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FILED/ENDORSED

DEC 28 2023

By: I. Romo
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

ABAD CRUZ MADRIGAL and GAVINO
PONCE SANTANA, individually, and on
behalf of other members of the general
public similarly situated, and as aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiffs,

vs.

FRANK CARSON LANDSCAPE &
MAINTENANCE, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 23CV007235

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, 41
SEQ.**

- (1) Violation of California Labor Code §§ 516 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of Labor Code §§ 226.7, 516, and 1198 (Failure to Provide Recovery Periods);
- (6) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (7) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (8) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);

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- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiffs Abad Cruz Madrigal and Gavino Ponce Santana, individually and on behalf
2 of all other members of the public similarly situated, and as aggrieved employees and on
3 behalf of all aggrieved employees, allege as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiffs, the State of California, and
8 other current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiffs’
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiffs' claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court, because Defendants filed Statement of
5 Information forms with the California Secretary of State designating a principal place of
6 business in Sacramento, County of Sacramento, in accordance with California Corporations
7 Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court
8 because Defendants employ persons in this county, and employed Plaintiffs in this county, and
9 thus a substantial portion of the transactions and occurrences related to this action occurred in
10 this county.

11 **THE PARTIES**

12 4. Plaintiff Abad Cruz Madrigal ("Plaintiff Cruz Madrigal") is a resident of Elk
13 Grove, California. Defendants employed Plaintiff Cruz Madrigal as an hourly paid, non-
14 exempt Skilled Laborer/Driver from approximately April 2023 to May 2023. Plaintiff Cruz
15 Madrigal worked for Defendants out of their location in Sacramento, California. During his
16 employment, Plaintiff Cruz Madrigal typically worked eight (8) hours or more per day, five
17 (5) days per week, from 6:00 a.m. to 2:30 p.m. Plaintiff Cruz Madrigal's primary job duties
18 included, without limitation, landscaping commercial and residential areas which included
19 cutting, planting, and maintaining lawns, flowers, and trees.

20 5. Plaintiff Gavino Ponce Santana ("Plaintiff Ponce Santana") is a resident of
21 Sacramento, California. Defendants employed Plaintiff Ponce Santana as an hourly paid, non-
22 exempt Skilled Laborer from approximately February 2021 to June 2023. Plaintiff Ponce
23 Santana worked for Defendants out of their location in Sacramento, California. During his
24 employment, Plaintiff Ponce Santana typically worked eight (8) hours or more per day, five
25 (5) days per week, from 6:00 a.m. to 2:30 p.m. Plaintiff Ponce Santana's primary job duties
26 included, without limitation, landscaping commercial and residential areas which included
27 cutting, planting, and maintaining lawns, flowers, and trees.

28 6. FRANK CARSON LANDSCAPE & MAINTENANCE, INC. was and is, upon

1 information and belief, a California corporation, and at all times hereinafter mentioned, an
2 employer whose employees are engaged throughout this county, the State of California, or the
3 various states of the United States of America.

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

8 8. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
9 were the partners, agents, owners, or managers of Defendants at all relevant times.

10 9. Plaintiffs are informed and believe, and thereon allege, that each and all of the
11 acts and omissions alleged herein was performed by, or is attributable to, FRANK CARSON
12 LANDSCAPE & MAINTENANCE, INC. and/or DOES 1 through 10 (collectively,
13 “Defendants” or “FRANK CARSON”), each acting as the agent, employee, alter ego, and/or
14 joint venturer of, or working in concert with, each of the other co-Defendants and was acting
15 within the course and scope of such agency, employment, joint venture, or concerted activity
16 with legal authority to act on the others’ behalf. The acts of any and all Defendants were in
17 accordance with, and represent, the official policy of Defendants.

18 10. At all relevant times, Defendants, and each of them, ratified each and every act
19 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
20 and abetted the acts and omissions of each and all the other Defendants in proximately causing
21 the damages herein alleged.

22 11. Plaintiffs are informed and believe, and thereon allege, that each of said
23 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
24 omissions, occurrences, and transactions alleged herein.

25 **GENERAL ALLEGATIONS**

26 12. Defendants are a full-service commercial and residential company specializing
27 in landscape maintenance, landscape renovation, tree services, irrigation services, and plant
28 healthcare services. Upon information and belief, Defendants maintain a single, centralized

Human Resources (“HR”) department at their corporate headquarters in Sacramento, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

13. In particular, Plaintiffs and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or positions.

14. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in Sacramento, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiffs and class members. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee’s employment ends.

15. Defendants continue to employ non-exempt or hourly paid employees in California.

16. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

17. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and class members were not paid for all hours worked because all hours worked were not recorded.

18. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to meal periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of

one (1) additional hour of pay at their regular rate of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and class members were not provided with all meal periods or payment of one (1) additional hour of pay at their regular rate of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

19. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to rest periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rate of pay when they were not authorized and permitted to take a compliant rest period and that Plaintiffs and class members were not authorized and permitted to take compliant rest periods or provided with payment of one (1) additional hour of pay at their regular rate of pay when they were not authorized and permitted to take a compliant rest period.

20. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to recovery periods in accordance with the California Labor Code and applicable General Industry Safety ("GIS") Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided a compliant recovery period and that Plaintiffs and class members were not provided with compliant recovery periods or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided a compliant recovery period.

21. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor

Code, Plaintiffs and class members were not paid at least minimum wages for work done off-the-clock.

23. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive complete and accurate wage statements in accordance with California law. In violation of the California Labor Code, Plaintiffs and class members were not provided complete and accurate wage statements.

24. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that they had a duty to maintain accurate and complete payroll records in accordance with the California Labor Code and applicable IWC Wage Order, but willfully, knowingly, and intentionally failed to do so.

25. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to timely payment of all wages earned upon termination of employment. In violation of the California Labor Code, Plaintiffs and class members did not receive payment of all wages due, including, but not limited to, overtime wages; minimum wages; and/or meal, rest, and recovery period premiums, within permissible time periods.

26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to timely payment of wages during their employment. In violation of the California Labor Code, Plaintiffs and class members did not receive payment of all wages, including, but not limited to, overtime wages; minimum wages; and/or meal, rest, and recovery period premiums, within permissible time periods.

27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive their full wages due without having to execute a release of claims. In violation of the California Labor Code, Defendants required Plaintiffs and class members to release their claims for unpaid wages as a condition to receiving their paychecks.

1 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and class members were entitled to receive full
3 reimbursement for all business-related expenses and costs they incurred during the course and
4 scope of their employment and that they did not receive full reimbursement of applicable
5 business-related expenses and costs incurred.

6 29. Plaintiffs are informed and believe, and thereon allege, that at all times herein
7 mentioned, Defendants knew or should have known that they had a duty to compensate
8 Plaintiffs and class members for all hours worked, and that Defendants had the financial
9 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so,
10 and falsely represented to Plaintiffs and class members that they were properly denied wages,
11 all in order to increase Defendants' profits.

12 **PAGA REPRESENTATIVE ALLEGATIONS**

13 30. At all times herein set forth, PAGA provides that any provision of law under
14 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
15 assessed and collected by the Labor and Workforce Development Agency ("LWDA") for
16 violations of the California Labor Code and applicable IWC Wage Order may, as an
17 alternative, be recovered by aggrieved employees in a civil action brought on behalf of
18 themselves and other current or former employees pursuant to procedures outlined in
19 California Labor Code section 2699.3.

20 31. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
21 person who was employed by the alleged violator and against whom one or more of the
22 alleged violations was committed."

23 32. Plaintiffs and other current and former employees of Defendants are "aggrieved
24 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
25 or former employees and one or more of the alleged violations were committed against them.

