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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

ELIAS DIAZ, on behalf of himself and all
others similarly situated, and the general
public,

Plaintiff,

v.

KINGSBOROUGH ATLAS TREE
SURGERY, INC., a California corporation;
ATLAS TREE SERVICE, INC., a California
corporation; ATLAS TREE AND
LANDSCAPE, INC., a business entity of
unknown form; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 23CV011375

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

1. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
2. Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
3. Failure to Pay Proper Sick Pay (Lab. Code § 246);
4. Failure to Pay Proper Vacation Wages (Lab. Code § 227.3);
5. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
6. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
7. Failure to Indemnify (Lab. Code § 2802);
8. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
9. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff ELIAS DIAZ (“Plaintiff”), on behalf of himself, all others similarly situated, the
2 State of California, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendants
5 KINGSBOROUGH ATLAS TREE SURGERY, INC., a California corporation; ATLAS TREE
6 SERVICE, INC., a California corporation; ATLAS TREE AND LANDSCAPE, INC., a business
7 entity of unknown form; and DOES 1 through 50, inclusive, (collectively referred to as “Defendants”)
8 for alleged violations of the California Labor Code and California Business and Professions Code.
9 As set forth below, Plaintiff alleges that Defendants have:

- 10 a. failed to pay them overtime wages at the correct rate;
- 11 b. failed to pay them double time wages at the correct rate;
- 12 c. failed to pay them overtime and/or double time wages by failing to include all
13 applicable remuneration in calculating the regular rate of pay;
- 14 d. failed to provide them with rest periods;
- 15 e. failed to pay them premium wages for missed rest breaks;
- 16 f. failed to pay them proper sick time pay;
- 17 g. failure to pay proper vacation wages;
- 18 h. failed to provide them with accurate written wage statements;
- 19 i. failed to reimburse them with necessary business expenditures;
- 20 j. failed to pay them all their final wages following separation of employment.

21 Based on these alleged Labor Code violations, Plaintiff now brings this class and
22 representative action to recover unpaid wages, liquidated damages, civil and statutory penalties,
23 restitution, and related relief on behalf of himself, all others similarly situated, and the general public.

24 **JURISDICTION AND VENUE**

25 2. This Court has subject matter jurisdiction to hear this case because the monetary
26 damages and restitution sought by Plaintiff from Defendants’ conduct exceeds the minimal
27 jurisdiction of the Superior Court of the State of California.

28 3. Venue is proper in the County of Sacramento pursuant to Code of Civil Procedure

1 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions
2 that are the subject matter of this Complaint occurred therein and/or each defendant is found,
3 maintains offices, transacts business and/or has an agent therein.

4 4. Venue is proper in Sacramento County because Defendants' have at all times alleged
5 herein, conducted business in Sacramento County, and throughout California. As such, venue is
6 proper in any county in California.

7 **PARTIES**

8 5. Plaintiff ELIAS DIAZ is, and at all relevant times mentioned herein, an individual
9 residing in the State of California.

10 6. Plaintiff is informed and believes, and thereupon alleges that Defendant
11 KINGSBOROUGH ATLAS TREE SURGERY, INC. is, and at all relevant times mentioned herein,
12 a California corporation doing business in the State of California.

13 7. Plaintiff is informed and believes, and thereupon alleges that Defendant ATLAS
14 TREE SERVICE, INC. is, and at all relevant times mentioned herein, a California corporation doing
15 business in the State of California.

16 8. Plaintiff is informed and believes, and thereupon alleges that Defendant ATLAS
17 TREE AND LANDSCAPE, INC. is, and at all relevant times mentioned herein, a business entity of
18 unknown form doing business in the State of California.

19 9. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
20 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
21 will amend this Complaint to allege the true names and capacities of the DOE defendants when
22 ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously
23 named defendants are responsible in some manner for the occurrences, acts and omissions alleged
24 herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of
25 them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE
26 defendants when ascertained.

27 10. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
28 mentioned herein, some or all of the defendants were the representatives, agents, employees, partners,

1 directors, associates, joint venturers, joint employers, owners, principals or co-participants of some
2 or all of the other defendants, and in doing the things alleged herein, were acting within the course
3 and scope of such relationship and with the full knowledge, consent, and ratification by such other
4 defendants.

5 11. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
6 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and
7 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts
8 and omissions alleged herein.

9 12. This action has been brought and may be maintained as a class action pursuant to Code
10 of Civil Procedure section 382 because there is a well-defined community of interest among the
11 persons who comprise the readily ascertainable classes defined below and because Plaintiff is
12 unaware of any difficulties likely to be encountered in managing this case as a class action.

13 13. **Relevant Time Period:** The relevant time period is defined as the time period
14 beginning four years prior to the filing of this action until judgment is entered.

