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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

MARCOS GONZALEZ SOSTENES,
as an aggrieved employee pursuant to
the Private Attorneys General Act
("PAGA"), on behalf of the State of
California and other non-party
Aggrieved Employees,

Plaintiff,

vs.

LIBERTY LANDSCAPING, INC., a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: **CIV SB 2315903**

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Marcos Gonzalez Sostenes, as an aggrieved employee and on behalf of the
2 State of California and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on May 9, 2023, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional
22 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
23 in this action given that the State of California, as the real party in interest in this action, is not
24 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
25 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
26 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
27 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the
28 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Marcos Gonzalez Sostenes is a resident of Victorville, in San Bernardino County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Laborer and Groundskeeper from approximately April 2019 to March 2023. Plaintiff typically worked eight (8) or more hours per day and five (5) days per week. At the time Plaintiff's employment with Defendants ended, he was compensated approximately \$16.50 per hour. Plaintiff's job duties included, without limitation, preparing his company vehicle for the day, traveling to jobsites to maintain landscaping, and trimming and cutting vegetation.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute an arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented employees with a "Mutual Agreement to Arbitrate Claims" ("Arbitration Agreement") during the onboarding process, which had to be reviewed and acknowledged immediately. Specifically, the Arbitration Agreement was one of several documents presented to new employees for signature during the orientation process, including the Acknowledgement of Drug-Free Workplace Policy, Employee Orientation Checklist, and Employee Handbook & Designation Form, among other documents. Also, employees did not have a meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to sign on a take-it or leave-it basis, along with all of the other on-boarding documents. Further, Defendants did not set forth in the agreement or

1 otherwise provide employees with the rules which will govern the arbitration, instead forcing
2 employees to seek this information out on their own (“These Rules may be found at:
3 <http://www.jamsadr.com/rules-streamlined-arbitration>”).

4 8. LIBERTY LANDSCAPING, INC. was and is, upon information and belief, a
5 California corporation, and at all times hereinafter mentioned, an employer whose employees
6 are engaged throughout this county and the State of California.

7 9. Plaintiff is unaware of the true names or capacities of the Defendants sued
8 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
9 amend the complaint and serve such fictitiously named Defendants once their names and
10 capacities become known.

11 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
12 were the partners, agents, owners, or managers of LIBERTY LANDSCAPING, INC. at all
13 relevant times.

14 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
15 acts and omissions alleged herein was performed by, or is attributable to, LIBERTY
16 LANDSCAPING, INC. and/or DOES 1 through 10 (collectively, “Defendants” or “LIBERTY
17 LANDSCAPING”), each acting as the agent, employee, alter ego, and/or joint venturer of, or
18 working in concert with, each of the other co-Defendants and was acting within the course and
19 scope of such agency, employment, joint venture, or concerted activity with legal authority to
20 act on the others’ behalf. The acts of any and all Defendants were in accordance with, and
21 represent, the official policy of Defendants.

22 12. At all relevant times, Defendants, and each of them, ratified each and every act
23 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
24 and abetted the acts and omissions of each and all the other Defendants in proximately causing
25 the damages herein alleged.

26 13. Plaintiff is informed and believes, and thereon alleges, that each of said
27 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
28 omissions, occurrences, and transactions alleged herein.

1 **PAGA REPRESENTATIVE ALLEGATIONS**

2 14. Defendants provide landscape maintenance, development, and tree care
3 services in the Southern California region. Upon information and belief, Defendants maintain
4 a single, centralized Human Resources (HR) department at their corporate headquarters in
5 Riverside, California, for all non-exempt, hourly paid employees working for Defendants in
6 California, which is responsible for the recruiting and hiring of new employees, and
7 communicating and implementing Defendants' company-wide policies, including timekeeping
8 policies and meal and rest period policies, to employees throughout California.

9 15. In particular, Plaintiff and other non-party Aggrieved Employees, on
10 information and belief, received the same standardized documents and/or written policies.
11 Upon information and belief, the usage of standardized documents and/or written policies,
12 including new-hire documents, indicate that Defendants dictated policies at the corporate level
13 and implemented them company-wide, regardless of their employees' assigned locations or
14 positions. Upon information and belief, Defendants set forth uniform policies and procedures
15 in several documents provided at an employee's time of hire.

16 16. Upon information and belief, Defendants maintain a centralized Payroll
17 department at their corporate headquarters in Riverside, California, which processes payroll
18 for all non-exempt, hourly paid employees working for Defendants at their various locations
19 and jobsites in California, including Plaintiff and other non-party Aggrieved Employees.
20 Based upon information and belief, Defendants issue the same formatted wage statements to
21 all non-exempt, hourly paid employees in California, irrespective of their work locations.
22 Upon information and belief, Defendants process payroll for departing employees in the same
23 manner throughout the State of California, regardless of the manner in which each employee's
24 employment ends.

25 17. Defendants continue to employ non-exempt or hourly paid employees in
26 California.

27 18. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants were advised by skilled lawyers and other professionals, employees

1 and advisors knowledgeable about California labor and wage law, employment and personnel
2 practices, and about the requirements of California law.

3 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
4 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
5 were not recorded.

6 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 receive certain wages for overtime compensation and that they were not receiving certain
9 wages for overtime compensation.

10 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 receive at least minimum wages for compensation and that they were not receiving at least
13 minimum wages for work that was required to be done off-the-clock. In violation of the
14 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
15 least minimum wages for work done off-the-clock.

16 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
19 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
20 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
21 other non-party Aggrieved Employees were not provided with all meal periods or payment of
22 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
23 uninterrupted, thirty (30) minute meal period.

24 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
27 payment of one (1) additional hour of pay at their regular rates of pay when they were not
28 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party

1 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
2 provided with payment of one (1) additional hour of pay at their regular rates of pay when
3 they were not authorized and permitted to take a compliant rest period.

4 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that other non-party Aggrieved Employees were entitled to recovery
6 periods in accordance with the California Labor Code and applicable General Industry Safety
7 (“GIS”) Order or payment of one (1) additional hour of pay at their regular rates of pay when
8 they were not provided a compliant recovery period and that other non-party Aggrieved
9 Employees were not provided with compliant recovery periods or payment of one (1)
10 additional hour of pay at their regular rates of pay when they were not provided a compliant
11 recovery period.

12 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
14 receive complete and accurate wage statements in accordance with California law. In
15 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
16 were not provided complete and accurate wage statements.

17 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that they had a duty to maintain accurate and complete payroll records in
19 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
20 and intentionally failed to do so.

21 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
23 timely payment of wages during their employment. In violation of the California Labor Code,
24 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
25 including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery
26 period premiums; and/or reporting time pay, within permissible time periods.

27 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to

1 timely payment of all wages earned upon termination of employment. In violation of the
2 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
3 payment of all wages due, including, but not limited to, overtime wages; minimum wages;
4 meal, rest, and recovery period premiums; and/or reporting time pay, within permissible time
5 periods.

6 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 receive their full wages due without having to execute a release of claims. In violation of the
9 California Labor Code, Defendants required Plaintiff and other non-party Aggrieved
10 Employees to release their claims for unpaid wages as a condition to receiving their
11 paychecks.

12 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that other non-party Aggrieved Employees were entitled to be paid
14 reporting time pay when they reported to work for their usual or scheduled shift but were put
15 to work for less than half of the usual or scheduled shift. In violation of the California Labor
16 Code, Defendants did not pay other non-party Aggrieved Employees all reporting time pay
17 due.

18 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
20 receive reimbursement for all business-related expenses and costs they incurred during the
21 course and scope of their employment and that they did not receive reimbursement of
22 applicable business-related expenses and costs incurred.

23 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants knew or should have known that they had a duty to compensate
25 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
26 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
27 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
28 that they were properly denied wages, all in order to increase Defendants' profits.

