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Superior Court of California
County of Sacramento

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

MARK DOUGLAS, JR., individually, and
on behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

TRUGREEN LIMITED PARTNERSHIP, a
Delaware limited partnership; TRUGREEN
COMPANIES L.L.C., a Delaware limited
liability company; TRUGREEN, INC., a
Delaware corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 24CV003985

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

- (1) Violation of California Labor Code §§ 510 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 California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, et seq.;

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- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Mark Douglas, Jr., individually and on behalf of all other members of the
2 public similarly situated, and as an aggrieved employee and on behalf of all aggrieved
3 employees, alleges 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 Plaintiff, the State of California, and other
8 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 Plaintiff 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. Plaintiff’s
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.

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

26 THE PARTIES

27 4. Plaintiff Mark Douglas, Jr. worked for Defendants as an hourly paid,
28 non-exempt Residential Laborer and Lawn Specialist from approximately April 2023 to June

1 2023. During his employment, Plaintiff typically worked 14 hours or more per day and five
2 (5) to six (6) days per week. Plaintiff's primary job duties included, without limitation,
3 applying fertilizers, pesticides, and other growth-stimulating chemicals to lawns, as well as
4 checking for weeds on residential and commercial properties.

5 5. TRUGREEN LIMITED PARTNERSHIP was and is, upon information and
6 belief, a Delaware limited partnership, and at all times hereinafter mentioned, an employer
7 whose employees are engaged throughout this county and the State of California.

8 6. TRUGREEN COMPANIES L.L.C. was and is, upon information and belief, a
9 Delaware limited liability company, and at all times hereinafter mentioned, an employer
10 whose employees are engaged throughout this county and the State of California.

11 7. TRUGREEN, INC. was and is, upon information and belief, a Delaware
12 corporation, and at all times hereinafter mentioned, an employer whose employees are
13 engaged throughout this county and the State of California.

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

18 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
19 were the partners, agents, owners, or managers of TRUGREEN LIMITED PARTNERSHIP;
20 TRUGREEN COMPANIES L.L.C.; and TRUGREEN, INC. at all relevant times.

21 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the
22 acts and omissions alleged herein was performed by, or is attributable to, TRUGREEN
23 LIMITED PARTNERSHIP; TRUGREEN COMPANIES L.L.C.; TRUGREEN, INC.; and/or
24 DOES 1 through 10 (collectively, "Defendants" or "TRUGREEN"), each acting as the agent,
25 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
26 Defendants and was acting within the course and scope of such agency, employment, joint
27 venture, or concerted activity with legal authority to act on the others' behalf. The acts of any
28 and all Defendants were in accordance with, and represent, the official policy of Defendants.

1 11. At all relevant times, Defendants, and each of them, ratified each and every act
2 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
3 and abetted the acts and omissions of each and all the other Defendants in proximately causing
4 the damages herein alleged.

5 12. Plaintiff is informed and believes, and thereon alleges, that each of said
6 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
7 omissions, occurrences, and transactions alleged herein.

8 13. Under California law, Defendants are jointly and severally liable as employers
9 for the violations alleged herein because they have each exercised sufficient control over the
10 wages, hours, working conditions, and employment status of Plaintiff and class members.
11 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
12 controlled their work schedule and/or conditions of employment, determined their rate of pay,
13 and maintained their employment records. Defendants suffered or permitted Plaintiff and
14 class members to work and/or “engaged” Plaintiff and class members so as to create a
15 common-law employment relationship. As joint employers of Plaintiff and class members,
16 Defendants are jointly and severally liable for the civil penalties and all other relief available
17 to Plaintiff and class members under the law.

18 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
19 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
20 members because Defendants have:

- 21 (a) jointly exercised meaningful control over the work performed by
22 Plaintiff and class members;
- 23 (b) jointly exercised meaningful control over Plaintiff’s and class members’
24 wages, hours, and working conditions, including the quantity, quality
25 standards, speed, scheduling, and operative details of the tasks
26 performed by Plaintiff and class members;
- 27 (c) jointly required that Plaintiff and class members perform work which is
28 an integral part of Defendants’ businesses; and

1 (d) jointly exercised control over Plaintiff and class members as a matter of
2 economic reality in that Plaintiff and class members were dependent on
3 Defendants, who shared the power to set the wages of Plaintiff and class
4 members and determined their working conditions, and who jointly
5 reaped the benefits from the underpayment of their wages and
6 noncompliance with other statutory provisions governing their
7 employment.

8 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
9 there has existed a unity of interest and ownership between Defendants such that any
10 individuality and separateness between the entities has ceased.

11 16. TRUGREEN LIMITED PARTNERSHIP; TRUGREEN COMPANIES L.L.C.;
12 TRUGREEN, INC.; and DOES 1 through 10 are therefore alter egos of each other.

13 17. Adherence to the fiction of the separate existence of Defendants would permit
14 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
15 from liability for the wrongful acts committed by them under the name TRUGREEN.

16 18. Plaintiff further alleges, upon information and belief, that Defendants
17 TRUGREEN LIMITED PARTNERSHIP; TRUGREEN COMPANIES L.L.C.; and
18 TRUGREEN, INC. are alter egos of each other for the following reasons:

19 (a) On the California Secretary of State's website
20 (<https://bizfileonline.sos.ca.gov/>), TRUGREEN LIMITED
21 PARTNERSHIP; TRUGREEN COMPANIES L.L.C.; and
22 TRUGREEN, INC. share the same principal address and mailing
23 address of "1790 KIRBY PARKWAY, STE 300, MEMPHIS, TN
24 38138";

25 (b) On the California Secretary of State's website, TRUGREEN LIMITED
26 PARTNERSHIP; TRUGREEN COMPANIES L.L.C.; and
27 TRUGREEN, INC. share the same agent for service of process, "C T
28 [CT] Corporation System";

- 1 (c) According to their most recent “Statement of Information” forms filed
2 with the California Secretary of State, TRUGREEN COMPANIES
3 L.L.C. and TRUGREEN, INC. share the same officers, including, but
4 not limited to, Kevin E. Mann, who serves as Secretary; and
- 5 (d) On information and belief, TRUGREEN LIMITED PARTNERSHIP;
6 TRUGREEN COMPANIES L.L.C.; and TRUGREEN, INC. utilize the
7 same standardized employment forms and issue the same employment
8 policies.

9 **GENERAL ALLEGATIONS**

10 19. Defendants are the nation’s largest lawn care company, providing lawn, tree,
11 and shrub care services to residential and commercial customers across the United States.
12 Upon information and belief, Defendants maintain a single, centralized Human Resources
13 (“HR”) department at their company headquarters in Memphis, Tennessee, which is
14 responsible for the recruiting and hiring of new employees, and communicating and
15 implementing Defendants’ company-wide policies, including timekeeping policies and meal
16 and rest period policies, to employees throughout California.