- 15 a. **Hourly Employee Class:** All persons employed by Defendants, collectively or
16 separately, and/or any staffing agencies and/or any other third parties in hourly or
17 non-exempt positions in California four years prior to the filing of this action and
ending on the date that final judgment is entered in this action (“Hourly Employee
Class”).
- 18 b. **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked a
19 shift of at least three and one-half (3.5) hours the four years prior to the filing of
this action and ending on the date that final judgment is entered in this action.
- 20 c. **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who
21 separated from their employment with Defendants during the period beginning
22 three years before the filing of this action and ending when final judgment is
entered.
- 23 d. **Sick-Pay Class:** All persons employed by Defendants in California who, at any
24 time from four years prior to the filing of this action and ending on the date that
final judgment is entered in this action, worked for more than 30 days for
25 Defendants, and were not paid for at least one hour of sick time for every 30 hours
of work thereafter, or at least 3 days of sick time for every 12-month period of
employment.
- 26 e. **Vacation Pay Class:** All persons employed by Defendants in California who
27 earned paid vacation time and/or paid time off without receiving compensation for
all vested paid vacation time during the **Relevant Time Period**.
- 28 f. **Wage Statement Class:** All persons employed by Defendants in California during

the period beginning one year before the filing of this action and ending when final judgment is entered.

g. **Expense Reimbursement Class**: All persons employed by Defendants in California who incurred business expenses during the **Relevant Time Period**.

h. **UCL Class**: All **Hourly Employee Class** and **Expense Reimbursement Class** members employed by Defendants in California during the four years prior to the filing of this action and ending on the date that final judgment is entered in this action.

14. **Reservation of Rights**: Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into sub-classes and/or by limitation to particular issues.

15. **Numerosity**: The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of class members, Plaintiff is informed and believes, and thereupon alleges that the actual number exceeds the minimum required for numerosity under California law.

16. **Commonality and Predominance**: Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual class members. These common questions include, but are not limited to:

- a. Whether Defendants maintained a policy or practice of failing to provide employees with their rest periods;
- b. Whether Defendants failed to pay premium wages to class members when they have not been provided with rest periods at the appropriate rates of pay;
- c. Whether Defendants failed to pay minimum and/or overtime wages to class members for all time worked;
- d. Whether Defendants failed to pay proper sick time pay;
- e. Whether Defendants failed to pay proper vacation wages;
- f. Whether Defendants failed to provide class members with accurate written wage statements as a result of providing them with written wage statements with inaccurate entries for, among other things, amounts of gross and net wages, and total hours worked;

- g. Whether Defendants applied policies or practices that result in late and/or incomplete final wage payments;
- h. Whether Defendants failed to reimburse class members for all necessary business expenses incurred during the discharge of their duties;
- i. Whether Defendants are liable to class members for waiting time penalties under Labor Code section 203; and
- j. Whether class members are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition;

17. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff is informed and believes, and thereupon alleges that Defendants have a policy or practice of failing to comply with the California Labor Code and Business and Professions Code as alleged in this Complaint.

18. **Adequacy of Class Representative:** Plaintiff is an adequate class representative and has no interests that are adverse to, or otherwise conflict with, the interests of absent class members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly and adequately represent and protect the interests of the other class members.

19. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent class members, are experienced in wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent class members.

20. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of the class members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual class members are likely to be relatively small and would thus make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue

1 the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent
2 or contradictory judgments inherent in individual litigation.

3 **GENERAL ALLEGATIONS**

4 21. Plaintiff worked for Defendants as a non-exempt employee during the relevant and
5 statutory periods.

6 22. Defendants had a common policy and practice of systemically failing to pay Plaintiff
7 and Class members proper wages and overtime for all hours worked, at the proper rates of pay. First,
8 Defendants implemented an unlawful time-rounding policy and practice which rounded down and
9 reduced the actual working hours recorded by Plaintiff and Class Members, and upon which their pay
10 was based, and generally did so to the detriment of the Plaintiff and Class Members, and these
11 unlawfully rounded time entries were inputted into Defendants' payroll system from which wage
12 statements and payroll checks were created. Defendants did so with the ostensible intent of paying
13 Plaintiff and Class members only for the hours they were scheduled to work, rather than the hours
14 they were actually under Defendants' control. Plaintiff contends this policy is not neutral and results,
15 over time, to the detriment of the Plaintiff and Class members by systematically undercompensating
16 them.

17 23. Next, Plaintiff and Class Members were also entitled to prevailing wages. However,
18 Defendants systemically failed to pay Plaintiff and Class Members the agreed prevailing wages to
19 which they were owed and entitled.

20 24. Plaintiff and Class Members were required to work in excess of eight (8), ten (10)
21 and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Plaintiff and Class Members
22 to minimum and overtime wages, which they were systemically denied. Defendants failed to Plaintiff
23 and Class Members overtime wages at the proper and applicable regular rates of pay. Specifically,
24 Plaintiff and Class Members received per diem pay, in addition to their hourly earnings. However,
25 this supplemental pay was not incorporated or otherwise blended into overtime or double time rates
26 of pay, systematically undercompensating Plaintiff and Class Members. Additionally, and as
27 discussed herein, Plaintiff and Class Members were owed prevailing wages which they were
28 systemically denied, which only further denied them overtime and double-time wages to which they

1 were owed.

