

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
Jasmine J. Badawi (Bar No. 335433)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

Attorneys for Plaintiff,
Timothy Contreras

ELECTRONICALLY
FILED
BY SUPERIOR COURT OF CALIFORNIA,
COUNTY OF NEVADA
08/17/2023
LAILA A. WAHEED, CLERK OF THE COURT
JENNI TREKELL-BOLAN, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF NEVADA**

TIMOTHY CONTRERAS, an
individual, on his own behalf and on
behalf of all others similarly situated,

Plaintiffs,

vs.

PEAK LANDSCAPE, INC. a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CU0000780

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY PREMIUM OVERTIME WAGES DUE (Cal. *Labor Code* §§ 510, 511, 558, 1194, 1198);**
- 2. FAILURE TO PAY MINIMUM WAGES DUE TO ROUNDING (Cal. *Labor Code* §§ 1194, 1197, 1197.1, 1198, 1199);**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. *Labor Code* §§ 226.7, 512);**
- 4. FAILURE TO PROVIDE REST PERIODS (Cal. *Labor Code* § 226.7);**
- 5. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. *Labor Code* §226);**
- 6. FAILURE TO PAY WAGES ON TERMINATION AND/OR RESIGNATION (Cal. *Labor Code* §§201-203);**
- 7. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. *Labor Code* §2802);**
- 8. FAILURE TO PAY FOR UNIFORM MAINTENANCE ALLOWANCE (Cal. *Labor Code* §2802);**

- 1
2
3
4
5
6
9. **UNLAWFUL DEDUCTION OF WAGES**
(*Cal. Labor Code §221*);
10. **UNFAIR COMPETITION** (*Cal. Bus. & Prof.*
Code §§17200 et seq.); and
11. **PRIVATE ATTORNEY GERNERAL ACT**
(PAGA)

7
8
9
10
11
12

DEMAND FOR A JURY TRIAL

13
14
15
16
17
18
19
20

All allegations in this First Amended Complaint are based upon information and belief except for those allegations which pertain to the Plaintiff named herein and his counsel. Each allegation has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

21
22

TIMOTHY CONTRERAS (“Plaintiff”) alleges the following:

23
24
25
26
27
28

1. This is a class action brought under California law by an individual who was employed by PEAK LANDSCAPE, INC. (along with DOES 1 through 100, collectively “Defendant”). Plaintiff brings this action on behalf of himself and others similarly situated to recover wages from Defendant due to Defendant’s systematic failure to pay overtime, failure to pay minimum wages due to rounding, failure to provide meal and rest breaks (or pay the statutory compensation due), failure to maintain records and to provide accurate itemized wage statements, failure to pay wages on termination and/or resignation, failure to reimburse business expenses, failure to pay for uniform maintenance, unlawfully deducting wages, and failure to allow inspection of employment records.

2. Plaintiff has worked as an employee for Defendant’s landscaping company in Truckee, California since May 2021. While working, Plaintiff and members of the Class have been forced to endure stressful and illegal workplace conditions created by Defendant’s efforts to maximize profits and tightly control labor costs.

3. Plaintiff, like his co-workers whom Defendant also employed during the applicable limitations period, spend their workdays as Yard and Fleet Managers and non-exempt hourly landscape employees, under illegal and highly regimented circumstances. That regimen results from Defendant’s insistence to strictly monitor and curtail labor costs, which Defendant

1 accomplishes by not paying for all labor costs, failing to pay overtime, failing to pay minimum
2 wages due to rounding, failing to provide meal and rest breaks (or pay the statutory compensation
3 due), failing to maintain records and to provide accurate itemized wage statements, failing to pay
4 wages on termination and/or resignation, failing to reimburse business expenses, failing to pay
5 for uniform maintenance, unlawfully deducting wages, failing to allow inspection of
6 employment records and by using other unlawful stratagems to ensure that labor costs remain
7 artificially low.

8 4. Plaintiff brings this class action to recover, among other things, wages and
9 penalties from unpaid wages earned and due, including but not limited to, premium overtime
10 wages, minimum wages, late and missed meal/rest break wages, wages due to discharged or
11 quitting employees, penalties for failure to maintain required records and to provide accurate
12 itemized wage statements, to pay wages on termination and/or resignation, reimbursement of
13 business expenses, pay wages due to unlawfully deducting wages and failure to pay for uniform
14 maintenance interest, attorneys' fees, costs.

15 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
16 himself and all members of the class, to compensate these workers for the unpaid wages and to
17 protect current and future workers of Defendant from being subjected to similar wage theft and
18 otherwise unlawful working conditions.

19 6. Plaintiff also brings an action seeking relief for Defendant's violations of
20 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
21 disgorgement of all compensation retained by Defendant as a result of its unlawful and unfair
22 business practices, as well as injunctive relief.

23 JURISDICTION AND VENUE

24 7. This Court has jurisdiction over this Complaint under Code of Civil Procedure
25 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business &*
26 *Professions Code* §§ 17200 *et seq.* Plaintiff Timothy Contreras brings this Complaint on his own
27 behalf and on behalf of all persons in the Class as defined in paragraph 16 below.

8. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of Nevada and because Defendant owned and operated their business in the County of Nevada.

THE PARTIES

PLAINTIFF

9. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Washoe County, Nevada;
- (b) Employed as a non-exempt hourly employee for Defendant Peak Landscape, Inc. (“Peak” or “Defendant”) in Truckee, California;
- (c) Did not receive overtime compensation required by *Labor Code* §§510 and 1194 and the applicable Wage Orders;
- (d) Did not receive minimum wage compensation due to rounding as required by *Labor Code* §§ 1194, 1197, 1197.1, 1198, 119 and the applicable Wage Orders;
- (e) Did not receive the meal periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (f) Did not receive the rest periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (g) Did not receive accurate itemized wage statements as mandated by *Labor Code* §226;
- (h) Was not paid wages on termination and/or resignation in violation of *Labor Code* §§201-203;
- (i) Did not receive reimbursement for business expenses as mandated by *Labor Code* § 2802;
- (j) Did not received reimbursement for uniform maintenance as mandated by *Labor Code* § 2802;

- 1 (k) Had his wages unlawfully deducted by Defendant in violation of *Labor*
2 *Code* §221; and
3 (l) Was not allowed to inspect his employment records in violation of Cal.
4 *Labor Code* §1198.5.