17 20. In particular, Plaintiff and class members, on information and belief, received
18 the same standardized documents and/or written policies. Upon information and belief, the
19 usage of standardized documents and/or written policies, including new-hire documents,
20 indicate that Defendants dictated policies at the corporate level and implemented them
21 company-wide, regardless of their employees’ assigned locations or positions. Upon
22 information and belief, Defendants set forth uniform policies and procedures in several
23 documents provided at an employee’s time of hire.

24 21. Upon information and belief, Defendants maintain a centralized Payroll
25 department at their company headquarters in Memphis, Tennessee, which processes payroll
26 for all non-exempt, hourly paid employees working for Defendants at their various locations
27 and jobsites in California, including Plaintiff and class members. Based upon information and
28 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.

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

23. Plaintiff is informed and believes, and thereon alleges, 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.

24. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class members were not paid for all hours worked because all hours worked were not recorded.

25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and/or class members were entitled to be paid at a regular rate of pay, and corresponding rates of pay for overtime wages and/or meal and rest period premiums, that included as eligible income all remuneration required by law, including but not limited to, all income derived from commissions, incentive pay, nondiscretionary bonuses, and/or other forms of compensation, but failed to include all forms of remuneration in calculating the regular rate of pay for Plaintiff and/or class members.

27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff 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, Plaintiff and class members were not paid at least minimum wages for work done off-the-clock.

28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to meal periods in
2 accordance with the California Labor Code and applicable IWC Wage Order or payment of
3 one (1) additional hour of pay at their regular rates of pay when they were not provided with
4 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
5 were not provided with all meal periods or payment of one (1) additional hour of pay at their
6 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
7 period.

8 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to rest periods in
10 accordance with the California Labor Code and applicable IWC Wage Order or payment of
11 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
12 permitted to take a compliant rest period and that Plaintiff and class members were not
13 authorized and permitted to take compliant rest periods or provided with payment of one (1)
14 additional hour of pay at their regular rates of pay when they were not authorized and
15 permitted to take a compliant rest period.

16 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to receive complete and
18 accurate wage statements in accordance with California law. In violation of the California
19 Labor Code, Plaintiff and class members were not provided complete and accurate wage
20 statements.

21 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that they had a duty to maintain accurate and complete payroll records in
23 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
24 knowingly, and intentionally failed to do so.

25 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to timely payment of all
27 wages earned upon termination of employment. In violation of the California Labor Code,
28 Plaintiff and class members did not receive payment of all wages due, including, but not

1 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
2 permissible time periods.

3 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to timely payment of wages
5 during their employment. In violation of the California Labor Code, Plaintiff and class
6 members did not receive payment of all wages, including, but not limited to, overtime wages,
7 minimum wages, and/or meal and rest period premiums, within permissible time periods.

8 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to receive itemized wage
10 statements or separate written statements showing the amount of paid sick leave available, or
11 paid time off provided in lieu of sick leave. In violation of the California Labor Code,
12 Defendants failed to provide Plaintiff and class members with written itemized wage
13 statements or separate written statements showing this information.

14 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to receive full
16 reimbursement for all business-related expenses and costs they incurred during the course and
17 scope of their employment and that they did not receive full reimbursement of applicable
18 business-related expenses and costs incurred.

19 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants knew or should have known that Defendants had a duty to provide
21 Plaintiff and class members with written notice of the material terms of their employment with
22 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

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

PAGA REPRESENTATIVE ALLEGATIONS

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

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

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

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

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.
- (b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation (“LWDA Notice”) within sixty (60) calendar days of

1 the postmark date of the aggrieved employee's notice. Upon receipt of
2 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
3 (65) calendar days of the postmark date of the aggrieved employee's
4 notice, the aggrieved employee may commence a civil action pursuant
5 to California Labor Code section 2699 to recover civil penalties.

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

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

27 43. On March 15, 2024, Plaintiff provided written notice by online filing to the
28 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor

Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-1016719-24. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

45. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

46. 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 "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

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

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

49. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

CLASS ACTION ALLEGATIONS

50. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

51. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

52. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, at any time from September 1, 2022, until the date of trial ("Class").

53. Plaintiff's 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").

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

55. Plaintiff reserves 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.

56. 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 required Plaintiff 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 Plaintiff and class members;

2 (b) Whether Defendants failed to include all forms of remuneration in the
3 regular rate of pay as required by law for purposes of paying overtime
4 wages and/or meal and rest period premiums to Plaintiff and/or class
5 members;

6 (c) Whether Defendants failed to pay Plaintiff and class members at least
7 minimum wages for all hours worked;

8 (d) Whether Defendants failed to provide Plaintiff and class members with
9 meal periods;

10 (e) Whether Defendants failed to authorize and permit Plaintiff and class
11 members to take rest periods;

12 (f) Whether Defendants provided Plaintiff and class members with
13 complete and accurate wage statements as required by California Labor
14 Code section 226(a);

15 (g) Whether Defendants maintained accurate payroll records as required by
16 California Labor Code section 1174(d);

17 (h) Whether Defendants failed to pay earned overtime wages, minimum
18 wages, and/or meal and rest period premiums due to Plaintiff and class
19 members upon their discharge;

20 (i) Whether Defendants failed to timely pay overtime wages, minimum
21 wages, and/or meal and rest period premiums due to Plaintiff and class
22 members during their employment;

23 (j) Whether Defendants provided Plaintiff and class members with written
24 notice of paid sick leave available, or paid time off, as required by
25 California Labor Code section 246;

26 (k) Whether Defendants failed to reimburse Plaintiff and class members for
27 necessary and required business-related expenditures and/or losses
28 incurred by them in the scope of their employment;

- (l) Whether Defendants failed to provide written notice of information material to Plaintiff's and class members' employment with Defendants;
- (m) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (n) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

57. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will

1 be necessarily expended for the prosecution of this action for the
2 substantial benefit of each class member.

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

9 (e) Public Policy Considerations: Employers in the State of California
10 violate employment and labor laws every day. Current employees are
11 often afraid to assert their rights out of fear of direct or indirect
12 retaliation. Former employees are fearful of bringing actions because
13 they believe their former employers might damage their future
14 endeavors through negative references and/or other means. Class
15 actions provide the class members who are not named in the complaint
16 with a type of anonymity that allows for the vindication of their rights
17 while simultaneously protecting their privacy.

18 **FIRST CAUSE OF ACTION**

19 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

20 **(Against all Defendants)**

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

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

28 60. California Labor Code section 1198 and the applicable IWC Wage Order

1 provide that it is unlawful to employ persons without compensating them at a rate of pay
2 either time-and-one-half or two-times that person's regular rate of pay, depending on the
3 number of hours worked by the person on a daily or weekly basis.

