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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

TIMOTHY VALENCIA, an individual, on
behalf of himself and others similarly situated

PLAINTIFF,

v.

TRUCLEAN MANAGEMENT, INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. CVRI2204777

[Case Assigned for All Purposes to Hon.
Harold W. Hopp in Dept. 10]

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7
4. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
5. Penalties Pursuant to Labor Code § 203
6. Violation of Business & Professions Code § 17200
7. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff TIMOTHY VALENCIA, an individual, on behalf of himself, all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under Labor Code Private Attorneys General Act of 2004, § 2699, *et seq.* (hereafter “PAGA”),
4 complains of Defendant TRUCLEAN MANAGEMENT, INC. (“Defendant”) and each of them,
5 as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382 and Labor Code §2699, *et seq.* on behalf of Plaintiff and a Proposed Class defined as:

10 All persons who are employed or have been employed as a non-
11 exempt employee by TRUCLEAN MANAGEMENT, INC. in the
12 State of California since four (4) years prior to the filing of this
action to the present. (“Proposed Class”)

13 2. From at least four (4) years prior to the filing of this action continuing to the present,
14 Defendant has had a consistent policy of failing to pay wages and/or overtime to all Proposed Class
15 members when they work more than eight hours in a day or forty hours in a week. Plaintiff and
16 the Proposed Class were not properly compensated for all hours worked because Defendant failed
17 to pay Plaintiff and the Proposed Class for each and every hour worked. Plaintiff and the Proposed
18 Class were required to routinely work “off the clock” and performed compensable activities after
19 each working shift for which no pay was provided.

20 3. From at least four (4) years prior to the filing of this action and continuing to the
21 present, Defendant has had a consistent policy of failing to inform Proposed Class members of
22 their right to take meal periods by way of a lawful policy and requiring Proposed Class members
23 within the State of California, including Plaintiff, to work at least five (5) hours without a meal
24 period and failing to pay such employees one (1) hour of pay at the employees’ regular rate of
25 compensation for each workday that the meal period is not provided or provided after five (5)
26 hours, as required by California state wage and hour laws.

27 4. For at least four (4) years prior to the filing of this action and continuing to the
28 present, Defendant has had a consistent policy of failing to inform Proposed Class members of

1 their right to take rest periods by way of a lawful policy and of failing to provide Proposed Class
2 members within the State of California, including Plaintiff, rest periods of at least ten (10) minutes
3 per four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour
4 of pay at the employee's regular rate of compensation for each workday that the rest period was
5 not provided, as required by California state wage and hour laws.

6 5. For at least four (4) years prior to the filing of this action and continuing to the
7 present, Defendant has failed to reimburse Plaintiff and the Proposed Class the cost of using their
8 personal cell phones for business. Plaintiff and the Proposed Class were required to incur
9 substantial expenses in direct consequent of the discharge of their duties for Defendant without
10 reimbursement. Defendant required Plaintiff and the Proposed Class to use their cell phones to
11 perform their job duties while working and this was necessary to perform their job duties as it is
12 not possible for Plaintiff and the Proposed Class to perform or commence their job duties without
13 the use of cell phones. These cell phones were not provided by Defendant, and Defendant failed
14 to reimburse Plaintiff and the Proposed Class for the costs associated with using these personal
15 cell phones.

16 6. For at least three (3) years prior to the filing of this action continuing to the present,
17 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
18 the Proposed Class.

19 7. Plaintiff, on behalf of himself and all Proposed Class members brings this action
20 pursuant to Labor Code §§ 201, 202, 203, 226.7, 510, 512, 1194, 1194.2, 1199, and 2802; Wage
21 Order 4-2001; and California Code of Regulations, Title 8, Section 11040, seeking unpaid
22 wages/overtime, meal and rest period penalties, unreimbursed expenses, other penalties, injunctive
23 and other equitable relief, and reasonable attorneys' fees and costs.

24 8. Plaintiff, on behalf of himself and all Proposed Class members, pursuant to
25 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
26 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

27 9. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
28 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to

1 PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph
2 2 above, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim
3 pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved employees presently or
4 formerly employed by Defendant during the liability period as defined in his PAGA notice letter
5 (see Exhibit “1”), brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking
6 penalties for Defendant’s violations of Labor §§ 201, 202, 203, 226.7, 510, 512, 1194, 1194.2,
7 1199, and 2802.