26 33. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
27 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the
28 following requirements have been met:

- 1 (a) The aggrieved employee or representative shall give written notice by
2 online filing with the LWDA and by certified mail to the employer of
3 the specific provisions of the California Labor Code alleged to have
4 been violated, including the facts and theories to support the alleged
5 violation.
- 6 (b) An aggrieved employee's notice filed with the LWDA pursuant to
7 2699.3(a) and any employer response to that notice shall be
8 accompanied by a filing fee of seventy-five dollars (\$75).
- 9 (c) The LWDA shall notify the employer and the aggrieved employee or
10 representative by certified mail that it does not intend to investigate the
11 alleged violation ("LWDA Notice") within sixty (60) calendar days of
12 the postmark date of the aggrieved employee's notice. Upon receipt of
13 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
14 (65) calendar days of the postmark date of the aggrieved employee's
15 notice, the aggrieved employee may commence a civil action pursuant
16 to California Labor Code section 2699 to recover civil penalties.

17 34. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
18 through Plaintiffs, may pursue a civil action arising under PAGA for violations of any
19 provision other than those listed in Section 2699.5 after the following requirements have been
20 met:

- 21 (a) The aggrieved employee or representative shall give written notice by
22 online filing with the LWDA and by certified mail to the employer of
23 the specific provisions of the California Labor Code alleged to have
24 been violated (other than those listed in Section 2699.5), including the
25 facts and theories to support the alleged violation.
- 26 (b) An aggrieved employee's notice filed with the LWDA pursuant to
27 2699.3(c) and any employer response to that notice shall be
28 accompanied by a filing fee of seventy-five dollars (\$75).

1 (c) The employer may cure the alleged violation within thirty-three (33)
2 calendar days of the postmark date of the notice sent by the aggrieved
3 employee or representative. The employer shall give written notice
4 within that period of time by certified mail to the aggrieved employee or
5 representative and by online filing with the LWDA if the alleged
6 violation is cured, including a description of actions taken, and no civil
7 action pursuant to Section 2699 may commence. If the alleged violation
8 is not cured within the 33-day period, the aggrieved employee may
9 commence a civil action pursuant to Section 2699.

10 35. On September 11, 2023, Plaintiff Cruz Madrigal provided written notice by
11 online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of
12 the California Labor Code alleged to have been violated, including facts and theories to
13 support the alleged violations, in accordance with California Labor Code section 2699.3.
14 Plaintiff Cruz Madrigal's written notice was accompanied with the applicable filing fee of
15 seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff
16 Cruz Madrigal's written notice and assigned Plaintiff Cruz Madrigal PAGA Case Number
17 LWDA-CM-980915-23. A true and correct copy of Plaintiff Cruz Madrigal's written notice
18 to the LWDA and Defendants is attached hereto as "Exhibit 1."

19 36. On September 11, 2023, Plaintiff Ponce Santana provided written notice by
20 online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of
21 the California Labor Code alleged to have been violated, including facts and theories to
22 support the alleged violations, in accordance with California Labor Code section 2699.3.
23 Plaintiff Ponce Santana's written notice was accompanied with the applicable filing fee of
24 seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff
25 Ponce Santana's written notice and assigned Plaintiff Ponce Santana PAGA Case Number
26 LWDA-CM-980918-23. A true and correct copy of Plaintiff Ponce Santana's written notice
27 to the LWDA and Defendants is attached hereto as "Exhibit 2."

28 37. As of the filing date of this complaint, over 65 days have passed since Plaintiffs

1 sent the notices described above to the LWDA, and the LWDA has not responded that it
2 intends to investigate Plaintiffs' claims and Defendants have not cured the violations.

3 38. Thus, Plaintiffs have satisfied the administrative prerequisites under California
4 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
5 violations of California Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a),
6 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

7 39. Labor Code section 558(a) provides "[a]ny employer or other person acting on
8 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
9 provision regulating hours and days of work in any order of the Industrial Welfare
10 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
11 dollars (\$50) for each underpaid employee for each pay period for which the employee was
12 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
13 underpaid employee for each pay period for which the employee was underpaid" Labor
14 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
15 to any other civil or criminal penalty provided by law."

16 40. Defendants, at all times relevant to this complaint, were employers or persons
17 acting on behalf of an employer(s) who violated Plaintiffs' and other aggrieved employees'
18 rights by violating various sections of the California Labor Code as set forth above.

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

22 42. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
23 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiffs, acting in the public interest as
24 private attorneys general, seek assessment and collection of civil penalties for themselves, all
25 other aggrieved employees, and the State of California against Defendants for violations of
26 California Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),
27 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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CLASS ACTION ALLEGATIONS

43. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all other persons similarly situated, and thus seek class certification under California Code of Civil Procedure section 382.

44. All claims alleged herein arise under California law for which Plaintiffs seek relief authorized by California law.

45. Plaintiffs' proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

46. Plaintiffs' proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

47. Members of the Class and Subclass are referred to herein as "class members."

48. Plaintiffs reserve the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

49. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants failed to provide Plaintiffs and class members meal periods;
- (b) Whether Defendants failed to authorize and permit Plaintiffs and class members to take rest periods;
- (c) Whether Defendants failed to provide Plaintiffs and class members with recovery periods;
- (d) Whether Defendants required Plaintiffs and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime

- 1 compensation to Plaintiffs and class members;
- 2 (e) Whether Defendants failed to pay Plaintiffs and class members at least
- 3 minimum wages for all hours worked;
- 4 (f) Whether Defendants provided Plaintiffs and class members with
- 5 complete and accurate wage statements as required by California Labor
- 6 Code section 226(a);
- 7 (g) Whether Defendants maintained accurate payroll records as required by
- 8 California Labor Code section 1174(d);
- 9 (h) Whether Defendants failed to pay earned overtime wages; minimum
- 10 wages; and/or meal, rest, and recovery period premiums due to
- 11 Plaintiffs and class members upon their discharge;
- 12 (i) Whether Defendants failed to timely pay overtime wages; minimum
- 13 wages; and/or meal, rest, and recovery period premiums to Plaintiffs
- 14 and class members during their employment;
- 15 (j) Whether Defendants unlawfully required Plaintiffs and class members
- 16 to execute releases of claims as a condition to receiving their earned
- 17 wages;
- 18 (k) Whether Defendants failed to reimburse Plaintiffs and class members
- 19 for necessary and required business-related expenditures and/or losses
- 20 incurred by them in the scope of their employment;
- 21 (l) Whether Defendants engaged in unlawful and unfair business practices
- 22 in violation of California Business & Professions Code sections 17200,
- 23 *et seq.*; and
- 24 (m) The appropriate amount of damages, restitution, or monetary penalties
- 25 resulting from Defendants' violations of California law.

26 50. There is a well-defined community of interest in the litigation and the class

27 members are readily ascertainable:

- 28 (a) Numerosity: The class members are so numerous that joinder of all

1 members would be unfeasible and impractical. The membership of the
2 entire class is unknown to Plaintiffs at this time; however, the class is
3 estimated to be greater than one hundred (100) individuals and the
4 identity of such membership is readily ascertainable by inspection of
5 Defendants' employment records.

6 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately
7 protect the interests of each class member with whom they have a well-
8 defined community of interest, and Plaintiffs' claims (or defenses, if
9 any) are typical of all class members as demonstrated herein.

10 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately
11 protect the interests of each class member with whom they have a well-
12 defined community of interest and typicality of claims, as demonstrated
13 herein. Plaintiffs acknowledge that they have an obligation to make
14 known to the Court any relationship, conflicts or differences with any
15 class member. Plaintiffs' attorneys, the proposed class counsel, are
16 versed in the rules governing class action discovery, certification, and
17 settlement. Plaintiffs have incurred, and throughout the duration of this
18 action, will continue to incur costs and attorneys' fees that have been,
19 are, and will be necessarily expended for the prosecution of this action
20 for the substantial benefit of each class member.

21 (d) Superiority: The nature of this action makes the use of class action
22 adjudication superior to other methods. A class action will achieve
23 economies of time, effort, and expense as compared with separate
24 lawsuits, and will avoid inconsistent outcomes because the same issues
25 can be adjudicated in the same manner and at the same time for the
26 entire class.