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

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

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

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

25 65. During the relevant time period, Defendants had a policy and/or practice of
26 discouraging and impeding Plaintiff and class members from recording hours worked that
27 were outside of their scheduled shifts, in order to limit the amount of overtime employees
28 could accrue. Defendants' management instructed Plaintiff and class members to clock in and

1 out at their scheduled shift start-times and shift end-times instead of their actual hours worked
2 to limit overtime hours employees were eligible to be compensated for. Because Defendants
3 discouraged overtime accrual, Plaintiff and class members were required to complete assigned
4 tasks before and after their scheduled shifts and on their days off without being compensated
5 for the time they worked. For example, in order to meet Defendants' expectations of
6 completing daily tasks within his scheduled hours, Plaintiff would report to work before his
7 scheduled shift start-time in order to complete his assigned duties, such as loading his truck
8 with supplies needed for the day and/or attending a team meeting, before he could clock in.
9 As a further example, at the end of his scheduled shift, Plaintiff was required to clock out and
10 then spend additional time unloading his truck and conducting an inventory of supplies after
11 clocking out. To the extent Defendants' timekeeping policies have taken away time worked
12 that was eligible for overtime, Plaintiff and class members have been denied overtime pay for
13 all hours worked. In addition, Plaintiff was required to respond to phone communications
14 from his supervisors and coworkers on his days off. For instance, Plaintiff would answer
15 work-related phone calls and text messages from his supervisors and coworkers about his
16 routes and work-related issues. However, Plaintiff and class members were not allowed to
17 record this time spent working.

18 66. Defendants knew or should have known that, as a result of these company-wide
19 practices and/or policies, Plaintiff and class members were performing their assigned duties
20 off-the-clock, and were suffered or permitted to perform work for which they were not paid.
21 Because Plaintiff and class members worked shifts of eight (8) hours a day or more, or forty
22 (40) hours a week or more, some of this off-the-clock work qualified for overtime premium
23 pay. Therefore, Plaintiff and class members were not paid overtime wages for all of the
24 overtime hours they actually worked.

25 67. Defendants' failure to pay Plaintiff and class members the balance of overtime
26 compensation, as required by California law, violates the provisions of California Labor Code
27 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
28 members are entitled to recover from Defendants their unpaid overtime compensation, as well

as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

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

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

69. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less 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)(L) (defining "Hours Worked").

70. As set forth above, Defendants maintained a company-wide policy and/or practice of limiting overtime accrual and pressuring employees to record only their scheduled hours rather than hours actually worked, thereby shorting Plaintiff and class members for work performed outside their scheduled shifts. As set forth above, pursuant to this policy, Plaintiff and class members performed various work-related tasks while off-the-clock before and after their shifts and on their days off, including loading and unloading their trucks, conducting an inventory of supplies, attending team meetings, and communicating with supervisors and coworkers regarding work-related matters.

71. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff 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.

72. Defendants' failure to pay Plaintiff and class members minimum wages violates

1 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
2 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from
3 Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and
4 interest thereon.

5 **THIRD CAUSE OF ACTION**

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

7 **Violations**

8 **(Against all Defendants)**

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

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

18 75. At all relevant times herein set forth, California Labor Code sections 226.7,
19 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
20 meal period mandated by an applicable order of the IWC.

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

27 77. During the relevant time period, Defendants had, and continue to have, a
28 company-wide policy and/or practice of scheduling and dispatching their employees to

1 complete lawn care appointments, which included traveling to 15-30 residential and
2 commercial properties of varying sizes and applying fertilizers/pesticides each day, without
3 building in sufficient time to allow for 30-minute meal periods. Often, Defendants
4 underestimated the size of properties and subsequently did not allocate enough time in
5 employees' routes to complete all appointments and take compliant meal periods.

6 78. Further, Defendants had, and continue to have, a company-wide policy and/or
7 practice of understaffing their routes while assigning heavy workloads, resulting in a failure to
8 provide Plaintiff and class members with adequate meal period coverage. Defendants
9 understaffed their routes by adopting a single-staffing model for certain positions, often
10 regardless of property size, which exacerbated the lack of meal period coverage for
11 employees. As a result of Defendants' policy of understaffing and/or single-staffing, Plaintiff
12 and class members were not always afforded uninterrupted 30-minute meal periods during
13 shifts when they were entitled to receive a meal period. Lawn care appointments could take
14 longer than the time Defendants allotted for them, such that Plaintiff and class members were
15 unable to take compliant meal periods. In conjunction with varying appointment durations,
16 travel time between client properties could take longer than anticipated due to traffic
17 conditions, which further impeded Plaintiff and class members from taking compliant meal
18 periods.

19 79. Additionally, upon information and belief, Defendants had no mechanism in
20 place to permit Plaintiff and class members to take meal periods when the schedule was
21 thrown off because one or more of their appointments took longer than the scheduled time, or
22 if travel time between appointments was extended by traffic conditions. Defendants'
23 company-wide policy and/or practice of allotting too little time for employees to actually
24 complete the appointments on their routes has prevented Plaintiff and class members from
25 being relieved of their duties to take uninterrupted 30-minute meal periods. For example,
26 Plaintiff missed his meal periods in order to meet Defendants' appointment time frame
27 expectations. Additionally, Plaintiff also took his meal periods late, after the fifth hour of
28 work, or had his meal periods shortened to return to work early, due to the heavy workload.

1 Thus, as a result of Defendants' policies and/or practices, Plaintiff and class members were
2 forced to work in excess of five (5) hours before taking a meal period, had their meal periods
3 interrupted, and/or had to forgo their meal periods altogether.

4 80. Moreover, Defendants did not provide Plaintiff and class members with second
5 30-minute meal periods on days that they worked in excess of ten (10) hours in one day.
6 During his employment, Plaintiff worked shifts in excess of ten (10) or more hours per day but
7 was not provided a second 30-minute meal period. Plaintiff and class members did not sign
8 valid meal period waivers on days that they were entitled to meal periods and were not
9 relieved of all duties.

10 81. At all times mentioned herein, Defendants knew or should have known that as a
11 result of their company-wide policies and/or practices, Plaintiff and class members were not
12 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
13 knew or should have known that they did not pay Plaintiff and class members all meal period
14 premiums when meal periods were late, interrupted, shortened, and/or missed.

15 82. Furthermore, Defendants engaged in a company-wide practice and/or policy of
16 not paying all meal period premiums owed when compliant meal periods are not provided.
17 Because of this practice and/or policy, Plaintiff and class members have not received premium
18 pay for missed, late, and interrupted meal periods.

