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Attorneys for Plaintiff(s), JOEL GUTIERREZ ALARCON, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FOR THE COUNTY OF RIVERSIDE
(UNLIMITED JURISDICTION)**

JOEL GUTIERREZ ALARCON, on behalf of
himself and all others similarly situated, and as
an “aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

FAIRWAY LANDSCAPE & IRRIGATION,
INC., a California corporation; and DOES 1–50,
inclusive,

Defendant(s).

CASE NO. CVRI2204068

**SECOND AMENDED COMPLAINT
FOR:**

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code § 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
8. Civil Penalties (Lab. Code §§ 2698, et



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seq.).
JURY TRIAL DEMANDED

Plaintiff, Joel Gutierrez Alarcon (hereafter “Plaintiff” or “Gutierrez Alarcon”), on behalf of himself and all others similarly situated, complains and alleges as follows:

I. INTRODUCTION

1. Plaintiff brings this class and representative action for alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 16-2001 (hereafter “the Wage Order”), and the California Business and Professions Code against Defendants Fairway Landscape & Irrigation, Inc., a California corporation, and Does 1 through 50, inclusive (collectively “Defendants”).

2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to him and other similarly situated workers for unpaid wages, statutory and civil penalties, interest, and related relief. These claims are based on Defendants’ failures to:

(A) Pay all wages, including minimum, regular, and overtime wages, earned for all hours worked at the correct rates of pay;

(B) Provide all meal periods;

(C) Authorize and permit all rest breaks;

(D) Pay premium wages for unprovided meal periods;

(E) Pay premium wages for unprovided rest breaks;

(F) Indemnify for necessary work-related expenditures;

(G) Issue only accurate and complete itemized wage statements; and

(H) Timely pay wages upon termination of employment

Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages, restitution, statutory and civil penalties, attorneys’ fees, costs, and related relief through this class and representative action.

II. THE PARTIES

3. Plaintiff Joel Gutierrez Alarcon is a resident of California.

4. Defendant Fairway Landscape & Irrigation, Inc. is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiff’s information and belief.



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1 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
2 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
3 is informed and believes and thereon alleges that said Defendants are legally responsible for the
4 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
5 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
6 when ascertained.

7 6. Plaintiff is informed and believes and thereon alleges that, at all relevant times
8 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
9 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
10 within the course and scope of such agency, employment, direction and control, and with the
11 approval and ratification of each of the other Defendants.

12 7. At all relevant times, in perpetrating the acts and omissions alleged herein,
13 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
14 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
15 Members or otherwise complying with their rights in accordance with applicable California labor
16 laws as alleged herein.

17 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
18 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
19 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
20 described class in accordance with applicable laws as alleged herein.

21 III. CLASS ALLEGATIONS

22 9. This action has been brought and may be maintained as a class action pursuant to
23 California Code of Civil Procedure section 382 because there is a well-defined community of
24 interest among the persons who comprise the readily ascertainable class defined below and
25 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
26 a class action.

27 10. **Class Definition:** The Class is defined as follows: All persons Defendants
28 employed in California hourly and non-exempt, individuals performing work comparable to the
aforementioned, compensated comparably to the aforementioned, and individuals in similar
positions, at any time during the period beginning four years prior to the filing of this action and
ending on the date that final judgment is entered in this action (“Class” or “Class Members”).



1 11. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
2 right to amend or modify the class definition with greater specificity, by further division into
3 subclasses and/or by limitation to particular issues.

4 12. **Numerosity:** The Class Members are so numerous that the individual joinder of
5 each individual Class Member is impractical. While Plaintiff does not currently know the exact
6 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
7 minimum required for numerosity under California laws.

8 13. **Commonality and Predominance:** Common questions of law and fact exist as to
9 all Class Members and predominate over any questions which affect only individual Class
10 Members. These questions include, but are not limited to:

11 A. Whether Defendants failed to pay all wages earned to Class Members for
12 all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime,
13 meal period premium, and rest period premium wages;

14 B. Whether Defendants failed to provide the Class Members with all meal
15 periods in compliance with California law;

16 C. Whether Defendants failed to authorize and permit the Class Members to
17 take all rest periods in compliance with California law;

18 D. Whether Defendants failed to indemnify the Class Members for the
19 reasonable expenses they incurred during the course of performing their duties;

20 E. Whether Defendants knowingly and intentionally failed to provide the
21 class with accurate and complete itemized wage statements;

22 F. Whether Defendants willfully failed to provide the class with timely final
23 wages;

24 G. Whether Defendants engaged in unfair competition within the meaning of
25 Business and Professions Code sections 17200, et seq., with respect to the Class; and

26 H. Whether Class Members are entitled to restitution of money or property
27 that Defendants may have acquired from them through alleged Labor Code violations.

28 14. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
Code, the Wage Order, and the Business and Professions Code.



15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

16. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

17. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

IV. **STATEMENT OF FACTS**

18. The Wage Order applies to

all persons employed in the on-site occupations of construction, including but not limited to alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq. drilling, including but not limited to all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; logging work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571 through 4586; and mining (not covered by Labor Code Section 750 et seq.), including all work required to mine and/or establish pits, quarries, and surface or underground mines for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or other basis."



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1 Wage Order, § 1. The Wage Order defines “construction occupations” to mean,

2 all job classifications associated with construction, including but not limited to
3 work involving alteration, demolition, building, excavation, renovation,
4 remodeling, maintenance, improvement, and repair work, by the California
5 Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq., and
6 any other similar or related occupations or trades. (D) “Division” means the
7 Division of Labor Standards Enforcement of the State of California.

8 Wage Order, § 2(C). The Wage Order defines "Drilling occupations" to mean,

9 all job classifications associated with the exploration or extraction of oil, gas, or
10 water resources work, including but not limited to the installation, establishment,
11 reworking, maintenance or repair of wells and pumps by boring, drilling,
12 excavating, casting, cementing and cleaning for the extraction or conveyance of
13 fluids such as water, steam, gases, or petroleum.