2 25. Defendants had a common policy and practice of systemically denying Plaintiff and
3 Class Members the opportunity to take rest periods in compliance with the California Law. Plaintiff
4 and Class Members were not provided with rest periods of at least ten (10) minutes for each four (4)
5 hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest
6 period as part of each work shift, including second rest breaks for shifts of six (6) hours or more and
7 third rest breaks for shifts of ten (10) hours or more; (2) no formal compliant written rest period policy
8 that encouraged employees to take their rest periods, or that properly advised Plaintiff and Class
9 Members of their rest period rights; (3) Defendants' policy and practice of requiring putative class
10 members to continue working through their rest breaks due to the excessive workload.

11 26. Furthermore, Defendants failed to pay Plaintiff and Class Members premium pay
12 wages at their appropriate regular rates of pay for each rest period denied. Specifically, Defendants
13 failed to incorporate supplemental per diem pay that Plaintiff and Class Members were paid into their
14 rest break premium payments.

15 27. Plaintiff and Class Members were not provided with accurate wage statements as
16 mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage
17 statements as "a detachable part of the check, draft, or voucher paying the employee's wages, or
18 separately if wages are paid by personal check or cash, an accurate itemized statement in writing."
19 Additionally, the wage statements issued to Plaintiff and Class Members were not recorded in "ink
20 or other indelible form."

21 28. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
22 earned" were not accurately reflected in that: all hours worked, including overtime, were not included.

23 29. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours worked
24 by the employee" were not accurately reflected in that: all hours worked, including overtime, were
25 not included.

26 30. Defendants failed to comply with Labor Code section 226(a)(5) as "net wages earned"
27 were not accurately reflected in that: all hours worked, including overtime, were not included.

28 31. Defendants failed to comply with Labor Code section 226(a)(9) as "all applicable

1 hourly rates in effect during the pay period and the corresponding number of hours worked at each
2 hourly rate by the employee” were not accurately reflected in that: all hours worked, including
3 overtime, were not included.

4 32. Furthermore, Defendants failed to provide Plaintiff and Class Members with paper pay
5 stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters.
6 Plaintiff’s and Class Members’ wage statement were only provided in electronic format in violation
7 of Labor Code § 226.

8 33. Plaintiff and Class Members were not reimbursed for business expenses incurred in
9 executing their duties under Defendant’s employ. Specifically, Plaintiff and Class Members were
10 required to use their personal cell phones for work-related activities, incurring costs for the phone
11 use. Additionally, Defendants had a policy requiring Plaintiff and Class Members to maintain,
12 launder, and care for their uniforms, which Plaintiff and Class Members adhered to, incurring costs.
13 Defendants never reimbursed Plaintiff and Class Members for these necessary work expenses.

14 34. Defendants also had a common policy and practice of systemically failing to pay
15 Plaintiff and Class Members the requisite and accrued vacation time pay in accordance with
16 California Law. Specifically, Plaintiff and Class Members accrued vested vacation time and/or paid
17 time off. However, Defendants failed to pay all accrued vacation time and/or paid time off owed to
18 Plaintiff and Class Members upon their separation from employment.

19 35. Finally, Defendants had a common policy and practice of systemically failing to pay
20 Plaintiff and Class Members the requisite sick time pay in accordance with California Law.
21 Specifically, Plaintiff and Class Members worked for Defendants for more than 30 days, but were not
22 paid at least one hour of sick pay for every 30 hours of work, or at least 3 days of sick time for every
23 12 month period of work. Additionally, Defendants failed to incorporate Plaintiff’s and Class
24 Members’ per diem premiums into the rate of sick pay.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST PERIODS**

3 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

4 **(Plaintiff and Rest Period Sub-Class)**

5 36. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
6 herein.

7 37. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
8 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
9 Code and the applicable Wage Order.

10 38. Section 12 of the applicable Wage Order imposes an affirmative obligation on
11 employers to permit and authorize employees to take required rest periods at a rate of no less than ten
12 (10) minutes of net rest time for each four (4) hour work period, or major fraction thereof, that must
13 be in the middle of each work period insofar as practicable.

14 39. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit
15 employers from requiring employees to work during required rest periods and require employers to
16 pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each
17 workday that the employee is not provided with the required rest period(s).

18 40. Compensation for missed rest periods constitutes wages within the meaning of Labor
19 Code section 200.

20 41. Labor Code section 1198 makes it unlawful to employ a person under conditions that
21 violate the Wage Order.

