		1872 DEN EE+Fam			23.04	207.36		
3883 LTD Taxed			.74	6.66		1878 VIS EE+Fam			5.09	45.81		
3899 ClearImpInc			.83-	7.47-		9010 Ded. 9010			69.23	623.07		
Current Employee: Hurtado, Julio Cesar												
*** Total Pay/Hours	Gross:	45.01	1,235.39	11,472.95	378.11	Check Date: 3/2/2018						
	Taxbl:		1,208.09	11,227.25		*** Total Employee Deductions						
						*** Net Pay						
1 Regular		40.00	1,040.00	8,714.68	335.18	***	Gross Wages		2,436.85	13,909.80		
4 Regular -Int				832.00	32.00		FED Income Tax		352.06	1,331.93	2,409.55	13,636.80
100 Overtime		1.15	44.85	460.20	11.80		FED FICA w/h		149.39	845.48	2,409.55	13,636.80
130 OT NonExempt				10.92	.28		FED Medicare w/h		34.93	197.73	2,409.55	13,636.80
508 AnnualPerfBo			1,352.00	1,352.00			CA Employment Development Dept		148.05	343.95	2,409.55	13,636.80
540 ReferralBonu				1,500.00			CA SDI-Employee		24.10	136.37	2,409.55	13,636.80
805 Holiday Pay				624.00	24.00		FED Unemp Insurance			129.46		7,000.00

Historical Payroll Register
Summary per Check Date
Employees Sorted by Address Number

Home Company: 00300 BrightView Landscape Svcs-CA
Business Unit: 31080 BVLS San Jose North

Pay Code	Description	Current Hours	Current Dollars	YTD Dollars	YTD Hours	DBA Code	Description	Add'l Tax Code	Current Amount	YTD Amount	Current Taxable Amount	YTD Taxable Amount
830	Vacation			416.00	16.00		FED FICA Company Contrib.		149.39	845.48	2,409.55	13,636.80
2872	DEN ER FAM		12.10	121.00			FED Medicare Co. Contrib.		34.93	197.73	2,409.55	13,636.80
2881	EAP		.21	2.10			CA Unemployment Ins.			252.00		7,000.00
2882	Life AD&D		.65	6.50			CA ETT			7.00		7,000.00
2883	LTD		.74	7.40		1872	DEN EE+Fam		23.04	230.40		
3882	Life Taxed		.09	.90		1878	VIS EE+Fam		5.09	50.90		
3883	LTD Taxed		.74	7.40		9010	Ded. 9010		69.23	692.30		
3899	ClearImplnc		.83-	8.30-								
Current Employee: Hurtado, Julio Cesar												
***	Total Pay/Hours	Gross: 41.15	2,436.85	13,909.80	419.26		*** Total Employee Deductions		805.89	3,829.06		
		Taxbl:	2,409.55	13,636.80			*** Total Employer Deductions		184.32	1,431.67		
							*** Net Pay		1,630.96	10,080.74		
1	Regular	40.00	1,040.00	9,754.68	375.18	***	Gross Wages		1,397.63	15,307.43		15,007.13
4	Regular -Int			832.00	32.00		FED Income Tax		92.15	1,424.08	1,370.33	15,007.13
100	Overtime	9.17	357.63	817.83	20.97		FED FICA w/h		84.96	930.44	1,370.33	15,007.13
130	OT NonExempt			10.92	.28		FED Medicare w/h		19.87	217.60	1,370.33	15,007.13
508	AnnualPerfBo			1,352.00			CA Employment Development Dept		24.03	367.98	1,370.33	15,007.13
540	ReferralBonu			1,500.00			CA SDI-Employee		13.70	150.07	1,370.33	15,007.13
805	Holiday Pay			624.00	24.00		FED Unemp Insurance			129.46		7,000.00
830	Vacation			416.00	16.00		FED FICA Company Contrib.		84.96	930.44	1,370.33	15,007.13
2872	DEN ER FAM		12.10	133.10			FED Medicare Co. Contrib.		19.87	217.60	1,370.33	15,007.13
2881	EAP		.21	2.31			CA Unemployment Ins.			252.00		7,000.00
2882	Life AD&D		.65	7.15			CA ETT			7.00		7,000.00
2883	LTD		.74	8.14		1872	DEN EE+Fam		23.04	253.44		
3882	Life Taxed		.09	.99		1878	VIS EE+Fam		5.09	55.99		
3883	LTD Taxed		.74	8.14		9010	Ded. 9010		69.23	761.53		
3899	ClearImplnc		.83-	9.13-								
7099	EligibleEarn		13,807.43	13,807.43								
Current Employee: Hurtado, Julio Cesar												
***	Total Pay/Hours	Gross: 49.17	1,397.63	15,307.43	468.43		*** Total Employee Deductions		332.07	4,161.13		
		Taxbl:	1,370.33	15,007.13			*** Total Employer Deductions		104.83	1,536.50		
							*** Net Pay		1,065.56	11,146.30		
1	Regular	39.79	1,034.54	10,789.22	414.97	***	Gross Wages		1,084.46	16,391.89		16,064.29
4	Regular -Int			832.00	32.00		FED Income Tax		54.57	1,478.65	1,057.16	