5 **DEFENDANT**

6 10. Plaintiff is informed and believes, and based on that information and belief,
7 alleges, Defendant Peak is, and at all times mentioned herein was:

- 8 (a) A California corporation, with a principal place of business at 11028
9 Comstock Drive, Truckee, California 96161. Peak has been authorized
10 to do business and has been doing business in the County of Nevada;
11 (b) The current employer of Plaintiff and the current and former employer of
12 the putative Class members;
13 (c) Paid Plaintiff and all Class Members on an hourly basis;
14 (d) Failed to pay Plaintiff and all putative Class members premium overtime
15 wages;
16 (e) Failed to Plaintiff and all putative Class members minimum wages;
17 (f) Failed to provide Plaintiff and all putative Class members with meal and
18 rest periods, failed to provide Plaintiff and all putative Class Members
19 with accurate itemized wage statements;
20 (g) Failed to accurately maintain records;
21 (h) Did not properly pay wages on termination and/or resignation;
22 (i) Failed to reimburse business expenses;
23 (j) Failed to pay for uniform maintenance;
24 (k) Unlawfully deducted wages; and
25 (l) Failed to allow inspection of personnel records. Each of these was a
26 violation of the *Labor Code*.

27 11. The true names and capacities, whether individual, corporate, subsidiary,
28 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown

1 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
2 *Civil Procedure* § 474. Plaintiff will seek leave to amend his Complaint to allege the true names
3 and capacities of DOES 1 through 100, inclusive, when they are ascertained.

4 12. Plaintiff is informed and believes, and based on that information and belief
5 alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which
6 reside in or are authorized to do, or are otherwise doing, business in the State of California.
7 Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and
8 conduct business in the County of Alameda. Each of the Defendants DOES 1 through 100 was
9 the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator, alter ego
10 and/or representative of one or more of the other Defendants named herein, and acting with
11 permission, authorization, and/or ratification and consent of the other Defendants.

12 13. Plaintiff is informed and believes, and based on that information and belief
13 alleges, that the Defendants named in this Complaint, including DOES 1 through 100, inclusive,
14 are responsible in some manner for one or more of the events and happenings that proximately
15 caused the injuries and damages hereinafter alleged.

16 14. Plaintiff is informed and believes, and based on that information and belief
17 alleges, that Defendants named in this Complaint, including DOES 1 through 100, inclusive, are,
18 and at all times mentioned herein were, the agents, servants, and/or employees of each of the
19 other Defendants and that each Defendant was acting within the course and scope of his, hers or
20 its authority as the agent, servant and/or employee of each of the other Defendants.
21 Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the Class,
22 for the damages sustained as a proximate result of their conduct.

23 15. Plaintiff is informed and believes, and based on that information and belief
24 alleges, that the Defendant named in this Complaint, including DOES 1 through 100, inclusive,
25 knowingly and willfully acted in concert, conspired and agreed together among themselves and
26 entered into a combination and systemized campaign of activity to *inter alia* damage Plaintiff,
27 and the Class, and to otherwise consciously and/or recklessly act in derogation of the rights of
28 Plaintiff and the Class, and the trust reposed by Plaintiff, and the Class, the acts being negligently

1 and/or intentionally inflicted. Their conspiracy, and Defendant's concerted actions, were such
2 that, to Plaintiff's information and belief, and to all appearances, Defendant, represented a unified
3 body so that the actions of one Defendant were accomplished in concert with, and with the
4 knowledge, ratification, authorization and approval of each of the other Defendants.

5 **CLASS ALLEGATIONS**

6 **A. The Definition of the Class**

7 16. The Class ("the Class") is defined as follows:

8 (a) "All current and former employees of Defendant in California who were paid
9 hourly at any time during the period commencing on the date that is four (4)
10 years prior to the filing of this Complaint and continuing through the present
11 date (the "Class Period")."

12 (b) "All persons who were employees of Defendant in California who were paid
13 hourly and left the employ of Defendant at any time during the period
14 commencing on the date that is within one (1) year prior to the filing of this
15 Complaint and continuing through the present date (the "Class Period")."

16 17. Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to
17 amend or modify the Class description with greater specificity or further division into subclasses
18 or limitation to particular issues.

19 **B. Maintenance of the Action**

20 18. Plaintiff brings this action individually and on behalf of himself and as
21 representative of all similarly situated persons under *Business & Professions Code* §§ 17203 and
22 17204 and *Code of Civil Procedure* § 382.

23 **C. The Class Requisites**

24 19. At all material times, Plaintiff was a member of the Class.

25 20. The Class action meets the statutory prerequisites for maintaining a class action
26 under Code of Civil Procedure § 382 in that:
27
28

- 1 (a) The persons who comprise the Class are so numerous that the joinder of all
2 those persons is impracticable and the disposition of their claims as a Class
3 will benefit the parties and the Court;
4 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
5 that are raised in this Complaint are common to the Class and will apply
6 uniformly to every Class member;
7 (c) The claims of the representative Plaintiff are typical of the claims of each
8 Class member. Plaintiff, like all Class members, has sustained damages
9 arising from Defendant's violations of the laws of the State of California.
10 Plaintiff, and the Class members, were and are similarly or identically
11 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
12 pattern of misconduct engaged in by the Defendant;
13 (d) The representative Plaintiff has, and will continue to, fairly and adequately
14 represent and protect the interests of the Class and has retained counsel who
15 are competent and experienced in class action litigation. There are no
16 material conflicts between the claims of the representative Plaintiff and the
17 Class members that would make class certification inappropriate. Counsel
18 for the Class will vigorously assert the claims of all Class members.

19 21. The persons who comprise the Class are so numerous that joining all of them is
20 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
21 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
22 will fairly and adequately protect the interests of the Class he seeks to represent. Plaintiff does
23 not have any interests that are antagonistic to the Class he seeks to represent. Counsel for Plaintiff
24 are experienced, qualified and generally able to conduct complex class action litigation.

25 22. The Court should permit the action to be maintained as a class action under *Code*
26 *of Civil Procedure* § 382 because:

- 27 (a) The questions of law and fact common to the Class predominate over any
28 question affecting only individual members:

- 1 (b) A class action is superior to any other available method for fairly and
2 efficiently adjudicating the claims of the Class;
- 3 (c) The Class members are so numerous that it is impractical to bring all of
4 them before the Court;
- 5 (d) Plaintiff and other Class members will not be able to obtain effective and
6 economic legal redress unless the action is maintained as a class action;
- 7 (e) There is a community of interest in obtaining appropriate legal and
8 equitable relief for the statutory violations, and in obtaining adequate
9 compensation for the damages and injuries for which Defendants are
10 responsible in an amount sufficient to adequately compensate the Class
11 members;
- 12 (f) Without Class certification, the prosecution of separate actions by
13 individual Class members would create a risk of:
- 14 i. Inconsistent or varying adjudications for individual Class members
15 that would establish incompatible standards of conduct for
16 Defendants; and/or,
- 17 ii. Adjudication for individual Class members that would, as a practical
18 matter, dispose of other non-party members' interests, or that would
19 substantially impair or impede the non-parties' ability to protect
20 their interests, by, for example, potentially exhausting the funds
21 available from Defendant, and
- 22 (g) Defendant has acted or refused to act on grounds generally applicable to
23 the Classes, making final injunctive relief appropriate for the Class, as a
24 whole.