22 42. Plaintiff alleges that, at all relevant times during the applicable limitations period,
23 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
24 with net rest period of at least ten (10) uninterrupted minutes for each four (4) hour work period, or
25 major fraction thereof, as required by the applicable Wage Order.

26 43. Plaintiff and **Rest Period Sub-Class** members were not provided with rest periods of
27 at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
28 Defendants' policy of not scheduling each rest period as part of each work shift, including second

1 rest breaks for shifts of six (6) hours or more and third rest breaks for shifts of ten (10) hours or more;
2 (2) no formal compliant written rest period policy that encouraged employees to take their rest
3 periods, or that properly advised Plaintiff and **Rest Period Sub-Class** members of their rest period
4 rights; (3) Defendants' policy and practice of requiring **Rest Period Sub-Class** members to continue
5 working through their rest breaks due to the excessive workload.

6 44. At all relevant times, Defendants failed to pay Plaintiff and **Rest Period Sub-Class**
7 members premium pay wages at their appropriate regular rates of pay for each rest period denied.
8 Specifically, Defendants failed to incorporate supplemental per diem pay that Plaintiff and **Rest**
9 **Period Sub-Class** members were paid into their rest break premium payments.

10 45. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of himself
11 and **Rest Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and
12 costs of suit.

13 46. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
14 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Rest**
15 **Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

18 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

19 **(Plaintiff and Hourly Employee Class)**

20 47. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
21 herein.

22 48. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been
23 non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
24 applicable Wage Order.

25 49. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
26 which an employee is subject to the control of the employer, and includes all the time the employee
27 is suffered or permitted to work, whether or not required to do so."

28 50. Section 4 of the applicable Wage Order requires an employer to pay non-exempt

1 employees at least the minimum wage set forth therein for all hours worked, which consist of all hours
2 that an employer has actual or constructive knowledge that employees are working.

3 51. Labor Code section 1194 invalidates any agreement between an employer and an
4 employee to work for less than the minimum or overtime wage required under the applicable Wage
5 Order.

6 52. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
7 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition
8 to the underlying unpaid minimum wages and interest thereon.

9 53. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
10 than the minimum wage required under the applicable Wage Order for all hours worked during a
11 payroll period.

12 54. Labor Code section 1197.1 provides that it is unlawful for any employer or any other
13 person acting either individually or as an officer, agent or employee of another person, to pay an
14 employee, or cause an employee to be paid, less than the applicable minimum wage.

15 55. Labor Code section 1198 makes it unlawful for employers to employ employees under
16 conditions that violate the applicable Wage Order.

17 56. Labor Code section 204 requires employers to pay non-exempt employees their earned
18 wages for the normal work period at least twice during each calendar month on days the employer
19 designates in advance and to pay non-exempt employees their earned wages for labor performed in
20 excess of the normal work period by no later than the next regular payday.

21 57. Labor Code section 223 makes it unlawful for employers to pay their employees lower
22 wages than required by contract or statute while purporting to pay them legal wages.

23 58. Labor Code section 510 and Section 3 of the applicable Wage Order require employees
24 to pay non-exempt employees overtime wages of no less than one and one-half (1.5) times their
25 respective regular rates of pay for all hours worked in excess of eight (8) hours in one workday, all
26 hours worked in excess of forty (40) hours in one workweek, and/or for the first eight (8) hours
27 worked on the seventh consecutive day of one workweek.

28 59. Labor Code section 510 and Section 3 of the applicable Wage Order also require

1 employers to pay non-exempt employees overtime wages of no less than two (2) times their respective
2 regular rates of pay for all hours worked in excess of twelve (12) hours in one workday and for all
3 hours worked in excess of eight (8) hours on a seventh consecutive workday during the workweek.

4 60. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
5 centrally devised policies and practices to him and **Hourly Employee Class** members with respect to
6 working conditions and compensation arrangements.

7 61. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
8 **Employee Class** members for all time worked, including but not limited to, overtime hours at
9 statutory and/or agreed rates.

10 62. Plaintiff and **Hourly Employee Class** members were not paid proper wages and
11 overtime for all hours worked, at the proper rates of pay. First, Defendants implemented an unlawful
12 time-rounding policy and practice which rounded down and reduced the actual working hours
13 recorded by Plaintiff and **Hourly Employee Class**, and upon which their pay was based, and
14 generally did so to the detriment of the Plaintiff and **Hourly Employee Class**, and these unlawfully
15 rounded time entries were inputted into Defendants' payroll system from which wage statements and
16 payroll checks were created. Defendants did so with the ostensible intent of paying Plaintiff and
17 **Hourly Employee Class** members only for the hours they were scheduled to work, rather than the
18 hours they were actually under Defendants' control. Plaintiff contends this policy is not neutral and
19 results, over time, to the detriment of the Plaintiff and **Hourly Employee Class** members by
20 systematically undercompensating them.