14 Wage Order, § 2(E). The Wage Order defines "logging occupations" to mean,

15 any work for which a timber operator’s license is required pursuant to California
16 Public Re- sources Code Sections 4571-4586, including the cutting or removal or
17 both of timber or other solid wood forest products, including Christmas trees,
18 from timberlands for commercial purposes, together with all the work that is
19 incidental thereto, including but not limited to construction and maintenance of
20 roads, fuel breaks, fire breaks, stream crossings, landings, skid trails, beds for the
21 falling of trees, and fire hazard abatement.

22 Wage Order, § 2(K). The Wage Order defines "mining occupations" to mean,

23 miners and other associated and related occupations (not covered by Labor Code
24 Sections 750 et seq.) required to engage in excavation or operations above or
25 below ground including work in mines, quarries, or open pits, used for the
26 purposes of exploration or extraction of nonmetallic minerals and ores, coal, and
27 building materials such as stone, gravel, and rock, or other materials intended
28 for manufacture or sale, whether paid on a time, piece rate, commission, or other
basis.

Wage Order, § 2(L). At all relevant times during the applicable limitations period, the Defendants,
Gutierrez Alarcon, and all of the Class Members were covered by the Wage Order because
Gutierrez Alarcon and all of the Class Members worked for the Defendants in construction
occupations. Accordingly, Gutierrez Alarcon and all of the other Class Members are entitled to
the protections the Wage Order provides.



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1 19. On approximately February 28, 2018, the Defendants began to employ Gutierrez
2 Alarcon in Riverside in the position of hourly, non-exempt gardener and landscaper. The
3 Defendants continuously employed him in that capacity until on or about March 25, 2022 when
4 his employment ended.

5 20. At all relevant times, the Defendants issued wages to Gutierrez Alarcon and all of
6 the other Class Members on a weekly (52 paychecks/year) basis and paid them by the hour. At
7 all relevant times, the Defendants classified Gutierrez Alarcon and all of the other Class Members
8 as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

9 21. At all relevant times, the Defendants failed to compensate Gutierrez Alarcon and
10 all of the other Class Members for all hours worked at the applicable minimum or regular rates of
11 pay. The Defendants required Gutierrez Alarcon and the Class Members to arrive for work over
12 one hour before their scheduled start time and to spend this time off the clock and without pay.
13 The Defendants also required Gutierrez Alarcon and the Class Members to wait several minutes
14 off the clock and without pay to clock in for work. The Defendants required Gutierrez Alarcon
15 and the Class Members to attend work meetings off the clock and without pay. Additionally, The
16 Defendants required Gutierrez Alarcon and the Class Members to remain at work over one hour
17 after their scheduled stop time and to spend this time off the clock and without pay. The
18 Defendants also required Gutierrez Alarcon and the Class Members to spend their meal periods,
19 pre-shift time, and post-shift time traveling from one worksite to another off the clock and without
20 pay. The Defendants also disallowed Gutierrez Alarcon and the Class Members to leave their
21 assigned worksite for meal periods.

22 22. At all relevant times, the Defendants failed to compensate Gutierrez Alarcon and
23 all of the other Class Members at the correct rates of pay for all hours worked over eight in a day,
24 over 40 in a week, and for the first eight hours of the seventh day of the workweek. Time spent
25 in the aforementioned unpaid work activities, combined with time spent on the clock, resulted in
26 Gutierrez Alarcon and the Class Members working overtime hours. However, The Defendants
27 did not pay Gutierrez Alarcon and the Class Members overtime premium pay for such hours
28 worked.

 23. At all relevant times, the Defendants failed to provide Gutierrez Alarcon and all
of the other Class Members with all timely 30-minute, off-duty meal periods. The Defendants
required Gutierrez Alarcon and the Class Members to delay their meal periods for more than five



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1 hours into their work shift so meal periods would be taken with other workers. The Defendants
2 also required Gutierrez Alarcon and the Class Members to spend their meal periods traveling from
3 one worksite to another off the clock and without pay. The Defendants also interrupted the meal
4 periods of Gutierrez Alarcon and the Class Members, including directives to unload the trucks.
5 The Defendants also disallowed Gutierrez Alarcon and the Class Members to leave their assigned
6 worksite for meal periods. The Defendants also failed to pay premium wages for days on which
7 they failed to provide Gutierrez Alarcon and all of the other Class Members with meal periods as
8 required by law.

9 24. At all relevant times, the Defendants failed to authorize and permit Gutierrez
10 Alarcon and all of the other Class Members to take ten-minute, off-duty, paid rest breaks every
11 four hours worked or major portion thereof. The Defendants required Gutierrez Alarcon and the
12 Class Members to delay their rest periods for more than four hours into their work shift to
13 complete work or forego them altogether if work was incomplete. The Defendants also interrupted
14 the rest periods of Gutierrez Alarcon and the Class Members. The Defendants also disallowed
15 Gutierrez Alarcon and the Class Members to leave their assigned worksite for rest periods. The
16 Defendants also failed to pay premium wages for days on which they failed to authorize and
17 permit Gutierrez Alarcon and all of the other Class Members to take rest breaks as required by
18 law.

19 25. At all relevant times, the Defendants failed to provide any toilet facilities for use
20 by Gutierrez Alarcon and all of the other Class Members within reasonable access. Additionally,
21 the Defendants failed to provide potable water, soap, or other suitable cleansing agent and single
22 use towels for handwashing for use by Gutierrez Alarcon and all of the other Class Members.

23 26. At all relevant times, the Defendants required Gutierrez Alarcon and all of the
24 other Class Members to incur certain business expenses in the course of performing their duties.
25 The Defendants required Gutierrez Alarcon and all of the other Class Members to supply mobile
26 phones, uniforms, protective gear and PPE to perform their job duties. However, the Defendants
27 did not provide these items and did not reimburse Gutierrez Alarcon and the other Class Members
28 for these items.

27 27. At all relevant times, the Defendants failed to issue to Gutierrez Alarcon and all of
the other Class Members complete and accurate wage statements that state all hours worked at
the correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed



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1 to state on the wage statements they issued to Gutierrez Alarcon and all of the other Class
2 Members the unpaid wages discussed above. The wage statements fail to state all minimum wages
3 earned, all regular wages earned, all overtime wages earned, all meal period premium wages
4 earned, all rest break premium wages earned, and related information.