25 23. Plaintiff contemplates eventually issuing notice to the proposed Class Members
26 that would set forth the subject and nature of the action. The Defendant's own business records
27 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that any
28

1 further notices may be required, Plaintiff would contemplate using additional media and/or
2 mailing.

3 **GENERAL ALLEGATIONS**

4 24. At all times material hereto, Peak has been, and is, a full-service landscape
5 contractor that provides landscaping services.

6 25. Plaintiff and members of the Class were employed as Yard and Fleet Managers
7 and other non-exempt hourly employees in California by Defendant at various times during the
8 Class Period.

9 **THE CONDUCT**

10 26. Plaintiff seeks relief from Defendant's uniform policies and practices of denying
11 Plaintiff and members of the Class wages and compensation owed under California law.

12 27. Starting in or about May 2021 and continuing through the present, Defendant
13 employed Plaintiff as a Yard and Fleet Manager in Truckee, California.

14 28. While employed by Defendant, Plaintiff was paid \$31.50 per hour.

15 29. The employment by Defendant of the Class Members, and each them, is governed
16 by Industrial Welfare Commission Wage Order 5, which covers those persons employed in the
17 Public Housekeeping Industry.

18 **OFF-THE-CLOCK-WORK**

19 30. Employers must compensate non-exempt employees for "off-the-clock" work
20 (before punching in or after punching out on a time clock) if the employers knew or should have
21 known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000)
22 22 Cal. 4th 575, 585.

23 31. Defendant required Plaintiff and the Class to regularly perform compensable tasks
24 pre-shift off-the-clock for which they did not receive any compensation. Specifically, as part of
25 the Class members' employment, when they arrive 10 to 15 minutes early to work, they are not
26 paid for that time even though they start working immediately. For example, when Plaintiff
27 arrives early to work, he goes to his work tent and starts reading the daily dispatch sent by his
28 boss which details the work for the day. When he is the first person to arrive at the site he unlocks

1 the gates and parks. As a result, and because they improperly treated such pre-shift activities as
2 non-compensable, Defendant failed to compensate Plaintiff and the Class for such time.

3 32. At all times relevant, Plaintiff and Class Members consistently worked hours for
4 which they were not paid because Plaintiff and the Class Members were required to engage in
5 post-shift off-the-clock activities such as locking up so that bears cannot gain access and sending
6 emails to Defendant with their time and a photo on their personal cell phones. The time to spent
7 doing these post-shift activities was between 10 and 15 minutes.

8 **FAILURE TO PAY OVERTIME/MINIMUM WAGES DUE TO ROUNDING**

9 33. At all times during the relevant time period, Plaintiff and the Class routinely
10 worked schedules such that they were due pay at overtime time rates. Plaintiff and members of
11 the Class were instructed to round down their hours. During this period, it was the practice and
12 policy of Defendant to not pay employees at appropriate overtime rates. Monies for unpaid
13 overtime remain due and owing.

14 34. Under California law, non-exempt employees as defined by the applicable Wage
15 Order are entitled to minimum wages. Plaintiff and the Class were not paid minimum wages.

16 35. Defendant unlawfully rounded down or “shaved” the hours worked by employees
17 such that they were not paid for all hours worked. Plaintiff and Class members did not use
18 electronic time clocks at work to keep track of their time. Plaintiff handwrote his shift’s scheduled
19 start and stop times. Plaintiff shaved his time and rounded it down because Defendant did not
20 approve overtime pay. Plaintiff and members of the class recorded the rounded time they started
21 and finished work. Plaintiff’s paystubs show rounded hours and his hand-written notes show
22 rounded entries.

23 **LATE AND/OR MEAL BREAKS NOT AFFORDED**

24 36. Under California law, non-exempt employees as defined by Wage Order 5, are
25 entitled to premium wages for overtime worked, a 30-minute lunch period for each 10 hours
26 worked, a 10-minute paid rest break for every four hours worked, or major fraction thereof. Non-
27 exempt employees are entitled to one hour pay at their regular pay rate for each day the requisite
28 rest and/or meal periods are not provided.

1 37. Plaintiff and the Class were routinely provided meal breaks late. Defendant has a
2 company-wide rule that meal breaks are to be taken by the 6th hour, not the 5th hour. Further,
3 during the summer months, Plaintiff and members of the Class work in excess of 10 hours 4
4 times per week, and are not afforded second meal breaks.

5 38. Defendant's policies and procedures were applied to all non-exempt employees
6 in California and resulted in non-exempt employees working time which was not compensated
7 by any wages in violation of Labor Code sections 510, 1194 and the applicable Wage Orders. As
8 a result, Defendant owes wages at the legal overtime rate for unpaid overtime to each of their
9 California non-exempt employees whose daily hours were automatically reduced even though
10 their meals periods were afforded late and second meal breaks were never afforded.

11 **REST BREAKS NOT AFFORDED**

12 39. Plaintiff and the Class were never afforded rest breaks. Plaintiff and members of
13 the Class only stop their work to use the restroom. On days when Plaintiff and members of the
14 Class worked between 10-12 hours, they were never afforded third rest breaks.

15 **LACK OF EXPENSE REIMBURSEMENT**

16 40. Plaintiff and Class Members incurred out-of-pocket expenses relating to their
17 work such as cell phone use, but were not reimbursed therefor. Two to three times per week,
18 Plaintiff spent between 5 to 15 minutes off-the-clock, especially on Fridays (his day off)
19 responding to calls from vendors, such as mechanics, on his personal cell phone. Defendant did
20 not reimburse Plaintiff and members of the Class for these business-related expenses.

21 41. Moreover, Defendant required Plaintiff and members of the Class to drive their
22 personal vehicles during work hours to pick up parts and supplies either on their way to work or
23 on the way home. Defendant under-reimbursed Plaintiff and the Class's mileage at the rate of
24 \$0.30 per mile. The Peak Landscape, Inc. 2022 Benefit Package states: "Fuel Allowance of 30
25 cents per mile will be extended to those team members who drive 20 miles or more round trip
26 from there [sic] place of residence to our yard." That amount is significantly below the IRS
27 Standard Mileage Rate of the last decade. Further, although Defendant initially paid a fuel
28

allowance to Plaintiff and members of the Class, Defendant cancelled Plaintiff's fuel allowance in January 2023, when the price of fuel fell below \$5.50 per gallon.

LACK OF UNIFORM MAINTENANCE

42. Defendant failed to pay for or reimburse Plaintiff and members of the Class for maintenance of their uniforms. Plaintiff and Class members had to pay for cleaning of their uniforms themselves. Defendant failed to maintain Plaintiff's and the Class's uniforms.