1 33. At all times herein set forth, PAGA provides that any provision of law under
2 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
3 assessed and collected by the LWDA for violations of the California Labor Code and
4 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
5 civil action brought on behalf of themselves and other current or former employees pursuant
6 to procedures outlined in California Labor Code section 2699.3.

7 34. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
8 person who was employed by the alleged violator and against whom one or more of the
9 alleged violations was committed.”

10 35. Plaintiff and other current and former employees of Defendants are “aggrieved
11 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
12 or former employees and one or more of the alleged violations were committed against them.

13 36. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
14 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
15 following requirements have been met:

- 16 (a) The aggrieved employee shall give written notice by online filing
17 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
18 to the employer of the specific provisions of the California Labor Code
19 alleged to have been violated, including the facts and theories to support
20 the alleged violations.
- 21 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
22 2699.3(a) and any employer response to that notice shall be
23 accompanied by a filing fee of seventy-five dollars (\$75).
- 24 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
25 employer and the aggrieved employee by certified mail that it does not
26 intend to investigate the alleged violation within sixty (60) calendar
27 days of the postmark date of the Employee’s Notice. Upon receipt of
28 the LWDA Notice, or if the LWDA Notice is not provided within sixty-

1 five (65) calendar days of the postmark date of the Employee's Notice,
2 the aggrieved employee may commence a civil action pursuant to
3 California Labor Code section 2699 to recover civil penalties in addition
4 to any other penalties to which the employee may be entitled.

5 37. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
6 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
7 provision other than those listed in Section 2699.5 after the following requirements have been
8 met:

- 9 (a) The aggrieved employee or representative shall give written notice by
10 online filing to the LWDA and by certified mail to the employer of the
11 specific provisions of the California Labor Code alleged to have been
12 violated (other than those listed in Section 2699.5), including the facts
13 and theories to support the alleged violation.
- 14 (b) An aggrieved employee's notice filed with the LWDA pursuant to
15 2699.3(c) and any employer response to that notice shall be
16 accompanied by a filing fee of seventy-five dollars (\$75).
- 17 (c) The employer may cure the alleged violation within thirty-three (33)
18 calendar days of the postmark date of the notice. The employer shall
19 give written notice by certified mail within that period of time to the
20 aggrieved employee or representative and the agency if the alleged
21 violation is cured, including a description of actions taken, and no civil
22 action pursuant to Section 2699 may commence. If the alleged violation
23 is not cured within the 33-day period, the employee may commence a
24 civil action pursuant to Section 2699.

25 38. On May 9, 2023, Plaintiff provided written notice by online filing to the
26 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
27 Code alleged to have been violated, including facts and theories to support the alleged
28 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written

1 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
2 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
3 Plaintiff PAGA Case Number LWDA-CM-953904-23. A true and correct copy of Plaintiff's
4 written notice to the LWDA and Defendants dated May 9, 2023, is attached hereto as "Exhibit
5 1."

6 39. As of the filing date of this complaint, over 65 days have passed since Plaintiff
7 sent the written notice described above, and the LWDA has not responded that it intends to
8 investigate Plaintiff's claims, and Defendants have not cured the violations.

9 40. Thus, Plaintiff has satisfied the administrative prerequisites under California
10 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
11 violations of California Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a),
12 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

13 41. Labor Code section 558(a) provides "[a]ny employer or other person acting on
14 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
15 provision regulating hours and days of work in any order of the Industrial Welfare
16 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
17 dollars (\$50) for each underpaid employee for each pay period for which the employee was
18 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
19 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
20 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
21 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
22 as a private attorney general, seeks assessment and collection of civil penalties under Labor
23 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
24 California against Defendants for violations of Labor Code sections 510, 512(a), 516, and
25 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
26 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
27 from Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the
28 applicable IWC Wage Order.

42. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved Employees' rights by violating various sections of the California Labor Code as set forth above.

43. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

44. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

FIRST CAUSE OF ACTION

For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

45. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

46. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

47. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

(a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other

1 non-party Aggrieved Employees with all required overtime pay, as set
2 forth below;

3 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
4 the applicable IWC Wage Order for Defendants' failure to compensate
5 Plaintiff and other non-party Aggrieved Employees with at least
6 minimum wages for all hours worked, as set forth below;

7 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
8 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
9 and other non-party Aggrieved Employees with meal periods, as set
10 forth below;

11 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
12 applicable IWC Wage Order for Defendants' failure to authorize and
13 permit Plaintiff and other non-party Aggrieved Employees to take rest
14 periods, as set forth below;

15 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
16 applicable GIS Order, for failure to provide heat recovery periods to
17 other non-party Aggrieved Employees, as set forth below;

18 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
19 IWC Wage Order for failure to provide accurate and complete wage
20 statements to Plaintiff and other non-party Aggrieved Employees, as set
21 forth below;

22 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
23 IWC Wage Order for failure to maintain payroll records, as set forth
24 below;

25 (h) Violation of Labor Code sections 204 for failure to pay all earned wages
26 during employment, as set forth below;

27 (i) Violation of Labor Code section 201 and 202 for failure to pay all
28 earned wages upon termination, as set forth below;

- 1 (j) Violation of Labor Code section 206.5 for requiring Plaintiff and other
2 non-party Aggrieved Employees to execute a release of claims as a
3 condition to receiving wages due to them, as set forth below;
- 4 (k) Violation of Labor Code section 1198 and the applicable IWC Wage
5 Order for failure to pay reporting time pay when other non-party
6 Aggrieved Employees were put to work for less than half of their
7 regular scheduled shifts, as set forth below; and
- 8 (l) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff
9 and other non-party Aggrieved Employees for all business expenses
10 necessarily incurred, as set forth below.

11 **FAILURE TO PAY OVERTIME**

12 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

13 48. Labor Code section 1198 makes it illegal to employ an employee under
14 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
15 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
16 shall be the . . . standard conditions of labor for employees. The employment of any employee
17 . . . under conditions of labor prohibited by the order is unlawful.”

18 49. California Labor Code section 1198 and the applicable IWC Wage Order
19 provide that it is unlawful to employ persons without compensating them at a rate of pay
20 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
21 number of hours worked by the person on a daily or weekly basis.

22 50. Specifically, the applicable IWC Wage Order provides that Defendants are and
23 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
24 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
25 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
26 (40) hours in a workweek.

27 51. The applicable IWC Wage Order further provides that Defendants are and were
28 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve

(12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

52. California Labor Code section 510 codifies the right to overtime compensation at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

53. During the relevant time period, Defendants willfully failed to pay all overtime wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were not recorded.

54. First, during the relevant period, Defendants had a policy and/or practice of discouraging and impeding Plaintiff and other non-party Aggrieved Employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. In doing so, Defendants failed to implement a timekeeping system at their jobsites and do not provide employees with any mechanism, such as a time clock or electronic timekeeping system, to accurately track and record their hours worked. Instead, Defendants' policy and/or practice is to require employees, including Plaintiff and other non-party Aggrieved Employees, to fill out handwritten timesheets and to submit them to management at the end of each pay period for review and approval. Upon information and belief, Defendants' management required Plaintiff and other non-party Aggrieved Employees to record only the scheduled shift start-times and shift end-times instead of their actual hours worked to limit overtime hours employees were eligible to be compensated for. Upon information and belief, Defendants' timekeeping policies are, and

1 continue to be, unfair and have, over time, resulted in the underpayment of wages to Plaintiff
2 and other non-party Aggrieved Employees. To the extent Defendants' timekeeping policies
3 have taken away time worked that was eligible for overtime, Plaintiff and other non-party
4 Aggrieved Employees have been denied overtime pay for all hours worked.

5 55. Alternatively, Defendants had, and continue to have, a company-wide policy
6 and/or practice of failing to record hours worked by their employees. Instead, on information
7 and belief, Defendants' policy and/or practice is to simply pay employees, including Plaintiff
8 and other non-party Aggrieved Employees, for the hours they are scheduled to work. Because
9 Defendants failed to accurately record their actual hours worked, Plaintiff and other non-party
10 Aggrieved Employees were not paid for all hours worked before or after their scheduled
11 shifts.

