

EMPLOYMENT RIGHTS LAW GROUP, APC.

Amir H. Seyedfarshi, (SBN 301656)
amir@employmentrightslawgroup.com
6380 Wilshire Blvd., Suite 1602
Los Angeles, California 90048
Telephone: (424) 777-0964

LAW OFFICE OF TATIANA HERNANDEZ, P.C.

Tatiana Hernández, Esq. CA Bar No. 255322
tatiana@thlawpc.com
315 South Beverly Drive, Suite 504
Beverly Hills, CA 90212
Telephone: (213) 909-4248
Facsimile: (310) 388-0639

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Case #23CV415465
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Attorneys for Plaintiffs, and on behalf of all similarly situated employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF SANTA CLARA

LINO TORRES, as an individual,
ROSALIO PINEDA, as an individual, and
on behalf of all similarly situated
employees,

Plaintiffs,

v.

MEDALLION LANDSCAPE
MANAGEMENT LLC and DOES 1
through 50, inclusive,

Defendants.

Case No.: **23CV415465**

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
DAMAGES**

1. Violation of Labor Code §§ 226.7, 512 (Meal Period Violations);
2. Violation of Labor Code §§ 226.7 (Rest Period Violations);
3. Violation of Section 12(A) of IWC Wage Order 5-2001;
4. Violation of Labor Code § 201 – 203 (Waiting Time Penalties);
5. Violations of Labor Code §§ 204, 210 (Untimely Payment of Wages);
6. Violations of Labor Code §§ 1194, 1194.2, 1197, 1197.1, 1198, 1199 (Failure to Pay Minimum Wages);
7. Violations of Labor Code § 510 (Failure to Pay Overtime Wages);
8. Violation of Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices); and
9. Violation of the Private Attorney General Act at Labor Code Sections 2698 et seq.

DEMAND FOR JURY TRIAL

1 Plaintiffs LINO TORRES (“Plaintiff Torres” or “TORRES”), as an individual and
2 ROSALIO PINEDA (“Plaintiff Pineda” or “PINEDA”), as an individual (collectively
3 “Plaintiffs”), on behalf themselves, the State of California, all other similarly situated employees
4 (hereinafter “Plaintiff Class” or “Class Members”) and Aggrieved Employees, complain and
5 allege on information and belief as follows:

6 **INTRODUCTION**

7 1. Plaintiffs bring this action on behalf of themselves, the Class Members and fellow
8 current and former Aggrieved Employees (defined pursuant to, and on behalf of, the California
9 general public). Plaintiff Class consists of all current and former non-exempt employees of
10 Defendant MEDALLION LANDSCAPE MANAGEMENT, LLC and DOES 1-50, inclusive
11 (collectively, “Defendant”), in the State of California during the Class Period.

12 2. Plaintiffs, individually and on behalf of Plaintiff Class and Aggrieved Employees,
13 seek relief against Defendant, for Defendant’s practices of violating the applicable Industrial
14 Welfare Commission (“IWC”) Wage Orders, Code of Regulations, and Labor Codes, including:
15 (1) failure to make available meal periods or provide compensation in lieu thereof; (2) failure to
16 make available rest periods or provide compensation in lieu thereof; (3) failure to provide separate
17 meal and rest periods; (4) waiting time penalties; (5) untimely payment of wages; (6) failure to
18 pay minimum wages; (7) failure to pay overtime wages; (8) Violation of Bus. & Prof. Code §§
19 17200 et seq. (Unfair Business Practices); and (9) violations of California’s Private Attorney
20 General Act (“PAGA”). As a result of the foregoing, Defendant has violated California statutory
21 laws as described below.

22 3. The “Class Period” is designated as the period from four years prior to the filing of
23 this action through the trial date. Defendant’s violations of California’s wage and hour laws
24 and unfair competition laws, as described more fully below, have been ongoing throughout
25 the Class Period.

26 4. The “PAGA Period” is designated as the period from one year prior to the filing of
27 Plaintiffs Torres and Pineda notice of LWDA through the trial date. Defendant’s violations
28 of California’s wage and hour laws and unfair competition laws, as described more fully

below, have been ongoing throughout the PAGA Period.

JURISDICTION AND VENUE

5. Venue is proper in this judicial district and the County of, pursuant to the Code of Civil Procedure sections 395 and 395.5, because the acts that give rise to the causes of action alleged herein occurred in this county.

6. This Court has personal jurisdiction over Defendant, because Defendant has its main place of business in, and conducts business in the State of California, and a substantial portion of the acts, omissions, events, and transactions constituting the causes of action alleged herein occurred within the State of California and more specifically in the county of Santa Clara, where Plaintiffs reside (Code Civ. Pro. § 410.10).

7. The California Superior Court has jurisdiction over this matter because the individual claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional threshold and the five million dollar (\$5,000,000.00) aggregate jurisdictional threshold for federal court; and upon information and belief, Plaintiffs and Defendant are citizens of, residents of, and/or domiciled in the State of California. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage Orders, Code of Civil Procedure, Rules of Court, and the Business & Professions Code. Thus, the above-entitled court maintains appropriate jurisdiction over this matter.

THE PARTIES

A. The Plaintiffs

8. Plaintiff Torres began his employment by Defendant as a non-exempt employee on or around October 2022 and remains employed by Defendant to date. Plaintiff Torres is employed by Defendant as a gardener/landscaper and he was hired to work five days per week, eight hours per day and is compensated at \$22 per hour. At all relevant times herein, Plaintiff Torres was employed by Defendant in a paid hourly non-exempt position. At all relevant times herein, Plaintiff Torres was entitled to compensation for all hours worked, meal and rest period premiums, as well as reimbursement from Defendant. Plaintiff Torres was also entitled to have

1 separate breaks for his meal and rest breaks over the course of his 8-hour workday. Plaintiff
2 Torres was employed by Defendant within the four (4) years prior to the commencement of this
3 action.

4 9. Plaintiff Pineda began his employment by Defendant as a non-exempt employee on or
5 around October 2021 and ended his employment with Defendant on or around March 23, 2023.
6 Plaintiff Pineda was employed by Defendant as a Crew Leader/Gardener worker and he was hired
7 to work five days per week, eight hours per day and is compensated at \$21 per hour, unless it
8 rained, wherein he only worked 4 hours a day. At all relevant times herein, Plaintiff Pineda was
9 employed by Defendant in a paid hourly non-exempt position. At all relevant times herein,
10 Plaintiff Pineda was entitled to compensation for all hours worked, meal and rest period
11 premiums, as well as reimbursement from Defendant. During Plaintiff Pineda's employment,
12 Plaintiff Pineda, and other members of the Plaintiff Class, had to bring their tools and materials
13 from the yard back to the vehicles after they clocked out. Plaintiff Pineda was employed by
14 Defendant within the four (4) years prior to the commencement of this action.