8 **II.**

9 **JURISDICTION AND VENUE**

10 10. This Court has subject matter jurisdiction over all causes of action asserted herein
11 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
12 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
13 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
14 State of California or is subject to adjudication in the courts of the State of California.

15 11. This Court has personal jurisdiction over Defendant because Defendant has caused
16 injuries in the County of Riverside and the State of California through their acts, and by their
17 violation of the California Labor Code, California state common law, and California Business &
18 Professions Code § 17200, *et seq.*

19 12. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
20 Civil Procedure § 395. Defendant operates within California and does business within Riverside
21 County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class
22 Members within the State of California and the county of Riverside.

23 13. This case should be classified as complex according to Rule 3.400 of the California
24 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
25 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive
26 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
27 require substantial post judgment judicial supervision.

28 ///

14. Plaintiff files this amended complaint adding a claim for penalties pursuant to
Labor Code § 2699, *et seq.* as a matter of right, pursuant to Labor Code § 2699.3(a)(2)(C).

III.

PARTIES

A. PLAINTIFF

15. Plaintiff TIMOTHY VALENCIA is a resident of California.

16. Plaintiff and all Proposed Class members, were regularly required to:

- a. Work without being paid for all hours at the appropriate overtime rate;
- b. Work without being provided meal periods;
- c. Work without being provided rest periods;
- d. Work without being reimbursed for their out of pocket expenses;

17. Defendant willfully failed to compensate Plaintiff and all Proposed Class members for wages at the termination of their employment with Defendant.

18. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

19. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code §2699(c).)

B. DEFENDANTS

20. Defendant TRUCLEAN MANAGEMENT, INC. is believed to be a California corporation operating within the State of California. Defendant's corporate address, according to the Secretary of State website¹, is believed to be 40880 County Center Drive Suite A Temecula, CA 92591. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

21. The true names and capacities, whether individual, corporate, associate, or

¹ <https://bizfileonline.sos.ca.gov/search/business>

1 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
2 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
3 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
4 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
5 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
6 capacities of the Defendants designated hereinafter as DOES when such identities become known.

7 22. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
8 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
9 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
10 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
11 employer and/or joint employer of Plaintiff and the Proposed Class members.

12 23. Furthermore, Defendants acted in all respects as the employers or joint employers
13 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
14 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
15 engaged, thereby creating a common law employment relationship, with the Proposed Class.
16 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

17 IV.

18 FACTUAL BACKGROUND

19 24. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
20 classified as non-exempt employees by Defendant. Defendant hires employees who work as
21 hourly employees who are paid on an hourly basis.

22 25. Upon information and belief, Plaintiff and the Proposed Class are covered by
23 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
24 Code of Regs. § 11040).

25 26. On a regular and consistent basis, Plaintiff and the Proposed Class were not
26 properly compensated for all hours worked because Plaintiff and the Proposed Class were routinely
27 required to work “off the clock” and performed compensable activities after working each shift for
28 which no pay was provided.

27. Defendant failed to inform Plaintiff and the members of the Proposed Class of their right to take compliant meal periods by way of a lawful policy.

28. Plaintiff and all Proposed Class members have been forced by Defendant to work over five (5) hours in one day without being provided a thirty (30) minute uninterrupted meal break and not being compensated one (1) hour of pay at the regular rate of compensation for each workday that a meal period was not provided or provided after five (5) hours, all in violation of California labor laws, regulations, and Industrial Welfare Commission Wage Orders. Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right to take meal periods by way of a lawful policy.

29. Plaintiff and the Proposed Class have been required to work four hour increments (or major fractions thereof) without being provided with a ten (10) minute rest period. Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right to take rest periods by way of a lawful policy.

30. On a regular and consistent basis, Plaintiff and the Proposed Class have not been properly reimbursed expenses associated with the cost of using their personal cell phones and tools necessary for the completion of their job duties. Defendant required that Plaintiff and the Proposed Class use their own cellphones which were necessary to perform and complete their job duties. Defendant also required Plaintiff and the Proposed Class be available by cell phone and answer/use their cell phones while working and this was necessary to perform their job duties.

31. Defendant willfully failed to pay wages and compensation, when Plaintiff and all Proposed Class members quit or were discharged. This failure was willful, without legal justification, and interfered with Plaintiff's and the Proposed Class members' rights.

32. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

V.