5 28. At all relevant times, the Defendants also failed to timely pay Gutierrez Alarcon
6 and all of the other Class Members all earned wages as described above during and at the
7 conclusion of employment.

8 29. At all relevant times, the Defendants failed to provide Gutierrez Alarcon and all
9 of the other Class Members with toilet and storage facilities, change rooms, and acceptable work
10 temperatures.

11 30. At all relevant times, the Defendants failed to maintain accurate employee records
12 of Gutierrez Alarcon and all of the other Class Members.

13 31. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
14 unlawful practices and policies, Plaintiff and the Class Members were:

- 15 A. Not provided with all off duty meal periods;
- 16 B. Not authorized and permitted to take all rest break periods;
- 17 C. Not paid one hour's pay for each workday in which Defendants failed to
18 authorize and permit them to take one or more timely rest periods;
- 19 D. Not paid one hour's pay for each workday in which Defendants failed to
20 provide them with one or more timely meal periods;
- 21 E. Not paid all wages earned, including, but not limited to, minimum, regular,
22 overtime, and doubletime wages for work performed while clocked out;
- 23 F. Not indemnified for all necessary business expenditures incurred during
24 the discharge of their duties;
- 25 G. Not provided with accurate and complete wage statements;
- 26 H. Not timely paid all earned and unpaid wages at the time their employment
27 ended;
- 28 I. Provide proper toilet facilities; and
- J. Maintain accurate employment records.

32. Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated
damages, restitution, statutory penalties, attorneys' fees, costs, civil penalties and related relief



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through this class and representative action.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES AT THE CORRECT RATES

Lab. Code §§ 510, 1194, 1197, and 1198

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

33. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

34. At all relevant times, Plaintiff and the Class Members have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

35. Section 2 of the Wage Order defines “hours worked” 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.”

36. Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee’s regular hourly salary as one fortieth (1/40) of the employee’s weekly salary.



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1
2 37. Section 4 of the Wage Order requires an employer to pay non-exempt employees
3 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
4 an employer has actual or constructive knowledge that employees are working.

5 38. Labor Code section 510 states:

6 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
7 in one workday and any work in excess of 40 hours in any one workweek and the
8 first eight hours worked on the seventh day of work in any one workweek shall be
9 compensated at the rate of no less than one and one-half times the regular rate of
10 pay for an employee. Any work in excess of 12 hours in one day shall be
11 compensated at the rate of no less than twice the regular rate of pay for an
12 employee. In addition, any work in excess of eight hours on any seventh day of a
13 workweek shall be compensated at the rate of no less than twice the regular rate of
14 pay of an employee. Nothing in this section requires an employer to combine more
15 than one rate of overtime compensation in order to calculate the amount to be paid
16 to an employee for any hour of overtime work.

17 39. Labor Code section 1194 invalidates any agreement between an employer and an
18 employee to work for less than the minimum wage required under the applicable Wage Order.

19 40. Labor Code section 1197 makes it unlawful for an employer to pay an employee
20 less than the minimum wage required under the applicable Wage Order for all hours worked
21 during a payroll period.

22 41. Labor Code section 1198 makes it unlawful for an employer to employ an
23 employee under conditions that violate the Wage Order.

24 42. In conjunction, these provisions of the Labor Code require employers to pay non-
25 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
26 worked, including unrecorded hours when the employer knew or reasonably should have known
27 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
28 Cal.4th 575, 585.)

43. At all relevant times during the applicable limitations period, Defendants failed to
compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and
doubletime hours, respectively, that they worked at the correct rates of pay.

44. Plaintiff is informed and believes and thereon alleges that, at all relevant times,



Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiff and the other Class Members for all hours worked at the correct rates of pay as required by California law.

B. UNDERPAID TRAVEL TIME

45. Under Section 5 of the Wage Order,

All employer-mandated travel that occurs after the first location where the employee's presence is required by the employer shall be compensated at the employee's regular rate of pay or, if applicable, the premium rate that may be required by the provisions of Labor Code Section 510 and Section 3, Hours and Days of Work, above.

At all relevant times, Defendants required Gutierrez Alarcon and all of the other Class Members to travel from Defendants' offices to a worksite Defendants designated. Additionally, Defendants required Gutierrez Alarcon and all of the other Class Members to travel from worksites and other locations to Defendants' offices. However, Defendants did not pay Gutierrez Alarcon and all of the other Class Members for such travel time at amounts that were at least as much as their regular rates of pay for work they performed at the worksites Defendants designated. This is a violation of the Wage Order and also the Labor Code (§ 1198).

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7 and 512

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

46. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

47. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

48. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

49. In relevant part, In relevant part, California Labor Code § 512 states:



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An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

50. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. (See Labor Code Section 512.)
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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. (See Labor Code Section 512.)
- (C) ...
- (D) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to and complies with Labor Code Section 512.
- (E) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the

1 employer shall pay the employee one (1) hour of pay at the
2 employee's regular rate of compensation for each workday that the
meal period is not provided.

3 51. In relevant part, California Labor Code § 226.7 states:

4 (b) An employer shall not require an employee to work during
5 a meal or rest period mandated pursuant to an applicable
6 statute, or applicable regulation, standard, or order of the
7 Industrial Welfare Commission, the Occupational Safety
8 and Health Standards Board, or the Division of
Occupational Safety and Health.

9 (c) If an employer fails to provide an employee a meal period
10 or rest period in accordance with a state law, including, but
11 not limited to, an applicable statute or applicable
12 regulation, standard, or order of the Industrial Welfare
13 Commission, the Occupational Safety and Health
14 Standards Board, or the Division of Occupational Safety
and Health, the employer shall pay the employee one
additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest
period is not provided.

15 52. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
16 Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
17 they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
18 to a second 30-minute meal period when they worked more than 10 hours in a workday.

19 53. Defendants intentionally failed to provide Plaintiff and the Class Members with
20 all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants
21 required Gutierrez Alarcon and the Class Members to delay their meal periods for more than five
22 hours into their work shift so meal periods would be taken with other workers. The Defendants
23 also required Gutierrez Alarcon and the Class Members to spend their meal periods traveling from
24 one worksite to another off the clock and without pay. The Defendants also interrupted the meal
periods of Gutierrez Alarcon and the Class Members, including directives to unload the trucks.
The Defendants also disallowed Gutierrez Alarcon and the Class Members to leave their assigned
worksite for meal periods.