27 (e) Public Policy Considerations: Employers in the State of California
28 violate employment and labor laws every day. Current employees are

1 often afraid to assert their rights out of fear of direct or indirect
2 retaliation. Former employees are fearful of bringing actions because
3 they believe their former employers might damage their future
4 endeavors through negative references and/or other means. Class
5 actions provide the class members who are not named in the complaint
6 with a type of anonymity that allows for the vindication of their rights
7 while simultaneously protecting their privacy.

8 **FIRST CAUSE OF ACTION**

9 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

10 **Violations**

11 **(Against all Defendants)**

12 51. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
13 and every allegation set forth above.

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

21 53. At all relevant times herein set forth, California Labor Code sections 226.7,
22 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
23 meal period mandated by an applicable order of the IWC.

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

1 mutual consent of the employer and the employee only if the first meal period was not waived.

2 55. During the relevant time period, Defendants had, and continue to have, a
3 company-wide policy and/or practice of understaffing their jobsites while assigning heavy
4 workloads, resulting in a failure to provide Plaintiffs and class members with adequate meal
5 period coverage and prevented Plaintiffs and class members from taking timely, uninterrupted
6 meal periods to which they were entitled. Typically, each landscaping team was thinly staffed
7 by a set number of employees (usually four (4)) who were expected to perform gardening and
8 maintenance services at private residential communities and to complete landscaping tasks for
9 several lots during one “service.” Defendants did not provide coverage if and when team
10 members were absent or called out sick. As a result, Plaintiffs and class members had to work
11 through all or part of their meal periods, had their meal periods interrupted, and/or had to wait
12 extended periods of time before taking meal periods. For example, due to the lack of meal
13 period coverage, Plaintiffs had their meal periods interrupted to keep up with the demands of
14 work and complete their assigned duties. Plaintiff Ponce Santana also took his meal periods
15 late at least twice for the same reasons. Thus, Defendants failed to provide Plaintiffs and class
16 members with compliant 30-minute meal periods. Plaintiffs and class members did not sign
17 valid meal period waivers on days that they were entitled to meal periods and were not
18 relieved of all duties.

19 56. Additionally, during the relevant time period, Defendants implemented a
20 company-wide policy and/or practice of automatically deducting meal periods from Plaintiffs’
21 and class members’ time records, instead of actually allowing employees to clock in and out
22 for meal periods. Specifically, Defendants’ policy and/or practice is to automatically deduct
23 30 minutes per day for “lunch” from 10:00 a.m. to 10:30 a.m. from Plaintiffs’ and class
24 members’ time records. Alternatively, because Defendants frowned upon employees accruing
25 meal period penalties, Defendants pressured Plaintiffs and class members to clock out for
26 meal periods on handwritten timesheets so that their time records would reflect compliant
27 meal periods, even when they did not receive a compliant meal period. As a result of this
28 policy, Defendants falsified and deducted meal periods from Plaintiff’s and class members’

time records even when meal periods were missed, short, interrupted, and/or late and thus systematically failed to correctly record meal periods.

57. Further, during the relevant time period, Defendants maintained and implemented a company-wide on-premises meal period policy, which effectively required Plaintiffs and class members to remain on the work premises during their meal periods. Because Plaintiffs and class members were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, Defendants effectively maintained control over Plaintiffs and class members during meal periods.

58. At all times herein mentioned, Defendants knew or should have known that, as a result of these policies, Plaintiffs and class members were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. Defendants further knew or should have known that Defendants did not pay Plaintiffs and class members all meal period premiums when meal periods were late, missed, shortened, or interrupted.

59. Furthermore, Defendants engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods were not provided. Because of this practice and/or policy, Plaintiffs and class members have not received all premium pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide Plaintiffs and class members compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

60. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiffs and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

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1 **SECOND CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**
3 **(Against all Defendants)**

4 61. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
5 and every allegation set forth above.

6 62. At all relevant times herein set forth, the applicable IWC Wage Order and
7 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and class
8 members' employment by Defendants.

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

15 64. At all relevant times, California Labor Code section 226.7 provides that no
16 employer shall require an employee to work during any rest period mandated by an applicable
17 order of the California IWC. To comply with its obligation to authorize and permit rest
18 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
19 employer must "relinquish any control over how employees spend their break time, and
20 relieve their employees of all duties—including the obligation that an employee remain on
21 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
22 *Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California
23 Labor Code section 226.7(c), Plaintiffs and class members are entitled to recover from
24 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
25 required rest period was not authorized and permitted.

26 65. During the relevant time period, Defendants regularly failed to authorize and
27 permit Plaintiffs and class members to take a ten (10) minute rest period per each four (4)
28 hour period worked or major fraction thereof. As with meal periods, Defendants' company-

1 wide practices of understaffing and assigning heavy workloads resulted in a lack of rest period
2 coverage and prevented Plaintiffs and class members from being relieved of all duty in order
3 to take compliant rest periods. Additionally, Defendants' management erroneously informed
4 Plaintiffs and class members that they were only entitled to two (2) 10-minute rest periods per
5 shift which were to be combined with their 30-minute meal period, for a total of a 50-minute
6 block "lunch" per shift. Thus, Defendants also wholly failed to schedule timely rest periods,
7 which, coupled with Defendants' failure to provide adequate rest period coverage, further led
8 to Plaintiffs and class members not being authorized and permitted to take compliant rest
9 periods.

10 66. Furthermore, upon information and belief, during the relevant time period,
11 Defendants maintained and implemented a company-wide on-premises rest period policy,
12 which effectively required that Plaintiffs and class members remain on the work premises
13 during their rest periods. Because Plaintiffs and class members were restricted from leaving
14 the premises during rest periods, they were denied the ability to use their rest periods freely
15 for their own purposes, such as running personal errands. Thus, Defendants effectively
16 maintained control over Plaintiffs and class members during rest periods.

17 67. As a result of Defendants' practices and policies, Plaintiffs and class members
18 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
19 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
20 Plaintiffs sometimes missed their rest periods entirely and could only take a 30-minute block
21 "lunch" due to the workload, or would have their rest periods interrupted or shortened because
22 they were expected to return to work and complete their assigned landscaping tasks.

23 68. Defendants have also engaged in a systematic, company-wide practice and/or
24 policy of not paying rest period premiums owed when rest periods are not authorized and
25 permitted. Because of this practice and/or policy, Plaintiffs and class members have not
26 received premium pay for all missed rest periods. As a result, Defendants denied Plaintiffs
27 and class members rest periods and failed to pay them rest period premiums due, in violation
28 of Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

69. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiffs and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

THIRD CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 516, and 1198 & California Code of Regulations Title 8, Section 3395—Heat Recovery Period Violations (Against all Defendants)

70. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

71. At all relevant times herein set forth, the applicable GIS Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and class members' employment by Defendants.

72. At all relevant times, California Labor Code section 226.7(a) defines "recovery period" to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable GIS Order provides that "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code Regs. Tit. 8, § 3395(d)(1). Furthermore, "[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other." *Id.* "Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times." *Id.*

1 73. During the relevant time period, Defendants violated California Labor Code
2 section 226.7 and California Code of Regulations, Title 8, section 3395(d), because
3 Defendants failed to provide Plaintiffs and class members with recovery periods. For
4 example, Plaintiffs were not provided shaded areas for recovery while working even though a
5 majority of their work was performed outside under the sun and in temperatures that could
6 exceed 100 degrees Fahrenheit.

7 74. Defendants also engaged in a company-wide practice and/or policy of not
8 paying recovery period premiums owed when compliant recovery periods were not provided.
9 Because of this practice and/or policy, Plaintiffs and class members have not received
10 premium pay for all missed recovery periods. As a result, Defendants denied Plaintiffs and
11 class members recovery periods and failed to pay them recovery period premiums due, in
12 violation of California Labor Code section 226.7.

13 75. Defendants' conduct violates the applicable GIS Order and California Labor
14 Code sections 226.7, 516, and 1198. Plaintiffs and class members are therefore entitled to
15 recover from Defendants one (1) additional hour of pay at the employee's regular rate of
16 compensation for each work day that a compliant recovery period was not provided.

17 **FOURTH CAUSE OF ACTION**

18 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime** 19 **(Against all Defendants)**

20 76. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
21 every allegation set forth above.