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a proposed class composed of and defined as follows:

1 All persons who are employed or have been employed as a non-
2 exempt employee by TRUCLEAN MANAGEMENT, INC. in the
3 State of California since four (4) years prior to the filing of this
4 action to the present. ("Proposed Class")

5 34. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
6 amend or modify the class description with greater specificity, by division into subclasses, or by
7 limitation to particular issues.

8 35. This action has been brought and may properly be maintained as a class action
9 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
10 community of interest in the litigation and the Proposed Classes are easily ascertainable.

11 **A. NUMEROSITY**

12 36. The potential members of the Proposed Class as defined are so numerous that
13 joinder of all the members of the Proposed Class is impracticable. While the precise number of
14 Proposed Class members has not been determined at this time, Plaintiff is informed and believes
15 that Defendant currently employ, and during the relevant time periods employed over 50 members
16 of the Proposed Class.

17 37. Plaintiff alleges that Defendant's employment records would provide information
18 as to the number and location of all Proposed Class members. Joinder of all members of the
19 Proposed Class is not practicable.

20 **B. COMMONALITY**

21 38. There are questions of law and fact common to the Proposed Class that predominate
22 over any questions affecting only individual Proposed Class members. These common questions
23 of law and fact include, without limitation:

24 a. Whether Defendant failed to pay wages and/or overtime compensation as
25 required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;

26 b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 4-
27 2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class
28 of their right to take meal periods and by failing to provide required meal periods throughout the
term of employment and failing to compensate said employees one (1) hours wages in lieu of rest

1 periods;

2 c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 4 -
3 2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class
4 of their right to take rest periods and failing to provide required rest periods throughout the term
5 of employment and failing to compensate said employees one (1) hours wages in lieu of rest
6 periods;

7 d. Whether Defendants violated Labor Code § 2802 and/or Wage Order 4-
8 2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the
9 cost of personal cell phone usage and tools necessary for the completion of their job duties;

10 e. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
11 compensation due and owing at the time that any Proposed Class Member's employment with
12 Defendant terminated;

13 f. Whether Defendant violated § 17200, *et seq.* of the Business & Professions
14 Code by engaging in the acts previously alleged; and

15 g. Whether Plaintiff and the members of the Proposed Class are entitled to
16 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

17 h. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
18 acts alleged herein.

19 **C. TYPICALITY**

20 39. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
21 all members of the Proposed Class sustained injuries and damages arising out of and caused by
22 Defendant's common course of conduct in violation of laws, regulations that have the force and
23 effect of law, and statutes as alleged herein.

24 **D. ADEQUACY OF REPRESENTATION**

25 40. Plaintiff will fairly and adequately represent and protect the interests of the
26 members of the proposed Class.

27 41. Counsel who represent Plaintiff and the Proposed Class are competent and
28 experienced in litigating large employment class actions.

E. SUPERIORITY OF CLASS ACTION

42. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Proposed Class members is not practicable, and questions of law and fact common to the Proposed Class predominate over any questions affecting only individual members of the Proposed Class. Each member of the Proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or practice of failing to pay all wages due, failing to provide meal and rest periods, failing to reimburse expenses, and failing to pay all wages upon resignation or termination.

43. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VI.

FIRST CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

FAILURE TO PAY WAGES AND/OR OVERTIME UNDER

LABOR CODE §§ 510, 1194, AND 1199

44. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

45. Labor Code §§ 510, 1194 and 1199 require an employer to compensate its employees at the rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. California law also requires that any compensation, including a shift differential must be included in the regular rate of pay.

46. Plaintiff and the Proposed Class were also not properly compensated for all hours worked because Defendant failed to pay Plaintiff and the Proposed Class for each and every hour worked. Plaintiff and the Proposed Class routinely work “off the clock” and performed compensable activities after working each shift for which no pay was provided.

47. Specifically, Plaintiff and the Proposed Class would have to upload pictures of their job sites onto the company’s portal every day after their shift. This would take about an hour every day, and Plaintiff and the Proposed Class were not properly compensated for this “off the clock” work.

48. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class members have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

VII.

SECOND CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO

LABOR CODE § 226.7 AND LABOR CODE § 512

49. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

50. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of these rights.

51. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours. Defendant failed to provide Plaintiff and the Proposed Class with proper meal periods of not less than thirty (30) minutes as required by the Labor Code during the relevant time period.