25 54. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
26 with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members
27
28



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1 their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants
2 failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class
3 Members with timely meal periods.

4 55. Plaintiff is informed and believes and thereon alleges that, at all relevant times
5 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
6 which resulted in Defendants not providing the and the Class Members with all off-duty meal
7 periods required by California law.

8 56. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
9 suffered damages in amounts subject to proof to the extent they were not paid additional wages
10 owed for all meal periods not provided to them.

11 57. By reason of the above, Plaintiff and the Class Members are entitled to premium
12 wages for workdays in which one or more meal periods were not provided to them pursuant to
13 California Labor Code § 226.7.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

16 **Lab. Code § 226.7**

17 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

18 58. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

19 59. At all relevant times during the applicable limitations period, Plaintiff and the
20 Class Members have been employees of Defendants and entitled to the benefits and protections
21 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

22 60. In relevant part, California Labor Code § 1198 states:

23 The maximum hours of work and the standard conditions of labor
24 fixed by the commission shall be the maximum hours of work and
25 the standard conditions of labor for employees. The employment
26 of any employee for longer hours than those fixed by the order or
27 under conditions of labor prohibited by the order is unlawful.

28 61. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take
rest periods, which insofar as practicable shall be in the middle of



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each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees' immediate work area.

(B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) ...

(D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

62. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.



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63. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

64. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order. The Defendants required Gutierrez Alarcon and the Class Members to delay their rest periods for more than four hours into their work shift to complete work or forego them altogether if work was incomplete. The Defendants also interrupted the rest periods of Gutierrez Alarcon and the Class Members. The Defendants also disallowed Gutierrez Alarcon and the Class Members to leave their assigned worksite for rest periods.

65. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Class Members for days on which they failed to authorize and permit Plaintiff and the other Class Members to take timely rest periods.

66. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed to authorize and permit them to take 10-minute rest periods every four hours worked or major fraction thereof.

67. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to take all rest breaks required by California law.

68. Defendants failed to provide Plaintiff with all required rest breaks in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class Members with all rest breaks required by California law.



69. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class Members with additional wages for all rest breaks not provided to them as required by California Labor Code § 226.7.

70. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all rest breaks not provided to them.

71. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more rest breaks were not provided to them pursuant to California Labor Code § 226.7.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

Lab. Code § 2802

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

72. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

73. In pertinent part, California Labor Code § 2802(a) states: "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties." Additionally, the Wage Order states,

(A) When 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.

...

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the particular trade or craft in conformity with Labor Code Section 2802.

Wage Order, § 9(A) and (B).

74. California Labor Code § 1198 prohibits employers from employing their



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employees under conditions prohibited by the Wage Order.

75. At all relevant times, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties.

76. As described above, the Defendants required Gutierrez Alarcon and all of the other Class Members to incur certain business expenses in the course of performing their duties. The Defendants required Gutierrez Alarcon and all of the other Class members to supply mobile phones, uniforms, protective gear and PPE to perform their job duties. However, the Defendants did not provide these items and did not reimburse Gutierrez Alarcon and the other Class members for these items. Additionally, the Defendants did not provide tools to Gutierrez Alarcon and the other Class members they required them to use to perform their work, nor did they reimburse them for such tools, including gloves, scissors, drills, drill bits, screwdrivers, wire stripper pliers, and related equipment.

77. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

FIFTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code § 226

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE STATEMENTS

78. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

79. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement showing:

A. Gross wages earned;

B. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

C. The number of piece rate units earned and any applicable piece rate if the



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1 employee is paid on a piece-rate basis;

2 D. All deductions, provided that all deductions made on written orders of the
3 Employee may be aggregated and shown as one item;

4 E. Net wages earned;

5 F. The inclusive dates of the period for which the employee is paid;

6 G. The name of the employee and his or her social security number, except
7 that by January 1, 2008, only the last four digits of his or her social security number or an
8 employee identification number other than a social security number may be shown on the itemized
9 statement;

10 H. The name and address of the legal entity that is the employer; and

11 I. All applicable hourly rates in effect during the pay period and the
12 corresponding number of hours worked at each hourly rate by the employee.

13 80. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
14 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
15 the employer fails to provide accurate and complete information as required by California Labor
16 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
17 alone one or more of the following:

18 A. The amount of the gross wages or net wages paid to the employee during
19 the pay period or any of the other information required to be provided on the itemized wage
20 statement pursuant to California Labor Code § 226(a);

21 B. Which deductions the employer made from gross wages to determine the
22 net wages paid to the employee during the pay period;

23 C. The name and address of the employer and, if the employer is a farm labor
24 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
25 and address of the legal entity that secured the services of the employer during the pay period;

26 D. The name of the employee and only the last four digits of his or her social
27 security number or an employee identification number other than a social security number; and

28 E. The number of piece-rate units earned and the piece rate.

81. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
means a reasonable person would be able to readily ascertain the information without reference
to other documents or information.



1 82. Similarly, section 6(B) of the Wage Order states

2 Every employer who has control over wages, hours, or working conditions shall
3 semimonthly or at the time of each payment of wages furnish each employee an
4 itemized statement in writing showing:

- 5 (1) all deductions;
- 6 (2) the inclusive dates of the period for which the employee is paid;
- 7 (3) the name of the employee or the employee's social security number; and
- 8 (4) the name of the employer, provided all deductions made on written orders
9 of the employee may be aggregated and shown as one item. (See Labor
10 Code Section 226.)

11 This information shall be furnished either separately or as a detachable part of the
12 check, draft, or voucher paying the employee's wages.

13 83. As alleged herein, at all relevant times during the applicable limitations period,
14 Defendants violated California Labor Code section 226 because they did not properly and
15 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,
16 the corresponding number of hours worked at each rate by the employee and other requirements
17 of California Labor Code section 226. Defendants failed to state in the wage statements they
18 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
19 including, but not limited to, regular and overtime wages for work they performed off-the-clock
20 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
21 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
22 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
23 Members that state all minimum wages earned, all regular wages earned, all overtime wages
24 earned, all meal period premium wages earned, and all rest break premium wages earned.