12 56. Because Defendants discouraged overtime accrual, Plaintiff and other non-
13 party Aggrieved Employees were required to complete assigned tasks before and after their
14 scheduled shifts without being compensated for the time they worked. For example,
15 Plaintiff's supervisors would ask him to report to work about 10 minutes before his scheduled
16 shift start-time and begin preparing equipment and his assigned company vehicle for the day,
17 and loading it with materials and tools. Further, after his scheduled shift end-time, Plaintiff
18 was required to unload his company vehicle and place the equipment back into storage,
19 spending approximately 10-15 minutes, time for which he should have been paid.

20 57. Second, during the relevant period, Defendants had, and continue to have, a
21 company-wide policy and/or practice of understaffing their jobsites while assigning heavy
22 workloads, resulting in a failure to provide Plaintiff and other non-party Aggrieved Employees
23 with adequate meal period coverage. Defendants also understaffed their jobsites by adopting
24 a single-staffing model for certain sites, which exacerbated the lack of meal period coverage
25 for employees. As a result of Defendants' policy of understaffing and/or single-staffing,
26 Plaintiff and other non-party Aggrieved Employees were not always afforded uninterrupted
27 30-minute meal periods during shifts when they were entitled to receive a meal period. For
28 example, Plaintiff worked through his meal periods to keep up with the demands of work and

1 complete his assigned duties. Additionally, Defendants, on a company-wide basis, had a
2 practice of failing to adhere to a schedule for meal periods which, in conjunction with the
3 assignment of heavy workloads, further caused Plaintiff and other non-party Aggrieved
4 Employees to not be relieved of their duties for compliant meal periods. In addition, even
5 when Plaintiff and other non-party Aggrieved Employees were able to take their meal periods,
6 Defendants pressured them to eat their meals while driving between client job sites. Thus,
7 Plaintiff's and other non-party Aggrieved Employees' meal periods were missed or
8 interrupted to complete their assigned workloads, and Defendants did not pay Plaintiff and
9 other non-party Aggrieved Employees for the time they continued to perform tasks during
10 meal periods.

11 58. Third, on information and belief, because Defendants frowned upon employees
12 accruing meal and/or rest period penalties, Defendants' management pressured Plaintiff and
13 other non-party Aggrieved Employees to record compliant meal and/or rest periods on their
14 timesheets, even when they did not receive compliant meal and/or rest periods. Specifically,
15 on information and belief, Defendants' policy and/or practice is to combine one 30-minute
16 meal period and two 15-minute rest periods into a single 60-minute "lunch." As a result,
17 Plaintiff and other non-party Aggrieved Employees were required to perform their assigned
18 tasks off-the-clock (including during meal and/or rest periods) because Defendants wanted to
19 avoid paying penalties for missed, interrupted, or shortened meal and/or rest periods. Thus,
20 Defendants did not record all hours worked during meal and/or rest periods and Plaintiff and
21 other non-party Aggrieved Employees performed work during meal and/or rest periods for
22 which they were not paid.

23 59. Defendants knew or should have known that as a result of these company-wide
24 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
25 their assigned duties off-the-clock before and after their shifts and during meal and/or rest
26 periods, and were suffered or permitted to perform work for which they were not paid.
27 Because Plaintiff and other non-party Aggrieved Employees worked shifts of eight (8) hours
28 or more a day or forty (40) hours a week or more, some of this off-the-clock work qualified

1 for overtime premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees
2 were not paid overtime wages for all of the overtime hours they actually worked.

3 60. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
4 the balance of overtime compensation as required by California law, violates the provisions of
5 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
6 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
7 558 and/or 2699(a), (f), and (g).

8 **FAILURE TO PAY MINIMUM WAGES**

9 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

10 61. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
11 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment
12 of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in
13 IWC Wage Order No. 5-2001 as "the time during which an employee is subject to the control
14 of an employer, and includes all the time the employee is suffered or permitted to work,
15 whether or not required to do so." Cal. Code Regs. tit. 8, § 11050(2)(K) (defining "Hours
16 Worked").

17 62. As stated, during the relevant time period, Defendants failed to provide
18 Plaintiff and other non-party Aggrieved Employees with an appropriate timekeeping
19 mechanism, such as a time clock or electronic timekeeping system, to accurately track and
20 record their hours worked. Instead, Defendants maintained a company-wide policy and/or
21 practice of limiting overtime accrual and pressuring employees to record scheduled hours on
22 their handwritten timesheets rather than hours actually worked, thereby shorting Plaintiff and
23 other non-party Aggrieved Employees for work performed outside their scheduled shifts. As
24 set forth above, pursuant to this policy, Plaintiff and other non-party Aggrieved Employees
25 performed various work-related tasks while off-the-clock before and after their shifts,
26 including preparing, loading, and unloading their assigned company vehicles, preparing
27 equipment, and storing away equipment. Alternatively, Defendants had a company-wide
28 policy and/or practice of only paying Plaintiff and other non-party Aggrieved Employees for

1 their scheduled shifts, rather than their actual hours worked, because Defendants failed to
2 track hours worked outside of their scheduled shifts.

3 63. As also stated, due to Defendants' policies and/or practices of understaffing
4 and/or single-staffing their jobsites while assigning heavy workloads, failing to adhere to a
5 schedule for meal periods, and requiring employees to take their meal periods while driving,
6 Plaintiff and other non-party Aggrieved Employees were impeded from taking all
7 uninterrupted meal periods to which they were entitled and were required to work off-the-
8 clock during meal periods, have their meal periods interrupted, and/or were otherwise not
9 relieved of all duties during unpaid meal periods.

10 64. Moreover, as stated, in order to prevent employees from accruing meal and/or
11 rest period penalties, upon information and belief, Defendants' management pressured
12 employees to record on their timesheets that they took meal and/or rest periods regardless of
13 whether they had received compliant meal and/or rest periods or not, in order to strictly limit
14 penalties that would need to be paid by Defendants. Further, as stated, on information and
15 belief, due to Defendants' company-wide policy and/or practice of combining 30-minute meal
16 periods and two (2) 15-minute rest periods into 60-minute "lunches," Plaintiff and other non-
17 party Aggrieved Employees were not paid for rest periods that were to be counted as hours
18 worked. Thus, Defendants systematically have failed to pay Plaintiff and other non-party
19 Aggrieved Employees for actual hours worked during unpaid meal and/or rest periods because
20 these hours were not correctly recorded.

21 65. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
22 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
23 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
24 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
25 1194, 1197, and 1198.

26 66. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
27 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
28 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil

penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PROVIDE AND RECORD MEAL PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198

67. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and non-party Aggrieved Employees' employment by Defendants.

68. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

69. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

70. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

71. As stated, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing their jobsites, resulting in a failure to provide Plaintiff and other non-party Aggrieved Employees with adequate meal period coverage. Defendants also understaffed their jobsites by adopting a single-staffing model for certain sites, which exacerbated the lack of meal period coverage for employees and prevented Plaintiff and other

1 non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to which
2 they were entitled. Further, as stated, Defendants had company-wide practices and/or policies
3 of failing to adhere to a schedule for meal periods and pressuring employees to eat their meals
4 while driving between customers' sites, which further caused Plaintiff and other non-party
5 Aggrieved Employees to not be relieved of their duties for compliant meal periods. Thus, as a
6 result of Defendants' policies and/or practices, Plaintiff and other non-party Aggrieved
7 Employees were forced to work in excess of five (5) hours before taking a meal period, had
8 their meal periods interrupted, and/or had to forgo their meal periods altogether. For example,
9 Plaintiff worked through some of his meal periods, in order to complete his jobs within
10 Defendants' management's expectations.