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

23 **FOURTH CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 25 **(Against all Defendants)**

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

28 85. At all relevant times herein set forth, the applicable IWC Wage Order and

1 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
2 members' employment by Defendants.

3 86. At all relevant times, the applicable IWC Wage Order provides that "[e]very
4 employer shall authorize and permit all employees to take rest periods, which insofar as
5 practicable shall be in the middle of each work period" and that the "rest period time shall be
6 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
7 hours or major fraction thereof" unless the total daily work time is less than three and one-half
8 (3 ½) hours.

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

20 88. During the relevant time period, Defendants regularly failed to authorize and
21 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
22 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
23 practices, including scheduling and dispatching their employees to complete lawn care
24 appointments, understaffing/single-staffing their routes, and assigning heavy workloads,
25 prevented Plaintiff and class members from being relieved of all duty in order to take their rest
26 periods. Defendants also failed to schedule rest periods, which, coupled with Defendants'
27 failure to provide adequate rest period coverage, further led to Plaintiff and class members not
28 being authorized and permitted to take compliant rest periods.

89. Moreover, on information and belief, Defendants maintained a company-wide on-premises rest period policy, which effectively required that Plaintiff and/or class members remain on the premises during their rest periods. Because Plaintiff and/or class members were restricted from leaving the jobsites during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, Defendants effectively maintained control over Plaintiff and/or class members during rest periods.

90. As a result of Defendants' practices and policies, Plaintiff and class members 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, Plaintiff had to forgo his rest periods due to the heavy workload and a lack of rest period coverage.

91. Defendants have also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because of this practice and/or policy, Plaintiff and class members have not received premium pay for all missed rest periods. Accordingly, Defendants failed to authorize and permit all compliant rest periods and failed to pay the full rest period premiums due.

92. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff 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.

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

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

6 95. At all relevant times, Defendants have knowingly and intentionally provided
7 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
8 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
9 that fail to correctly list: gross wages earned; total hours worked; net wages earned; the
10 address of the legal entity that is the employer; and all applicable hourly rates in effect during
11 the pay period, including rates of pay for overtime wages, and the corresponding number of
12 hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
13 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

14 96. First, because Defendants did not record the time Plaintiff and Subclass
15 members spent working off the clock, Defendants did not list the correct amount of gross
16 wages and net wages earned by Plaintiff and Subclass members in compliance with sections
17 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
18 number of hours worked by Plaintiff and Subclass members, in violation of section 226(a)(2),
19 and failed to list the applicable hourly rates of pay in effect during the pay period and the
20 corresponding accurate number of hours worked at each hourly rate, in violation of section
21 226(a)(9).

22 97. Second, and separately from these violations, Defendants issued uniform wage
23 statements to Plaintiff and Subclass members that failed to list the address of the legal entity
24 of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to
25 provide California employees with transparency as to the true identity of their employer, to
26 allow the employee to contact their employer during employment or in the future for various
27 reasons, including filing an administrative claim, judicial claim, or other action to seek relief
28 against their employer, to obtain unemployment benefits, etc. During the relevant time period,

Defendants systematically, and on a company-wide basis, issued wage statements to Plaintiff and Subclass members that fail to correctly list the employing entity's correct address. Plaintiff's and Subclass members' wage statements incorrectly list the employer's address as "1790 KIRBY PARKWAY, MEMPHIS, TN 38138," but according to the California Secretary of State's website, Defendant TRUGREEN LIMITED PARTNERSHIP's complete entity address should be "1790 KIRBY PARKWAY **STE 300**, MEMPHIS, TN 38138-7411" (emphasis added).

98. 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 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 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.

99. 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), Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass members 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.

100. 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

1 employment of any employees for longer hours than those fixed by the order or under
2 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
3 Wage Order, employers are required to keep accurate time records showing when the
4 employee begins and ends each work period and meal period. During the relevant time
5 period, Defendants engaged in company-wide practices and/or policies of failing to record
6 actual hours worked, and thereby failed to keep accurate records of work period and meal
7 period start and end times for Plaintiff and Subclass members, in violation of section 1198.
8 Furthermore, in light of Defendants’ failure to provide Plaintiff and Subclass members with
9 second 30-minute meal periods to which they were entitled, Defendants kept no records of
10 meal start and end times for second meal periods.

11 101. Plaintiff and Subclass members are entitled to recover from Defendants the
12 greater of their actual damages caused by Defendants’ failure to comply with California Labor
13 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
14 employee.

15 **SIXTH CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 17 **Termination** 18 **(Against all Defendants)**

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

21 103. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
22 that if an employer discharges an employee, the wages earned and unpaid at the time of
23 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
24 her employment, his or her wages shall become due and payable not later than seventy-two
25 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
26 his or her intention to quit, in which case the employee is entitled to his or her wages at the
27 time of quitting.

28 104. On information and belief, Defendants have a company-wide practice and/or

1 policy of paying departing employees their final wages on the next regular pay cycle, instead
2 of adhering to the time requirements set forth in Labor Code sections 201 and 202. For
3 example, Defendants terminated Plaintiff on or about June 3, 2023; however, Defendants did
4 not provide Plaintiff with his final wages until the next regular payday, which was several
5 days after his date of termination. Thus, Defendants failed to pay Plaintiff his final wages
6 immediately, in violation of California Labor Code section 201.

7 105. Additionally, Defendants willfully failed to pay Plaintiff and class members
8 who are no longer employed by Defendants the earned and unpaid wages set forth above,
9 including but not limited to, overtime wages, minimum wages, and/or meal and rest period
10 premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving
11 Defendants' employ.

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

18 SEVENTH CAUSE OF ACTION

19 Violation of California Labor Code § 204—Failure to Timely Pay Wages During 20 Employment 21 (Against all Defendants)

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

24 108. This cause of action is dependent upon, and wholly derivative of, the overtime
25 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
26 Plaintiff and class members during their employment.

27 109. At all times relevant herein set forth, Labor Code section 204 provides that all
28 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)

1 days, inclusive, of any calendar month, other than those wages due upon termination of an
2 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
3 the month during which the labor was performed.

4 110. At all times relevant herein, Labor Code section 204 provides that all wages
5 earned by any person in any employment between the sixteenth (16th) and the last day,
6 inclusive, of any calendar month, other than those wages due upon termination of an
7 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
8 month.

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

15 112. During the relevant time period, Defendants willfully failed to pay Plaintiff and
16 class members all wages due including, but not limited to, overtime wages, minimum wages,
17 and/or meal and rest period premiums, within the time periods specified by California Labor
18 Code section 204.