24 84. Defendants' failure to provide Plaintiff and the other Class Members with accurate
25 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
26 the other Class Members with accurate wage statements but intentionally provided wage
27 statements that Defendants knew were not accurate.

28 85. As a result of being provided with inaccurate wage statements by Defendants,
Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate



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1 wage statements were violated and they were misled about the amount of wages they had actually
2 earned and were owed. In addition, the absence of accurate information on their wage statements
3 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
4 and mathematical computations to determine the amounts of wages owed, has caused difficulty
5 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
6 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
7 and the other Class Members were not able to ascertain from the wage statements whether
8 Defendants complied with their obligations under California Labor Code section 226(a).

9 **SIXTH CAUSE OF ACTION**

10 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

11 **Lab. Code §§ 201, 202, and 203**

12 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

13 86. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 87. At all relevant times during the applicable limitations period, Plaintiffs and the
15 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
16 of California Labor Code §§ 201, 202, and 203, and the Wage Order.

17 88. Labor Code § 201 provides that all earned and unpaid wages of an employee who
18 is discharged are due and payable immediately at the time of discharge.

19 89. Labor Code § 202 provides that all earned and unpaid wages of an employee who
20 quits after providing at least 72-hours notice before quitting are due and payable at the time of
21 quitting and that all earned and unpaid wages of an employee who quits without providing at least
22 72-hours notice before quitting are due and payable within 72 hours.

23 90. The Defendants failed to pay Gutierrez Alarcon and all of the other Class Members
24 whose employment ended all of the earned but unpaid wages described above by the conclusion
25 of their employment with Gutierrez Alarcon, including minimum wages, regular wages, overtime
26 wages, unprovided meal period premium wages, and unprovided rest break premium wages.
27 Additionally, the Defendants failed to issue to Gutierrez Alarcon and all of the other Class
28 members whose employment ended their final paychecks.

91. By failing to pay such earned wages to Plaintiff and the Class Members,
Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
§ 201 or § 202.



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1 92. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
2 and the Class Members all of their earned and unpaid wages (described above) have been willful
3 in that, at all relevant times, Defendants have deliberately maintained policies and practices that
4 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,
5 they have had the ability to comply with those legal requirements.

6 93. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of
7 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
8 penalties for each Class Member.

9 **SEVENTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 **Bus. & Prof. Code §§ 17200, *et seq.***

12 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

13 94. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 95. At all relevant times during the applicable limitations period, Plaintiff and the
15 Class Members have been employees of Defendants and entitled to the benefits and protections
16 of the Business and Professions Code §§ 17200, *et seq.*

17 96. The unlawful conduct of Defendants alleged herein amount to and constitutes
18 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
19 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
20 gained a competitive advantage over other comparable companies doing business in California
21 that comply with their legal obligations to compensate employees for all earned wages.

22 97. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
23 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
24 Members were deprived of minimum wages, regular wages, overtime wages, doubletime wages,
25 missed meal period premium wages, missed rest period premium wages, phone expenses, uniform
26 expense, tool expenses, and comparable money and property.

27 98. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
28 Class Members are entitled to restitution of all monies rightfully belonging to them that
Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
practices.

99. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in



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connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

Lab. Code §§ 2698

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

100. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

101. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning September 19, 2021 and ending on the date that final judgment is entered in this action.

102. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

103. California Labor Code §§ 2699(a) and (g) authorize an Aggrieved Employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

104. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants’ violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802, and related Labor Code statutes during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 226, two hundred fifty dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

B. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each Aggrieved Employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).

C. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established by Labor Code § 1174.5).



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1 D. For violations of California Labor Code § 1197, one hundred dollars
2 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
3 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
4 (regardless of whether the initial violations were intentionally committed) (penalty amounts
5 established by California Labor Code § 1197.1).

6 E. For violations of California Labor Code §§ 201, 202, 203, 204, 226.7,
7 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2)).

11 105. Plaintiff has complied with the procedures for bringing suit specified in California
12 Labor Code § 2699.3. By letter dated September 19, 2022, Plaintiff gave written notice by
13 certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of
14 the specific provisions of the California Labor Code alleged to have been violated, including the
15 facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to
16 the LWDA dated September 19, 2022 is attached hereto as Exhibit A. The LWDA has not
17 responded to Plaintiff’s letter.

18 106. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
19 Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in
20 connection with their claims for civil penalties.

21 V. PRAYER FOR RELIEF

22 107. WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees,
23 prays for relief and judgment against Defendants as follows:

24 A. An order that the action be certified as a class action with respect to
25 Plaintiff’s claims for violations of California law;

26 B. An order that Plaintiff be appointed class representative;

27 C. An order that counsel for Plaintiff be appointed class counsel;

28 D. Unpaid wages, including minimum, regular, overtime, double-time, split
shift, vacation, missed meal period, and missed rest period premium wages;

E. Liquidated damages;

F. Statutory penalties, including waiting time penalties;



- 1 G. Civil penalties;
2 H. Restitution;
3 I. Declaratory relief;
4 J. Actual damages;
5 K. Pre-judgment interest;
6 L. Costs of suit;
7 M. Reasonable attorneys' fees; and
8 N. Such other relief as the Court deems just and proper.

9 **VI. DEMAND FOR JURY TRIAL**

10 Plaintiff, on behalf of himself and all other similarly situated, hereby demands a jury trial
11 on all issues so triable.

12 Respectfully submitted,

13 THE SPIVAK LAW FIRM

14 Dated: March 8, 2023

15 By:



16 DAVID G. SPIVAK
17 CHRISTINA J. PREJEAN, Attorneys
18 for Plaintiff(s), JOEL GUTIERREZ
19 ALARCON, and all others similarly
20 situated



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EXHIBIT A



THE SPIVAK LAW FIRM
EMPLOYEE RIGHTS

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SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

September 19, 2022

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Joel Gutierrez Alarcon / Fairway Landscape

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Joel Gutierrez Alarcon (hereafter “Gutierrez Alarcon” or “Complainant”) provides notice that Fairway Landscape & Irrigation, Inc., a California corporation, and related entities (collectively “the Fairway Landscape Employers” or “the Employers”) violated his rights and those of all other individuals the Fairway Landscape Employers have employed or otherwise contracted with in California as hourly and non-exempt, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Gutierrez Alarcon hereby provides this notice to the Labor & Workforce Development Agency and the Fairway Landscape Employers and their agents and representatives.