UNLAWFUL DEDUCTION OF WAGES

43. Defendant also engaged in the unlawful deduction of wages. The Annual Package Work Sheet provides: "Any HOA fines, company or client damages will be deducted from your bonus." On three separate occasions, Defendant deducted damages from Plaintiff's bonuses as follows:

- a. \$500 for chainsaws that were stolen from a truck;
- b. \$200 for equipment that was damaged during snow removal; and
- c. \$2,950 for damage to an excavator that Plaintiff did not receive training on from Defendant as to how to operate.

Further, the Spring Bonus form dated April 29, 2022, contains a separate section entitled "Deduction for Damage to Company/Customer Property" that is unfilled. Thus, it is possible that even year-end bonuses or spring bonuses may contain deductions in applicable situations.

REGULAR RATE OF PAY

44. California law uses the terms "compensation" and "pay" interchangeably and requires that all applicable remuneration, including but not limited to, commissions, and/or non-discretionary bonuses, and/or gift cards, etc., be included when calculating an employee's regular rate of pay.

45. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or should have known that Plaintiff and Class members were entitled to be paid at a regular rate of pay, and corresponding overtime rate of pay, that included as eligible income all income derived from nondiscretionary bonuses, gift cards and/or other forms of compensation.

1 46. Defendant failed to properly pay and calculate overtime minimum wages due to
2 excluding nondiscretionary bonuses and gift cards from regular rate of pay calculations. Such
3 bonus payments are required under California law to be included in an employee's regular rate
4 of pay for overtime and minimum wage calculation. Defendant failed to do so, thereby failing to
5 pay employees their full wages as required under the Labor Code.

6 47. Plaintiff and members of the Class received gift cards and multiple extra benefits
7 and allowances that must be included when calculating their regular rates of pay for purposes of
8 overtime, minimum wages and meal/rest premiums. However, Defendant failed to correctly
9 calculate Plaintiff and members of the Class's regular rate of pay to include all applicable
10 remuneration, including, but not limited to, gift cards, etc. Specifically, Defendant gave \$20 gift
11 cards for birthdays. Further, Defendant held monthly drawings to celebrate team safety and
12 provided winners with \$50 gift cards, \$1.00 per hour pay increases for employees becoming fully
13 bilingual in Spanish/English in oral and written forms, Green Industry Certifications and
14 classes/seminars for continued education credits, and ski pass allowances for Foremen and
15 Managers in the amount of \$791 for the 22/23 season. Plaintiff's paystubs do not show any gift
16 cards or cash awards paid to Plaintiff.

17 48. Further, twice per year, Plaintiff and members of the Class were paid a bonus.
18 The first bonus was for hours worked during the summer and second was a yearly retention
19 bonus. The amounts of these bonuses are based on monthly evaluations of employees. Plaintiff
20 was paid one bonus in the amount of \$2,500 and another in the amount of \$1,500. The Peak
21 Landscape, Inc. 2022 Benefit Package lists the following bonuses:

- 22 a. "End of Season Bonus" based on (5-12%) of employees' regular pay;
23 b. "Loyalty Bonus" of \$100 per year worked as of August 1, 2022;
24 c. "Winter Bonus" of between \$1,000-\$2,000.

25 Additionally, the "2022 Team Member Referral Incentive Program" lists a referral bonus of
26 \$2,400 per team member. Additional documents reveal the following bonuses: "Spring Bonus"
27 (which Plaintiff received in the amount of \$1,209.60 on April 29, 2022), and "End of Season
28 Bonus". Defendant failed to correctly calculate Plaintiff and members of the Class's regular rate

1 of pay to include all applicable bonuses. Plaintiff's paystubs show that overtime was paid at 1.5
2 times the base rate and bonuses were not incorporated.

3 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

4 49. Defendant failed to allow Plaintiff and Class members to timely inspect their
5 records and payroll files.

6 50. As a result of Defendant's failure to pay employees at required overtime time
7 rates, minimum wages, premium pay for missed meal/rest breaks and unlawful deductions, the
8 wage statements issued to the employees did not comply with *Labor Code* §226 and California
9 Industrial Welfare Commission ("IWC") Wage Order 5 in that they did not accurately reflect all
10 wages earned and due and owing.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY OVERTIME TIME**

13 **(Labor Code §§510, 558, 1194.3 and Wage Order 5 By Plaintiffs Against Defendant and**
14 **Does 1-100)**

15 51. Plaintiff and the Class reallege and incorporate by reference all of the allegations
16 set forth in this Complaint.

17 52. During Plaintiff's entire employment with Defendant, pursuant to Cal. Lab. Code
18 §§200, 510, 1194, and 1198, and IWC Wage Order No. 5, Defendant was required to compensate
19 Plaintiff with premium pay for all overtime work, for hours worked in excess of eight (8) hours
20 per day and/or forty (40) hours per week.

21 53. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
22 who had not been paid overtime compensation could recover the unpaid balance of the full
23 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
24 fees and costs of suit.

25 54. Pursuant to IWC Wage Order No. 5-2001, § 3, "Employment beyond eight (8)
26 hours in any workday is permissible provided the employee is compensated for such overtime at
27 not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours
28 worked in excess of eight (8) hours up to and including twelve (12) hours in any workday.

1 55. California Labor Code section 558 provides in pertinent part:

2 (a) Any employer or other person acting on behalf of an employer who
3 violates, or causes to be violated, a section of this chapter or any provision
4 regulating hours and days of work in any order of the Industrial Welfare
Commission shall be subject to a civil penalty as follows:

5 (1) For any initial violation, fifty dollars (\$50) for each underpaid
6 employee for each pay period for which the employee was underpaid in
7 addition to an amount sufficient to recover underpaid wages.

8 (2) For each subsequent violation, one hundred dollars (\$100) for each
9 underpaid employee for each pay period for which the employee was
underpaid in addition to an amount sufficient to recover underpaid wages.

10 (3) Wages recovered pursuant to this section shall be paid to the affected
11 employee...

12 (c) The civil penalties provided for in this section are in addition to any
13 other civil or criminal penalty provided by law.

14 56. Plaintiff and members of the Class engaged in pre-shift and post-shift activities
15 for which they were not compensated. Further, Plaintiff and members of the Class responded to
16 calls from vendors on their days off and were not compensated for time spent doing so.

17 57. Defendant failed to pay Plaintiff and the members of the Class for these off-the
18 clock activities and as a result thereof, Plaintiff and the Class were not paid overtime that was
19 due to them.

20 58. The regular rate of pay under California law includes all remuneration for
21 employment paid, on behalf of the employer, to the employee. Employers must properly factor
22 all economic items into the regular rate of pay for purposes of calculating the overtime wages
23 due to its employees. *See Alvarado v. Dart Container Corp. of California* (2018) 4 Cal. 5th 542,
24 554, 568 (the regular rate of pay must include the “value of any nonhourly compensation,”
including bonuses).