11 72. Further, as set forth above, on information and belief, because Defendants
12 frowned upon employees accruing meal period penalties, Defendants' management pressured
13 Plaintiff and other non-party Aggrieved Employees to record that they took meal periods on
14 their timesheets regardless of whether they had received a compliant meal period or not, in
15 order to strictly limit meal penalties that would need to be paid by Defendants.

16 73. Moreover, Defendants did not provide other non-party Aggrieved Employees
17 with second 30-minute meal periods on days that they worked in excess of ten (10) hours in
18 one day. Plaintiff and other non-party Aggrieved Employees did not sign valid meal period
19 waivers on days that they were entitled to meal periods and were not relieved of all duties.

20 74. At all times herein mentioned, Defendants knew or should have known that, as
21 a result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented
22 from being relieved of all duties and required to perform some of their assigned duties during
23 meal periods. Defendants further knew or should have known that Defendants did not pay
24 Plaintiff and other non-party Aggrieved Employees meal period premiums when meal periods
25 were late, interrupted, shortened, or missed.

26 75. Moreover, Defendants engaged in a company-wide practice and/or policy of
27 not paying all meal period premiums owed when compliant meal periods are not provided.
28 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees

1 have not received premium pay for all missed, late, and interrupted meal periods.

2 76. Defendants' conduct violates the applicable IWC Wage Order, and California
3 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
4 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
5 558 and/or 2699(a), (f), and (g).

6 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

7 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

8 77. At all relevant times herein set forth, the applicable IWC Wage Order and
9 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
10 non-party Aggrieved Employees' employment by Defendants.

11 78. At all relevant times, the applicable IWC Wage Order provides that "[e]very
12 employer shall authorize and permit all employees to take rest periods, which insofar as
13 practicable shall be in the middle of each work period" and that the "rest period time shall be
14 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
15 hours or major fraction thereof" unless the total daily work time is less than three and one-half
16 (3 ½) hours.

17 79. At all relevant times, California Labor Code section 226.7 provides that no
18 employer shall require an employee to work during any rest period mandated by an applicable
19 order of the California IWC. To comply with its obligation to authorize and permit rest
20 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
21 employer must "relinquish any control over how employees spend their break time, and
22 relieve their employees of all duties—including the obligation that an employee remain on
23 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
24 *Inc.*, 2 Cal. 5th 257, 273 (2016). California Labor Code section 226.7 and the applicable IWC
25 Wage Order also provide that rest periods shall be counted as hours worked for which there
26 shall be no deduction from wages.

27 80. Pursuant to the applicable IWC Wage Order and California Labor Code section
28 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from

1 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
2 required rest period was not authorized and permitted.

3 81. During the relevant time period, Defendants regularly failed to authorize and
4 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
5 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
6 Defendants' company-wide scheduling policies and practices, while simultaneously assigning
7 heavy workloads and understaffing their jobsites, prevented Plaintiff and other non-party
8 Aggrieved Employees from being able to take rest periods. On information and belief, as set
9 forth above, Defendants' management erroneously informed Plaintiff and other non-party
10 Aggrieved Employees that they were entitled to two (2) 15-minute rest periods per shift,
11 which were to be combined with their 30-minute meal period, for a 60-minute "lunch" per
12 shift. Thus, Defendants also wholly failed to schedule compliant, timely rest periods, which,
13 coupled with Defendants' failure to provide adequate rest period coverage, further led to
14 Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take
15 compliant rest periods.

16 82. Furthermore, Defendants maintained and implemented a company-wide on-
17 premises rest period policy, which mandated that Plaintiff and/or other non-party Aggrieved
18 Employees remain on the premises during their rest periods. Because Plaintiff and/or other
19 non-party Aggrieved Employees were restricted from leaving Defendants' premises during
20 rest periods, they were denied the ability to use their rest periods freely for their own
21 purposes, such as running personal errands. Thus, Defendants effectively maintained control
22 over Plaintiff and/or other non-party Aggrieved Employees during rest periods.

23 83. As a result of Defendants' practices and policies, Plaintiff and other non-party
24 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
25 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
26 were entitled. For example, Plaintiff had to forego his rest periods altogether, due to
27 Defendants' policy of combining rest periods with meal periods. Moreover, as stated,
28 Defendants unlawfully deducted rest periods from Plaintiff's and other non-party Aggrieved

1 Employees' wages.

2 84. Defendants have also engaged in a company-wide practice and/or policy of not
3 paying all rest period premiums owed when compliant rest periods are not authorized and
4 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
5 Employees have not received premium pay for all missed rest periods. Accordingly,
6 Defendants failed to authorize and permit all compliant rest periods and failed to pay the full
7 rest period premiums due.

8 85. Defendants' conduct violates the applicable IWC Wage Order and California
9 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
10 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
11 558 and/or 2699(a), (f), and (g).

12 **FAILURE TO PROVIDE HEAT RECOVERY PERIODS**
13 **VIOLATION OF LABOR CODE §§ 226.7, 516, AND 1198, AND CALIFORNIA**
14 **CODE OF REGULATIONS TITLE 8, SECTION 3395**

15 86. At all relevant times herein set forth, the applicable General Industry Safety
16 Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's
17 and other non-party Aggrieved Employees' employment by Defendants.

18 87. At all relevant times, California Labor Code section 226.7(a) defines "recovery
19 period" to mean a cooldown period afforded an employee to prevent heat illness. California
20 Labor Code section 226.7 provides that no employer shall require an employee to work during
21 any recovery period mandated by an applicable order of the California IWC, the Occupational
22 Safety and Health Standards Board, or the Division of Occupational Safety and Health. The
23 applicable GIS Order provides that "[e]mployees shall have access to potable drinking water
24 . . . located as close as practicable to the areas where employees are working." Cal. Code
25 Regs. tit. 8, § 3395(c). The applicable GIS Order further provides that "[w]hen the outdoor
26 temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and
27 maintain one or more areas with shade at all times while employees are present that are either
28 open to the air or provided with ventilation or cooling." Cal. Code Regs. tit. 8, § 3395(d)(1).

Furthermore, “[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other.” *Id.* “Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.” *Id.*

88. During the relevant time period, Defendants violated California Labor Code section 226.7 and California Code of Regulations, Title 8, sections 3395(c) and (d), because Defendants failed to provide other non-party Aggrieved Employees with recovery periods. For example, on information and belief, other non-party Aggrieved Employees worked in high temperatures, were not provided with drinking water close to their work areas, were not provided an adequate shaded area for recovery near their work areas, and were not permitted to take recovery periods in a shaded area while working at various job sites due to a heavy workload and Defendants’ expectations.

89. Defendants also have engaged in a company-wide practice and/or policy of not paying all recovery period premiums owed when compliant recovery periods are not provided. Because of this practice and/or policy, other non-party Aggrieved Employees have not received premium pay for missed recovery periods.

90. Defendants’ conduct violates the applicable GIS Order and California Labor Code sections 226.7, 516, and 1198. Other non-party Aggrieved Employees are therefore entitled to civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS
VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198

91. At all relevant times herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

1 92. During the relevant time period, Defendants have knowingly and intentionally
2 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
3 inaccurate wage statements. For example, Defendants issued uniform wage statements to
4 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
5 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
6 the pay period, including rates of pay for overtime wages, and the corresponding number of
7 hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
8 226(a)(2), 226(a)(5), and 226(a)(9).

9 93. Because Defendants did not record the time Plaintiff and other non-party
10 Aggrieved Employees spent working off-the-clock, deducted time from their records for meal
11 periods that were interrupted and/or missed (and therefore time for which they should have
12 been paid), and/or deducted time for rest periods that should have been paid, Defendants did
13 not list the correct amount of gross wages and net wages earned by Plaintiff and other non-
14 party Aggrieved Employees in compliance with section 226(a)(1) and section 226(a)(5),
15 respectively. For the same reason, Defendants failed to accurately list the total number of
16 hours worked by Plaintiff and other non-party Aggrieved Employees, in violation of section
17 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period
18 and the corresponding accurate number of hours worked at each hourly rate, in violation of
19 section 226(a)(9).