15 10. By way of this action, Plaintiffs also seek to represent the following Classes:

- 16 a. All non-exempt individuals who or were employed by MEDALLION
17 LANDSCAPE MANAGEMENT, LLC in the State of California during the
18 Class Period. (hereinafter, referred to as "Class Members" or the "Class");
- 19 b. All Class Members who did not receive their timely ten-minute, duty-free
20 rest breaks while working for Defendant during the Class Period
21 (hereinafter referred to as "Rest Break Class Members");
- 22 c. All Class Members who did not receive their timely thirty-minute meal
23 break on or before the fifth hour of work while working for Defendant on
24 shifts greater than five hours and/or did not receive their second meal period
25 for shifts worked in excess of ten hours during the Class Period and/or were
26 not paid meal period premiums for late meal breaks (hereinafter referred to
27 as "Meal Break Class Members");
- 28 d. All Class Members who did not receive all their minimum wages and

overtime wages during the Class Period;

e. All Class Members who were not provided accurate itemized wage statements within one year prior to the filing of the Complaint; and

f. All Class Members and whose employment with Defendant terminated during the period from three years prior to the filing of this Complaint and continuing into through judgment (hereinafter referred to “Waiting Time Penalty Class Members”).

B. The Defendants

11. Plaintiffs are informed and believes, and based thereon alleges, that Defendant MEDALLION LANDSCAPE MANAGEMENT, LLC is a California limited liability Corporation that owns and operates a landscaping business throughout California, including in Santa Clara County, and was Plaintiffs’ employer. On information and belief, and based thereon, Plaintiffs allege that Defendant is conducting business in good standing in California, and at all times herein mentioned has regularly conducted business throughout the State of California.

12. To operate its business, Defendant employs non-exempt employees, such as the Plaintiffs, the Class Members and the Aggrieved Employees.

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

14. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or single business enterprise, integrated enterprise, and/or are agents of one another, are alter egos, joint employers, and conspire with one another to increase profits by engaging in the conduct described in this complaint.

1 15. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
2 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
3 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
4 below was acting, at least in part, within the course and scope of that authority as such agent,
5 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
6 the permission and consent of the co-Defendants. Plaintiffs also allege the acts of each Defendant
7 are legally attributable to the other Defendants.

8 16. Defendant was and is the employer of Plaintiffs, the Aggrieved Employees and
9 Class Members for all relevant time periods.

10 **FACTUAL ALLEGATIONS**

11 17. Plaintiffs, the Class Members and the Aggrieved Employees have, at all times
12 relevant herein, been non-exempt employees within the meaning of the Labor Code, and the
13 implementing rules of the IWC Wage Orders no. 5.

14 18. Plaintiffs are informed and believe, and based thereon allege, that Defendant
15 continues to employ non-exempt employees within California.

16 19. Plaintiffs are informed and believe, and based thereon allege, that Defendant's
17 policies and practices described herein are common across each of Defendant's locations within
18 the State of California.

19 20. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew
20 or should have known that Plaintiffs, Class Members and Aggrieved Employees were entitled to
21 receive all required meal periods or payment of one (1) additional hour of pay at Plaintiffs' and
22 Class Members' regular rate of pay when they did not receive a timely, uninterrupted off-duty
23 meal period. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern,
24 practice, and policy of not providing compliant meal periods. Plaintiffs, Class Members and
25 Aggrieved Employees were regularly unable to take a duty-free meal period or had their meal
26 periods interrupted by Defendant. In addition to having their meal periods interrupted, Plaintiffs,
27 Class Members and Aggrieved Employees were required to combine their meal and rest breaks
28 into one longer break rather than maintain them as three distinct breaks. Plaintiffs, Class

Members and Aggrieved Employees did not receive all meal periods or payment of one (1) additional hour of pay at Plaintiffs', Class Members', or Aggrieved Employees' regular rate of pay when they did not receive a timely, uninterrupted thirty (30) minute off-duty meal period.

21. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew or should have known that Plaintiffs, Class Members and Aggrieved Employees were entitled to receive all paid rest periods or payment of one (1) additional hour of pay at Plaintiffs', Class Members', and Aggrieved Employees' regular rate of pay when a rest period was missed, interrupted, or shortened. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice, and policy of not providing paid rest periods. Defendant instructed Plaintiffs, Class Members and Aggrieved Employees to forego their rest breaks or to combine their meal and rest breaks. As a result, Plaintiffs, Class Members and Aggrieved Employees did not receive all paid rest periods or payment of one (1) additional hour of pay at Plaintiffs', Class Members', and Aggrieved Employees' regular rate of pay when a paid rest period was missed, truncated, or interrupted.

22. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew or should have known that Plaintiffs, Class Members and Aggrieved Employees were asked to clock out prior to returning their tools to the Defendant's vehicles. As a result, Plaintiffs, Class Members and Aggrieved Employees did not receive all of their regular full-time wages nor did they receive any overtime wages that might be due to them. Often, this unpaid additional working time resulted in Plaintiffs, Class Members and Aggrieved Employees working shifts over 8 hours. When this occurred, Plaintiffs and Class Members, should have been paid at the applicable overtime rate. In violation of Labor Code §§ 510, 1194, 1194.2, 1197, 1197.1, 1198, 1199, Defendant has a pattern, practice, and policy, of expecting its employees to clock out prior to the end of their shift in order to avoid paying the higher, more costly overtime rate triggering both a failure to pay minimum wages and a failure to pay overtime wages.

CLASS ACTION ALLEGATIONS

23. Plaintiffs bring this action on behalf of themselves and all other similarly situated employees, as a class action pursuant to Code of Civil Procedure section 382.

1 24. Plaintiffs proposed class consists of and is defined as follows: all individuals who
2 worked for Defendants in a California location as non-exempt employees during the Class Period.

3 25. Plaintiffs reserve the right under California Rules of Court, rule 3.765, to amend
4 or modify the class description(s) with greater specificity or further division into subclasses or
5 limitation to particular issues.