21 63. Next, Plaintiff and **Hourly Employee Class** members were also entitled to prevailing
22 wages. However, Defendants systemically failed to pay Plaintiff and **Hourly Employee Class**
23 members the agreed prevailing wages to which they were owed and entitled.

24 64. Plaintiff and **Hourly Employee Class** members were required to work in excess of
25 eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Plaintiff
26 and **Hourly Employee Class** members to minimum and overtime wages, which they were
27 systemically denied. Defendants failed to Plaintiff and **Hourly Employee Class** members overtime
28 wages at the proper and applicable regular rates of pay. Specifically, Plaintiff and **Hourly Employee**

1 **Class** members received per diem pay, in addition to their hourly earnings. However, this
2 supplemental pay was not incorporated or otherwise blended into overtime or double time rates of
3 pay, systematically undercompensating Plaintiff and **Hourly Employee Class** members.
4 Additionally, and as discussed herein, Plaintiff and **Hourly Employee Class** members were owed
5 prevailing wages which they were systemically denied, which only further denied them overtime and
6 double-time wages to which they were owed.

7 65. Furthermore, Defendants failed to pay Plaintiff and **Hourly Employee Class** members
8 premium pay wages at their appropriate regular rates of pay for each rest period denied. Specifically,
9 Defendants failed to incorporate supplemental per diem pay that Plaintiff and **Hourly Employee**
10 **Class** members were paid into their rest break premium payments.

11 66. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
12 members have suffered damages in an amount, subject to proof, to the extent they were not paid the
13 full amount of wages earned during each pay period during the applicable limitations period,
14 including overtime wages.

15 67. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
16 behalf of himself and **Hourly Employee Class** members, seeks to recover unpaid straight time and
17 overtime wages, interest thereon and costs of suit.

18 68. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
19 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and
20 **Hourly Employee Class** members, seeks to recover reasonable attorneys' fees.

21 **THIRD CAUSE OF ACTION**

22 **FAILURE TO PAY PROPER SICK PAY**

23 **(Lab. Code § 246)**

24 **(Plaintiff and Sick Pay Class)**

25 69. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 70. Labor Code Section 246 affords an employee "who works in California for 30 or
28 more days within a year from the commencement of employment [] paid sick days . . . of not less

1 than one hour per every 30 hours worked” and “no less than 24 hours of accrued sick leave or paid
2 time off by the 120th calendar day of employment or each calendar year, or in each 12-month
3 period.”

4 71. Additionally, Subsection (l) of Section 246 provides:

5 For the purposes of this section, an employer shall calculate paid sick leave
6 using any of the following calculations:

7 (1) Paid sick time for nonexempt employees shall be calculated in the same
8 manner as the regular rate of pay for the workweek in which the employee
9 uses paid sick time, whether or not the employee actually works overtime
10 in that workweek.

11 72. Defendants had a common policy and practice of systemically failing to pay Plaintiff
12 and **Sick Pay Class** Members the requisite sick time pay in accordance with California Law.
13 Specifically, Plaintiff and **Sick Pay Class** Members worked for Defendants for more than 30 days,
14 but were not paid at least one hour of sick pay for every 30 hours of work, or at least 3 days of sick
15 time for every 12 month period of work. Additionally, Defendants failed to incorporate Plaintiff's
16 and **Sick Pay Class** Members' per diem premiums into the rate of sick pay.

17 73. Therefore, **Sick Pay Class** Members are owed the unpaid balance of said wages
18 pursuant to the Wage order according to proof at trial, interest pursuant to Labor Code §§ 218.6 and
19 1194(a), Civil Code §§ 3287 and § 3289, and reasonable attorneys' fees and costs and/or penalties
20 pursuant to Labor Code § 558(a).

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PAY VACATION WAGES**

23 **(Lab. Code § 227.3)**

24 **(Plaintiff and Vacation Pay Class)**

25 74. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

26 75. California Labor Code section 227.3 provides:

27 Unless otherwise provided by a collective-bargaining agreement,
28 whenever a contract of employment or employer policy provides for
paid vacations, and an employee is terminated without having taken off
his vested vacation time, all vested vacation shall be paid to him as
wages at his final rate in accordance with such contract of employment
or employer policy respecting eligibility or time served; provided,

however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

76. At all relevant times during the applicable limitations period, Plaintiff and members of the **Vacation Pay Class** accrued vacation time, and/or paid time off, during their employment with Defendants.

77. However, Defendants implemented a common policy and practice of failing to pay Plaintiff and **Vacation Pay Class** members for all accrued vacation wages upon separation of employment, in violation of Labor Code 227.3.

78. By reason of the above, Plaintiff and the members of the **Vacation Pay Class** are entitled to restitution for all unpaid amounts due and owing to within four (4) years of the date of the filing of the original Complaint until the date of entry of judgment.