At all relevant times, the Fairway Landscape Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Gutierrez Alarcon and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 16-2001 (hereafter “the Wage Order”) section 2, subdivision (H) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately February 28, 2018, the Fairway Landscape Employers began to employ Gutierrez Alarcon in Riverside in the position of hourly, non-exempt gardener and landscaper. The Fairway Landscape Employers continuously employed him in that capacity until on or about March 25, 2022 when his employment ended.

At all relevant times, the Fairway Landscape Employers issued wages to Gutierrez Alarcon and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Fairway Landscape Employers classified Gutierrez Alarcon and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Fairway Landscape Employers failed to compensate Gutierrez Alarcon and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to arrive for work over one hour before their scheduled start time and to spend this time off the clock and without pay. The Fairway Landscape Employers also required Gutierrez Alarcon and the Aggrieved Employees to wait several minutes off the clock and without pay to clock in for work. The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to attend work meetings off the clock and without pay. Additionally, The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to remain at work over one hour after their scheduled stop time and to spend this time off the clock and without pay. The Fairway Landscape Employers also required Gutierrez Alarcon and the Aggrieved Employees to spend their meal periods, pre-shift time, and post-shift time traveling from one worksite to another off the clock and without pay. The Fairway Landscape Employers also disallowed Gutierrez Alarcon and the Aggrieved Employees to leave their assigned worksite for meal periods.

The Fairway Landscape Employers failed to compensate Gutierrez Alarcon and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. Time spent in the aforementioned unpaid work activities, combined with time spent on the clock, resulted in Gutierrez Alarcon and the Aggrieved Employees working overtime hours. However, The Fairway Landscape Employers did not pay

Gutierrez Alarcon and the Aggrieved Employees overtime premium pay for such hours worked.

At all relevant times, the Fairway Landscape Employers failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to delay their meal periods for more than five hours into their work shift so meal periods would be taken with other workers. The Fairway Landscape Employers also required Gutierrez Alarcon and the Aggrieved Employees to spend their meal periods traveling from one worksite to another off the clock and without pay. The Fairway Landscape Employers also interrupted the meal periods of Gutierrez Alarcon and the Aggrieved Employees, including directives to unload the trucks. The Fairway Landscape Employers also disallowed Gutierrez Alarcon and the Aggrieved Employees to leave their assigned worksite for meal periods. The Fairway Landscape Employers also failed to pay premium wages for days on which they failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Fairway Landscape Employers failed to authorize and permit Gutierrez Alarcon and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to delay their rest periods for more than four hours into their work shift to complete work or forego them altogether if work was incomplete. The Fairway Landscape Employers also interrupted the rest periods of Gutierrez Alarcon and the Aggrieved Employees. The Fairway Landscape Employers also disallowed Gutierrez Alarcon and the Aggrieved Employees to leave their assigned worksite for rest periods. The Fairway Landscape Employers also failed to pay premium wages for days on which they failed to authorize and permit Gutierrez Alarcon and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Fairway Landscape Employers required Gutierrez Alarcon and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Fairway Landscape Employers required Gutierrez Alarcon and all of the other Aggrieved Employees to supply mobile phones, scissors, uniforms, protective gear and PPE and comparable items to perform their job duties.

However, the Fairway Landscape Employers did not provide these items and did not reimburse Gutierrez Alarcon and the other Aggrieved Employees for these items.

At all relevant times, the Fairway Landscape Employers failed to issue to Gutierrez Alarcon and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Fairway Landscape Employers knowingly and intentionally failed to state on the wage statements they issued to Gutierrez Alarcon and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

The Fairway Landscape Employers also failed to timely pay Gutierrez Alarcon and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Fairway Landscape Employers failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees with toilet facilities, potable water, soap, or other suitable cleaning agent and single use towels for handwashing.

The Fairway Landscape Employers failed to maintain accurate employee records of Gutierrez Alarcon and all of the other Aggrieved Employees.

For the reasons stated herein, Gutierrez Alarcon alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Fairway Landscape Employers failed to pay Gutierrez Alarcon and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Fairway Landscape Employers failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees all meal periods in compliance with California law;

- (c) The Fairway Landscape Employers failed to authorize and permit Gutierrez Alarcon and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Fairway Landscape Employers failed to compensate Gutierrez Alarcon and all of the other Aggrieved Employees at one hour's pay for each day in which the Fairway Landscape Employers failed to provide them with one or more meal periods as required by law;
- (e) The Fairway Landscape Employers failed to compensate Gutierrez Alarcon and all of the other Aggrieved Employees at one hour's pay for each day in which the Fairway Landscape Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Fairway Landscape Employers failed to indemnify Gutierrez Alarcon and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Fairway Landscape Employers knowingly and intentionally failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees with accurate wage statements;
- (h) The Fairway Landscape Employers willfully failed to timely pay Gutierrez Alarcon and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Fairway Landscape Employers and when their employment ended;
- (i) The Fairway Landscape Employers failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees with toilet facilities, potable water, soap, or other suitable cleaning agent and single use towels for handwashing; and
- (j) The Fairway Landscape Employers failed to maintain accurate employment records pertaining to Gutierrez Alarcon and all of the other Aggrieved Employees.

Accordingly, Gutierrez Alarcon now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Fairway Landscape Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to

all persons employed in the on-site occupations of construction, including but not limited to alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq. drilling, including but not limited to all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; logging work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571 through 4586; and mining (not covered by Labor Code Section 750 et seq.), including all work required to mine and/or establish pits, quarries, and surface or underground mines for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or other basis."

Wage Order, § 1. The Wage Order defines "construction occupations" to mean,

all job classifications associated with construction, including but not limited to work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair work, by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq., and any other similar or related occupations or trades. (D) "Division" means the Division of Labor Standards Enforcement of the State of California.