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

28 95. California Labor Code section 1174(d) provides that “[e]very person employing

labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

96. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed, on a company-wide basis, to keep accurate records of work period and meal period start and end times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198. Furthermore, in light of Defendants’ failure to provide other non-party Aggrieved Employees with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

97. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d), and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

1 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

2 **VIOLATION OF LABOR CODE SECTION 204**

3 98. At all relevant times herein set forth, California Labor Code section 204
4 requires that all wages earned by any person in any employment between the 1st and the 15th
5 days, inclusive, of any calendar month, other than those wages due upon termination of an
6 employee, are due and payable between the 16th and the 26th day of the month during which
7 the labor was performed. Labor Code section 204 further provides that all wages earned by
8 any person in any employment between the 16th and the last day, inclusive, of any calendar
9 month, other than those wages due upon termination of an employee, are due and payable
10 between the 1st and the 10th day of the following month.

11 99. At all relevant times herein, California Labor Code section 204 also requires
12 that all wages earned for labor in excess of the normal work period shall be paid no later than
13 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
14 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
15 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
16 more than seven (7) calendar days following the close of the payroll period.

17 100. During the relevant time period, Defendants willfully failed to pay Plaintiff and
18 other non-party Aggrieved Employees all wages due to them within any time period specified
19 by California Labor Code section 204 including, but not limited to, overtime wages; minimum
20 wages; meal, rest, and recovery period premiums; and/or reporting time pay.

21 101. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
22 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

23 **FAILURE TO PAY WAGES UPON TERMINATION**

24 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

25 102. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
26 that if an employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
28 her employment, his or her wages shall become due and payable not later than seventy-two

(72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

21. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved Employees who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

103. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and (g).

**REQUIRING RELEASE OF CLAIMS FOR WAGES DUE
VIOLATION OF LABOR CODE SECTION 206.5**

104. At all relevant times herein set forth, California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

105. During the relevant time period, on information and belief, Defendants required Plaintiff and other non-party Aggrieved Employees to release their claims for unpaid wages as a condition to receiving their paychecks. For example, on information and belief, Defendants required Plaintiff and other non-party Aggrieved Employees to sign verifications on their timesheets that their timesheets were accurate and correct. Defendants compelled Plaintiff and other non-party Aggrieved Employees to sign these false verifications when they, in fact, had not received all earned and unpaid wages, including overtime wages; minimum wages;

1 meal, rest, and recovery period premiums; and/or reporting time pay. Defendants' policy and
2 practice of requiring Plaintiff and other non-party Aggrieved Employees to release their
3 claims for unpaid wages as a condition to receiving their paychecks is in violation of
4 California Labor Code section 206.5.

5 106. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
6 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

7 **FAILURE TO PAY REPORTING TIME PAY**

8 **VIOLATION OF LABOR CODE SECTION 1198**

9 107. California Labor Code section 1198 makes it illegal to employ an employee
10 under conditions of labor that are prohibited by the applicable IWC Wage Order. California
11 Labor Code section 1198 requires that ". . . the standard conditions of labor fixed by the
12 commission shall be the . . . standard conditions of labor for employees. The employment of
13 any employee . . . under conditions of labor prohibited by the order is unlawful."

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

24 109. On information and belief, Defendants violated California Labor Code section
25 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because Defendants
26 failed to pay other non-party Aggrieved Employees reporting time pay when they reported to
27 work for their usual or scheduled shifts, but were put to work for less than half of the usual or
28 scheduled shift. For example, on occasions when employees reported to work for their

1 scheduled shifts, Defendants' management sent employees home within the first half of their
2 scheduled shifts due to weather conditions. Although other non-party Aggrieved Employees
3 reported to work based on the schedule that Defendants provided to them, Defendants would
4 send them home before they had worked at least half of their scheduled shifts without giving
5 them reporting time pay.

6 110. Accordingly, other non-party Aggrieved Employees were not properly
7 compensated with reporting time pay in violation of California Labor Code section 1198 and
8 California Code of Regulations, Title 8, section 11050(5)(A). Other non-party Aggrieved
9 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
10 2699(a), (f), and (g).

11 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

12 **VIOLATION OF LABOR CODE SECTION 2802**

13 111. At all times herein set forth, California Labor Code section 2802 provides that
14 an employer must reimburse employees for all necessary expenditures and losses incurred by
15 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
16 to prevent employers from passing off their cost of doing business and operating expenses on
17 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
18 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen
19 tools or equipment are required by the employer or are necessary to the performance of a job,
20 such tools and equipment shall be provided and maintained by the employer, except that an
21 employee whose wages are at least two (2) times the minimum wage provided herein may be
22 required to provide and maintain hand tools and equipment customarily required by the trade
23 or craft." IWC Wage Order No. 5-2001 further provides that: "[w]hen uniforms are required
24 by the employer to be worn by the employee as a condition of employment, such uniforms
25 shall be provided and maintained by the employer."

26 112. First, during the relevant time period, Plaintiff and other non-party Aggrieved
27 Employees were required to use their personal mobile devices, including, but not limited to,
28 cellular phones, and/or mobile data to carry out their job duties, but Defendants failed to

1 reimburse them for the costs of their work-related mobile device expenses. For example,
2 Plaintiff was required to use his personal cellular phone to converse with his supervisors and
3 coworkers about work-related matters. Although Defendants required Plaintiff and other non-
4 party Aggrieved Employees to utilize their personal mobile devices and/or mobile data to
5 carry out their work-related responsibilities, Defendants failed to reimburse them for these
6 costs.

7 113. Second, during the relevant time period, Defendants, on a company-wide basis,
8 required that Plaintiff and other non-party Aggrieved Employees use their own personal
9 vehicles to run company errands. For example, on a few occasions during the relevant time
10 period, Plaintiff was required to use his personal vehicle and drive to a Home Depot store to
11 pick up supplies. Additionally, during the relevant time period, Plaintiff was required to use
12 his personal vehicle to drive between different jobsites. On average, Plaintiff estimates
13 driving approximately 20 miles per month to run company errands in his personal vehicle.
14 Although Defendants required Plaintiff and other non-party Aggrieved Employees to utilize
15 their personal vehicles to carry out their work-related responsibilities, Defendants failed to
16 fully reimburse them for their mileage or travel expenses.

17 114. Third, during the relevant time period, Defendants required Plaintiff and other
18 non-party Aggrieved Employees to wear uniforms bearing the “Liberty Landscaping”
19 company logo, including a long sleeve shirt. Due to the nature of landscaping work,
20 Plaintiff’s uniform items would become dusty, dirty, be exposed to harsh chemicals, and/or
21 acquire an unpleasant odor such that he was unable to mix these clothes in with other laundry.
22 As a result, he had to wash his uniform items separately from his regular clothing, thus
23 incurring additional utility and laundry expenses for the upkeep of his uniforms. Thus,
24 Defendants failed to maintain uniforms they required Plaintiff and other non-party Aggrieved
25 Employees to wear during their shifts and forced them to incur the cost of maintaining
26 employee uniforms.

27 115. Defendants could have provided Plaintiff and other non-party Aggrieved
28 Employees with the actual tools for use on the job, such as company mobile devices and

1 vehicles, and access to laundering services. Or, Defendants could have reimbursed employees
2 for the costs of their mobile device usage, mileage and travel, and laundering expenses or
3 provided a uniform maintenance allowance. Instead, Defendants passed these operating costs
4 off onto Plaintiff and other non-party Aggrieved Employees. At all relevant times, Plaintiff
5 did not earn at least two (2) times the minimum wage.

6 116. Defendants' company-wide policy and/or practice of not reimbursing
7 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
8 and other non-party Aggrieved Employees violates California Labor Code section 2802.
9 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
10 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

11 **REQUEST FOR JURY TRIAL**

12 Plaintiff requests a trial by jury.

13 **PRAYER FOR RELIEF**

14 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
15 judgment against Defendants, jointly and severally, as follows:

16 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
17 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different
18 amount.