79. Plaintiff, on behalf of himself and the members of the **Vacation Pay Class**, seeks interest thereon pursuant to California Labor Code section 218.6, costs pursuant to California Labor Code section 218.6, and reasonable attorneys' fees pursuant to California Code of Civil Procedure section 1021.5.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(Plaintiff and Wage Statement Penalties Sub-Class)

80. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

81. Labor Code section 226(a) states:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be

1 aggregated and shown as one item, (5) net wages earned, (6) the
2 inclusive dates of the period for which the employee is paid, (7) the
3 name of the employee and only the last four digits of his or her social
4 security number or an employee identification number other than a
5 social security number, (8) the name and address of the legal entity that
6 is the employer and, if the employer is a farm labor contractor, as
7 defined in subdivision (b) of Section 1682, the name and address of the
8 legal entity that secured the services of the employer, and (9) all
9 applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the
11 employee and, beginning July 1, 2013, if the employer is a temporary
services employer as defined in Section 201.3, the rate of pay and the
total hours worked for each temporary services assignment. The
deductions made from payment of wages shall be recorded in ink or
other indelible form, properly dated, showing the month, day, and year,
and a copy of the statement and the record of the deductions shall be
kept on file by the employer for at least three years at the place of
employment or at a central location within the State of California. For
purposes of this subdivision, ‘copy’ includes a duplicate of the itemized
statement provided to an employee or a computer-generated record that
accurately shows all of the information required by this subdivision.

12 82. The Division of Labor Standards Enforcement (“DLSE”) has sought to harmonize the
13 “detachable part of the check” provision and the “accurate itemized statement in writing” provision
14 of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee
15 retains the right to elect to receive a written paper stub or record and that those who are provided with
16 electronic wage statements retain the ability to easily access the information and convert the electronic
17 statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

18 83. Plaintiff is informed and believes that, at all relevant times during the applicable
19 limitations period, Defendants have failed to provide Plaintiff and **Wage Statement Class** members
20 with written wage statements as described above. Additionally, the wage statements issued to class
21 members failed to account for the unpaid minimum wages, overtime, and premium pay wages
22 described above.

23 84. Furthermore, Defendants failed to provide Plaintiff and **Wage Statement Class**
24 Members with paper pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE
25 Opinion Letters. Plaintiff’s and **Wage Statement Class** members’ wage statements were only
26 provided in electronic format in violation of Labor Code § 226.

27 85. Plaintiff is informed and believes that Defendants’ failure to provide Plaintiff and
28 **Wage Statement Class** members with accurate written wage statements was intentional in that

1 Defendants have the ability to provide them with accurate wage statements but have intentionally
2 provided them with written wage statements that Defendants have known do not comply with Labor
3 Code section 226(a).

4 86. Plaintiff and **Wage Statement Class** members have suffered injuries, in that
5 Defendants have violated their legal rights to receive accurate wage statements and have misled them
6 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
7 statements has prevented immediate challenges to Defendants' unlawful pay practices, has required
8 discovery and mathematical computations to determine the amount of wages owed, has caused
9 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
10 submission of inaccurate information about wages and deductions to federal and state government
11 agencies.

12 87. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of himself and **Wage**
13 **Statement Class** members, seeks the greater of actual damages or \$50.00 for the initial pay period in
14 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
15 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
16 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

17 **SIXTH CAUSE OF ACTION**

18 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

19 **(Lab. Code §§ 201-203)**

20 **(Plaintiff and Waiting Time Penalties Sub-Class)**

21 88. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
22 herein.

23 89. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have
24 been entitled, upon the end of their employment with Defendants, to timely payment of all wages
25 earned and unpaid before termination or resignation.

26 90. At all relevant times, pursuant to Labor Code section 201, employees who have been
27 discharged have been entitled to payment of all final wages immediately upon termination.

28 91. At all relevant times, pursuant to Labor Code section 202, employees who have

1 resigned after giving at least seventy-two (72) hours' notice of resignation have been entitled to
2 payment of all final wages at the time of resignation.

3 92. Plaintiff is informed and believes that, at all relevant times during the applicable
4 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
5 members all their final wages in accordance with the Labor Code.

6 93. Plaintiff is informed and believes that, at all relevant times during the applicable
7 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
8 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
9 sections 201 or 202 by failing to timely pay them all final wages.

10 94. Plaintiff is informed and believes, and thereupon alleges that Defendants' failure to
11 timely pay all final wages to him and **Waiting Time Penalties Sub-Class** members has been willful
12 in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201
13 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
14 requirements.

15 95. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of himself and
16 **Waiting Time Penalties Sub-Class** members, seeks waiting time penalties from the dates that their
17 final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

18 96. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
19 and/or the common fund doctrine, Plaintiff, on behalf of himself and **Waiting Time Penalties Sub-**
20 **Class** members, seeks awards of reasonable attorneys' fees and costs.

21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO INDEMNIFY**

23 **(Lab. Code § 2802)**

24 **(Plaintiff and Reimbursement Class)**

25 97. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
26 herein.