19 113. Defendants' failure to timely pay Plaintiff and class members all wages due
20 violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover
21 from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

22 **EIGHTH CAUSE OF ACTION**

23 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 24 **(Against all Defendants)**

25 114. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
26 and every allegation set forth above. At all times herein set forth, California Labor Code
27 section 2802 provides that an employer must reimburse employees for all necessary
28 expenditures and losses incurred by the employee in the performance of his or her job. The

1 purpose of Labor Code section 2802 is to prevent employers from passing off their cost of
2 doing business and operating expenses on to their employees. *Cochran v. Schwan's Home*
3 *Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage
4 Order No. 5-2001, provides that: “[w]hen tools or equipment are required by the employer or
5 are necessary to the performance of a job, such tools and equipment shall be provided and
6 maintained by the employer, except that an employee whose wages are at least two (2) times
7 the minimum wage provided herein may be required to provide and maintain hand tools and
8 equipment customarily required by the trade or craft.”

9 115. During the relevant time period, Defendants, on a company-wide basis,
10 required Plaintiff and class members to use their personal mobile devices, including, but not
11 limited to, cellular phones, and/or mobile data to carry out their job duties but failed to fully
12 reimburse them for the costs of their work-related mobile device and/or mobile data expenses.
13 For example, Plaintiff was required to use his personal cellular phone to communicate with his
14 supervisors and coworkers to discuss routes and work-related issues. Although Defendants
15 required Plaintiff and class members to use their personal mobile devices and/or mobile data
16 to carry out their work-related duties, Defendants failed to reimburse them for their costs
17 incurred.

18 116. Defendants could have provided Plaintiff and class members with the actual
19 equipment for use on the job, such as company mobile devices, or Defendants could have
20 reimbursed employees for the cost of their mobile device usage. Instead, Defendants passed
21 these operating costs off onto Plaintiff and class members. At all relevant times, Plaintiff did
22 not earn at least two (2) times the minimum wage.

23 117. Defendants’ company-wide policy and/or practice of not reimbursing
24 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
25 and class members violates California Labor Code section 2802. Defendants have
26 intentionally and willfully failed to reimburse Plaintiff and class members for necessary
27 business-related expenses and costs.

28 118. Plaintiff and class members are entitled to recover from Defendants their

1 business-related expenses incurred during the course and scope of their employment, plus
2 interest.

3 **NINTH CAUSE OF ACTION**

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

5 **(Against all Defendants)**

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

8 119. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
9 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
10 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
11 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
12 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
13 those Labor Code sections not found in section 2699.5, including sections 246, 516, 1182.12,
14 and 2810.5.

15 120. Defendants’ conduct, as alleged herein, violates numerous sections of the
16 California Labor Code, including, but not limited to, the following:

- 17 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
18 Wage Order for Defendants’ failure to compensate Plaintiff and other
19 aggrieved employees with all required overtime pay, as alleged herein
20 and as set forth below;
- 21 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
22 applicable IWC Wage Order for Defendants’ failure to include all forms
23 of remuneration in the “regular rate” of pay as required by law for
24 purposes of paying overtime wages and/or meal and rest period
25 premiums to other aggrieved employees, as set forth below;
- 26 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
27 1198, and the applicable IWC Wage Order for Defendants’ failure to
28 compensate Plaintiff and other aggrieved employees with at least

1 minimum wages for all hours worked, as alleged herein;

2 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
3 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
4 and other aggrieved employees with meal periods, as alleged herein and
5 as set forth below;

6 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
7 applicable IWC Wage Order for Defendants' failure to authorize and
8 permit Plaintiff and other aggrieved employees to take rest periods, as
9 alleged herein and as set forth below;

10 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
11 IWC Wage Order for failure to provide accurate and complete wage
12 statements to Plaintiff and other aggrieved employees, as alleged herein
13 and set forth below;

14 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
15 IWC Wage Order for failure to maintain payroll records, as alleged
16 herein;

17 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
18 earned wages upon termination, as alleged herein;

19 (i) Violation of Labor Code section 204 for failure to pay all earned wages
20 during employment, as alleged herein;

21 (j) Violation of Labor Code section 246 for failure to provide written notice
22 of paid sick leave available, or paid time off, as set forth below;

23 (k) Violation of Labor Code section 2802 for failure to reimburse other
24 aggrieved employees for all business expenses necessarily incurred, as
25 alleged herein; and

26 (l) Violation of Labor Code section 2810.5 for failure to provide notice of
27 material terms of employment, as set forth below.

28 121. During the relevant time period, as stated, Defendants failed to pay Plaintiff

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

12 122. Defendants' failure to compensate Plaintiff and other aggrieved employees with
13 all required overtime pay and Defendants' failure to properly calculate the overtime rates paid
14 to other aggrieved employees is in violation of California Labor Code sections 510 and 1198,
15 and the applicable IWC Wage Order.

16 123. As stated, during the relevant time period, Defendants engaged in a company-
17 wide practice and/or policy of not paying all meal period premiums owed when compliant
18 meal periods are not provided. Because of this practice and/or policy, Plaintiff and other
19 aggrieved employees have not received all premium pay for missed, late, and interrupted meal
20 periods. Alternatively, to the extent that Defendants did pay other aggrieved employees for
21 missed, late, and interrupted meal periods, Defendants did not pay other aggrieved employees
22 at the correct rate of pay for premiums because Defendants systematically failed to include all
23 forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or
24 other forms of remuneration, in the regular rate of pay.

25 124. Defendants' failure to properly calculate the rates of pay for meal period
26 premiums based on all remuneration paid is in violation of California Labor Code sections
27 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order.

28 125. As stated, as with meal periods, Defendants also have engaged in a company-

1 wide practice and/or policy of not paying all rest period premiums owed when compliant rest
2 periods are not authorized or permitted. Because of this practice and/or policy, Plaintiff and
3 other aggrieved employees have not received premium pay for all missed rest periods.
4 Alternatively, to the extent that Defendants did pay other aggrieved employees one (1)
5 additional hour of premium pay for missed rest periods, Defendants did not pay other
6 aggrieved employees at the correct rate of pay for premiums because Defendants failed to
7 include all forms of compensation, such as commissions, incentive pay, nondiscretionary
8 bonuses, and/or other forms of remuneration, in the regular rate of pay.

9 126. Defendants' failure to properly calculate the rates of pay for rest period
10 premiums based on all remuneration paid is in violation of California Labor Code sections
11 226.7, 516, and 1198, and the applicable IWC Wage Order.

12 127. During the relevant time period, because Defendants did not calculate other
13 aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages
14 and/or meal and rest period premiums, Defendants did not list the correct amount of gross
15 wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not
16 list the correct amount of net wages earned by other aggrieved employees in violation of
17 section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect
18 during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest
19 period premiums, in violation of section 226(a)(9). Defendants' conduct is in violation of
20 California Labor Code section 226(a).