6 26. This action has been brought and may be maintained as a class action pursuant to
7 Code of Civil Procedure section 382 because there is a well-defined community of interest in the
8 litigation and because the proposed classes are easily ascertained by Defendant's personnel and
9 payroll records.

10 **Numerosity**

11 27. The potential members of the class as defined are so numerous that joinder of all
12 class members is impracticable. While the precise number of the Plaintiff Class is unknown,
13 Plaintiffs are informed and believe that Defendant has employed more than 400 non-exempt
14 employees during the Class Period.

15 **Commonality**

16 28. There are common questions of law and fact arising out of Defendant's conduct
17 as described herein, including, but not limited to:

- 18 a. Whether Defendant failed and continues to fail to provide meal periods or
19 compensation in lieu thereof to Class Members;
- 20 b. Whether Defendant failed and continues to fail to authorize and permit
21 Class Members to take rest periods or compensation in lieu thereof;
- 22 c. Whether Defendant forced Class Members to consolidate their meal and
23 rest breaks into one larger break rather than maintaining them as separate
24 breaks as required by law;
- 25 d. Whether Defendant failed to pay wages in a timely manner;
- 26 e. Whether Defendant forced Class Members to clock out prior to finishing
27 their shift to put tools away on vehicles,
- 28 f. Whether Defendants failed to pay both regular full-time wages and

overtime wages where work was still clearly being performed, and

g. Whether Defendant engaged in unfair/unlawful business practices.

Typicality

29. The claims of the Plaintiffs are typical of the claims for the Plaintiff Class, all of whom have incurred and/or will incur damages, as a result of Defendant's common course of conduct and common policies and practices. The claims of Plaintiffs are typical because Defendant subjected all of its non-exempt employees to the identical violations of the IWC Wage Orders, Code of Regulations, Labor Code, and Business and Professions Code, among other statutes.

Adequacy of Representation

30. Plaintiffs will fairly and adequately represent and protect the interests of the Plaintiff Class. Plaintiffs' interests are not in conflict with those of the Plaintiff Class. Plaintiffs' attorneys are competent, well-versed, and experienced in litigating employment class actions and other complex litigation matters.

Superiority of Class Action

31. Under the facts and circumstances set forth above, a class action is superior to any other method available for the fair and efficient adjudication of the rights of each Class Member in as much as joinder of individual, relatively small claims of Class Members is not practical and if each employee were required to file an individual lawsuit, the corporate defendant would necessarily gain an unconscionable advantage as they would be able to exploit and overwhelm the limited resources of each individual plaintiff. Requiring each Class Member to pursue an individual remedy would also discourage the assertion of lawful claims by employees still employed by Defendant who are fearful of retaliation and permanent damage to their careers as well as employees who are fearful of retaliation and permanent damage to their careers at their new place of employment. Further, the substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class Members against Defendants herein further support class certification.

PAGA ADMINISTRATIVE PREREQUISITE

32. Under the facts and circumstances set forth above, a class action is superior. The Private Attorney General Act (“PAGA”) permits an “Aggrieved Employee” to recover penalties on behalf of herself or himself as well as on behalf of all Aggrieved Employees as a result of the employer’s violation of certain sections of California Labor Code. In this case, Aggrieved Employees are all non-exempt individuals who were employed by Defendant in the State of California who worked one or more shifts of 3.5 hours or longer during the PAGA period.

33. Plaintiffs Torres and Pineda qualify as Aggrieved Employees as defined in Labor § 2699(a), in that they were employed by Defendant in the state of California and worked one or more shifts or longer during the PAGA period.

34. By this Complaint, Plaintiffs Torres and Pineda bring this case as a representative action seeking civil penalties for the State of California in a representative capacity, as provided for in PAGA, to the extent permitted by law, as an aggrieved employee and on behalf of all other aggrieved employees who were employed by Defendants and subject to the violations set forth in Plaintiff’s notice to the Labor and Workforce Development Agency (“LWDA”) and the employer, including but not limited to: Labor Code §§202, 203, 204, 226, 226.7, 510, 512, 1174 and 1194 as well as IWC Wage Order 4/9-2001.

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

36. On May 1, 2023, prior to the filing of the complaint in this action, Plaintiffs Li and Wei gave written notice of the specified provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. This written notice was given via certified mail to Defendants and electronically to the LWDA, LWDA Case No. LWDA-CM-951853-23. A true and correct copy of Plaintiff’s notice to the LWDA and to Defendants dated May 1, 2023, is attached hereto as Exhibit A.

1 37. Under Labor Code section 2699.3(a)(2)(C), “Notwithstanding any other provision
2 of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action
3 arising under this part at any time within 60 days of the time periods specified in this part.”

4 **FIRST CAUSE OF ACTION**

5 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

6 **(Lab. Code, §§ 226.7, 512)**

7 **(By Plaintiffs against All Defendants)**

8 38. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein, as
9 if fully alleged.

10 39. Labor Code sections 226.7, 512, and the applicable IWC Wage Order provide that
11 no employer shall employ any person for a work period of more than five (5) hours without
12 providing a meal period uninterrupted by work duties of not less than thirty (30) minutes or
13 employ any person for a work period of more than ten (10) hours without a second meal period
14 of not less than thirty (30) minutes.

15 40. Labor Code section 226.7 provides that if an employer fails to provide an
16 employee a meal period in accordance with this section, the employer shall pay the employee one
17 (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal
18 period is not provided in accordance with this section. Plaintiffs allege that Defendant failed to
19 provide legally compliant meal periods and/or impeded, discouraged, dissuaded, and/or failed to
20 relieve employees from all work duties during meal periods thereby preventing employees from
21 taking legally compliant meal periods. Specifically, Plaintiffs and Class Members frequently did
22 not receive their meal period until after the fifth (5th) hour of work. Plaintiffs and Class Members
23 also had their lunches constantly interrupted.

24 41. At all times relevant hereto, Plaintiffs and Plaintiff Class have worked shifts of
25 more than five (5) hours in a workday.

26 42. Pursuant to Labor Code section 226.7, Plaintiffs and Plaintiff Class are entitled to
27 damages in the amount equal to one (1) hour of wages at their regular rate of pay for each missed
28 meal break, in an amount to be proven at trial.