22 77. Labor Code section 1198 makes it illegal to employ an employee under
23 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
24 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
25 shall be the . . . standard conditions of labor for employees. The employment of any employee
26 . . . under conditions of labor prohibited by the order is unlawful.”

27 78. California Labor Code section 1198 and the applicable IWC Wage Order
28 provide that it is unlawful to employ persons without compensating them at a rate of pay

1 either time-and-one-half or two-times that person's regular rate of pay, depending on the
2 number of hours worked by the person on a daily or weekly basis.

3 79. Specifically, the applicable IWC Wage Order provides that Defendants are and
4 were required to pay Plaintiffs and class members working more than eight (8) hours in a day
5 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
6 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
7 workweek.

8 80. The applicable IWC Wage Order further provides that Defendants are and were
9 required to pay Plaintiffs and class members working more than twelve (12) hours in a day,
10 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
11 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
12 employee, including nondiscretionary bonuses and incentive pay.

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

19 82. During the relevant time period, Defendants willfully failed to pay all overtime
20 wages owed to Plaintiffs and class members. During the relevant time period, Plaintiffs and
21 class members were not paid overtime premiums for all of the hours they worked in excess of
22 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
23 hours in a week, because all hours worked were not recorded.

24 83. During the relevant time period, as stated, Defendants had, and continue to
25 have, a company-wide policy and/or practice of understaffing their jobsites while assigning
26 heavy workloads, resulting in a failure to provide Plaintiffs and class members with adequate
27 meal period coverage. Because Defendants did not employ or staff a sufficient number of
28 employees to provide meal period coverage, there was no one available to relieve employees

1 for meal periods, and Plaintiffs and class members were not always afforded uninterrupted 30-
2 minute meal periods during shifts when they were entitled to receive a meal period.
3 Consequently, Plaintiffs and class members were required to work through and/or had their
4 unpaid meal periods interrupted to complete their assigned duties and handle work demands,
5 time for which they were not paid.

6 84. Additionally, as stated, during the relevant time period, Defendants
7 implemented a company-wide policy and/or practice of automatically deducting 30-minute
8 meal periods from Plaintiffs' and class members' time records, instead of actually allowing
9 employees to clock in and out for meal periods. Alternatively, because Defendants frowned
10 upon employees accruing meal period penalties, Defendants pressured Plaintiffs and class
11 members to clock out for meal periods on handwritten timesheets so that their time records
12 would reflect compliant meal periods, even when they did not receive a compliant meal
13 period. As a result of this policy, Defendants falsified and deducted meal periods from
14 Plaintiffs' and class members' time records even when meal periods were missed, short,
15 and/or interrupted. Thus, Defendants did not record all hours worked during meal periods,
16 and Plaintiffs and class members performed work for which they were not paid.

17 85. Further, as stated, Defendants maintained and implemented a company-wide
18 on-premises meal period policy, which effectively required Plaintiffs and class members to
19 remain on the work premises during their meal periods. Because Plaintiffs and class members
20 were restricted from leaving the premises during meal periods, they were denied the ability to
21 use their meal periods freely for their own purposes, such as running personal errands. Thus,
22 Defendants effectively maintained control over Plaintiffs and class members during meal
23 periods.

24 86. Defendants knew or should have known that as a result of these company-wide
25 practices and/or policies, Plaintiffs and class members were performing their assigned duties
26 off-the-clock, and were suffered or permitted to perform work for which they were not paid.
27 Because Plaintiffs and class members regularly worked shifts of eight (8) hours a day or more
28 or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime

1 premium pay. Therefore, Plaintiffs and class members were not paid overtime wages for all
2 of the overtime hours they actually worked.

3 87. Defendants' failure to pay Plaintiffs and class members the balance of overtime
4 compensation as required by California law, violates the provisions of California Labor Code
5 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiffs and class
6 members are entitled to recover from Defendants their unpaid overtime compensation, as well
7 as interest, costs, and attorneys' fees.

8 **FIFTH CAUSE OF ACTION**

9 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 10 **Minimum Wages** 11 **(Against all Defendants)**

12 88. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
13 and every allegation set forth above.

14 89. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
15 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
16 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
17 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the
18 time during which an employee is subject to the control of an employer, and includes all the
19 time the employee is suffered or permitted to work, whether or not required to do so." Cal.
20 Code Regs. Tit. 8, § 11050(2)(K) (defining "Hours Worked").

21 90. As stated, due to Defendants' policies and/or practices of understaffing their
22 jobsites, assigning heavy workloads, and requiring employees to stay on the work premises
23 during meal periods, Plaintiffs and class members were impeded from taking all uninterrupted
24 meal periods to which they were entitled and were required to work off-the-clock during meal
25 periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties
26 during unpaid meal periods. Moreover, as stated, during the relevant time period, Defendants
27 implemented a company-wide policy and/or practice of automatically deducting 30-minute
28 meal periods from Plaintiffs' and class members' time records, even when meal periods were

missed, short, and/or interrupted. Alternatively, as stated, because Defendants frowned upon employees accruing meal period penalties, Defendants pressured Plaintiffs and class members to clock out for meal periods on handwritten timesheets so that their time records would reflect compliant meal periods, even when they did not receive a compliant meal period. Thus, Defendants systematically failed to pay Plaintiffs and class members for actual hours worked, including during meal periods, because these hours were not correctly recorded.

91. Defendants did not pay minimum wages for all hours worked by Plaintiffs and class members. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

92. Defendants' failure to pay Plaintiffs and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiffs and class members are entitled to recover from Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

SIXTH CAUSE OF ACTION

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

93. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

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

95. At all relevant times, Defendants have knowingly and intentionally provided

1 Plaintiffs and Subclass members with uniform, incomplete, and inaccurate wage statements.
2 For example, Defendants issued uniform wage statements to Plaintiffs and Subclass members
3 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
4 applicable hourly rates in effect during the pay period, including rates of pay for overtime
5 wages, and the corresponding number of hours worked at each hourly rate. Specifically,
6 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

16 97. The wage statement deficiencies also include, without limitation, failing to list
17 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
18 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
19 for which employees were paid; failing to list the name of the employee and only the last four
20 digits of his or her social security number or an employee identification number other than a
21 social security number; failing to list the name and address of the legal entity that is the
22 employer; and/or failing to state all hours worked as a result of not recording or stating hours
23 worked off-the-clock.

24 98. California Labor Code section 1174(d) provides that “[e]very person employing
25 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
26 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
27 plants or establishments at which employees are employed, payroll records showing the hours
28 worked daily by and the wages paid to, and the number of piece-rate units earned by and any

1 applicable piece rate paid to, employees employed at the respective plants or
2 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
3 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and Subclass
4 members showing the daily hours they worked and the wages paid thereto as a result of failing
5 to record the off-the-clock hours that they worked.

6 99. California Labor Code section 1198 provides that the maximum hours of work
7 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
8 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
9 employment of any employees for longer hours than those fixed by the order or under
10 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
11 Wage Order, employers are required to keep accurate time records showing when the
12 employee begins and ends each work period. During the relevant time period, Defendants
13 engaged in company-wide practices and/or policies of failing to record actual hours worked
14 (including falsifying time records by recording that compliant meal periods were taken
15 regardless of if or when meal periods were actually taken), and thereby failed to keep accurate
16 records of work period and meal period start and end times for Plaintiffs and Subclass
17 members, in violation of section 1198.

18 100. Plaintiffs and Subclass members are entitled to recover from Defendants the
19 greater of their actual damages caused by Defendants’ failure to comply with California Labor
20 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
21 employee.

22 SEVENTH CAUSE OF ACTION

23 Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon 24 Termination 25 (Against all Defendants)

26 101. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
27 and every allegation set forth above.