19 **As to the First Cause of Action**

20 2. That the Court declare, adjudge and decree that Defendants violated the
21 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
22 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
23 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
24 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
25 permit all rest periods); 226.7, 516, and 1198 (by failing to provide all heat recovery periods);
26 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain
27 accurate payroll records); 204 (by failing to timely pay all earned wages during employment);
28 201 and 202 (by failing to timely pay all earned wages upon termination); 206.5 (by requiring

1 employees to release claims as a condition to receive paychecks); 1198 and the applicable
2 IWC Wage Order (by failing to provide reporting time pay); and 2802 (by failing to reimburse
3 business expenses);

4 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
5 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
6 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

7 4. For attorneys' fees and costs pursuant to California Labor Code section
8 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
9 Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
10 1194, 1197, 1198, and 2802;

11 5. For pre-judgment and post-judgment interest as provided by law; and

12 6. For such other and further relief as the Court may deem equitable and
13 appropriate.

14
15 Dated: July 14, 2023

Respectfully submitted,

Capstone Law APC

16
17
18 By: 

Orlando Villalba

Helga Hakimi

Joseph D. Parsons

Attorneys for Plaintiff Marcos Gonzalez
Sostenes

EXHIBIT “1”



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May 9, 2023

VIA ONLINE SUBMISSION

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

Subject: *Marcos Gonzalez Sostenes v. Liberty Landscaping, Inc.*

Dear PAGA Administrator:

This office represents Marcos Gonzalez Sostenes in connection with his claims under the California Labor Code. Mr. Gonzalez Sostenes was an employee of LIBERTY LANDSCAPING, INC. ("LIBERTY").

The employer may be contacted directly at the address below:

LIBERTY LANDSCAPING, INC.
5212 EL RIVINO ROAD
RIVERSIDE, CA 92509

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

LIBERTY employed Mr. Gonzalez Sostenes as an hourly paid, non-exempt Laborer and Groundskeeper from approximately April 2019 to March 2023. During his employment, Mr. Gonzalez Sostenes typically worked eight (8) or more hours per day and five (5) days per week. By the end of his employment, Mr. Gonzalez Sostenes was compensated approximately \$16.50 per hour. His job duties included, without limitation, preparing company vehicle for the day, traveling to jobsites to maintain landscaping, and trimming and cutting vegetation.

LIBERTY committed one or more of the following Labor Code violations against Mr. Gonzalez Sostenes, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

LIBERTY’s Company-Wide and Uniform Payroll and HR Practices

LIBERTY LANDSCAPING, INC. is a California corporation that provides landscape maintenance, development, and tree care services in the Southern California region. Upon information and belief, LIBERTY maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Riverside, California, for all non-exempt, hourly paid employees working for LIBERTY in California, including Mr. Gonzalez Sostenes and other aggrieved employees. At all relevant times, LIBERTY issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Gonzalez Sostenes and other aggrieved employees, regardless of their location or position.

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

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

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

LIBERTY willfully failed to pay all overtime wages owed to Mr. Gonzalez Sostenes and other aggrieved employees. During the relevant time period, Mr. Gonzalez Sostenes and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8)

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

hours in a day, in excess of ten (10) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, LIBERTY had a policy and/or practice of discouraging and impeding Mr. Gonzalez Sostenes and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. In doing so, LIBERTY failed to implement a timekeeping system at its jobsites and do not provide employees with any mechanism, such as a time clock or electronic timekeeping system, to accurately track and record their hours worked. Instead, LIBERTY's policy and/or practice is to require employees, including Mr. Gonzalez Sostenes and other aggrieved employees, to fill out handwritten timesheets and to submit them to management at the end of each pay period for review and approval. Upon information and belief, LIBERTY's management required Mr. Gonzalez Sostenes and other aggrieved employees to record only the scheduled shift start-times and shift end-times instead of their actual hours worked to limit overtime hours employees were eligible to be compensated for. Upon information and belief, LIBERTY's timekeeping policies are, and continue to be, unfair and have, over time, resulted in the underpayment of wages to Mr. Gonzalez Sostenes and other aggrieved employees. To the extent LIBERTY's timekeeping policies have taken away time worked that was eligible for overtime, Mr. Gonzalez Sostenes and other aggrieved employees have been denied overtime pay for all hours worked.

Alternatively, LIBERTY had, and continues to have, a company-wide policy and/or practice of failing to record hours worked by its employees. Instead, on information and belief, LIBERTY's policy and/or practice is to simply pay employees, including Mr. Gonzalez Sostenes and other aggrieved employees, for the hours they are scheduled to work. Because LIBERTY failed to accurately record their actual hours worked, Mr. Gonzalez Sostenes and other aggrieved employees were not paid for all hours worked before or after their scheduled shifts.

Because LIBERTY discouraged overtime accrual, Mr. Gonzalez Sostenes and other aggrieved employees were required to complete assigned tasks before and after their scheduled shifts without being compensated for the time they worked. For example, Mr. Gonzalez Sostenes's supervisors would ask him to report to work about 10 minutes before his scheduled shift start-time and begin preparing equipment and his assigned company vehicle for the day, and loading it with materials and tools. Further, after his scheduled shift end-time, Mr. Gonzalez Sostenes was required to unload his company vehicle and place the equipment back into storage, spending approximately 10-15 minutes, time for which he should have been paid.

Second, during the relevant period, LIBERTY had, and continues to have, a company-wide policy and/or practice of understaffing its jobsites while assigning heavy workloads, resulting in a failure to provide Mr. Gonzalez Sostenes and other aggrieved employees with adequate meal period coverage. LIBERTY also understaffed its jobsites by adopting a single-staffing model for certain sites, which exacerbated the lack of meal period coverage for employees. As a result of LIBERTY's policy of understaffing and/or single-staffing, Mr. Gonzalez Sostenes and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Gonzalez Sostenes worked through his meal periods to keep up with the demands of work and complete his assigned duties. Additionally, LIBERTY, on a company-wide basis, had a practice of failing to adhere to a schedule for meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Gonzalez Sostenes and other aggrieved employees to not be relieved of their duties for compliant meal periods. In addition, even when Mr. Gonzalez Sostenes and other aggrieved employees were able to take their meal

periods, LIBERTY pressured them to eat their meals while driving between client job sites. Thus, Mr. Gonzalez Sostenes's and other aggrieved employees' meal periods were missed or interrupted to complete their assigned workloads, and LIBERTY did not pay Mr. Gonzalez Sostenes and other aggrieved employees for the time they continued to perform tasks during meal periods.

Third, on information and belief, because LIBERTY frowned upon employees accruing meal and/or rest period penalties, LIBERTY's management pressured Mr. Gonzalez Sostenes and other aggrieved employees to record compliant meal and/or rest periods on their timesheets, even when they did not receive compliant meal and/or rest periods. Specifically, on information and belief, LIBERTY's policy and/or practice is to combine one 30-minute meal period and two 15-minute rest periods into a single 60 minute "lunch." As a result, Mr. Gonzalez Sostenes and other aggrieved employees were required to perform their assigned tasks off-the-clock (including during meal and/or rest periods) because Defendants wanted to avoid paying penalties for missed, interrupted, or shortened meal and/or rest periods. Thus, LIBERTY did not record all hours worked during meal and/or rest periods and Mr. Gonzalez Sostenes and other aggrieved employees performed work during meal and/or rest periods for which they were not paid.

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

Furthermore, LIBERTY did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, LIBERTY paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, LIBERTY failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, LIBERTY failed to pay all overtime wages by paying a lower overtime rate than required.