 43. Pursuant to Labor Code section 226.7, Plaintiffs individually and on behalf of the

1 Plaintiff Class, request recovery of meal period compensation which they are owed beginning
2 four (4) years prior to filing this complaint, as well as the assessment of any statutory penalties
3 against the Defendant, and each of them, in a sum as provided by the Labor Code and/or other
4 statutes. Pursuant to Code of Civil Procedure section 1021.5, and any other provision of law,
5 Plaintiffs request the court award reasonable attorneys' fees and costs incurred by them in this
6 action.

7 **SECOND CAUSE OF ACTION**
8 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
9 **(Lab. Code, § 226.7)**
10 **(By Plaintiffs against All Defendants)**

11 44. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein, as
12 if fully alleged.

13 45. Labor Code section 226.7 and the applicable Wage Order provide that employers
14 authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time
15 per four (4) work hours, or major fraction thereof.

16 46. Labor Code section 226.7, subdivision (b), provides that if an employer fails to
17 provide and employee rest periods in accordance with this section, the employer shall pay the
18 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
19 that the rest period is not provided. Plaintiffs and Plaintiff Class consistently worked over four
20 (4) hours per shift with no rest breaks, or otherwise had their rest breaks interrupted or shortened
21 due to Defendant's uniform policies and practices.

22 47. Defendant failed to reasonably make available rest breaks to Plaintiffs and Plaintiff
23 Class throughout the Class Period due to their understaffing, workload, and demands.

24 48. Plaintiffs and Plaintiff Class are entitled to damages in an amount equal to one (1)
25 hour of wages per missed rest break, in a sum to be proven at trial. Pursuant to Code of Civil
26 Procedure section 1021.5, and any other provision of law, Plaintiffs requests the court award
27 reasonable attorneys' fees and costs incurred by them in this action.

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THIRD CAUSE OF ACTION
FAILURE TO PROVIDE SEPARATE REST AND MEAL BREAKS
(Section 12(A) of IWC Wage Order 5-2001)
(By Plaintiffs against All Defendants)

49. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein, as if fully alleged herein.

50. Under Section 12(A) of IWC Wage Order 5-2001, Defendant was required to offer Plaintiffs a minimum 10-minute paid rest break after 3.5 hours of work, a minimum 30-minute unpaid meal break after 5 hours of work and a second paid rest break after 6 hours of work.

51. Defendant forced Plaintiffs to consolidate all of their rest and meal periods into one break, and, as such, failed to comply with the requirements and intent of Section 12(A) of IWC Wage Order 5-2001.

52. The law is clear that employers must adhere to the rest and meal break schedule set forth in the Wage Order unless they can offer an adequate justification as to why the preferred is not capable of being put into practice.

53. A departure from the preferred schedule that is merely advantageous to the employer cannot satisfy the requirement stated in Section 12(A) of IWC Wage Order 5-2001.

54. Defendant cannot offer any practical reasons for forcing Plaintiffs to consolidate his meal and rest periods.

55. Plaintiffs and Plaintiff Class are entitled to damages in an amount equal to one (1) hour of wages per missed rest break, in a sum to be proven at trial. Pursuant to Code of Civil Procedure section 1021.5, and any other provision of law, Plaintiffs request the court award reasonable attorneys' fees and costs incurred by them in this action.

FOURTH CAUSE OF ACTION
Waiting Time Penalties For
Failure To Pay Wages Due On Termination
[Cal. Labor Code §§ 201-203]
On Behalf of Plaintiffs and the Waiting Time Class Against Defendant

56. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

57. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of

1 an employee who is discharged or who quits, the wages of the employee shall continue as a
2 penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487,
3 492.

4 58. Due to Defendant’s faulty policies described above, including its failure to pay for
5 all minimum and overtime wages owed and meal and rest break premiums, Defendant violated
6 Labor Code § 203, for those employees whose employment ended within the last three years and
7 ongoing (i.e., the Waiting Time Class Members) by willfully failing to pay them all wages due
8 upon the termination of their employment.

9 **FIFTH CAUSE OF ACTION**
10 **Failure to Pay Wages**
11 **(Labor Code §§ 204, 210)**
(By Plaintiffs against All Defendants)

12 59. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein, as
13 if fully alleged herein.

14 60. Pursuant to Cal. Lab. Code § 204, “all wages...earned by any person in
15 employment are due and payable twice during each calendar month, on days designated in
16 advance by the employer as the regular paydays.”

17 61. Plaintiffs and the Plaintiff Class who worked for Defendant during the Class
18 Period were not paid in a timely manner.

19 62. Pursuant to Cal. Lab. Code 210, Plaintiffs are entitled to recover a penalty of
20 \$100.00 for the initial failure to timely pay each employee all of the wages earned; in addition,
21 pursuant to Section 210, for each subsequent failure to pay in compliance with Labor Code
22 Section 204, Plaintiffs are entitled to recover an additional amount equal to 25% of the unlawfully
23 withheld wages.

24 63. As a direct and proximate result of Defendant’s conduct in violation of the Labor
25 Code as alleged above, Plaintiffs and the Class have suffered, and continue to suffer, losses related
26 to the use and enjoyment of wages and lost interest on such wages all to their damage in amounts
27 according to proof at trial.

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SIXTH CAUSE OF ACTION
Failure to Pay Minimum Wages
(Labor Code §§ 1194, 1194.2, 1197, 1197.1, 1198, 1199)
On Behalf of Plaintiffs and the Class Against Defendant

64. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

65. Labor Code section 1197 establishes the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab. Code, § 1197; Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11050, 11070, 11160.) Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an employee who has not been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid balance, together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

66. Here, Defendant failed to fully conform its pay practices to the requirements of the law during the relevant statutory periods. Plaintiffs and the other Class Members were not compensated for all hours worked including, but not limited to, all hours they were subject to the control of Defendant and/or suffered or permitted to work under the Labor Code and the Applicable Wage Orders.

67. Labor Code section 1198 makes unlawful the employment of an employee under conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

68. As a direct and proximate result of Defendant's unlawful conduct as alleged herein, Plaintiffs and the other Class Members have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief because of Defendant's violations of the Labor Code and Applicable Wage Orders.