28 102. At all times relevant herein set forth, Labor Code sections 201 and 202 provide

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

7 103. On information and belief, Defendants have a company-wide practice and/or
8 policy of paying departing employees their final wages on the next regular pay cycle, instead
9 of adhering to the time requirements set forth in Labor Code sections 201 and 202. For
10 example, Plaintiff Ponce Santana voluntarily resigned on or about June 14, 2023; however,
11 Defendants did not provide Plaintiff Ponce Santana with his final paycheck until nearly a
12 week later, on June 20, 2023. Thus, Defendants failed to pay Plaintiff Ponce Santana his final
13 wages within (72) hours from the time he resigned, in violation of Labor Code section 202.

14 104. Additionally, Defendants willfully failed to pay Plaintiffs and class members
15 who are no longer employed by Defendants the earned and unpaid wages set forth above,
16 including but not limited to, overtime wages; minimum wages; and/or meal, rest, and recovery
17 period premiums, either at the time of discharge, or within seventy-two (72) hours of their
18 leaving Defendants' employ.

19 105. Defendants' failure to pay Plaintiffs and class members who are no longer
20 employed by Defendants their wages earned and unpaid at the time of discharge, or within
21 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
22 and 202. Plaintiffs and class members are therefore entitled to recover from Defendants the
23 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
24 thirty (30) day maximum pursuant to California Labor Code section 203.

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1 **EIGHTH CAUSE OF ACTION**

2 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
3 **Employment**
4 **(Against all Defendants)**

5 106. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
6 and every allegation set forth above.

7 107. This cause of action is dependent upon, and wholly derivative of, the overtime
8 wages; minimum wages; and/or meal, rest, and recovery period premiums that were not timely
9 paid to Plaintiffs and class members during their employment.

10 108. At all times relevant herein set forth, Labor Code section 204 provides that all
11 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
12 days, inclusive, of any calendar month, other than those wages due upon termination of an
13 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
14 the month during which the labor was performed. Labor Code section 204 further provides
15 that all wages earned by any person in any employment between the sixteenth (16th) and the
16 last day, inclusive, of any calendar month, other than those wages due upon termination of an
17 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
18 month.

19 109. At all times relevant herein, Labor Code section 204 provides that all wages
20 earned for labor in excess of the normal work period shall be paid no later than the payday for
21 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
22 204 provides that the requirements of this section are deemed satisfied by the payment of
23 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
24 seven (7) calendar days following the close of the payroll period.

25 110. During the relevant time period, Defendants willfully failed to pay Plaintiffs
26 and class members all wages due including, but not limited to, overtime wages; minimum
27 wages; and/or meal, rest, and recovery period premiums, within the time periods specified by
28 California Labor Code section 204.

111. Defendants' failure to pay Plaintiffs and class members all wages due violates Labor Code section 204. Plaintiffs and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

NINTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

112. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

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

114. During the relevant time period, Defendants had a company-wide policy of requiring Plaintiffs and class members to wear uniforms bearing the company name and logo, including uniform shirts, jackets, hats, and/or safety vests. Due to the nature of landscaping work, Plaintiffs' and class members' uniform items would become dusty or dirty, be exposed to harsh chemicals, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, Plaintiffs had to wash their uniform items separately from their regular clothing, thus incurring additional laundry expenses for the upkeep of their uniforms. Thus, Defendants failed to maintain uniforms they required Plaintiffs and class members to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

115. Defendants could have provided Plaintiffs and class members with access to laundering services; or, Defendants could have reimbursed employees for laundering expenses

1 or provided a uniform maintenance allowance. Instead, Defendants passed these operating
2 costs off onto Plaintiffs and class members.

3 116. Defendants' company-wide policy and/or practice of passing on their operating
4 costs to Plaintiffs and class members violates California Labor Code section 2802.
5 Defendants have intentionally and willfully failed to reimburse Plaintiffs and class members
6 for necessary business-related expenses and costs.

7 117. Plaintiffs and class members are entitled to recover from Defendants their
8 business-related expenses incurred during the course and scope of their employment, plus
9 interest.

10 **TENTH CAUSE OF ACTION**

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

12 **(Against all Defendants)**

13 118. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
14 and every allegation set forth above.

15 119. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover
16 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
17 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 206.5, 226(a),
18 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
19 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties for
20 violations of those Labor Code sections not found in section 2699.5, including sections 516
21 and 1182.12.

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

- 24 (a) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
25 applicable IWC Wage Order for Defendants' failure to provide
26 Plaintiffs and other aggrieved employees with meal periods, as alleged
27 herein;
- 28 (b) Violation of Labor Code sections 226.7, 516, and 1198, and the

1 applicable IWC Wage Order for Defendants' failure to authorize and
2 permit Plaintiffs and other aggrieved employees to take rest periods, as
3 alleged herein;

- 4 (c) Violation of Labor Code sections 226.7, 516, and 1198, and the
5 applicable GIS Order for Defendants' failure to provide heat recovery
6 periods to Plaintiffs and other aggrieved employees, as alleged herein;
- 7 (d) Violation of Labor Code sections 510 and 1198, and the applicable IWC
8 Wage Order for Defendants' failure to compensate Plaintiffs and other
9 aggrieved employees with all required overtime pay, as alleged herein;
- 10 (e) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
11 1198, and the applicable IWC Wage Order for Defendants' failure to
12 compensate Plaintiffs and other aggrieved employees with at least
13 minimum wages for all hours worked, as alleged herein;
- 14 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
15 IWC Wage Order for failure to provide accurate and complete wage
16 statements to Plaintiffs and other aggrieved employees, as alleged
17 herein;
- 18 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
19 IWC Wage Order for failure to maintain payroll records, as alleged
20 herein;
- 21 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
22 earned wages upon termination, as alleged herein;
- 23 (i) Violation of Labor Code section 204 for failure to pay all earned wages
24 during employment, as alleged herein;
- 25 (j) Violation of Labor Code section 206.5 for requiring Plaintiffs and other
26 aggrieved employees to execute a release of claims as a condition to
27 receiving wages due to them, as set forth below; and
- 28 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs

1 and other aggrieved employees for all business expenses necessarily
2 incurred, as alleged herein.

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

8 122. During the relevant time period, Defendants required Plaintiffs and other
9 aggrieved employees to release their claims for meal and/or rest period violations, as well as
10 their claims for uncompensated hours worked, as a condition of receiving their paychecks.
11 For example, before Defendants provided Plaintiffs their paychecks, Defendants required
12 Plaintiffs to verify that they had been timely provided all meal and rest periods by signing a
13 “Meal Break Time Sheet Punches” form reflecting falsified times for meal periods (*see*
14 *supra*).

15 123. Defendants compelled Plaintiff other aggrieved employees to sign these false
16 verifications when they, in fact, were not provided all meal or rest periods and/or had not been
17 able to accurately record all of the hours they had worked. Defendants’ policy and practice of
18 requiring Plaintiffs and other aggrieved employees to release their claims for meal or rest
19 period violations and/or their claims for uncompensated hours worked, as a condition to
20 receiving their wages, is in violation of California Labor Code section 206.5. Plaintiffs and
21 other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
22 Code sections 2699(a), (f), and (g).

23 **ELEVENTH CAUSE OF ACTION**

24 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

25 **Unlawful Business Practices**

26 **(Against all Defendants)**

27 124. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
28 and every allegation set forth above.

125. Defendants are “persons” as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

126. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered injury in fact and have lost money as a result of Defendants’ unlawful business practices. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

127. Defendants’ activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

128. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants’ policies and practices have violated state law in at least the following respects:

- (a) Failing to provide all meal periods to Plaintiffs and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (b) Failing to authorize and permit Plaintiffs and class members to take all rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (c) Failing to provide recovery periods to Plaintiffs and class members in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable GIS Order, as alleged herein;
- (d) Requiring non-exempt, hourly paid employees, including Plaintiffs and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to pay at least minimum wage to Plaintiffs and class members in

violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;

(f) Failing to provide Plaintiffs and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;

(g) Failing timely to pay all earned wages to Plaintiffs and class members in violation of California Labor Code section 204, as alleged herein;

(h) Requiring Plaintiffs and class members to execute releases of claims as a condition to receiving their earned wages, in violation of California Labor Code section 206.5, as set forth below; and

(i) Failing to reimburse Plaintiffs and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein.