21 128. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
22 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
23 days from the commencement of employment with paid sick days, to be accrued at least one
24 hour for every 30 hours worked. Effective January 1, 2024, California Labor Code section
25 246(b)(4) requires employers to provide no less than 40 hours or five (5) days of paid sick
26 leave (or equivalent paid leave or paid time off) in each year of the employee's employment.
27 Further, Labor Code section 246(i) provides that an employer must provide an employee with
28 written notice that sets forth the amount of paid sick leave available, or paid time off that an

1 employer provides in lieu of sick leave, for use on either the employee's itemized wage
2 statement or in a separate written statement provided on the designated pay date with the
3 employee's wages.

4 129. During the relevant time period, Defendants failed, on a company-wide basis,
5 to provide Plaintiff and other aggrieved employees written notice on wage statements and/or
6 other separate written statements that listed the amount of paid sick leave (or equivalent paid
7 leave or paid time off) available to them. Defendants' ongoing and systematic failure to
8 provide written notice of sick leave benefits to Plaintiff and other aggrieved employees
9 violates California Labor Code section 246(i).

10 130. California's Wage Theft Prevention Act was enacted to ensure that employers
11 provide employees with basic information material to their employment relationship at the
12 time of hiring, and to ensure that employees are given written and timely notice of any
13 changes to basic information material to their employment. Codified at California Labor
14 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
15 employer must provide written notice to employees containing basic and material payroll
16 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
17 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
18 overtime, the regular payday designated by the employer, and any allowances claims as part
19 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
20 (C).

21 131. On information and belief, Defendants failed to provide Plaintiff and other
22 aggrieved employees written notice that lists the requisite information set forth in Labor Code
23 section 2810.5(a)(1)(A)-(C).

24 132. Defendants' failure to provide Plaintiff and other aggrieved employees with
25 written notice of basic information regarding their employment with Defendants is in violation
26 of Labor Code section 2810.5.

27 133. Therefore, Plaintiff and other aggrieved employees are entitled to recover civil
28 penalties pursuant to Labor Code sections 226.3, 248.5, 558, and/or 2699(a), (f), and (g).

1 **TENTH CAUSE OF ACTION**

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

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

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

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

10 136. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
12 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
13 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
14 meaning of Code of Civil Procedure section 1021.5.

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

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

- 21 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
22 class members, to work overtime without paying them proper
23 compensation in violation of California Labor Code sections 510 and
24 1198, and the applicable IWC Wage Order, as alleged herein;
- 25 (b) Failing to pay at least minimum wage to Plaintiff and class members in
26 violation of California Labor Code sections 1182.12, 1194, 1197,
27 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
28 herein;

- 1 (c) Failing to provide all meal periods to Plaintiff and class members in
2 violation of California Labor Code sections 226.7, 512(a), 516, and
3 1198, and the applicable IWC Wage Order, as alleged herein;
- 4 (d) Failing to authorize and permit Plaintiff and class members to take all
5 rest periods in violation of California Labor Code sections 226.7, 516,
6 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 7 (e) Failing to provide Plaintiff and class members with accurate wage
8 statements and failing to maintain accurate payroll records in violation
9 of California Labor Code sections 226(a), 1174(d), and 1198, and the
10 applicable IWC Wage Order, as alleged herein; and
- 11 (f) Failing to timely pay all earned wages to Plaintiff and class members in
12 violation of California Labor Code section 204, as alleged herein;
- 13 (g) Failing to provide written notice of paid sick leave benefits available in
14 violation of California Labor Code section 246, as set forth below;
- 15 (h) Failing to reimburse Plaintiff and class members for all business
16 expenses necessarily incurred in violation of California Labor Code
17 section 2802, as alleged herein; and
- 18 (i) Failing to provide written notice of information material to Plaintiff's
19 and class members' employment with Defendants in violation of
20 California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

21 139. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
22 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
23 days from the commencement of employment with paid sick days, to be accrued at least one
24 hour for every 30 hours worked. Effective January 1, 2024, California Labor Code section
25 246(b)(4) requires employers to provide no less than 40 hours or five (5) days of paid sick
26 leave (or equivalent paid leave or paid time off) in each year of the employee's employment.
27 Further, Labor Code section 246(i) provides that an employer must provide an employee with
28 written notice that sets forth the amount of paid sick leave available, or paid time off that an

1 employer provides in lieu of sick leave, for use on either the employee's itemized wage
2 statement or in a separate written statement provided on the designated pay date with the
3 employee's wages.

4 140. During the relevant time period, Defendants failed, on a company-wide basis,
5 to provide Plaintiff and class members written notice on wage statements and/or other separate
6 written statements that listed the amount of paid sick leave (or equivalent paid leave or paid
7 time off) available to them. Defendants' ongoing and systematic failure to provide written
8 notice of sick leave benefits to Plaintiff and class members violates California Labor Code
9 section 246(i).

10 141. At all relevant times herein, California's Wage Theft Prevention Act was
11 enacted to ensure that employers provide employees with basic information material to their
12 employment relationship at the time of hiring, and to ensure that employees are given written
13 and timely notice of any changes to basic information material to their employment. Codified
14 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
15 time of hiring, an employer must provide written notice to employees containing basic and
16 material payroll information, including, among other things, the rate(s) of pay and basis
17 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
18 including any rates for overtime, the regular payday designated by the employer, and any
19 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
20 Code § 2810.5(a)(1)(A)-(C).

21 142. At all relevant times, on information and belief, Defendants failed, on a
22 company-wide basis, to provide written notice to Plaintiff and class members that lists the
23 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
24 to provide Plaintiff and class members with written notice of basic information regarding their
25 employment with Defendants is in violation of California Labor Code section 2810.5.

26 143. As a result of the violations of California law herein described, Defendants
27 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
28 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged

1 herein.

2 144. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
3 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
4 Defendants during a period that commences four years prior to the filing of the initial
5 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to
6 Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of
7 Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

8 **ELEVENTH CAUSE OF ACTION**

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

10 **Unfair Business Practices**

11 **(Against all Defendants)**

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

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

17 147. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
18 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
19 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff
20 seeks to enforce important rights affecting the public interest within the meaning of Code of
21 Civil Procedure section 1021.5.

22 148. Defendants’ activities, namely Defendants’ company-wide practice and/or
23 policy of not paying Plaintiff and class members all meal and rest period premiums due to
24 them under California Labor Code section 226.7, deprived Plaintiff and class members of the
25 compensation guarantee and enhanced enforcement implemented by section 226.7. The
26 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
27 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*
28 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7

1 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
2 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
3 unfair business practice in violation of California Business & Professions Code sections
4 17200, *et seq.* (*Id.*)

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

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

16 **REQUEST FOR JURY TRIAL**

17 Plaintiff requests a trial by jury.

18 **PRAYER FOR RELIEF**

19 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
20 against Defendants, jointly and severally, as follows:

21 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
22 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
23 reserves the right to amend his prayer for relief to seek a different amount.