69. Defendant's practices and policies regarding illegal employee compensation are

1 unlawful and create an entitlement to recovery by Plaintiffs and the other Class Members in a
2 civil action for the unpaid amount of minimum wages, liquidated damages, including interest
3 thereon, statutory penalties, attorney' s fees, and costs of suit according to Labor Code sections
4 204, 218.5, 1194, 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

5 **SEVENTH CAUSE OF ACTION**
6 **Failure to Pay All Overtime Wages**
7 **(Labor Code § 510)**
8 **On Behalf of Plaintiffs and the Class Against Defendant**

9 70. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
10 in the preceding paragraphs.

11 71. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194,
12 and 1198, which provide that employees are entitled to overtime wages for all overtime hours
13 worked and provide a private right of action for the failure to pay all overtime compensation for
14 overtime work performed. At all times relevant herein, Defendant was required to properly pay
15 Plaintiffs and the other Class Members for all overtime wages earned pursuant to Labor Code
16 section 1194 and the Applicable Wage Orders. Defendant caused Plaintiffs and the other Class
17 Members to work overtime hours but did not compensate them at one and one-half times their
18 regular rate of pay for such hours in accordance with California law. Likewise, Defendant caused
19 Plaintiffs and the other Class Members to work double-time hours but did not compensate them
20 at twice their regular rate of pay for such hours in accordance with California law.

21 72. Defendant failed to fully conform their pay practices to the requirements of
22 California law. This unlawful conduct includes but is not limited to Defendant's uniform and
23 unlawful pay policies and practices of failing to accurately record all the time that non-exempt
24 employees were under the supervision and control of Defendant. The foregoing policies and
25 practices are unlawful and allow Plaintiffs and the other Class Members to recover in a civil action
26 the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties,
27 attorney's fees, and costs of suit according to Labor Code section 204, 510, 1194, and 1198, the
28 Applicable Wage Orders, and Code of Civil Procedure section 1021.5.

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EIGHTH CAUSE OF ACTION
Unfair/Unlawful Business Practices
(Bus. & Prof. Code, §§ 17200 et seq.)
(By Plaintiffs against All Defendants)

73. Plaintiffs reallege and incorporate by reference all preceding paragraphs herein, as if fully alleged herein.

74. Plaintiffs bring this claim individually and on behalf of Class Members.

75. Business and Professions Code section 17200 (“UCL”) prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.

76. Business and Professions Code section 17204 allows “any person who has suffered injury in fact and has lost money or property as a result of such unfair competition” to prosecute a civil action for violation of the UCL.

77. Labor Code section 90.5, subdivision (a), states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

78. Beginning at an exact date unknown to Plaintiffs, but at least since the date four years prior to the filing of this complaint, Defendant has committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent business practices and acts described in this complaint, including, but not limited to, violations of Labor Code sections 202, 203, 204, 206, 210, 226, 226.3, 226.7, 510, and 512, as well as other statutes.

79. The violations of these laws and regulations, as well as of fundamental California public policies protecting workers, serve as unlawful predicate acts and practices for purposes of Business and Professions Code sections 17200 et seq.

80. As a result of these actions, Plaintiffs, on information and belief, allege that Defendant, through its unlawful, unfair and/or fraudulent business practices, has gained an unlawful competitive advantage over other comparable companies in the State of California in

violation of Business and Professions Code sections 17000 et seq. and sections 17200 et seq.

81. The victims of these unlawful, unfair, and/or fraudulent business practices include, but are not limited to, Plaintiffs, putative Class Members, competing landscape companies in the State of California, and the general public. Plaintiffs are informed and believe, and thereon allege, that Defendant performed the above-mentioned acts with the intent of gaining an unfair competitive advantage and thereby injuring Plaintiffs, putative class members, other competitors, and the general public.

82. Plaintiffs' success in this action will enforce important rights affecting the public interest and public policy. In this regard, Plaintiffs sue on behalf of the public as well as on behalf of themselves.

83. Business and Professions Code sections 17203 provides that a court may make such orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent Defendants from repeating their unlawful, unfair, and fraudulent business acts and business practices alleged above.

84. Business and Professions Code section 17203 provides that the Court may restore to any person in interest any money or property that may have been acquired by means of such unfair competition. Plaintiffs and the Plaintiff Class are entitled to restitution pursuant to Business and Professions Code section 17203 for wages and payments unlawfully withheld from employees, including the fair value of the meal and rest periods and other losses alleged herein, during the four-year period prior to the filing of this complaint. All remedies are cumulative pursuant to Business and Professions Code section 17205.

85. Business and Professions Code section 17202 provides: "Notwithstanding section 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition." Plaintiffs and Plaintiff Class are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code section 17202.

86. Plaintiffs request injunctive relief pursuant to Business and Professions Code

1 section 17203 to enjoin Defendant from continuing the unfair/unlawful business practices alleged
2 herein.

3 87. Plaintiffs herein take upon enforcement of these laws and lawful claims. There is
4 a financial burden involved in pursuing this action. The action is seeking to vindicate a public
5 right, and it would be against the interests of justice to penalize Plaintiffs by forcing Plaintiffs to
6 pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to
7 Code of Civil Procedure section 1021.5 and others.

8
9 **NINTH CAUSE OF ACTION**
10 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**
11 **[Cal. Lab. Code §§ 2698, et seq.]**
12 **(On Behalf of Plaintiff Torres, Aggrieved Employees, and Class Against All Defendants)**

13 88. Plaintiff Torres and the Aggrieved Employees reallege and incorporate by this
14 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

15 89. PAGA is a mechanism by which the State of California itself can enforce state
16 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
17 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
18 fundamentally a law enforcement action designed to protect the public and not to benefit private
19 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
20 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
21 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
22 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
23 ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

24 90. Plaintiffs bring this Representative Action on behalf of the State of California with
25 respect to themselves, the Plaintiff Class, and all other current and former Aggrieved Employees
26 employed by Defendants during the PAGA Period.

27 91. At all relevant times, for the reasons described herein, and others, Plaintiffs, the
28 Class Members, and the Aggrieved Employees were aggrieved employees of Defendants within

1 the meaning of Labor Code Section 2699(c).

2 92. Labor Code Sections 2699(a) and (g) authorize an Aggrieved Employee, like
3 Plaintiffs Torres and Pineda, on behalf of themselves, the Class Members and other current or
4 former employees, to bring a civil action to recover civil penalties pursuant to the procedures
5 specified in Labor Code Section 2699.3.