25 59. Specifically, Defendant had a company-wide policy of paying Plaintiff and
26 members of the Class nondiscretionary bonuses and gift cards as well as a plethora of extra
27 benefits and allowances as detailed above. Defendant failed to incorporate nondiscretionary
28 bonuses, gift cards, etc. into Plaintiff and Class members regular rate of pay, and as a result, paid

1 them at incorrect and lower rates of pay for overtime hours worked. Defendant's failure to
2 properly calculate the overtime rates of pay based on all remuneration paid has resulted in an
3 underpayment of overtime to wages to Plaintiff and Class members on a company-wide basis.

4 60. Plaintiff and Class Members were required to work in excess of 8 hours, but were
5 not accurately paid for overtime since non-discretionary bonuses and/or gift cards, etc. were not
6 included in the regular rate of pay.

7 61. Defendant violated the rights of Plaintiff and the members of the Class by not
8 correctly calculating their regular rate of pay to include all applicable remuneration, including,
9 but not limited to, non-discretionary bonuses, gift cards, etc.

10 62. In addition, Defendant unlawfully instructed Plaintiff and members of the Class
11 to manually round down or shave their time such that Plaintiff and members of the Class were
12 systematically deprived of earned wages.

13 63. Throughout Plaintiff's employment, Defendant failed and refused to pay and
14 properly calculate overtime compensation to Plaintiff and members of the Class as required by
15 law.

16 64. The foregoing overtime compensation is owed and unpaid. As a direct and
17 proximate result of Defendant's failure and refusal to pay overtime compensation, Plaintiff and
18 Class Members suffered damages in an amount to be proven at trial.

19 65. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
20 counsel in order to enforce Plaintiff's rights to overtime, is entitled to recover Plaintiff's
21 attorneys' fees, costs and interest.

22 **SECOND CAUSE OF ACTION**
23 **FOR FAILURE TO PAY MINIMUM WAGES**

24 **(Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order 5 By Plaintiffs Against**
25 **Defendant)**

26 66. Plaintiff and the Class reallege and incorporate by reference all of the allegations
27 set forth in this Complaint.
28

1 67. Labor Code § 1197 states the California requirement that employees must be paid
2 at least the minimum wage fixed by the Commission, and any payment of less than the minimum
3 wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the
4 legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount
5 of this minimum wage." IWC Wage Order 5-2001 also obligates employers to pay each
6 employee minimum wages for all hours worked. These minimum wage standards apply to each
7 hour employees worked for which they were not paid.

8 68. During the four years preceding the filing of this lawsuit, Defendant was required
9 to compensate Plaintiff at the minimum wage, but failed to carry out its duties and
10 responsibilities as an employer imposed under the laws and regulations of the State of California
11 by failing to pay Plaintiff a minimum wage as required by the Cal. Lab. Code and/or IWC Wage
12 Order No. 5. Specifically, Defendant committed the following acts:

- 13 a. failing to pay overtime time;
- 14 b. failing to pay minimum wages;
- 15 c. failing to provide meal breaks as required by law;
- 16 d. failing to provide rest breaks as required by law;
- 17 e. failing to maintain records and provide accurate itemized wage
18 statements;
- 19 f. failing to pay wages on resignation or termination;
- 20 g. failing to reimburse business expenses;
- 21 h. failing to reimburse for uniform maintenance;
- 22 i. unlawful wage deductions;
- 23 j. failing to provide employment records; and
- 24 k. all other reasons to be discovered.

25 69. Labor Code § 1194 provides, in part, that any employee receiving less than the
26 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
27 wage, including interest thereon, reasonable attorneys' fees, and costs of suit.

1 70. Labor Code § 1194.2 allows an employee to recover liquidated damages in an
2 amount equal to the wages unlawfully unpaid and interest thereon for any action under Labor
3 Code § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid
4 for all hours worked under Labor Code § 1194, the employee may recover minimum wages for
5 the time associated with the overtime for which they received no compensation. See *Sillah v.*
6 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing
7 for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed
8 they were paid less than minimum wage); accord *Andrade v. Arby's Rest. Grp., Inc.*, 225 F.
9 Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

10 71. Plaintiff and the other Class Members suffered and continue to suffer losses
11 related to the use and enjoyment of compensation due and owing to them as a direct result of
12 Defendant's unlawful acts and Labor Code violations in an amount to be shown according to
13 proof at trial and within the jurisdictional limitations of this Court.

14 72. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
15 Class are entitled to recover the unpaid balances of the minimum wages Defendant owes them,
16 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to proof.

17 **THIRD CAUSE OF ACTION**

18 **FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS**

19 **(Failure to Provide Timely Off-Duty Meal Periods in Violation of IWC Wage Order No.**
20 **5; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendant)**

21 73. Plaintiff and the Class reallege and incorporate by reference all of the allegations
22 set forth in this Complaint.

23 74. California Labor Code §226.7(a) prohibits an employer from requiring an
24 employee to work during any meal period mandated by an applicable Industrial Wage Order.
25 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
26 employee to work during a meal or rest break or recovery period mandated pursuant to an
27 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
28 Commission..."

1 75. California Labor Code §1198 makes unlawful the employment of an employee
2 under conditions the IWC prohibits.

3 76. IWC Order No. 5-2001(11)(A) provides, in relevant part: "No employer shall
4 employ any person for a work period of more than five (5) hours without a meal period of not
5 less than 30-minutes, except that when a work period of not more than six (6) hours will complete
6 the day's work the meal period may be waived by mutual consent of the employer and the
7 employee."

8 77. IWC Order No. 5-2001 (11)(c) further provides, in relevant part: "Unless the
9 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
10 considered an 'on duty' meal period and counted as time worked."

11 78. Section 512(a) of the California Labor Code provides, in relevant part, that:

12 An employer may not employ an employee for a work period of more than five
13 hours per day without providing the employee with a meal period of not less than
14 30-minutes, except that if the total work period per day of the employee is no
15 more than six hours, the meal period may be waived by mutual consent of both
16 the employer and employee. An employer may not employ an employee for a
17 work period of more than 10 hours per day without providing the employee with
18 a second meal period of not less than 30-minutes, except that if the total hours
worked is no more than 12 hours, the second meal period may be waived by
mutual consent of the employer and the employee only if the first meal period
was not waived.

19 79. The Labor Code and Wage Order provisions cited above require California
20 employers to provide employees with off-duty 30-minute meal periods on or before the fifth hour
21 of their shifts. To satisfy this obligation, California employers must: (1) make employees aware
22 of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and (2)
23 ensure that employees are actually free of job duties for thirty minutes per day on or before the
24 fifth hour of their shifts.

25 80. As alleged herein, Plaintiff and the members of the Class were routinely required
26 to work through their meal period at the fifth hour of their shifts at the direction of Defendant
27 and/or with their endorsement, encouragement, knowledge and acquiescence. Moreover,
28 Defendant failed to inform off-employees of their rights to off-duty thirty-minute meal periods

1 before the sixth hour of their shifts and instead discouraged the taking of timely meal periods.
2 Rather, Defendant has a policy of affording meal breaks by the 6th hour, not the 5th hour. Thus,
3 Plaintiff and members of the Class's meal breaks were always afforded late.