24 **Class Certification**

- 25 2. That this case be certified as a class action;
26 3. That Plaintiff be appointed as the representative of the Class and Subclass;
27 4. That counsel for Plaintiff be appointed as class counsel.

28 //

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

2 5. That the Court declare, adjudge, and decree that Defendants violated California
3 Labor Code sections 510 and 1198 and the applicable IWC Wage Order by willfully failing to
4 pay all overtime wages due to Plaintiff and class members;

5 6. For general unpaid wages at overtime wage rates and such general and special
6 damages as may be appropriate;

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

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

11 9. For such other and further relief as the Court may deem equitable and
12 appropriate.

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

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

17 11. For general unpaid wages and such general and special damages as may be
18 appropriate;

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

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

23 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

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

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

27 16. That the Court declare, adjudge, and decree that Defendants violated California
28 Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order by

1 willfully failing to provide all meal periods to Plaintiff and class members;

2 17. That the Court make an award to the Plaintiff and class members of one (1)
3 hour of pay at each employee's regular rate of pay for each workday that a meal period was
4 not provided;

5 18. For all actual, consequential, and incidental losses and damages, according to
6 proof;

7 19. For premiums pursuant to California Labor Code section 226.7(c);

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

10 21. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

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

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

15 23. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order by willfully
17 failing to authorize and permit Plaintiff and class members to take all rest periods;

18 24. That the Court make an award to the Plaintiff and class members of one (1) hour
19 of pay at each employee's regular rate of pay for each workday that a rest period was not
20 authorized and permitted;

21 25. For all actual, consequential, and incidental losses and damages, according to
22 proof;

23 26. For premiums pursuant to California Labor Code section 226.7(c);

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

26 28. For attorneys' fees pursuant to California Code of Civil Procedure section
27 1021.5, or as otherwise provided by law; and

28 29. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Fifth Cause of Action

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

31. For all actual, consequential, and incidental losses and damages, according to proof;

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

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

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

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

As to the Sixth Cause of Action

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

37. For all actual, consequential and incidental losses and damages, according to proof;

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

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

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

41. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Seventh Cause of Action

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

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

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

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

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

As to the Eighth Cause of Action

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

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

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

51. For all actual, consequential, and incidental losses and damages, according to proof;

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

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

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 246 (by failing to provide written notice of paid sick leave); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of material terms of employment);

55. For civil penalties pursuant to the California Labor Code, including sections 210, 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

56. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

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

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

As to the Tenth Cause of Action

59. That the Court declare, adjudge and decree that Defendants' conduct of failing

1 to provide Plaintiff and class members all overtime wages due to them, failing to provide
2 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
3 class members all meal periods, failing to authorize and permit Plaintiff and class members to
4 take all rest periods, failing to provide Plaintiff and class members accurate and complete
5 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
6 and failing to timely pay Plaintiff and class members all earned wages during employment,
7 failing to provide written notice of paid sick leave, failing to reimburse Plaintiff and class
8 members for business-related expenses, and failing to provide written notice of material terms
9 of employment constitutes an unlawful business practice in violation of California Business
10 and Professions Code sections 17200, *et seq.*;

11 60. For restitution of unpaid wages to Plaintiff and all class members and
12 prejudgment interest from the day such amounts were due and payable;

13 61. For the appointment of a receiver to receive, manage and distribute any and all
14 funds disgorged from Defendants and determined to have been wrongfully acquired by
15 Defendants as a result of violations of California Business & Professions Code sections
16 17200, *et seq.*;

17 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
18 California Code of Civil Procedure section 1021.5; and

19 63. For such other and further relief as the Court may deem equitable and
20 appropriate.

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

22 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
23 Plaintiff and class members the statutory benefits guaranteed under California Labor Code
24 section 226.7 constitutes an unfair business practice in violation of California Business and
25 Professions Code sections 17200, *et seq.*;

26 65. For restitution of the statutory benefits under California Labor Code section
27 226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the
28 day such amounts were due and payable;

1 66. For the appointment of a receiver to receive, manage and distribute any and all
2 funds disgorged from Defendants and determined to have been wrongfully acquired by
3 Defendants as a result of violations of California Business & Professions Code sections
4 17200, *et seq.*;

5 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 California Code of Civil Procedure section 1021.5;

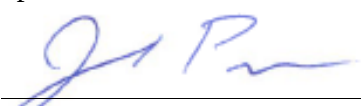
7 68. For pre-judgment and post-judgment interest as provided by law; and

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

11 Dated: May 20, 2024

Respectfully submitted,

Capstone Law APC

12
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14 By: 

Orlando Villalba
Helga Hakimi
Joseph D. Parsons

Attorneys for Plaintiff Mark Douglas, Jr.
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EXHIBIT “1”

SAIRAH BUDHWANI
310.929.5455 Direct
Sairah.Budhwani@capstonelawyers.com

March 14, 2024

VIA ONLINE SUBMISSION

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

Subject: *Mark Douglas, Jr. v. TruGreen Limited Partnership, et al.*

Dear PAGA Administrator:

This office represents Mark Douglas, Jr. in connection with his claims under the California Labor Code. Mr. Douglas, Jr. was an employee of TRUGREEN LIMITED PARTNERSHIP; TRUGREEN COMPANIES L.L.C.; and/or TRUGREEN, INC. For the purpose of this letter, Mr. Douglas, Jr. collectively refers to these entities as “TRUGREEN.”

The employers may be contacted directly at the addresses below:

TRUGREEN LIMITED PARTNERSHIP
1790 KIRBY PARKWAY, STE 300
MEMPHIS, TN 38138

TRUGREEN COMPANIES L.L.C.
1790 KIRBY PARKWAY, STE 300
MEMPHIS, TN 38138

TRUGREEN, INC.
1790 KIRBY PARKWAY, STE 300
MEMPHIS, TN 38138

Mr. Douglas, Jr. 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. Douglas, Jr. seeks relief on behalf of himself, the State of California, and other persons who are or were employed by TRUGREEN 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.

TRUGREEN employed Mr. Douglas, Jr. as an hourly paid, non-exempt employee from approximately April 2023 to June 2023. Mr. Douglas, Jr. worked for TRUGREEN as a Residential Laborer and Lawn Specialist out of its location in Sacramento, California. During his employment, Mr. Douglas, Jr. typically worked 14 hours or more per day and five (5) to six (6) days per week. At the time his employment with TRUGREEN ended, Mr. Douglas, Jr. was compensated approximately

\$16.00 per hour. His job duties included, without limitation, applying fertilizers, pesticides, and other growth-stimulating chemicals to lawns, as well as checking for weeds on residential and commercial properties.