Wage Order, § 2(C). The Wage Order defines "Drilling occupations" to mean,

all job classifications associated with the exploration or extraction of oil, gas, or water resources work, including but not limited to the installation, establishment, reworking, maintenance or repair of wells and pumps by boring, drilling,

excavating, casting, cementing and cleaning for the extraction or conveyance of fluids such as water, steam, gases, or petroleum.

Wage Order, § 2(E). The Wage Order defines "logging occupations" to mean,

any work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571-4586, including the cutting or removal or both of timber or other solid wood forest products, including Christmas trees, from timberlands for commercial purposes, together with all the work that is incidental thereto, including but not limited to construction and maintenance of roads, fuel breaks, fire breaks, stream crossings, landings, skid trails, beds for the falling of trees, and fire hazard abatement.

Wage Order, § 2(K). The Wage Order defines "mining occupations" to mean,

miners and other associated and related occupations (not covered by Labor Code Sections 750 et seq.) required to engage in excavation or operations above or below ground including work in mines, quarries, or open pits, used for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone, gravel, and rock, or other materials intended for manufacture or sale, whether paid on a time, piece rate, commission, or other basis.

Wage Order, § 2(L).

At all relevant times during the applicable limitations period, the Fairway Landscape Employers, Gutierrez Alarcon, and all of the Aggrieved Employees were covered by the Wage Order because Gutierrez Alarcon and all of the Aggrieved Employees worked for the Fairway Landscape Employers in construction occupations. Accordingly, Gutierrez Alarcon and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(J) of the Wage Order states,

“Hours worked” means 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[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work 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. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to arrive for work over one hour before their scheduled start time and to spend this time off the clock and without pay. The Fairway Landscape Employers also required Gutierrez Alarcon and the Aggrieved Employees to wait several minutes off the clock and without pay to clock in for work. The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to attend work meetings off the clock and without pay. Additionally, The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to remain at work over one hour after their scheduled stop time and to spend this time off the clock and without pay. The Fairway Landscape Employers also required Gutierrez Alarcon and the Aggrieved Employees to spend their meal periods, pre-shift time, and post-shift time traveling from one worksite to another off the clock and without pay. The Fairway Landscape Employers also disallowed Gutierrez Alarcon and the Aggrieved Employees to leave their assigned worksite for meal periods.

Time spent in the aforementioned unpaid work activities, combined with time spent on the clock, resulted in Gutierrez Alarcon and the Aggrieved Employees working overtime hours. However, The Fairway Landscape Employers did not pay Gutierrez Alarcon and the Aggrieved Employees overtime premium pay for such hours worked.

At all relevant times during the applicable limitations period, the Fairway Landscape Employers failed to compensate Gutierrez Alarcon and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, and overtime wages for all hours they worked at the correct rates of pay. Accordingly, Gutierrez Alarcon now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));

3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Unpaid Travel Time

Under Section 5 of the Wage Order,

All employer-mandated travel that occurs after the first location where the employee's presence is required by the employer shall be compensated at the employee's regular rate of pay or, if applicable, the premium rate that may be required by the provisions of Labor Code Section 510 and Section 3, Hours and Days of Work, above.

At all relevant times, the Fairway Landscape Employers required Gutierrez Alarcon and all of the other Aggrieved Employees to travel from the Fairway Landscape Employers' offices to a worksite the Fairway Landscape Employers designated. Additionally, the Fairway Landscape Employers required Gutierrez Alarcon and all of the other Aggrieved Employees to travel from worksites and other locations to the Fairway Landscape Employers' offices. However, the Fairway Landscape Employers did not pay Gutierrez Alarcon and all of the other Aggrieved Employees for such travel time at amounts that were at least as much as their regular rates of pay for work they performed at the worksites the Fairway Landscape Employers designated.

This is a violation of the Wage Order and also the Labor Code (§ 1198). Accordingly, Gutierrez Alarcon seeks civil penalties from the Fairway Landscape Employers on behalf of himself and all of the Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200

for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(J) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

In relevant part, section 10 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived

by mutual consent of the employer and the employee. (See Labor Code Section 512.)

- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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. (See Labor Code Section 512.)
- (C) ...
- (D) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to and complies with Labor Code Section 512.
- (E) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, 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 addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or rest or recovery period is not provided.

At all relevant times, the Fairway Landscape Employers failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees with all timely meal periods. The Fairway Landscape Employers denied Gutierrez Alarcon and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to delay their meal periods for more than five hours into their work shift so meal periods would be taken with other workers. The Fairway Landscape Employers also required Gutierrez Alarcon and the Aggrieved Employees to spend their meal periods traveling from one worksite to another off the clock and without pay. The Fairway Landscape Employers also interrupted the meal periods of Gutierrez Alarcon and the Aggrieved Employees, including directives to unload the trucks. The Fairway Landscape Employers also disallowed Gutierrez Alarcon and the Aggrieved Employees to leave their assigned worksite for meal periods. Furthermore, the Fairway Landscape Employers failed to pay premium wages for days on which they failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees with timely meal periods. Accordingly, Gutierrez Alarcon now seeks civil penalties for these Labor Code violations that the Fairway Landscape Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and

3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(J) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 11 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees’ immediate work area.
- (B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the

product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) ...

(D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or rest or recovery period is not provided.

(d) A rest or recovery period mandated pursuant to a state law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, shall be counted

as hours worked, for which there shall be no deduction from wages.
This subdivision is declaratory of existing law.

The Fairway Landscape Employers failed to authorize and permit Gutierrez Alarcon and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Fairway Landscape Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to delay their rest periods for more than four hours into their work shift to complete work or forego them altogether if work was incomplete. The Fairway Landscape Employers also interrupted the rest periods of Gutierrez Alarcon and the Aggrieved Employees. The Fairway Landscape Employers also disallowed Gutierrez Alarcon and the Aggrieved Employees to leave their assigned worksite for rest periods. Moreover, the Fairway Landscape Employers failed to pay Gutierrez Alarcon and all of the other Aggrieved Employees premium wages on workdays the Fairway Landscape Employers failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Gutierrez Alarcon now seeks civil penalties for these Labor Code violations that the Fairway Landscape Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Pre-employment medical and physical examination fees
(Lab. Code § 222.5)

Labor Code § 222.5 states

No person shall withhold or deduct from the compensation of any employee, or require any prospective employee or applicant for employment to pay, any fee for, or cost of, any pre-employment medical or physical examination taken as a condition of employment, nor shall any person withhold or deduct from the compensation of any employee, or require any employee to pay any fee for, or costs of, medical or physical examinations required by any law or regulation of federal, state or local governments or agencies thereof.