4 81. Plaintiff and members of the Class routinely were not afforded second meal
5 breaks on days when they worked in excess of 10 hours.

6 82. Further, instead of allowing Plaintiff and members of the Class to take timely meal
7 breaks, Defendant required Plaintiff and members of the Class to sign meal break waivers which
8 failed to include required language, including failing to state that the agreements could be
9 revoked by employees at any time. In violation of the applicable Wage Order, Defendant's "Meal
10 Break Waiver Form" does not mention Plaintiff and the Class's right to revoke the waiver.

11 83. By their actions in affording late meal breaks and failing to afford Plaintiff and
12 Class Members second meal periods, Defendant violated Cal. Lab. Code §226.7(b) and section
13 11 of the Wage Order in the amount of one additional hour of pay at the employee's regular rate
14 of compensation for each work period during each day in which Defendant failed to provide
15 employees with statutory timely off-duty meal periods.

16 84. Defendant also has a policy or practice of failing to pay each of their employees
17 who was not provided with a meal period as required an additional one hour of compensation at
18 each employee's regular rate of pay. Alternatively, to the extent that Defendant did pay Plaintiff
19 and Class members premium pay for missed, late, and interrupted meal periods, Defendant did
20 not pay Plaintiff and Class members at the correct rate of pay for premium wages because
21 Defendant systematically failed to include all forms of compensation, such as nondiscretionary
22 bonuses and/or other forms of remuneration, in the regular rate of pay. As a result, Defendant
23 failed to provide Plaintiff and Class members compliant meal periods in violation of California
24 Labor Code sections 226.7, 512, and 516 and failed to pay the full meal period premiums due.

25 85. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to bring
26 a private right of action to recover wages due based on the deprivation of timely meal periods
27 under Cal. Labor Code § 226.7(b).

86. As a direct and proximate result of Defendant's unlawful conduct as alleged herein, Plaintiff and members of the Class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages, attorneys' fees and penalties and other appropriate relief due to Defendant's violations of the California Labor Code and the applicable IWC Wage Orders.

FOURTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE REST PERIODS

(Labor Code § 226.7 and IWC Wage Order No. 5 By Plaintiffs Against Defendant and Does 1 through 100)

87. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

88. Labor Code § 226.7 and the applicable Wage Order provide that employers shall authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four hours of work, or major fraction thereof.

89. Labor Code § 226.7 and the applicable Wage Order provide that if an employer fails to provide an employee with rest periods in accordance with those provisions, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest periods were not so provided.

90. Defendant has intentionally and improperly denied rest periods to Plaintiff and the Class in violation of Labor Code § 226.7 and the applicable Wage Order.

91. At all times relevant hereto, Plaintiff and members of the Class have worked 8 or more hours daily.

92. At all times relevant hereto, Defendant failed to provide rest periods as required by Labor Code § 226.7 and the applicable Wage Order. Plaintiff and Class members rest breaks were interrupted. Alternatively, to the extent that Defendant did pay Plaintiff and Class members premium pay for missed, late, and interrupted rest periods, Defendant did not pay Plaintiff and Class members at the correct rate of pay for premium wages because Defendant systematically

1 failed to include all forms of compensation, such as nondiscretionary bonuses and/or other forms
2 of remuneration, in the regular rate of pay. As a result, Defendant failed to provide Plaintiff and
3 Class members compliant rest periods in violation of California Labor Code sections 226.7, 512,
4 and 516 and failed to pay the full rest period premiums due.

5 93. By virtue of Defendant's unlawful failure to provide rest periods to the Plaintiff
6 and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in
7 amounts which are presently unknown to Plaintiff and the Class, but which exceed the
8 jurisdictional limits of the Court and which will be ascertained according to proof at trial.

9 **FIFTH CAUSE OF ACTION**

10 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE**

11 **ITEMIZED STATEMENTS**

12 **(Labor Code §226 By Plaintiffs Against Defendant and Does 1 through 100)**

13 94. Plaintiff and the Class reallege and incorporate by reference all of the allegations
14 set forth in this Complaint.

15 95. Pursuant to the applicable IWC Wage Orders, Defendant is/was the employers of
16 Plaintiff and the Class.

17 96. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 5-
18 2001 section 7, Defendant is required to maintain and provide accurate records relating to
19 employee compensation including all formulas and production records used to calculate wages
20 due.

21 97. Defendant is further required to provide semimonthly or at the time of each
22 payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) all
23 deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which the
24 employee is being paid; (5) the name of the employee; and (6) the name and address of the legal
25 entity that is the employee's actual employer. Cal. Labor Code §226(a).

26 98. Section 226(e) provides that an employee is entitled to recover \$50 for the initial
27 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period,
28 not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods in

1 which the employer knowingly and intentionally failed to provide accurate itemized statements
2 to the employee causing the employee to suffer injury.

3 99. Notwithstanding these provisions. Defendant has engaged in a uniform practice
4 of refusing to maintain and provide the accurate records and wage statements required by
5 California law.

6 100. Throughout the Class Period, Defendant intentionally and knowingly provided
7 Plaintiff and other members of the Class with weekly itemized wage statements containing
8 inaccurate information regarding the wages earned by Plaintiff and members of the Class in that
9 the payments owed to Plaintiff and the members of the Class for overtime compensation,
10 minimum wages, and untimely or missed meal and rest periods, were not included in gross wages
11 earned by Plaintiff and members of the Class. Further, Defendant failed to furnish Plaintiff and
12 the Class, upon payment of wages, itemized statements accurately showing the number of hours
13 worked and the rates paid.

14 101. As a result, Plaintiff and members of the Class have been injured by having been
15 deprived of the true facts pertaining to their compensation and employment.

16 102. Plaintiff and members of the Class were damaged by these failures because,
17 among other things, the failures led them to believe that they were not entitled to overtime
18 compensation, minimum wages, and to be paid for meal and rest periods not provided, even
19 though they were so entitled and these failures hindered them from determining the amounts of
20 wages owed to them.

21 103. Plaintiff and members of the Class are entitled to the amounts provided in Labor
22 Code §226(e), plus attorneys' fees and costs.

23 104. As result, Plaintiff seeks recovery of the penalties authorized by Labor Code
24 sections 226(e) and 558, and such other penalties and legal and equitable remedies as are
25 provided by law for Defendant's improper conduct.

26 **SIXTH CAUSE OF ACTION**

27 **FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION**

28 **(Labor Code §§201-203 By Plaintiff Against Defendant and Does 1 through 100)**

1 105. Plaintiff and the Class reallege and incorporate by reference all of the allegations
2 set forth in this Complaint.