27 98. Labor Code section 2802(a) states:

28 An employer shall indemnify his or her employee for all necessary

1 expenditures or losses incurred by the employee in direct consequence
2 of the discharge of his or her duties, or of his or her obedience to the
3 directions of the employer, even though unlawful, unless the employee,
4 at the time of obeying the directions, believed them to be unlawful.

5 99. Plaintiff and **Expense Reimbursement Class** members were not reimbursed for
6 business expenses incurred in executing their duties under Defendant's employ. Specifically, Plaintiff
7 and **Expense Reimbursement Class** members were required to use their personal cell phones for
8 work-related activities, incurring costs for the phone use. Additionally, Defendants had a policy
9 requiring Plaintiff and **Expense Reimbursement Class** members to maintain, launder, and care for
10 their uniforms, which Plaintiff and Class Members adhered to, incurring costs. Defendants never
11 reimbursed Plaintiff and **Expense Reimbursement Class** members for these necessary work
12 expenses.

13 100. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to
14 restitution for all unpaid amounts due and owing to within four (4) years of the date of the filing of
15 the Complaint and until the date of entry of judgment.

16 101. Plaintiff, on behalf of himself, and **Expense Reimbursement Class** members, seeks
17 interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys' fees and
18 costs pursuant to Code of Civil Procedure section 1021.5.

19 **EIGHTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION**

21 **(Bus. & Prof. Code §§ 17200 et seq.)**

22 **(Plaintiff and UCL Class)**

23 102. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
24 herein.

25 103. Business and Professions Code section 17200 defines "unfair competition" to include
26 any unlawful business practice.

27 104. Business and Professions Code sections 17203-17204 allow a person who has lost
28 money or property as a result of unfair competition to bring a class action in accordance with Code
of Civil Procedure section 382 to recover money or property that may have been acquired from
///

1 similarly situated persons by means of unfair competition.

2 105. California law requires employers to pay hourly, non-exempt employees for all hours
3 they are permitted or suffered to work, including hours that the employer knows or reasonable should
4 know that employees have worked.

5 106. Plaintiff and the **UCL Class** members re-allege and incorporate the FIRST, SECOND,
6 THIRD, FOURTH, and SEVENTH causes of action herein.

7 107. Plaintiff lost money or property as a result of the aforementioned unfair competition.

8 108. Defendants have or may have acquired money by means of unfair competition.

9 109. Plaintiff is informed and believes, and thereupon alleges that by committing the Labor
10 Code violations described in this Complaint, Defendants violated Labor Code sections 215, 216, 225,
11 226.6, 226.7, 227.3, 246, 354, 408, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198,
12 1199, and 2802 as well as applicable Wage Orders, which make it a misdemeanor to commit the
13 violations alleged herein.

14 110. Defendants have committed criminal conduct through their policies and practices of,
15 *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-exempt
16 employees with compliant rest periods; pay for all hours worked at the proper rates of pay; proper
17 sick time pay; and reimbursement for necessary business expenditures.

18 111. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes
19 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
20 Business and Professions Code section 17200 *et seq.* protects against unfair competition and allows
21 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
22 unlawful or fraudulent business practice to seek restitution on his own behalf and on behalf of
23 similarly situated persons in a class action proceeding.

24 112. As a result of Defendants' violations of the Labor Code during the applicable
25 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
26 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants' conduct.

27 113. Plaintiff is informed and believes that other similarly situated persons have been
28 subject to the same unlawful policies or practices of Defendants.

1 114. Due to the unfair and unlawful business practices in violation of the Labor Code,
2 Defendants have gained a competitive advantage over other comparable companies doing business in
3 the State of California that comply with their legal obligations.

4 115. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
5 relief for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act
6 violates or is considered unlawful under any other state or federal law.

7 116. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
8 Plaintiff requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
9 Defendants, and each of them, and their agents and employees, from further violations of the Labor
10 Code and applicable Wage Orders.

11 117. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff
12 requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
13 Defendants, and each of them, and their agents and employees, from further violations of the Labor
14 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seeks
15 an order permanently enjoining Defendants, and each of them, and their respective agents and
16 employees, from further violations of the Labor Code and applicable Industrial Welfare Commission
17 Wage Orders.

18 118. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
19 himself and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully
20 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
21 and unfair business practices.

22 119. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
23 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
24 reasonable attorneys' fees in connection with their unfair competition claims.

25 120. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
26 himself and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully
27 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
28 and unfair business practices.

1 121. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
2 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
3 reasonable attorneys' fees in connection with their unfair competition claims.

4 **NINTH CAUSE OF ACTION**

5 **CIVIL PENALTIES**

6 **(Lab. Code §§ 2698, *et seq.*)**

7 122. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

8 123. During the applicable limitations period, Defendants have violated Labor Code §§
9 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 246, 510, 558, 558.1, 1174, 1174.5, 1182.12, 1185,
10 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802.¹

11 124. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of himself
12 and other current and former employees, to bring a representative civil action to recover civil penalties
13 pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or
14 maintained as a class action pursuant to Code of Civil Procedure section 382.