6 93. Plaintiff Torres complied with the procedures for bringing suit specified in Labor
7 Code Section 2699.3. By certified letter, return receipt requested and electronic mail, dated May
8 1, 2023, Plaintiffs gave written notice to the Labor and Workforce Development Agency
9 (“LWDA”) and to Defendants of the specific provisions of the Labor Code alleged to have been
10 violated, including the facts and theories to support the alleged violations. See Exhibit #1,
11 attached hereto and incorporated by this reference herein.

12 94. As of July 5, 2023, sixty-five (65) days after serving the LWDA with notice of
13 Defendants’ violations, the LWDA has not provided any notice by certified mail of its intent to
14 investigate the Defendants’ alleged violations as mandated by Labor Code Section
15 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, Plaintiffs may
16 commence and are authorized to pursue this cause of action.

17 95. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiffs and the Aggrieved
18 Employees are entitled to civil penalties for Defendants’ violations of Labor Code Section 201,
19 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1198, in the
20 following amounts:

- 21 a. For violations of Labor Code Section 226(a), a civil penalty in the amount
22 of two hundred fifty dollars (\$250) for each Aggrieved Employee for any
23 initial violation and one thousand dollars for each subsequent violation
24 [penalty per Labor Code Section 226.3];
- 25 b. For violations of Labor Code Sections 204, a civil penalty in the amount of
26 one hundred dollars (\$100) for each Aggrieved Employee for any initial
27 violation and two hundred dollars (\$200) for Aggrieved Employee for each
28 subsequent violation [penalty per Labor Code Section 210];

- c. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid Aggrieved Employee for the initial violation and hundred dollars (\$100) for each underpaid Aggrieved Employee for each subsequent violation [penalty per Labor Code Section 558];
- d. For violations of Labor Code Section 2269(a), a civil penalty in the subsequent violation [penalty per Labor Code Section 226.3];
- e. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];
- f. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars (\$100) for each Aggrieved Employee for any initial violation and two hundred dollars (\$200) for Aggrieved Employee for each subsequent violation [penalty per Labor Code Section 210];
- g. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid Aggrieved Employee for the initial violation and hundred dollars (\$100) for each underpaid Aggrieved Employee for each subsequent violation [penalty per Labor Code Section 558];
- h. For violations of Labor Code Section 2269(a), a civil penalty in the subsequent violation [penalty per Labor Code Section 226.3];
- i. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil penalty in the amount of one hundred dollars (\$100) per Aggrieved Employee per pay period for the initial violation and two hundred dollars fifty (\$250) per Aggrieved Employee per pay period for each subsequent violation [penalty per Labor Code Section].

96. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred dollars

1 (\$100) for each Aggrieved Employee per pay period for the initial violation and two hundred
2 dollars (\$200) for Aggrieved Employee per pay period for each subsequent violation [penalty per
3 Labor Code Section 2699(f)(2)];

4 97. For all provisions of the Labor Code for which civil penalty is not specifically
5 provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100)
6 for each Aggrieved Employee per pay period for the initial violation and two hundred dollars
7 (\$200) for each Aggrieved Employee per pay period for each subsequent violation. Plaintiffs and
8 the Aggrieved Employees are entitled to an award of reasonable attorney's fees and costs in
9 connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

10 98. To the extent that any of the conduct and violations alleged herein did not affect
11 Plaintiffs or Class Members during the PAGA period, Plaintiffs and Class Members seek
12 penalties for those violations that affected other Aggrieved Employees. (Carrington v. Starbucks
13 Corp. (2018) 30 Cal.App.5th 504, 519; See also Huff v. Securitas Security Services USA, Inc.
14 (2018) 23 Cal. App. 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected
15 by at least one Labor Code violation committed by an employer—to pursue penalties for all the
16 Labor Code violations committed by that employer."], Emphasis added, reh'g denied (June 13,
17 2018).

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiffs pray for judgment as follows:

20 1. That the Court determine that this action may be maintained as a class action under
21 Code of Civil Procedure section 382;

22 2. The Court appoint Plaintiffs as Class Representatives;

23 3. The Court appoint Employment Rights Law Group, APC and Law Offices of
24 Tatiana Hernandez as class counsel;

25 4. For compensatory and statutory damages;

26 5. For restitution of all monies due to Plaintiffs and Plaintiff Class from the
27 unlawful/unfair business practices of Defendant;

28 6. For injunctive relief;

- 1 7. For statutory and civil penalties according to proof;
- 2 8. For reasonable attorneys' fees and costs pursuant to Labor Code section 226,
- 3 subdivision (e), and section 1194; Code of Civil Procedure section 1021.5, and/or other applicable
- 4 laws statutes;
- 5 9. For civil penalties to the extent permitted by law pursuant to the Labor Code under
- 6 the Private Attorneys General Act; and
- 7 10. That the Court award such other and further relief as this Court may deem
- 8 appropriate.

9

10 Dated: July 5, 2023

EMPLOYMENT RIGHTS LAW GROUP, APC
LAW OFFICES OF TATIANA HERNANDEZ, PC

11

12

13 By: 

Amir H. Seyedfarshi, Esq.
Tatiana Hernández, Esq.
Attorneys for Plaintiffs and on behalf of all similarly
situated employees

14

15

16

17 **DEMAND FOR JURY TRIAL**

18 Plaintiffs Lino Torres and Rosalio Pineda on behalf of themselves, all Class Members and

19 all Aggrieved Employees, hereby demand a jury trial on all causes of action and claims with

20 respect to which they have a right to a jury trial.

21

22 Dated: July 5, 2023

EMPLOYMENT RIGHTS LAW GROUP, APC
LAW OFFICES OF TATIANA HERNANDEZ, PC

23

24

25 By: 

Amir H. Seyedfarshi, Esq.
Tatiana Hernández, Esq.
Attorneys for Plaintiffs and on behalf of all similarly
situated employees

26

27

28

Exhibit 1



Employment Rights Law Group, APC
6380 Wilshire Blvd., Suite 1602
Los Angeles, CA 90048
424-777-0964
amir@employmentrightslawgroup.com

April 30, 2023

Via Online Filing with the LWDA & Certified Mail to Defendant

Medallion Landscape Management, LLC
C/O Agent for service of process
John Gates
10 San Bruno Avenue
Morgan Hill, CA 95037

Re: NOTICE OF INTENT TO FILE SUIT (Labor Code § 2699.3)

Lino Torres v. Medallion Landscape Management, LLC

Mr. Gates:

This letter is the written notice (“Notice”) required by the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698 *et seq.*, including without limitation Labor Code sections 2699.3 (a)(1) and/or any other applicable provision of statute, rule, or law. This letter is being sent simultaneously via online filing with the California Labor and Workforce Development Agency (“LWDA”). This letter is an important formal legal notice which may lead to action against you and/or Medallion Landscape Management, LLC (“MLM”) in a court of law and/or in administrative proceedings; and to the imposition of substantial penalties, damages, and/or other orders against you and/or MLM.