At all relevant times, the Fairway Landscape Employers required Gutierrez Alarcon and all of the other Aggrieved Employees to obtain preemployment medical or physical examinations as a condition of employment. Accordingly, Gutierrez Alarcon seeks civil penalties for these Labor Code violations that the Fairway Landscape Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 222.5, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 222.5, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When 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.

...

- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the particular trade or craft in conformity with Labor Code Section 2802.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Fairway Landscape Employers required Gutierrez Alarcon and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Fairway Landscape Employers required Gutierrez Alarcon and all of the other Aggrieved Employees to supply mobile phones, uniforms, protective gear and PPE and similar items to perform their job duties. However, the Fairway Landscape Employers did not provide these items and did not reimburse Gutierrez Alarcon and the other Aggrieved Employees for these items. Additionally, the Fairway Landscape Employers did not provide tools to Gutierrez Alarcon and the other Aggrieved Employees it required them to use to perform their work, nor did they reimburse them for such tools, including scissors, gloves, drills, drill bits, screwdrivers, wire stripper pliers and similar items. Accordingly, Gutierrez Alarcon seeks civil penalties for these Labor Code violations that the Fairway Landscape Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and

2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
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.

Similarly, section 6(B) of the Wage Order states

Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized statement in writing showing:

- (1) all deductions;
- (2) the inclusive dates of the period for which the employee is paid;
- (3) the name of the employee or the employee's social security number; and
- (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. (See Labor Code Section 226.)

This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

At all relevant times during the applicable limitations period, the Fairway Landscape Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Fairway Landscape Employers failed to state in the wage statements they issued to Gutierrez Alarcon and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Fairway Landscape Employers knowingly and intentionally failed to state on the wage statements they issued to Gutierrez Alarcon and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required

information. Accordingly, Gutierrez Alarcon seeks civil penalties for the Labor Code violations that the Fairway Landscape Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) 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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Fairway Landscape Employers failed to compensate Gutierrez Alarcon and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other earnings at the intervals stated above. As a result, the Fairway Landscape Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Gutierrez Alarcon now seeks civil penalties for the Labor Code violations that the Fairway Landscape Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Fairway Landscape Employers failed to pay Gutierrez Alarcon and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Gutierrez Alarcon, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and similar forms of compensation. Additionally, the Fairway Landscape Employers failed to issue to Gutierrez Alarcon and all of the other Aggrieved Employees whose employment ended their final paychecks. By failing to pay Gutierrez Alarcon and all of the other Aggrieved Employees as set forth above at the end of employment, the Fairway Landscape Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Gutierrez Alarcon seeks civil penalties from the Fairway Landscape Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200

per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Toilet Facilities, Potable Water, Cleansing Agents
(Lab. Code §§ 1198 and 2350)

Labor Code § 2350 states,

Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.

Section 10(C) of the Wage Order states, “in all places of employment the employer shall provide an adequate supply of potable water, soap, or other suitable cleaning agent and single use towels for handwashing.”

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

Throughout the relevant time period, the Fairway Landscape Employers failed to provide any toilet facilities for use by Gutierrez Alarcon and all of the other Aggrieved

Employees within reasonable access. Additionally, the Fairway Landscape Employers failed to provide potable water, soap, or other suitable cleansing agent and single use towels for handwashing for use by Gutierrez Alarcon and all of the other Aggrieved Employees. Accordingly, on behalf of himself and aggrieved employees, Gutierrez Alarcon demands that the Fairway Landscape Employers cure the violations of Labor Code § 2350 and provide sufficient toilets to all aggrieved employees. If within 33 days of this notice, the Fairway Landscape Employers fail to notify my office in writing by certified mail that they have cured the violations of Labor Code § 2350 and the Wage Order mentioned above, Gutierrez Alarcon, on behalf of himself and all of the other Aggrieved Employees, will commence a civil action and seek civil penalties from the Fairway Landscape Employers as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 2350, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 6 of Wage Order states,

- (A) Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including the following:
 - (1) The employee's full name, home address, occupation, and social security number. The employee's date of birth, if under 18 years of age, and designation as a minor. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (2) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

- (3) Total hours worked during the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.
- (C) All required records shall be in the English language and in ink or other indelible form, dated properly, showing month, day and year. The employer who has control over wages, hours, or working conditions shall also keep said records on file at the place of employment or at a central location for at least three years. An employee's records shall be available for inspection by the employee upon reasonable request.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Fairway Landscape Employers failed to compensate Gutierrez Alarcon and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, and all rest break premium wages earned. As a result, the Fairway Landscape Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Gutierrez Alarcon and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Gutierrez Alarcon seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

- 1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
- 2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

LWDA / The Fairway Landscape Employers
Re: Joel Gutierrez Alarcon
September 19, 2022
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Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Joel Gutierrez Alarcon will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David G. Spivak Esq.
david@spivaklaw.com

cc: Mr. Joel Gutierrez Alarcon

Mr. Louis M. Benowitz Esq.
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Fairway Landscape & Irrigation, Inc.
c/o Agent for service of process
Ms. Alicia O. Martinez
Fairway Landscape & Irrigation, Inc.
4223 Alamo Street
Riverside CA 92501

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PROOF OF SERVICE

State of California,
County of Los Angeles

I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 1801 Century Park East, 25th Fl, Los Angeles, CA 90067.

I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On March 8, 2023, I served the foregoing document described as **SECOND AMENDED COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

Kari E. Gibson, Esq.
Christine Baran, Esq.
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, CA 92614
cbaran@fisherphillips.com
kgibson@fisherphillips.com
Grace Andrade – Legal Assistant - gandrade@fisherphillips.com

_____ (BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 1801 Century Park East, 25th Fl, Los Angeles, CA 90067.

XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address stacy@spivaklaw.com.

EXECUTED on March 8, 2023, at Thousand Oaks, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



STACY SUSSMAN