52. Specifically, Plaintiff and the Proposed Class were told to take their meal breaks during the drive between job sites, rather than stopping work entirely. Plaintiff and the Proposed Class were frequently interrupted during their breaks, and thus were not provided compliant meal periods in violation of Labor Code §§ 226.7 and 512.

53. Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, when meal premiums are provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

54. Pursuant to Labor Code § 226.7, Plaintiff and the Class are entitled to damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum to be proven at trial.

VIII.

THIRD CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

FAILURE TO ALLOW REST PERIODS PURSUANT TO

LABOR CODE § 226.7

55. Plaintiff, on behalf of himself and the proposed Class, realleges and incorporates by reference all previous paragraphs.

56. Labor Code § 226.7 requires an employer to pay an additional hour (1) of compensation for each rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked (or major fraction thereof). Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

57. Plaintiff and the Class consistently worked shifts with no rest breaks, and Defendant failed to maintain an accurate policy advising Plaintiff and the Class of these rest breaks and failed to provide Plaintiff and the Class with rest breaks of not less than ten (10) minutes as required by the Labor Code during the relevant time period.

58. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven

1 at trial.

2 **IX.**

3 **FOURTH CAUSE OF ACTION**

4 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

5 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO**

6 **LABOR CODE § 2802**

7 59. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
8 by reference all previous paragraphs.

9 60. Labor Code § 2802 requires employers to indemnify employees for all necessary
10 expenditures incurred by employees in the discharge of their duties.

11 61. Defendant required that Plaintiff and the Proposed Class purchase their own tools
12 necessary to perform and complete their job duties.

13 62. Defendants also required Plaintiff and the Proposed Class use their cell phones
14 while working and this was necessary to perform their job duties. Specifically, Plaintiff and the
15 Proposed Class had to call every job site before arriving to let them know that they were coming.

16 63. As such, these cell phones were not provided by Defendant and Defendant failed
17 to reimburse Plaintiff and the Proposed Class for the costs of regular and consistent cellular phone
18 usage, despite the fact that these expenditures were necessary for business related purposes.

19 64. As a result of the unlawful acts of Defendants, Plaintiff and the Proposed Class
20 have been deprived of reimbursement in the amounts to be determined at trial, and are entitled to
21 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

22 **X.**

23 **FIFTH CAUSE OF ACTION**

24 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

25 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

26 65. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
27 by reference all previous paragraphs.

28 66. Numerous members of the Proposed Class including the Plaintiff are no longer

1 employed by Defendant. They were either fired or quit Defendant's employ.

2 67. Defendant's failure to pay wages, as alleged above was willful in that Defendant
3 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
4 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
5 penalty until paid for a period of up to thirty (30) days from the time they were due.

6 68. Defendant has failed to pay Plaintiff and others a sum certain at the time of
7 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
8 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
9 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class
10 members' daily wage multiplied by thirty (30) days.

11 **XI.**

12 **SIXTH CAUSE OF ACTION**

13 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

14 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

15 69. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
16 by reference all previous paragraphs.

17 70. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
18 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
19 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
20 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
21 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
22 interest within the meaning of Code of Civil Procedure § 1021.5.

23 71. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,
24 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
25 appropriate equitable relief.

26 72. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
27 practices.

28 73. California's wage and hour laws express fundamental public policies. Providing

1 employees with proper wages and compensation are fundamental public policies of this State and
2 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
3 vigorously minimum labor standards, to ensure that employees are not required or permitted to
4 work under substandard and unlawful conditions, and to protect law-abiding employers and their
5 employees from competitors who lower their costs by failing to comply with minimum labor
6 standards.

7 74. Defendant has violated statutes and public policies as alleged herein. Through the
8 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
9 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
10 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
11 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
12 guaranteed to all employees under law.

13 75. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
14 violation of § 17200, *et seq.* of the Business & Professions Code.

15 76. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
16 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
17 § 17200, *et seq.* of the Business & Professions Code.

18 77. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
19 others similarly situated have been damaged in a sum as may be proven.

20 78. Unless restrained, Defendant will continue to engage in the unlawful conduct as
21 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
22 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
23 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
24 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
25 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
26 proposed Class the money Defendant has unlawfully failed to pay.

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28 ///

1 **XII.**

2 **SEVENTH CAUSE OF ACTION**

3 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

4 79. Plaintiff, on behalf of himself and all aggrieved employees, realleges and
5 incorporates by reference all previous paragraphs.