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

130. During the relevant time period, Defendants required Plaintiffs and class members to release their claims for meal and/or rest period violations, as well as their claims for uncompensated hours worked, as a condition of receiving their paychecks. For example, before Defendants provided Plaintiffs their paychecks, Defendants required Plaintiffs to verify that they had been timely provided all meal and rest periods by signing a “Meal Break Time Sheet Punches” form reflecting falsified times for meal periods (*see supra*).

131. Defendants compelled Plaintiffs and class members to sign these false verifications when they, in fact, were not provided all meal or rest periods and/or had not been

1 able to accurately record all of the hours they had worked. Defendants' policy and practice of
2 requiring Plaintiffs and class members to release their claims for meal or rest period violations
3 and/or their claims for uncompensated hours worked, as a condition to receiving their wages,
4 is in violation of California Labor Code section 206.5.

5 132. As a result of the violations of California law herein described, Defendants
6 unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members
7 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
8 herein.

9 133. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
10 Plaintiffs and class members are entitled to restitution of the wages withheld and retained by
11 Defendants during a period that commences four years prior to the filing of this complaint; a
12 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and
13 class members; and an award of attorneys' fees pursuant to California Code of Civil
14 Procedure section 1021.5 and other applicable laws; and an award of costs.

15 **TWELFTH CAUSE OF ACTION**

16 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

17 **Unfair Business Practices**

18 **(Against all Defendants)**

19 134. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
20 and every allegation set forth above.

21 135. Defendants are "persons" as defined by California Business & Professions
22 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
23 and/or associations.

24 136. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
25 and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered
26 injury in fact and have lost money as a result of Defendants' unfair business practices.
27 Plaintiffs seek to enforce important rights affecting the public interest within the meaning of
28 Code of Civil Procedure section 1021.5.

137. Defendants’ activities, namely Defendants’ company-wide practice and/or policy of not paying Plaintiffs and class members all meal and rest period premiums due to them under Labor Code section 226.7, deprived Plaintiffs and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiffs and class members as part of their employment with Defendants, and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

138. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants’ policies and practices have violated the spirit of California’s meal and rest period laws and constitute acts against the public policy behind these laws.

139. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiffs and class members; an award of attorneys’ fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury.

PRAYER FOR RELIEF

Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in

1 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiffs
2 reserve the right to amend their prayer for relief to seek a different amount.

3 **Class Certification**

4 2. That this case be certified as a class action;

5 3. That Plaintiffs be appointed as the representatives of the Class and Subclass;

6 4. That counsel for Plaintiffs be appointed as class counsel.

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

8 5. That the Court declare, adjudge, and decree that Defendants violated California
9 Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by
10 willfully failing to provide all meal periods to Plaintiffs and class members;

11 6. That the Court make an award to the Plaintiffs and class members of one (1)
12 hour of pay at each employee's regular rate of pay for each workday that a meal period was
13 not provided;

14 7. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 8. For premiums pursuant to California Labor Code section 226.7(c);

17 9. For pre-judgment interest on any unpaid meal period premiums from the date
18 such amounts were due, or as otherwise provided by law;

19 10. For attorneys' fees pursuant to California Code of Civil Procedure section
20 1021.5, or as otherwise provided by law; and

21 11. For such other and further relief as the Court may deem equitable and
22 appropriate.

23 **As to the Second Cause of Action**

24 12. That the Court declare, adjudge and decree that Defendants violated California
25 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully
26 failing to authorize and permit Plaintiffs and class members to take all rest periods;

27 13. That the Court make an award to the Plaintiffs and class members of one (l)
28 hour of pay at each employee's regular rate of pay for each workday that a rest period was not

1 authorized and permitted;

2 14. For all actual, consequential, and incidental losses and damages, according to
3 proof;

4 15. For premiums pursuant to California Labor Code section 226.7(c);

5 16. For pre-judgment interest on any unpaid rest period premiums from the date
6 such amounts were due, or as otherwise provided by law;

7 17. For attorneys' fees pursuant to California Code of Civil Procedure section
8 1021.5, or as otherwise provided by law; and

9 18. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 **As to the Third Cause of Action**

12 19. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code sections 226.7, 516, and 1198 and the applicable GIS Order by willfully failing to
14 provide all recovery periods to Plaintiffs and class members;

15 20. That the Court make an award to the Plaintiffs and class members of one (1)
16 hour of pay at each employee's regular rate of pay for each workday that a recovery period
17 was not provided;

18 21. For all actual, consequential, and incidental losses and damages, according to
19 proof;

20 22. For premiums pursuant to California Labor Code section 226.7(c);

21 23. For pre-judgment interest on any unpaid recovery period premiums from the date
22 such amounts were due, or as otherwise provided by law;

23 24. For attorneys' fees pursuant to California Code of Civil Procedure section
24 1021.5, or as otherwise provided by law; and

25 25. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Fourth Cause of Action**

28 26. That the Court declare, adjudge, and decree that Defendants violated California

1 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
2 pay all overtime wages due to Plaintiffs and class members;

3 27. For general unpaid wages at overtime wage rates and such general and special
4 damages as may be appropriate;

5 28. For pre-judgment interest on any unpaid overtime compensation commencing
6 from the date such amounts were due, or as otherwise provided by law;

7 29. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
8 California Labor Code section 1194(a); and

9 30. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 **As to the Fifth Cause of Action**

12 31. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
14 Order by willfully failing to pay minimum wages to Plaintiffs and class members;

15 32. For general unpaid wages and such general and special damages as may be
16 appropriate;

17 33. For pre-judgment interest on any unpaid compensation from the date such
18 amounts were due, or as otherwise provided by law;

19 34. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
20 California Labor Code section 1194(a);

21 35. For liquidated damages pursuant to California Labor Code section 1194.2; and

22 36. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Sixth Cause of Action**

25 37. That the Court declare, adjudge and decree that Defendants violated the
26 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
27 Wage Order as to Plaintiffs and Subclass members, and willfully failed to provide accurate
28 itemized wage statements thereto;

1 38. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 39. For injunctive relief pursuant to California Labor Code section 226(h);

4 40. For statutory penalties pursuant to California Labor Code section 226(e);

5 41. For attorneys' fees and costs pursuant to California Labor Code section
6 226(e)(1); and

7 42. For such other and further relief as the Court may deem equitable and
8 appropriate.

9 **As to the Seventh Cause of Action**

10 43. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code sections 201 and 202 by willfully failing to pay overtime wages; minimum wages;
12 and/or meal, rest, and recovery period premiums owed at the time of termination of the
13 employment of Plaintiffs and other terminated class members;

14 44. For all actual, consequential and incidental losses and damages, according to
15 proof;

16 45. For waiting time penalties according to proof pursuant to California Labor
17 Code section 203 for all employees who have left Defendants' employ;

18 46. For pre-judgment interest on any unpaid wages from the date such amounts
19 were due, or as otherwise provided by law;

20 47. For attorneys' fees pursuant to California Code of Civil Procedure section
21 1021.5, or as otherwise provided by law; and

22 48. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Eighth Cause of Action**

25 49. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code section 204 by willfully failing to timely pay Plaintiffs and class members
27 overtime wages; minimum wages; and/or meal, rest, and recovery period premiums during
28 their employment;

1 50. For all actual, consequential and incidental losses and damages, according to
2 proof;

3 51. For statutory penalties according to proof pursuant to California Labor Code
4 section 210;

5 52. For pre-judgment interest on any unpaid wages from the date such amounts
6 were due, or as otherwise provided by law;

7 53. For attorneys' fees pursuant to California Code of Civil Procedure section
8 1021.5, or as otherwise provided by law; and

9 54. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 **As to the Ninth Cause of Action**

12 55. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
14 related expenses and costs incurred by Plaintiffs and class members;

15 56. For unpaid business-related expenses and such general and special damages as
16 may be appropriate;

17 57. For pre-judgment interest on any unpaid business-related expenses from the
18 date such amounts were due, or as otherwise provided by law;

19 58. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 59. For attorneys' fees and costs pursuant to California Labor Code section
22 2802(c), or as otherwise provided by law; and

23 60. For such other and further relief as the Court may deem equitable and
24 appropriate.