LIBERTY's failure to pay Mr. Gonzalez Sostenes and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Gonzalez Sostenes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the

employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

As stated, during the relevant time period, LIBERTY failed to provide Mr. Gonzalez Sostenes and other aggrieved employees with an appropriate timekeeping mechanism, such as a time clock or electronic timekeeping system, to accurately track and record their hours worked. Instead, LIBERTY maintained a company-wide policy and/or practice of limiting overtime accrual and pressuring employees to record scheduled hours rather than hours actually worked, thereby shorting Mr. Gonzalez Sostenes and other aggrieved employees for work performed outside their scheduled shifts. As set forth above, pursuant to this policy, Mr. Gonzalez Sostenes and other aggrieved employees performed various work-related tasks while off-the-clock before and after their shifts, including preparing, loading, and unloading their assigned company vehicles, preparing equipment, and storing away equipment. Alternatively, LIBERTY had a company-wide policy and/or practice of only paying Mr. Gonzalez Sostenes and other aggrieved employees for their scheduled shifts, rather than their actual hours worked, because LIBERTY failed to track hours worked outside of their scheduled shifts.

As also stated, due to LIBERTY’s policies and/or practices of understaffing and/or single-staffing its jobsites while assigning heavy workloads, failing to adhere to a schedule for meal periods, and requiring employees to take their meal periods while driving, Mr. Gonzalez Sostenes and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

Moreover, as stated, in order to prevent employees from accruing meal and/or rest period penalties, upon information and belief, LIBERTY’s management pressured employees to record on their timesheets that they took meal and/or rest periods regardless of whether they had received compliant meal and/or rest periods or not, in order to strictly limit penalties that would need to be paid by LIBERTY. Further, as stated, on information and belief, due to LIBERTY’s company-wide policy and/or practice of combining 30-minute meal periods and two (2) 15-minute rest periods into 60-minute “lunches,” Mr. Gonzalez Sostenes and other aggrieved employees were not paid for rest periods that were to be counted as hours worked. Thus, LIBERTY systematically has failed to pay Mr. Gonzalez Sostenes and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not correctly recorded.

Thus, LIBERTY did not pay at least minimum wages for all hours worked by Mr. Gonzalez Sostenes and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, LIBERTY did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, LIBERTY regularly failed to pay at least minimum wages to Mr. Gonzalez Sostenes and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198. Mr. Gonzalez Sostenes and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

As stated, LIBERTY had, and continues to have, a company-wide policy and/or practice of understaffing its jobsites, resulting in a failure to provide Mr. Gonzalez Sostenes and other aggrieved employees with adequate meal period coverage. LIBERTY also understaffed its jobsites by adopting a single-staffing model for certain sites, which exacerbated the lack of meal period coverage for employees and prevented Mr. Gonzalez Sostenes and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, LIBERTY had company-wide practices and/or policies of failing to adhere to a schedule for meal periods and pressuring employees to eat their meals while driving between customers' sites, which further caused Mr. Gonzalez Sostenes and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Gonzalez Sostenes worked through some of his meal periods, in order to complete his jobs within LIBERTY's management's expectations. Thus, as a result of LIBERTY's policies and/or practices, Mr. Gonzalez Sostenes and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether.

Further, as set forth above, on information and belief, because LIBERTY frowned upon employees accruing meal period penalties, LIBERTY's management pressured Mr. Gonzalez Sostenes and other aggrieved employees to record that they took meal periods on their timesheets regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by LIBERTY.

Moreover, LIBERTY did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Gonzalez Sostenes and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, LIBERTY knew or should have known that, as a result of these policies, Mr. Gonzalez Sostenes and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. LIBERTY further knew or should have known that LIBERTY did not pay Mr. Gonzalez Sostenes and other

aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, or missed.

Moreover, LIBERTY engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Gonzalez Sostenes and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that LIBERTY did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, LIBERTY did not pay other aggrieved employees at the correct rate of pay for premiums because LIBERTY systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, LIBERTY failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Gonzalez Sostenes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016). California Labor Code section 226.7 and the applicable IWC Wage Order also provide that rest periods shall be counted as hours worked for which there shall be no deduction from wages.

During the relevant time period, LIBERTY regularly failed to authorize and permit Mr. Gonzalez Sostenes and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, LIBERTY's company-wide scheduling policies and practices, while simultaneously assigning heavy workloads and understaffing its jobsites, prevented Mr. Gonzalez Sostenes and other aggrieved employees from being able to take rest periods. On information and belief, as set forth above, LIBERTY's management erroneously informed Mr. Gonzalez Sostenes and other aggrieved employees that they were entitled to two (2) 15-minute rest periods per shift, which were to be combined with their 30-minute meal period, for a 60-minute "lunch" per shift. Thus, LIBERTY also wholly failed to schedule compliant, timely rest periods, which, coupled with LIBERTY's failure to provide adequate rest period coverage, further

led to Mr. Gonzalez Sostenes and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, LIBERTY maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Gonzalez Sostenes and/or other aggrieved employees remain on the premises during their rest periods. Because Mr. Gonzalez Sostenes and/or other aggrieved employees were restricted from leaving LIBERTY's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, LIBERTY effectively maintained control over Mr. Gonzalez Sostenes and/or other aggrieved employees during rest periods.

As a result of LIBERTY's practices and policies, Mr. Gonzalez Sostenes and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Gonzalez Sostenes had to forego his rest periods altogether, due to LIBERTY's policy of combining rest periods with meal periods. Moreover, as stated, LIBERTY unlawfully deducted rest periods from Mr. Gonzalez Sostenes's and other aggrieved employees' wages.

LIBERTY has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Gonzalez Sostenes and other aggrieved employees have not received premium pay for missed rest periods. Alternatively, to the extent that LIBERTY did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, LIBERTY did not pay other aggrieved employees at the correct rate of pay for premiums because LIBERTY failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, LIBERTY failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Gonzalez Sostenes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 & California Code of Regulations Title 8, Section 3395 – Failure to Provide Heat Recovery Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide recovery periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest or recovery period is not provided. California Labor Code section 226.7(a) defines "recovery period" to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety ("GIS") Order provides that "[e]mployees shall have access to potable drinking water . . . located as close as practicable to the areas where employees are working." Cal. Code of Reg., Title 8, § 3395(c). The applicable GIS Order further provides that "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code of Reg., Title 8, § 3395(d)(1). Furthermore, "[t]he amount of shade present shall be at least

enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other.” *Id.* “Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.” *Id.*

During the relevant time period, LIBERTY violated California Labor Code section 226.7 and California Code of Regulations, Title 8, sections 3395(c) and (d), because LIBERTY failed to provide other aggrieved employees with recovery periods. For example, other aggrieved employees worked in high temperatures, were not provided with drinking water close to their work areas, were not provided an adequate shaded area for recovery near their work areas, and were not permitted to take recovery periods in a shaded area while working at various job sites due to a heavy workload and LIBERTY’s expectations.

LIBERTY also has engaged in a company-wide practice and/or policy of not paying all recovery period premiums owed when compliant recovery periods are not provided. Because of this practice and/or policy, other aggrieved employees have not received premium pay for missed recovery periods. Alternatively, to the extent that LIBERTY did pay other aggrieved employees for missed recovery periods, LIBERTY did not pay other aggrieved employees at the correct rate of pay, because LIBERTY systematically failed to include all compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, LIBERTY failed to authorize and permit all recovery periods in violation of California Labor Code sections 226.7, 516, and 1198, and California Code of Regulations, Title 8, section 3395. Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

During the relevant time period, LIBERTY has knowingly and intentionally provided Mr. Gonzalez Sostenes and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, LIBERTY issued uniform wage statements to Mr. Gonzalez Sostenes and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal, rest, and recovery period premiums, and the corresponding number of

hours worked at each hourly rate. Specifically, LIBERTY violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

Additionally, because LIBERTY did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal, rest, and recovery period premiums, LIBERTY did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, LIBERTY failed to list the correct amount of net wages in violation of section 226(a)(5). LIBERTY also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, and/or meal and rest premiums, in violation of section 226(a)(9).