6 80. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
7 seeks penalties under Labor Code § 2699, *et seq.* use of Defendant's violation of Labor Code §§
8 201, 202, 203, 226.7, 510, 512, 1194, 1194.2, 1199, and 2802; Wage Order 4-2001; and California
9 Code of Regulations, Title 8, Section 11040, which call for civil penalties.

10 81. For each such penalty, Plaintiff and the aggrieved employees are entitled to
11 penalties in an amount to be shown at trial, subject to the following formula:

12 a. \$100 for the initial violation per employee per pay period.

13 b. \$200 for each subsequent violation per employee per pay period.

14 82. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
15 twenty-five percent (25%) to the affected employees.

16 83. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
17 LWDA² and mailed a letter by certified mail to Defendant's entity address, as proscribed by the
18 Code on November 2, 2022, describing Defendant's conduct in violation of Labor Code §§ 201,
19 202, 203, 226.7, 510, 512, 1194, 1194.2, 1199, and 2802. (*see* Exhibit "1.") Plaintiff also obtained
20 an e-filing confirmation from the LWDA confirming receipt of the notice (*see* Exhibit "2").

21 84. As no letter evidencing the LWDA's intention to investigate was received by
22 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
23 action as though the LWDA had not chosen to investigate pursuant to Labor Code
24 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First
25 Amended Class and Representative Action Complaint immediately.

26 ///

27 ² Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of unpaid wages and/or overtime not paid to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For compensatory damages in the amount of Plaintiff's and each Proposed Class members' hourly wage for each rest period and/or meal period missed or taken late from at least four (4) years prior to the filing of this action to the present as may be proven;

3. For compensatory damages in the amount of Plaintiff's and each Proposed Class members' unreimbursed out of pocket expenses as a requirement of employment;

4. For penalties pursuant to Labor Code § 203 for all employees who were terminated or resigned equal to their daily wage times thirty (30) days;

5. An award of prejudgment and post judgment interest;

6. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or overtime, meal periods, rest periods, accurate itemized wage statements, and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226.7, 510, 512, 1194, 1194.2, 1199, and 2802, and IWC 4-2001;

7. For restitution for unfair competition pursuant to Business & Professions Code § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

8. For penalties and other relief pursuant to Labor Code §2699, *et seq.* for Plaintiff and all other Aggrieved Employees for Defendant's violation of Labor Code §§ 201, 202, 203, 226.7, 510, 512, 1194, 1194.2, 1199, and 2802; Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040.

9. An award providing for payment of costs of suit;

10. An award of attorneys' fees; and

11. Such other and further relief as this Court may deem proper and just.

///

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

DATED: January 9, 2023

KINGSLEY & KINGSLEY, APC

By: _____

Liane Katzenstein Ly

Attorneys for Plaintiff and the Proposed Class

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

November 2, 2022

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

Proclean Building Maintenance
40880 County Center Drive, Suite A
Temecula, CA 92591
Via Certified Mailing # 7018 1130 0001 5815 1932

Proclean Building Maintenance
1588 Arrow Hwy
La Verne, CA 91750
Via Certified Mailing # 7018 1130 0001 5815 1949

Proclean Building Maintenance
C/O Agent for Service of Process
Suzan M. Holder
1249 Douglass Dr.
Pomona, CA 91768
Via Certified Mailing # 7018 1130 0001 5815 1956

Re: Timothy Valencia v. Proclean Building Maintenance
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Timothy Valencia (“Plaintiff”) and a proposed group of current and former employees working for Proclean Building Maintenance (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as a non-exempt employee by Proclean Building Maintenance, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

November 2, 2022

Page 2 of 4

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

Additionally, Plaintiff and other aggrieved employees were also not properly compensated for all hours worked because, Defendant fails to pay Plaintiff and the aggrieved employees for each and every hour worked. Plaintiff and the aggrieved employees routinely work “off the clock” and performed compensable activities after working each shift for which no pay was provided. Specifically, Plaintiff and the aggrieved employees would have to upload pictures of their job sites onto the company’s portal every day after their shift. This would take about an hour every day, and Plaintiff and the aggrieved employees were not properly compensated for this “off the clock” work.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Likewise, the Wage Orders (4-2001) state that: 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 thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide timely meal periods. Defendant has had a consistent policy of: (1) requiring Plaintiff and the aggrieved employees to take late meal breaks that occurred after the first five hours of each shift; (2) required Plaintiff and the aggrieved employees to work shifts over ten (10) hours without providing a second meal period of thirty minutes in length altogether; and (3) failed to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that the first meal period was not provided within the first (5) hours of the shift or that a second meal period was not provided.