My office, alongside with my co-counsel, Tatiana Hernandez, Esq. of Law Office of Tatiana Hernandez, P.C., represents Plaintiff Lino Torres (“Plaintiff”) and a proposed group of current and former Aggrieved Employees of MLM or any affiliated entities of MLM, including but not limited to any of its co-employers, successors in interest, and/or merged entities (“Defendant”) in connection with Plaintiff’s individual and/or PAGA representative action claims for, *inter alia*, civil penalties based on, without limitation, the following (“PAGA Claims”):

- (1) Defendant’s failure to provide timely duty-free rest periods within the first four (4) hours or major fraction thereof, and/or pay rest period premiums for late, on-duty, or missed rest breaks in violation of Labor Code sections 226.7 and 512 and Section 12 of the applicable IWC Wage Order;

- (2) Defendant's failure to provide timely duty-free meal periods and/or pay meal period premiums for late, on-duty, or missed meal breaks in violation of Labor Code sections 226.7 and 512 and Section 11 of the applicable IWC Wage Order;
- (3) Defendant's failure to provide accurate itemized wage statements in violation of Labor Code section 226 for failure to include: (a) all hours worked; and (b) rest and meal period premiums owed on MLM's wage statements issued to Plaintiff and the Wage Statement Aggrieved Employees;
- (4) statutory penalties based upon the foregoing, pursuant to Labor Code section 226;
- (5) Defendant's failure to pay all wages upon termination in violation of Labor Code sections 201-202;
- (6) Defendant's failure to timely pay employees all wages and failure to pay wages and meal and rest period premiums due on a bi-monthly basis when other wages were paid as required by Labor Code sections 204 and 210; and
- (7) statutory penalties under PAGA based upon the foregoing, pursuant to Labor Code sections 2698 *et seq.*

In connection with these PAGA Claims, Plaintiff and the Aggrieved Employees seek PAGA penalties from at least one year prior to the date of this Notice and ongoing (the "PAGA Period"). Plaintiff seeks to represent the following groups of Aggrieved Employees:

- (1) "Aggrieved Employees": All current or former hourly, non-exempt employees who worked for MLM in California during the PAGA period;
- (2) "Rest Break Aggrieved Employees": All Aggrieved Employees who worked more than 3.51 hours in a shift for Defendant during the PAGA Period;
- (3) "Meal Break Aggrieved Employees": All Aggrieved Employees who worked at least 6 hours in a shift for Defendant during the PAGA Period; and
- (4) "Wage Statement Aggrieved Employees": All Aggrieved Employees who were issued at least one wage statement from Defendant during the PAGA Period;

This notice is hereby given to and is made against MLM, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors managers, managing agents, or entities who are or may be liable under law for any of the alleged violations as to Aggrieved Employee who worked at any location of MLM at any time during the PAGA Period in the State of California.

I. FACTUAL BACKGROUND

Plaintiff is a current employee of MLM, who was hired in or around October of 2022 as a gardener, making \$22.00 per hour. Plaintiff performed his duties at a San Jose Yard in Morgan Hills, California ("Jobsite"). His typical schedule included working five days per week, beginning at 6:00 a.m. and ending his shift at approximately 2:30 p.m.

Since the commencement of his employment, Plaintiff and the Aggrieved Employees were denied the opportunity to take uninterrupted, duty free, 10-minute rest breaks every four hours of work or major fraction thereof. Plaintiff and the Aggrieved Employees were also denied the opportunity to take their uninterrupted off-duty meal breaks per California law. Instead, all employees present at the Jobsite were required to combine their rest breaks and meal break into one, break which began at 11:00 a.m. Plaintiff and the Aggrieved Employees were required to clock out for their “combined” single break period. This was the only break they were allowed to take during their entire shift. Although they were required to clock out promptly at 11:00 a.m., Plaintiff often had to walk to his truck if he wanted to leave the Jobsite during his break, which was located far away off the premises, and would need to return early from his break in order to make it back to the Jobsite to clock in on time. This resulted in Plaintiff missing several minutes of his break. On several occasions, Plaintiff and the Aggrieved Employees’ breaks were interrupted by their supervisor. Additionally, on rainy or other inclement weather days during which Plaintiff and Aggrieved Employees were required to report to work, they were forced to work during the rain with no break at all.

II. PAGA Claims

A. Non-Compliant Rest Periods

California law requires an employer to provide its employees with an uninterrupted, duty-free rest period of not less than ten (10) minutes for each four hours worked or a “major fraction thereof.” Lab. Code § 226.7; IWC Wage Order 4-2001 § 12. The Division of Labor Standards Enforcement (“DLSE”) has interpreted the phrase “major fraction thereof”, as applied to a four-hour period, to mean any amount of time in excess of two hours—i.e., any fraction greater than half. *Brinker* at 1029, citing Dept. Industrial Relations, DLSE Opn. Letter No. 1999.02.16 (Feb. 16, 1999) p. 1. “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission . . .” Lab. Code § 226.7(b). If an employer fails to provide a legally compliant, duty-free rest period, the employee is entitled to one hour of “premium pay,” or an additional hour of pay at the employee’s regular rate of compensation for each workday that the rest period was not provided. Lab. Code § 226.7(c). The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

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

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

Here, Plaintiff and the Rest Break Aggrieved Employees were not provided their timely ten-minute duty-free rest breaks every four hours or major fraction thereof. On the contrary, they were not provided a rest break until 11:00 a.m., which was *five* hours after their shift ended. Furthermore, MLM illegally combined all of their rest breaks with this presumed meal period, only allowing them to take one, single break per shift. These breaks were frequently interrupted when they were required to perform duties while on break by their supervisor. Additionally, these breaks were often cut short if Plaintiff chose to leave the premises, as Plaintiff had to walk from the clock-in/out location on the Jobsite's premises to his truck, which was far away. On other occasions, Plaintiff and the Rest Break Aggrieved Employees were required to work on rainy or otherwise inclement weather days through their shifts, not receiving any timely breaks at all. Because Plaintiff and the Rest Break Aggrieved Employees did not receive compliant rest breaks, they were entitled to receive rest period premium pay for each day that they did not receive a compliant rest break, yet MLM failed to pay rest period premiums, in violation of Labor Code section 226.7.