25 **As to the Tenth Cause of Action**

26 61. That the Court declare, adjudge and decree that Defendants violated the
27 following California Labor Code provisions as to Plaintiffs and/or other aggrieved employees:
28 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by

1 failing to authorize and permit all rest periods); 226.7, 516, and 1198 (by failing to provide
2 recovery periods); 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194,
3 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked);
4 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain
5 accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon
6 termination); 204 (by failing to timely pay all earned wages during employment); 206.5 (by
7 requiring employees to release claims as a condition to receive paychecks); and 2802 (by
8 failing to reimburse business expenses);

9 62. For civil penalties pursuant to the California Labor Code, including sections
10 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code
11 sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
12 1197.1, 1198, and 2802;

13 63. For attorneys' fees and costs pursuant to California Labor Code section
14 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
15 Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 246, 248.6, 510, 512(a), 516,
16 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

17 64. For pre-judgment and post-judgment interest as provided by law; and

18 65. For such other and further relief as the Court may deem equitable and
19 appropriate.

20 **As to the Eleventh Cause of Action**

21 66. That the Court declare, adjudge and decree that Defendants' conduct of failing
22 to provide Plaintiffs and class members all meal periods, failing to authorize and permit
23 Plaintiffs and class members to take all rest periods, failing to provide Plaintiffs and class
24 members all recovery periods, failing to provide Plaintiffs and class members all overtime
25 wages due to them, failing to provide Plaintiffs and class members all minimum wages due to
26 them, failing to provide Plaintiffs and class members accurate and complete wage statements,
27 failing to maintain accurate payroll records for Plaintiffs and class members, failing to timely
28 pay Plaintiffs and class members all earned wages during employment, requiring employees to

1 release claims as a condition to receive paychecks, and failing to reimburse Plaintiffs and
2 class members for business-related expenses, constitutes an unlawful business practice in
3 violation of California Business and Professions Code sections 17200, *et seq.*;

4 67. For restitution of unpaid wages to Plaintiffs and all class members and
5 prejudgment interest from the day such amounts were due and payable;

6 68. For the appointment of a receiver to receive, manage and distribute any and all
7 funds disgorged from Defendants and determined to have been wrongfully acquired by
8 Defendants as a result of violations of California Business & Professions Code sections
9 17200, *et seq.*;

10 69. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
11 California Code of Civil Procedure section 1021.5; and

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

14 **As to the Twelfth Cause of Action**

15 71. That the Court declare, adjudge and decree that Defendants' conduct of denying
16 Plaintiffs and class members the statutory benefits guaranteed under section 226.7 constitutes
17 an unfair business practice in violation of California Business and Professions Code sections
18 17200, *et seq.*;

19 72. For restitution of the statutory benefits under section 226.7 unfairly withheld
20 from Plaintiffs and class members and prejudgment interest from the day such amounts were
21 due and payable;

22 73. For the appointment of a receiver to receive, manage and distribute any and all
23 funds disgorged from Defendants and determined to have been wrongfully acquired by
24 Defendants as a result of violations of California Business & Professions Code sections
25 17200, *et seq.*;

26 74. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
27 California Code of Civil Procedure section 1021.5;

28 75. For pre-judgment and post-judgment interest as provided by law; and

1 76. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: December 28, 2023,

Respectfully submitted,

5 Capstone Law APC

6
7 By: 

8 Orlando Villalba

Helga Hakimi

9 Joseph D. Parsons

10 Attorneys for Plaintiffs Abad Cruz Madrigal
11 and Gavino Ponce Santana
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EXHIBIT “1”

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

September 11, 2023

VIA ONLINE SUBMISSION

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

Subject: *Abad Cruz Madrigal v. Frank Carson Landscape & Maintenance, Inc.*

Dear PAGA Administrator:

This office represents Abad Cruz Madrigal in connection with his claims under the California Labor Code. Mr. Cruz Madrigal was an employee of FRANK CARSON LANDSCAPE & MAINTENANCE, INC. ("FCLM").

The employer may be contacted directly at the address below:

FRANK CARSON LANDSCAPE & MAINTENANCE, INC.
9530 ELDER CREEK ROAD
SACRAMENTO, CA 95829

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

FCLM employed Mr. Cruz Madrigal as an hourly paid, non-exempt Skilled Laborer/Driver from approximately April 2023 to May 2023. Mr. Cruz Madrigal worked for FCLM out of its location in Sacramento, California. During his employment, Mr. Cruz Madrigal typically worked eight (8) hours or more per day, five (5) days per week, from 6:00 a.m. to 2:30 p.m. His primary job duties included, without limitation, landscaping commercial and residential areas which included cutting, planting, and maintaining lawns, flowers, and trees.

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

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

FRANK CARSON LANDSCAPE & MAINTENANCE, INC. is a California corporation. FCLM is a full-service commercial and residential company specializing in landscape maintenance, landscape renovation, tree services, irrigation services, and plant healthcare services. Upon information and belief, FCLM maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Sacramento, California, for all non-exempt, hourly paid employees working for FCLM in California, including Mr. Cruz Madrigal and other aggrieved employees. At all relevant times, FCLM issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Cruz Madrigal and other aggrieved employees, regardless of their location or position.

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

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

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

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

to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant period, on information and belief, FCLM had, and continues to have, a company-wide policy and/or practice of understaffing its jobsites while assigning heavy workloads, resulting in a failure to provide Mr. Cruz Madrigal and other aggrieved employees with adequate meal period coverage and prevented Mr. Cruz Madrigal and other aggrieved employees from taking timely, uninterrupted meal periods to which they were entitled. Typically, each landscaping team was thinly staffed by a set number of employees (usually four (4)) who were expected to perform gardening and maintenance services at private residential communities and to complete landscaping tasks for several lots during one "service." FCLM did not provide coverage if and when team members were absent or called out sick. As a result, Mr. Cruz Madrigal and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, due to the lack of meal period coverage, Mr. Cruz Madrigal had his meal periods interrupted to keep up with the demands of work and complete his assigned duties. Other aggrieved employees also took their meal periods late for the same reasons. Thus, FCLM failed to provide Mr. Cruz Madrigal and other aggrieved employees with compliant 30-minute meal periods.

Additionally, during the relevant time period, FCLM implemented a company-wide policy and/or practice of automatically deducting meal periods from Mr. Cruz Madrigal's and other aggrieved employees' time records, instead of actually allowing employees to clock in and out for meal periods. Specifically, FCLM's policy and/or practice is to automatically deduct 30 minutes per day for "lunch" from 10:00 a.m. to 10:30 a.m. from Mr. Cruz Madrigal's and other aggrieved employees' time records. Alternatively, because FCLM frowned upon employees accruing meal period penalties, FCLM pressured Mr. Cruz Madrigal and other aggrieved employees to clock out for meal periods on handwritten timesheets so that their time records would reflect compliant meal periods, even when they did not receive a compliant meal period. As a result of this policy, FCLM falsified and deducted meal periods from Mr. Cruz Madrigal's and other aggrieved employees' time records even when meal periods were missed, short, interrupted, and/or late and thus systematically failed to correctly record meal periods.

Further, during the relevant time period, FCLM maintained and implemented a company-wide on-premises meal period policy, which effectively required Mr. Cruz Madrigal and other aggrieved employees to remain on the work premises during their meal periods. Because Mr. Cruz Madrigal and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, FCLM effectively maintained control over Mr. Cruz Madrigal and other aggrieved employees during meal periods.

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

At all times herein mentioned, FCLM knew or should have known that, as a result of these policies, Mr. Cruz Madrigal and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. FCLM further knew or

should have known that it did not pay Mr. Cruz Madrigal and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, FCLM engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Cruz Madrigal and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that FCLM did pay other aggrieved employees for missed, late, and interrupted meal periods, FCLM did so at the incorrect rates. In addition to an hourly wage, FCLM paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, FCLM failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. Therefore, during times when other aggrieved employees received meal period premiums and these other forms of pay, FCLM failed to pay full meal period premiums by paying a lower rate than required.