3 106. Labor Code § 201(a) provides that a discharged employee's unpaid wages are due
4 and payable immediately. Labor Code § 202(a) provides that when an employee resigns from
5 employment, unpaid wages are due and payable within 72 hours of resignation.

6 107. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
7 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
8 paid, not to exceed thirty days.

9 108. Plaintiff and/or the Class were discharged and/or resigned from Defendant's
10 employ and Defendant willfully failed to pay Plaintiff and the Class wages due them.

11 109. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one days' wages
12 for each day he or she was not timely paid, not to exceed 30 days' wages.

13 **SEVENTH CAUSE OF ACTION**

14 **REIMBURSEMENT OF BUSINESS EXPENSES**

15 **(Cal. Labor Code §2802 By Plaintiffs Against Defendant and Does 1 through 100)**

16 110. Plaintiff and the Class reallege and incorporate by reference all of the allegations
17 set forth in this Complaint.

18 111. Labor Code §2802 requires employers to indemnify employees for all necessary
19 expenditures incurred by employees in the discharge of their duties.

20 112. At all times relevant herein, Defendant was aware that Plaintiff and members of
21 the Class were incurring out-of-pocket expenses for business purposes, but failed to indemnify
22 Plaintiff and members of the Class for all their business-related expenses, in accordance with
23 Labor Code §2802. Plaintiff and members of the Class used their personal cell phones 2-3 times
24 per week while they were off the clock, on their days off to respond to calls from vendors.
25 Additionally, Plaintiff and members of the Class were required to drive their personal vehicles
26 on behalf of Defendant during work hours to pick up parts and supplies and were under-
27 reimbursed for mileage at the rate of \$0.30 per mile, a rate that is significantly below the IRS
28 Standard Mileage Rate. Lastly, Defendant initially provided Plaintiff and members of the Class

1 with a fuel allowance reimbursement, however, beginning in January 2023, Defendant stopped
2 providing the fuel allowance when the rate for gasoline fell below \$5.50 a gallon.

3 113. Defendant maintained a practice of not reimbursing Plaintiff and Class Members
4 for their work-related expenses that they incurred for work-related purposes.

5 114. As a result of Defendant's conduct, Plaintiff and Class Members suffered
6 damages in an amount, subject to proof, to the extent they were not reimbursed for all of their
7 business-related expenses incurred in the discharge of their duties.

8 115. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to
9 recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and
10 costs of suit.

11 **EIGHTH CAUSE OF ACTION**

12 **FAILURE TO PAY FOR UNIFORM MAINTENANCE ALLOWANCE**

13 **(Cal. Labor Code §2802 By Plaintiffs Against Defendant and Does 1 through 100)**

14 116. Plaintiff and the Class reallege and incorporate by reference all of the allegations
15 set forth in this Complaint.

16 117. Under California law, if an employer requires non-exempt employees to wear a
17 uniform, the employer must pay for and maintain the uniform for the employee. Labor Code
18 §2802.

19 118. In addition to the cost of the uniform, the employer must provide non-exempt
20 employees with reasonable maintenance of the uniforms. The employer can either maintain the
21 uniform itself, or pay the employee a weekly maintenance allowance.

22 119. An employer may never impose a financial burden on employees, with respect to
23 purchasing or maintaining clothing, which would reduce the employees' wage rate below the
24 minimum wage.

25 120. Here, it is uncertain if Defendant reimbursed Plaintiff and Class members for
26 purchase of their uniforms. Further, Defendant does not maintain the uniforms. Plaintiff and
27 members of the Class had to pay for the maintenance and cleaning themselves.

121. Defendant may have failed to reimburse Plaintiff and members of the Class for purchase of their uniforms, failed to maintain the uniform, nor reimburse Plaintiff and members of the Class and pay them a weekly maintenance allowance.

122. As a proximate result of the aforementioned violations of § 2802, Plaintiff and members of the Class are entitled to recovery from Defendant for reimbursement of necessary expenditures including interest and attorneys' fees.

123. As a proximate result of the aforementioned violations of Labor Code § 2802, Plaintiff and members of the Class have been damaged in an amount according to proof at the time of trial.

NINTH CAUSE OF ACTION

UNLAWFUL DEDUCTION OF WAGES

(Cal. Labor Code § 221 By Plaintiffs against Defendant and Does 1 through 100)

124. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

125. California Labor Code § 221 states that “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

126. Labor Code § 221 reflects “California's strong public policy favoring the protection of employees' wages.” *Sciborski v. Pacific Bell Directory* (2012) 205 Cal. App. 4th 1152, 1166.

127. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221 cannot “be contravened or set aside by a private agreement.” Therefore, the rights under Labor Code § 221 are nonnegotiable and cannot be waived by the parties. *See Sciborski*, 205 Cal. App. 4th at 1166. Also, under Labor Code §§ 219 and 221, an employer may not “require its employees to consent to unlawful deductions from their wages.” *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal. App. 4th 1109, 1124.

128. As previously alleged herein, Defendant engaged in the unlawful deduction of wages and/or bonuses for HOA fines, company or client damages.

1 129. As a result of Defendant's violations of Labor Code § 221, Plaintiff and the
2 members of the Class seek to recover the total amount of wages unlawfully deducted, as well as
3 penalties, interest, attorneys' fees, and costs as permitted under California law.

4 **TENTH CAUSE OF ACTION**

5 **FOR UNFAIR COMPETITION**

6 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against Defendant and Does 1**
7 **through 100)**

8 130. Plaintiff and the Class reallege and incorporate by reference all of the allegations
9 set forth in this Complaint.

10 131. Pursuant to applicable IWC Wage Orders, Defendant was the employer of
11 Plaintiff and the Class. Defendant is also a "person" as that term is defined in Business &
12 Professions Code §17021.

13 132. The Business & Professions Code defines unfair competition as any unlawful,
14 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
15 described herein, Defendants have engaged in unfair and unlawful practices by failing to (1) pay
16 overtime time compensation; (2) pay minimum wages; (3) pay for meal periods not provided, (4)
17 pay for rest periods not provided; (5) pay wages due to discharged or quitting employees, (6)
18 furnish Plaintiff and the Class with accurate itemized wage statements, as mandated by the
19 applicable Labor Code and Industrial Welfare Commission requirements, (7) reimburse business
20 expenses, (8) pay for uniform maintenance, (9) pay for unlawfully deducted wages, and (10)
21 allow inspection of employment records, all in violation of Business & Professions Code §§
22 17200 *et seq.*

23 133. By and through the unfair and unlawful business practices described herein,
24 Defendant has obtained valuable property, money and services from the Plaintiff and the Class
25 and have deprived them of valuable rights and benefits guaranteed by law all to the detriment of
26 Plaintiff and the Class.

27 134. All the acts described herein are violations of, among other things, the Labor Code
28 and applicable Industrial Commission Wage Orders, are unlawful and in violation of public

1 policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby
2 constitute unfair and unlawful business practices in violation of Business & Professions Code §§
3 17200 et seq.