Furthermore, Defendant did not authorize Plaintiff and the Rest Break Aggrieved Employees to take their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their shifts. Plaintiff and the Aggrieved Employees were required and instructed by their supervisors to combine both their meal and rest breaks and only take one rest break. Relying on the California Supreme Court's guidance in *Brinker Restaurant Corp. v. Superior Court*, the appellate court in *Rodriguez v. E.M.E. Inc.* 246 Cal. App. 4th 1027 (2016) held that "rest breaks in an eight-hour shift should fall on either side of the meal break, absent factors rendering such scheduling impracticable." There may be unusual or exceptional circumstances that will permit variation from the norm. The Rodriguez court rejected, in ordinary circumstances, the combining of meal and rest breaks as incompatible with California law and the normal sequencing and timing of meal and rest breaks.

B. Non-Compliant Meal Periods

Pursuant to Labor Code section 512, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. *Id.* at subd. (a). However, if the total work period for that day is less than six hours, then the meal period may be waived by mutual consent. *Id.* The first meal period must start prior to the end of the employee's fifth hour of work if the employee is working less than ten (10) hours. *Brinker Restaurant Corp., supra*, 53 Cal. 4th at 1041. During the meal period, the employee is to be completely free of the employer's control and must not be required to perform any work for the employer. *Id.* at 1040-1041. If an employer fails to provide a legally compliant, duty-free meal period, the employee is entitled to one hour of "premium pay," or an additional hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided. Lab. Code § 226.7(c); IWC Wage Order 5-2001 § 11.

Here, Plaintiff and the Meal Break Aggrieved Employees were not permitted to take timely, legally compliant meal periods frequently, as *See Brinker Restaurant Corp., supra*, 53 Cal. 4th at 1041. Furthermore, MLM illegally combined all of their rest breaks with this presumed meal period, only allowing them to take one, single break per shift. Despite the foregoing, Plaintiff and the Meal Break Aggrieved Employees were never paid a meal period premium for every day that they did not receive a compliant meal period, in violation of the Labor Code.

C. Violation of Labor Code Sections 200, 204 & 210

Pursuant to Labor Code section 200, “wages” include “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” The term “wages” includes meal and rest break premiums. *See Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal. 5th 93, 110-118 (California Supreme Court held that unpaid meal and rest break premiums are “wages” that can be the basis of derivative claims for waiting time penalties and wage statement penalties). Labor Code section 204 expressly requires that “[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” *Id.* at subd. (a). Additionally, Labor Code section 210(a), provides that, in addition to, and entirely independent and apart from, any other penalty provided under the Labor Code, every person who fails to pay wages pursuant to section 204 shall be subject to a civil penalty as follows:

- (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee;
- (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.”

Here, due to MLM’s failure to pay Plaintiff and the applicable Aggrieved Employees the meal period and rest period premiums that they were owed, it follows that MLM also failed to pay them all applicable wages on a timely and bi-monthly basis, giving rise to a viable claim for unpaid wages and civil penalties pursuant to Labor Code sections 200, 204, and 210.

D. Inaccurate Wage Statement Claim

Pursuant to Labor Code section 226, employers are obligated to furnish an itemized wage statement showing: (1) gross wages earned; (2) total hours worked; (3) the number of piece-rate units earned and any applicable piece rate (if applicable); (4) all deductions; (5) net wages earned; (6) the inclusive dates of the pay period; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number; (8) the

legal name and address of employer; and (9) all applicable hourly rates in effect and the corresponding number of hours worked at each rate during the pay period. *Id.* at subd. (a). An employer has an affirmative duty to track employee's hours worked and meal periods. *See* IWC Wage Order section 7(A) ("Every employer shall keep accurate information with respect to each employee including . . . time records showing when the employee begins each work period[,] [m]eal periods[,] and total daily worked shall also be recorded."); *See also Naranjo, supra*, 13 Cal. 5th at 110-111, 117-118 (meal and rest break premiums are wages that can be the basis of derivative claims for wage statement penalties). Additionally, if an employer does not keep such records, as is the case here, the burden shifts to the employer to show that proper timekeeping procedures were maintained. *See Hernandez v. Mendoza* (1988) 199 Cal. App. 3d 721, 727 (burden shifted to employer to produce evidence either of the precise amount of work or evidence to negate the reasonableness of the inference to be drawn from the employee's evidence).

Labor Code section 226(e) provides that an employee is entitled to recover \$50 for initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury.

Here, Plaintiff and the Wage Statement Aggrieved Employees did not receive wage statements which included all of the required information under Labor Code section 226(a), including all meal and rest period premiums owed, and thus the wage statements issued to these individuals failed to include the correct amount of gross wages earned, the net wages earned, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

Furthermore, MLM's failure to furnish accurate itemized wage statements has caused Plaintiff and the Wage Statement Aggrieved Employees to incur economic damages in that they were not aware that they were owed, due to not being paid compensation for their time spent on non-compliant meal and rest periods. *See Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949, 960-961 (reversing summary judgment for defendants where wage statements did not "give an accurate report of the hours plaintiff worked, at least not on its face"). "If it is left to the employee to add up the daily hours shown on the time cards or other records so that the employee must perform arithmetic computations to determine the total hours worked during the pay period, the requirements of section 226 would not be met." *Id.* at 955; *see also* Lab. Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the gross or net wages earned by the employee during the pay period).

III. CONCLUSION

Based on the foregoing, we write to inform MLM and the LWDA, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action (and a class action) against Defendant seeking, *inter alia*, PAGA penalties under Labor Code section 2699,

to be brought by Plaintiff individually, on a class basis, and on behalf of the Aggrieved Employees as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the putative class and the Aggrieved Employees. If Defendant is interested in attempting to resolve this matter, please have counsel contact us by **May 18, 2023**, so that we may discuss an informal discovery plan and the possibility of early resolution through mediation. You may contact either myself through email at Amir@employmentrightslawgroup.com or by calling (424) 777-0964. We look forward to your response.

Regards,

Amir Seyedfarshi, Esq. 

Tatiana Hernandez, Esq.
*Attorneys for Plaintiff and the
Aggrieved Employees*