15 125. Plaintiff, a former employee against whom Defendants committed one or more of the
16 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
17 within the meaning of Labor Code § 2699(c). Plaintiff was employed by Defendants as a non-exempt
18 hourly employee in California. Aggrieved Employees include all non-exempt hourly employees of
19 Defendants within the state of California from one year prior to the date of this letter and continuing
20 through the present (Plaintiff and Aggrieved Employees are collectively referred to herein as
21 "Aggrieved Employees")

22 126. Plaintiff has complied with the procedures for bringing suit specified in Labor Code §
23 2699.3. Notice was provided to the California Labor & Workforce Development Agency ("LWDA")
24 and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an intent to
25 _____

26 ¹ Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees, for
27 Defendants' violations of the applicable provisions of the Labor Code, suffered by Aggrieved
28 Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc.*
(2018) 23 Cal.App.5th 745.

1 investigate.

2 127. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
3 penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 223, 226.7, 226(a), 226.8,
4 246, 510, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 2802:

- 5 i. For violations of Labor Code §§ 201, 202, 203, 226.7, 246, 1174, 1194, 1198
6 and 2802, one hundred dollars (\$100) for each employee per pay period for
7 each initial violation and two hundred dollars (\$200) for each employee per
8 pay period for each subsequent violation (penalties set by Labor Code §
9 2699(f)(2));
- 10 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding thirty
11 (30) days' pay as waiting time (penalties set by Labor Code § 256);
- 12 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
13 employee for each initial violation that was neither willful nor intentional, two
14 hundred dollars (\$200) for each employee, plus 25% of the amount unlawfully
15 withheld from each employee, for each initial violation that was either willful
16 or intentional, and two hundred dollars (\$200) for each employee, plus twenty-
17 five percent (25%) of the amount unlawfully withheld from each employee,
18 for each subsequent violation, regardless of whether the subsequent violation
19 was either willful or intentional (penalties set by Labor Code § 210);
- 20 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
21 employee for each initial violation that was neither willful nor intentional, two
22 hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of
23 the amount unlawfully withheld from each employee, for each initial violation
24 that was either willful or intentional, and two hundred dollars (\$200) for each
25 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
26 from each employee, for each subsequent violation, regardless of whether the
27 subsequent violation was either willful or intentional (penalties set by Labor
28 Code § 225.5);

- v. For violations of Labor Code § 226(a), if this action is deemed to be an initial citation, two hundred and fifty dollars (\$250) for each employee for each violation. Alternatively, if an initial citation or its equivalent occurred before the filing of this action, one thousand dollars (\$1,000) for each employee for each violation (penalties set by Labor Code § 226.3);
- vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each employee for each initial pay period for which the employee was underpaid, and one hundred dollars (\$100) for each employee for each subsequent pay period for which the employee was underpaid (penalties set by Labor Code § 558);
- vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each aggrieved employee for each initial violation of Labor Code § 1197 that was intentional and two hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation of Labor Code § 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code § 1197.1);
- viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

PRAYER FOR RELIEF

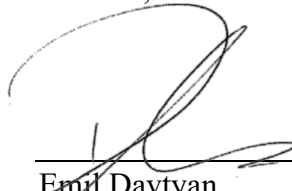
WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, the State of California, and the general public, prays for relief and judgment against Defendants as follows:

- a. An order that the action be certified as a class action;
- b. An order that Plaintiff be appointed class representative;
- c. An order that counsel for Plaintiff be appointed class counsel;
- d. Unpaid wages and overtime;
- e. Actual damages;
- f. Liquidated damages;

- g. Unreimbursed expenses;
- h. Restitution;
- i. Declaratory relief;
- j. Pre-judgment interest;
- k. Statutory penalties;
- l. Civil penalties;
- m. Costs of suit;
- n. Reasonable attorneys' fees; and
- o. Such other relief as the Court deems just and proper.

Dated: January 12, 2024

D.LAW, INC.



Emil Davtyan
David Yeremian
David Keledjian
Hrag Alexanian
Attorneys for Plaintiff
ELIAS DIAZ, and the putative class

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself, all other similarly situated, the State of California, and the general public, hereby demands a jury trial on all issues so triable.

Dated: January 12, 2024

D.LAW, INC.



Emil Davtyan
David Yeremian
David Keledjian
Hrag Alexanian
Attorneys for Plaintiff
ELIAS DIAZ, and the putative class

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

Diane Aquí
Stephanie Abbott
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Counsel for Defendant Kingsborough Atlas Tree Surgery, Inc.

Atlas Tree and Landscape, Inc.
1544 Ludwig Ave
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[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

[] (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

[X] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 12, 2024, at Glendale, California.

Jordan Floyd