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

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

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

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, FCLM regularly failed to authorize and permit Mr. Cruz Madrigal and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, FCLM's company-wide practices of understaffing while assigning heavy workloads resulted in a lack of rest period coverage and prevented Mr. Cruz Madrigal and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, FCLM's management erroneously informed Mr. Cruz Madrigal and other aggrieved employees that they were only entitled to two (2) 10-minute rest periods per shift which were to be combined with their 30-minute meal period, for a total of a 50-minute block "lunch" per shift. Thus, FCLM wholly failed to schedule timely rest periods, which, coupled with FCLM's

failure to provide adequate rest period coverage, further led to Mr. Cruz Madrigal and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, FCLM maintained and implemented a company-wide on-premises rest period policy, which effectively required that Mr. Cruz Madrigal and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Cruz Madrigal and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, FCLM effectively maintained control over Mr. Cruz Madrigal and other aggrieved employees during rest periods.

As a result of FCLM's practices and policies, Mr. Cruz Madrigal and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Cruz Madrigal sometimes missed his rest periods entirely and could only take a 30-minute block "lunch" due to the workload, or would have his rest periods interrupted or shortened because he was expected to return to work and complete his assigned landscaping tasks.

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

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

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

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide recovery periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest or recovery period is not provided. California Labor Code section 226.7(a) defines "recovery period" to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety Order provides that "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code Regs., tit. 8, § 3395(d)(1). Furthermore, "[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other." *Id.* "Employees shall be allowed and

encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.” *Id.*

During the relevant time period, FCLM violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because FCLM failed to provide Mr. Cruz Madrigal and other aggrieved employees with recovery periods. For example, Mr. Cruz Madrigal was not provided a shaded area for recovery while working even though the majority of his work was performed outside under the sun and in temperatures that could exceed 100 degrees Fahrenheit.

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

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

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

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

FCLM willfully failed to pay all overtime wages owed to Mr. Cruz Madrigal and other aggrieved employees. During the relevant time period, Mr. Cruz Madrigal and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

FCLM had, and continues to have, a company-wide policy and/or practice of understaffing its jobsites while assigning heavy workloads, resulting in a failure to provide Mr. Cruz Madrigal and other aggrieved employees with adequate meal period coverage. Because FCLM did not employ or staff a sufficient number of employees to provide meal period coverage, there was no one available to relieve employees for meal periods, and Mr. Cruz Madrigal and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Consequently, Mr. Cruz Madrigal and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted to complete their assigned duties and handle work demands, time for which they were not paid.

Additionally, as stated, during the relevant time period, FCLM implemented a company-wide policy and/or practice of automatically deducting 30-minute meal periods from Mr. Cruz Madrigal's and other aggrieved employees' time records, instead of actually allowing employees to clock in and out for meal periods. Alternatively, because FCLM frowned upon employees accruing meal period penalties, FCLM pressured Mr. Cruz Madrigal and other aggrieved employees to clock out for meal periods on handwritten timesheets so that their time records would reflect compliant meal periods, even when they did not receive a compliant meal period. As a result of this policy, FCLM falsified and deducted meal periods from Mr. Cruz Madrigal's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted. Thus, FCLM did not record all hours worked during meal periods, and Mr. Cruz Madrigal and other aggrieved employees performed work for which they were not paid.

Further, as stated, FCLM maintained and implemented a company-wide on-premises meal period policy, which effectively required Mr. Cruz Madrigal and other aggrieved employees to remain on the work premises during their meal periods. Because Mr. Cruz Madrigal and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, FCLM effectively maintained control over Mr. Cruz Madrigal and other aggrieved employees during meal periods.

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

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

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

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

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

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

As set forth above, due to FCLM’s policies and/or practices of understaffing its jobsites, assigning heavy workloads, and requiring employees to stay on the work premises during meal periods, Mr. Cruz Madrigal and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, during the relevant time period, FCLM implemented a company-wide policy and/or practice of automatically deducting 30-minute meal periods from Mr. Cruz Madrigal’s and other aggrieved employees’ time records, even when meal periods were missed, short, and/or interrupted. Alternatively, as stated, because FCLM frowned upon employees accruing meal period penalties, FCLM pressured Mr. Cruz Madrigal and other aggrieved employees to clock out for meal periods on handwritten timesheets so that their time records would reflect compliant meal periods, even when they did not receive a compliant meal period. Thus, FCLM systematically failed to pay Mr. Cruz Madrigal and other aggrieved employees for actual hours worked, including during meal periods, because these hours were not correctly recorded.

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

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

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

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

During the relevant time period, FCLM has knowingly and intentionally provided Mr. Cruz Madrigal and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, FCLM issued uniform wage statements to Mr. Cruz Madrigal and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages

and/or meal, rest, and recovery period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, FCLM violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

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

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

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, FCLM engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Cruz Madrigal and

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

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

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

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

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

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

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

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

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

On information and belief, FCLM has a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202.

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

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

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

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

During the relevant time period, FCLM required Mr. Cruz Madrigal and other aggrieved employees to release their claims for meal and/or rest period violations, as well as their claims for uncompensated hours worked, as a condition of receiving their paychecks. For example, before FCLM provided Mr. Cruz Madrigal his paycheck, FCLM required Mr. Cruz Madrigal to verify that he had been timely provided all meal and rest periods by signing a "Meal Break Time Sheet Punches" form reflecting falsified times for meal periods (*see supra*). FCLM compelled Mr. Cruz Madrigal and other aggrieved employees to sign these false verifications when they, in fact, were not provided all meal or rest periods and/or had not been able to accurately record all of the hours they had worked.

FCLM's policy and practice of requiring Mr. Cruz Madrigal and other aggrieved employees to release their claims for meal or rest period violations and/or their claims for uncompensated hours worked, as a condition to receiving their wages, is in violation of California Labor Code section 206.5. Mr. Cruz Madrigal and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, FCLM, on a company-wide basis, required Mr. Cruz Madrigal and other aggrieved employees to report to wear uniforms bearing the company logo and name, including uniform shirts, jackets, hats, and/or safety vests. Due to the nature of landscaping work, Mr. Cruz

Madrigal's uniform items would become dusty or dirty, be exposed to harsh chemicals, and/or acquire an unpleasant odor such that he was unable to mix these clothes in with his other laundry. As a result, he had to wash his uniform items separately from his regular clothing, thus incurring additional laundry expenses for the upkeep of his uniforms. Thus, FCLM failed to maintain the uniforms it required Mr. Cruz Madrigal and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

FCLM could have provided Mr. Cruz Madrigal and other aggrieved employees with access to laundering services. Or, FCLM could have reimbursed employees for the costs of laundering expenses or provided a uniform maintenance allowance. Instead, FCLM passed these operating costs off onto Mr. Cruz Madrigal and other aggrieved employees.

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

California Labor Code § 558(a)

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

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

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: FRANK CARSON LANDSCAPE & MAINTENANCE, INC. (via U.S. Certified Mail)

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Capstone Law, APC
Frank Carson Landscape
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PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **December 28, 2023**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Lukas J. Clary
lclary@weintraub.com
Olatomiwa T. Aina
oaina@weintraub.com
WEINTRAUB TOBIN CHEDIAK
COLEMAN GRODIN law corporation
400 Capitol Mall, 11th Floor
Sacramento, CA 95814
Telephone: 916-558-6000
Facsimile: 916-446-1611

Attorneys for Defendant:
FRANK CARSON LANDSCAPE &
MAINTENANCE, INC.

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

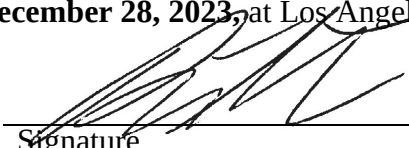
☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

☐ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **December 28, 2023**, at Los Angeles, California.

Riley McIntire
Type/Print Name


Signature