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

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." At all relevant times, and in violation of Labor Code section 1174(d), LIBERTY willfully failed to maintain accurate payroll records for Mr. Gonzalez Sostenes and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, LIBERTY engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Gonzalez Sostenes and other

aggrieved employees, in violation of section 1198. Furthermore, in light of LIBERTY's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, LIBERTY kept no records of meal start and end times for second meal periods.

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

Mr. Gonzalez Sostenes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

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

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

During the relevant time period, LIBERTY willfully failed to pay Mr. Gonzalez Sostenes and other aggrieved employees all wages due including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay, within the time periods specified by California Labor Code section 204.

Mr. Gonzalez Sostenes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

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

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

LIBERTY willfully failed to pay Mr. Gonzalez Sostenes and other aggrieved employees who are no longer employed by LIBERTY the earned and unpaid wages set forth above, including but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving LIBERTY's employ.

Mr. Gonzalez Sostenes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 206.5 – Release of Claims for Wages Due

California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

During the relevant time period, on information and belief, LIBERTY required Mr. Gonzalez Sostenes and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks. For example, on information and belief, LIBERTY required Mr. Gonzalez Sostenes and other aggrieved employees to sign verifications on their timesheets, that their timesheets were accurate and correct. LIBERTY compelled Mr. Gonzalez Sostenes and other aggrieved employees to sign these false verifications when they, in fact, had not received all earned and unpaid wages, including overtime wages; minimum wages; and/or meal, rest, and recovery period premiums. LIBERTY's policy and practice of requiring Mr. Gonzalez Sostenes and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks is in violation of California Labor Code section 206.5.

Mr. Gonzalez Sostenes and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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

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

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

of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

On information and belief, LIBERTY violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because LIBERTY failed to pay other aggrieved employees reporting time pay when they reported to work for their usual or scheduled shifts, but were put to work for less than half of the usual or scheduled shift. For example, on occasions when employees reported to work for their scheduled shifts, LIBERTY’s management sent employees home within the first half of their scheduled shifts due to weather conditions. Although other aggrieved employees reported to work based on the schedule that LIBERTY provided to them, LIBERTY would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A).

Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, Mr. Gonzalez Sostenes and other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but LIBERTY failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Gonzalez Sostenes was required to use his personal cellular phone to converse with his supervisors and coworkers about work-related matters. Although LIBERTY required Mr. Gonzalez Sostenes and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, LIBERTY failed to reimburse them for these costs.

Second, during the relevant time period, LIBERTY, on a company-wide basis, required that Mr. Gonzalez Sostenes and other aggrieved employees use their own personal vehicles to run company errands. For example, on a few occasions during the relevant time period, Mr. Gonzalez Sostenes was required to use his personal vehicle and drive to a Home Depot to pick up supplies. Additionally, during the relevant time period, Mr. Gonzalez Sostenes was required to use his personal vehicle to drive between different jobsites. On average, Mr. Gonzalez Sostenes estimates driving approximately 20 miles per month to run company errands in his personal vehicle. Although

LIBERTY required Mr. Gonzalez Sostenes and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, LIBERTY failed to fully reimburse them for their mileage or travel expenses.

Third, during the relevant time period, LIBERTY required Mr. Gonzalez Sostenes and other aggrieved employees to wear uniforms bearing the “Liberty Landscaping” company logo, including a long sleeve shirt. Due to the nature of landscaping work, Mr. Gonzalez Sostenes’s uniform items would become dusty, dirty, be exposed to harsh chemicals, and/or acquire an unpleasant odor such that he was unable to mix these clothes in with other laundry. As a result, he had to wash his uniform items separately from his regular clothing, thus incurring additional utility and laundry expenses for the upkeep of his uniforms. Thus, LIBERTY failed to maintain uniforms they required Mr. Gonzalez Sostenes and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

LIBERTY could have provided Mr. Gonzalez Sostenes and other aggrieved employees with the actual tools for use on the job, such as company mobile devices and vehicles, and access to laundering services. Or, LIBERTY could have reimbursed employees for the costs of their mobile device usage, mileage and travel, and laundering expenses or provided a uniform maintenance allowance. Instead, LIBERTY passed these operating costs off onto Mr. Gonzalez Sostenes and other aggrieved employees. At all relevant times, Mr. Gonzalez Sostenes did not earn at least two (2) times the minimum wage.

Thus, LIBERTY had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Gonzalez Sostenes and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

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

Accordingly, Mr. Gonzalez Sostenes seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Gonzalez Sostenes, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against LIBERTY for violations of California Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

Pre-Litigation Demand

This notice shall further serve as Mr. Gonzalez Sostenes's reasonable attempt to settle her dispute with LIBERTY prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform LIBERTY of Mr. Gonzalez Sostenes's aforementioned grievances and the proposed remedies as detailed below, while affording LIBERTY a reasonable opportunity to satisfy Mr. Gonzalez Sostenes's demands.

Demand is hereby made that LIBERTY shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. LIBERTY shall pay Mr. Gonzalez Sostenes and all other aggrieved employees employed by LIBERTY at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. LIBERTY shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal, rest, and recovery periods, and paid all reporting time pay.
3. LIBERTY shall conduct a survey or interview all current and former aggrieved employees in California who worked for LIBERTY in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; the number of recovery periods which were not authorized and permitted; and the number of employees who were required to pay for mobile device expenses, travel expenses, mileage, and uniform maintenance expenses or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. LIBERTY shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. LIBERTY also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198. Additionally, LIBERTY also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more recovery periods, as required by Labor Code sections 226.7, 516, and 1198.
5. LIBERTY shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for LIBERTY's benefit, including, but not limited to, costs of mobile device usage, travel expenses and mileage, uniform maintenance expenses, or other expenditures, as required by Labor Code section 2802.
6. LIBERTY shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.

7. LIBERTY shall provide all aggrieved employees employed by LIBERTY at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. LIBERTY shall cease the practice of requiring aggrieved employees to release their claims for unpaid wages as a condition for receiving their paychecks (Labor Code section 206.5).
9. LIBERTY shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. LIBERTY shall implement and maintain one or more work areas with shade at all times while aggrieved employees are present that are either open to the air or provided with ventilation or cooling, shall provide drinking water near work areas, and shall provide heat recovery periods to aggrieved employees.
11. LIBERTY shall provide all aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
12. LIBERTY shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 5-2001, section 20.

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

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

Best Regards,



Ninel Kocharyan

Copy: LIBERTY LANDSCAPING, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2406 0033

CERTIFIED MAIL

LIBERTY LANDSCAPING, INC.
5212 EL RIVINO ROAD
RIVERSIDE, CA 92509

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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

LIBERTY LANDSCAPING, INC.
5212 EL RIVINO ROAD
RIVERSIDE, CA 92509



9590 9402 1512 5362 2481 95

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☒ Addressee

3. Received by (Printed Name)

C. Date of Delivery

2. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ All Restricted Delivery

- ☐ Priority Mail Express®
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LIBERTY
RIVERSIDE

1. Delivery & Return Service Fee, see fee schedule
☒ Return Receipt (hardcopy)
☐ Return Receipt (electronic)

LIBERTY
RIVERSIDE

LIBERTY LANDSCAPING, INC.
5212 EL RIVINO ROAD
RIVERSIDE, CA 92509

7022 2410 0000 2406 0033

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

LIBERTY LANDSCAPING, INC.
5212 EL RIVINO ROAD
RIVERSIDE, CA 92509



9590 9402 1512 5362 2481 95

2. Article Number (Transfer from service label)

7022 2410 0000 2406 0033

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☒ Agent
☐ Addressee

B. Received by (Printed Name)

Jermis J. J. J.

C. Date of Delivery

5-12-23

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

- | | |
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| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Restricted Delivery | |

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Domestic Return Receipt