Specifically, Plaintiff and the aggrieved employees were told to take their meal breaks during the drive between job sites, rather than stopping work entirely. Plaintiff and the aggrieved employees were frequently interrupted during their breaks, and thus were not provided compliant meal periods in violation of Labor Code §§ 226.7 and 512.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

November 2, 2022

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Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, when meal premiums are provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff and the aggrieved employees with a second rest period despite regularly requiring Plaintiff and the aggrieved employees to work over six (6) hours. As Such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7.

In addition, Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones for business related purposes. Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones while working and purchase tools/equipment that was necessary to perform their job duties. Specifically, Plaintiff and the aggrieved employees had to call every job site before arriving to let them know that they were coming. These cell phones and tools/equipment were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones and tools/equipment.

Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty 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." Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant's employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226.7, 510, 512, 1194, 1194.2, 1199, and 2802 with or

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

November 2, 2022

Page 4 of 4

without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Liane Katzenstein Ly

[LKL/tg]

Cc: 1. ABRAMSON LABOR GROUP, 11846 Ventura Blvd, Suite 100, , Studio City, CA 91604

EXHIBIT "2"



State of California
Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Liane

Your Last Name *

Katzenstein Ly

Firm Name (if any) *

Kingsley & Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Boulevard

Your Mobile Phone Number

(818) 990-8300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Timothy Valencia

Plaintiff/Aggrieved Employee Occupation *

Laborer

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select...

Employer Name *

Proclean Building Maintenance

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

40880 County Center Drive, Suite A

Employer City *

Temecula

Employer State *

California

Employer Zip/Postal Code *

92591

Employer Industry *

Janitorial

Add additional defendants

☒ Add any entity other than an individual

☐ Add an individual/sole proprietor employer

Additional Employer Information (Corporation/General Partnership)

Employer Entity Type

Employer Name *

Please select...

▼

Proclean Building Maintenance

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

1588 Arrow Hwy

Employer City *

La Verne

Employer State *

California

▼

Employer Zip/Postal Code *

91750

Employer Industry *

Janitorial

▼

Additional Employer Information (Corporation/General Partnership)

Employer Entity Type

Please select...

▼

Proclean Building Maintenance

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

1249 Douglass Dr.

Employer City *

Pomona

Employer State *

California

▼

Employer Zip/Postal Code *

91768

Employer Industry *

Janitorial

▼

[Remove](#)

[Add Additional Employers](#)

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☐ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.c

Billing Phone

(818) 990-8300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Boulevard Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

Credit Card Number *

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File

LWDA Letter - ...nagement.pdf

Other Attachment - (if any) (must be a .pdf)

Choose File

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

Thank you for submission of your PAGA Case.

noreply@salesforce.com <noreply@salesforce.com>

on behalf of

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Wed 11/2/2022 12:31 PM

To: **Service Email** <service@kingsleykingsley.com>

External Email!

11/2/2022

LWDA Case No. LWDA-CM-917408-22

Law Firm : Kingsley & Kingsley, APC

Plaintiff Name : Timothy Valencia

Employer: Proclean Building Maintenance

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: [https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate Attorneys General Act.htm&data=05%7C01%7CTaylor%40kingsleykingsley.com%7Caa9d5aa76752440751b208dabd08d527%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C638030142898891686%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjojV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=8hhTW4f6WXHig%2FGFKRuub%2FEAID7p22gge21tIWwuV94%3D&reserved=0](https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate%20Attorneys%20General%20Act.htm&data=05%7C01%7CTaylor%40kingsleykingsley.com%7Caa9d5aa76752440751b208dabd08d527%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C638030142898891686%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjojV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=8hhTW4f6WXHig%2FGFKRuub%2FEAID7p22gge21tIWwuV94%3D&reserved=0)

State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

noreply@salesforce.com <noreply@salesforce.com>

on behalf of

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Wed 11/2/2022 12:31 PM

To: **Service Email** <service@kingsleykingsley.com>

External Email!

Thank you for your payment.

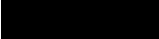
Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-917408-22

Order Number: ORD-000199328

Total:\$75.00

Card Type: 

Date: 11/2/2022

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Boulevard Suite 1200

Encino, California

91436