4 135. Plaintiff and the Class are entitled to, and do, seek such relief as may be necessary
5 to restore to them the money and property which Defendant has acquired, or of which Plaintiff
6 and the Class have been deprived by means of the above-described unfair and unlawful business
7 practices.

8 136. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
9 above-described business practices are unfair and unlawful and that injunctive relief should be
10 issued restraining Defendant from engaging in any of the above described unfair and unlawful
11 business practices in the future.

12 137. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
13 redress the injuries which they have suffered as a consequence of the unfair and unlawful
14 business practices of Defendant. As a result of the unfair and unlawful business practices
15 described above, Plaintiff and the Class have suffered and will continue to suffer irreparable harm
16 unless Defendant is restrained from continuing to engage in these unfair and unlawful business
17 practices. In addition, Defendant should be required to disgorge the unpaid moneys to Plaintiff
18 and the Class.

19 **ELEVENTH CAUSE OF ACTION**

20 **(Damages Pursuant to the Private Attorney General Act Against Employers)**

21 138. Plaintiff repeats and realleges each of the allegations set forth in this complaint.

22 139. Plaintiff bring this action on his own behalf and on behalf of all current and former
23 employees of Defendants who were employed in California for the previous four years seeking
24 to recover unpaid wages, including but not limited to unpaid overtime, meal period violations,
25 and rest periods violations (or pay the statutory compensation due), failure to issue accurate wage
26 statements, failure to pay wages due on termination, failure to reimburse business expenses,
27 failure to pay for uniform maintenance, failure to pay for off the clock work, time shaving,
28 unlawful deductions, and unfair competition as set forth in this pleading.

1 140. On June 13, 2023, Plaintiff, pursuant to California Labor Code §§2699, *et seq.*,
2 by and through his attorneys, uploaded a Private Attorney General Act (“PAGA”) claim to the
3 State of California Labor and Workforce Development Agency (“LWDA”) and sent a letter via
4 Certified Mail Return Receipt Requested to the defendant.

5 141. More than 30 days have passed since the above letter, and Plaintiff’s counsel has
6 not received any notice from the LWDA stating an intention to prosecute Plaintiff’s PAGA
7 claims.

8 142. Plaintiff has, therefore complied with the administrative exhaustion requirements
9 of PAGA.

10 143. Plaintiff seeks Labor Code penalties, attorney’s fees, and costs, in an amount
11 according to proof at trial, as provided by the Labor Code Private Attorney General Act.

12
13 **WHEREFORE**, Plaintiff respectfully prays that this Court enter judgment in his favor
14 and against Defendant as follows:

15 1. For compensatory damages in the amount of unpaid overtime due to Plaintiff and
16 Class Members, according to proof;

17 2. For compensatory damages in the amount of unpaid minimum wages due to
18 Plaintiff and Class Members, according to proof;

19 3. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class
20 Members for each workday that a meal and/or rest period was not provided;

21 4. For payment of unpaid wages in accordance with California labor and
22 employment law;

23 5. For an award of consequential damages in Plaintiff and Class Members’ favor and
24 against Defendant, in an amount to be proven at trial;

25 6. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

26 7. For payment to Plaintiff and Class Members of waiting time penalties pursuant to
27 *Cal. Lab. Code* §203, in an amount equal to his respective daily rates of pay at the time of
28 termination or layoff, multiplied by the total amount of days elapsed between the date of the

1 involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a
2 maximum of 30 days' pay, according to proof;

3 8. For specific relief enforcing waiting time penalties of 30 days of per diem wages
4 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

5 9. For compensatory damages in the amount of Plaintiff and Class Members' out of
6 pocket expenses and/or reimbursement of monies incurred while performing Defendant's
7 business-related duties plus interests, costs and attorneys' fees pursuant to *Cal. Code Civ. Proc.*
8 §2802(c);

9 10. For reimbursement for uniform maintenance;

10 11. For an award of all amounts unlawfully deducted from Plaintiff and members of
11 the Class's wages;

12 12. For prejudgment interest accrued on all due and unpaid overtime and minimum
13 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
14 1194(a), according to proof;

15 13. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 203, 210, 225.5, 226.7,
16 according to proof;

17 14. For reasonable costs, including attorneys' fees, in an amount according to proof
18 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 218.5, 1198.5(1), 2802 and/or *Cal. Code of Civ.*
19 *Proc.* §1021.5;

20 15. For an award of restitution of wages to Plaintiff and Class Members in an amount
21 equal to the amount of wages owed and unpaid, according to proof;

22 16. For injunctive relief ordering the continuing unfair business acts and practices to
23 cease, as the Court deems just and proper;

24 17. For other injunctive relief ordering Defendant to notify Plaintiff and Class
25 Members that they have not been paid the proper amounts in accordance with California law;

26 18. For injunctive relief requiring Defendant to comply with *Labor Code*
27 1198.5(b)(1);

28 19. For punitive and exemplary damages in a sum to be determined at trial;

1 20. For penalties provided by the Labor Code Private Attorney General Act; and

2 21. For such other and further relief as the Court deems just and proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff Timothy Contreras hereby respectfully requests a trial by jury for all claims and
5 issues raised in his Complaint that may be entitled to a jury trial.

6
7 LIPELES LAW GROUP, APC

8 Date: August 17, 2023

9
10 By: _____

11 Jasmine J. Badawi
12 Thomas H. Schelly
13 Attorneys for Plaintiff
14 Timothy Contreras
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is Lipeles Law Group APC, 880 Apollo Street, Suite 336, El Segundo, CA 90245. On the date below, I served the foregoing document(s) described as:

FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

By sending a true copy thereof to the address listed below:

SEE ATTACHED SERVICE LIST

- ☐ **By Messenger Service.** I served the documents by providing them to a professional messenger service for personal service.
- ☐ **By Overnight Delivery.** I deposited a sealed envelope containing a true and correct copy of the documents listed above for overnight delivery and with the postage fully prepaid.
- ☒ **By E-Mail or Electronic Transmission.** I caused the documents to be sent to the persons at the email address listed above in a PDF file, and the transmission appeared to be successful.
- ☐ **By United States Mail.** I deposited a sealed envelope containing a true and correct copy of the documents listed above with the United States Postal Service with the postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at El Segundo, California.
- ☐ **By Fax Transmission.** I faxed the documents to the persons at the fax number listed above, and the transmission appeared to be successful.

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

Executed on August 17, 2023 at Stanton, California.

/s/ Jessica Torres
Jessica Torres

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

William R. H. Mosher, Esq.
Lewis BrisBois
2020 West El Camino Avenue, Suite 700,
Sacramento, CA 95833
Office Ph: (916) 646-8246
E: William.Mosher@lewisbrisbois.com
Gabriel.Hudson@lewisbrisbois.com

Attorney for Defendant Peak Landscape, Inc.