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

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

TRUGREEN LIMITED PARTNERSHIP is a Delaware limited partnership; TRUGREEN COMPANIES L.L.C. is a Delaware limited liability company; and TRUGREEN, INC. is a Delaware corporation. Together, they are the nation’s largest lawn care company, providing lawn, tree, and shrub care services to residential and commercial customers across the United States. Upon information and belief, TRUGREEN maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Memphis, Tennessee, for all non-exempt, hourly paid employees working for TRUGREEN in California, including Mr. Douglas, Jr. and other aggrieved employees. At all relevant times, TRUGREEN issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Douglas, Jr. and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of

¹ These facts, theories, and claims are based on Mr. Douglas, Jr.’s experience and counsel’s review of those records currently available relating to Mr. Douglas, Jr.’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. Douglas, Jr. 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.

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.

TRUGREEN willfully failed to pay all overtime wages owed to Mr. Douglas, Jr. and other aggrieved employees. During the relevant time period, Mr. Douglas, Jr. 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.

During the relevant time period, TRUGREEN had, and continues to have, policy and/or practice of discouraging and impeding Mr. Douglas, Jr. and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. TRUGREEN's management instructed Mr. Douglas, Jr. and other aggrieved employees to clock in and out at their scheduled shift start-times and shift end-times instead of their actual hours worked to limit overtime hours employees were eligible to be compensated for. Because TRUGREEN discouraged overtime accrual, Mr. Douglas, Jr. and other aggrieved employees were required to complete assigned tasks before and after their scheduled shifts and on their days off without being compensated for the time they worked. For example, in order to meet TRUGREEN's expectations of completing daily tasks within his scheduled hours, Mr. Douglas, Jr. would report to work before his scheduled shift start-time in order to complete his assigned duties, such as loading his truck with supplies needed for the day and/or attending a team meeting, which took approximately 15-30 minutes each time, before he could clock in. As a further example, at the end of his scheduled shift, Mr. Douglas, Jr. was required to clock out and then spend 15-30 minutes each time unloading his truck and conducting an inventory of supplies after clocking out. To the extent TRUGREEN's timekeeping policies have taken away time worked that was eligible for overtime, Mr. Douglas, Jr. and other aggrieved employees have been denied overtime pay for all hours worked. In addition, Mr. Douglas, Jr. was required to respond to phone communications from his supervisors and coworkers on his days off. For instance, Mr. Douglas, Jr. would answer work-related phone calls and text messages from his supervisors and coworkers about his routes and work-related issues, spending around two (2) hours each week responding. However, Mr. Douglas, Jr. and other aggrieved employees were not allowed to record this time spent working.

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

Furthermore, TRUGREEN did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, TRUGREEN paid other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, TRUGREEN failed to incorporate all remunerations, including commissions, incentive pay, and/or nondiscretionary bonuses, 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, TRUGREEN failed to pay all overtime wages by paying a lower overtime rate than required.

TRUGREEN's failure to pay Mr. Douglas, Jr. 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. Douglas, Jr. 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 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, TRUGREEN maintained a company-wide policy and/or practice of limiting overtime accrual and pressuring employees to record only their scheduled hours rather than hours actually worked, thereby shorting Mr. Douglas, Jr. and other aggrieved employees for work performed outside their scheduled shifts. As set forth above, pursuant to this policy, Mr. Douglas, Jr. and other aggrieved employees performed various work-related tasks while off-the-clock before and after their shifts and on their days off, including loading and unloading their trucks, conducting an inventory of supplies, attending team meetings, and communicating with supervisors and coworkers regarding work-related matters. TRUGREEN failed to track this time Mr. Douglas, Jr. and other aggrieved employees spent working off-the-clock, and Mr. Douglas, Jr. and other aggrieved employees received no compensation for this time.

Thus, TRUGREEN did not pay at least minimum wages for all hours worked by Mr. Douglas, Jr. and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, TRUGREEN 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, TRUGREEN regularly failed to pay at least minimum wages to Mr. Douglas, Jr. 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. Douglas, Jr. and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period

may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, TRUGREEN had, and continues to have, a company-wide policy and/or practice of scheduling and dispatching its employees to complete lawn care appointments, which included traveling to 15-30 residential and commercial properties of varying sizes and applying fertilizers/pesticides each day, without building in sufficient time to allow for 30-minute meal periods. Often, TRUGREEN underestimated the size of properties and subsequently did not allocate enough time in employees' routes to complete all appointments and take compliant meal periods.

Further, TRUGREEN had, and continues to have, a company-wide policy and/or practice of understaffing its routes while assigning heavy workloads, resulting in a failure to provide Mr. Douglas, Jr. and other aggrieved employees with adequate meal period coverage. TRUGREEN understaffed its routes by adopting a single-staffing model for certain positions, often regardless of property size, which exacerbated the lack of meal period coverage for employees. As a result of TRUGREEN's policy of understaffing and/or single-staffing, Mr. Douglas, Jr. and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Lawn care appointments could take longer than the time TRUGREEN allotted for them, such that Mr. Douglas, Jr. and other aggrieved employees were unable to take compliant meal periods. In conjunction with varying appointment durations, travel time between client properties could take longer than anticipated due to traffic conditions, which further impeded Mr. Douglas, Jr. and other aggrieved employees from taking compliant meal periods.

Additionally, upon information and belief, TRUGREEN had no mechanism in place to permit Mr. Douglas, Jr. and other aggrieved employees to take meal periods when the schedule was thrown off because one or more of their appointments took longer than the scheduled time, or if travel time between appointments was extended by traffic conditions. TRUGREEN's company-wide policy and/or practice of allotting too little time for employees to actually complete the appointments on their routes has prevented Mr. Douglas, Jr. and other aggrieved employees from being relieved of their duties to take uninterrupted 30-minute meal periods. For example, more often than not, Mr. Douglas, Jr. missed his meal periods in order to meet TRUGREEN's appointment time frame expectations. Additionally, Mr. Douglas, Jr. also regularly took his meal periods late, after the fifth hour of work, or had his meal periods shortened to return to work early, due to the heavy workload. Thus, as a result of TRUGREEN's policies and/or practices, Mr. Douglas, Jr. and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether.

Moreover, TRUGREEN did not provide Mr. Douglas, Jr. and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Douglas, Jr. worked shifts in excess of ten (10) or more hours per day but was not provided a second 30-minute meal period. Mr. Douglas, Jr. 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 mentioned herein, TRUGREEN knew or should have known that as a result of its company-wide policies and/or practices, Mr. Douglas, Jr. and other aggrieved employees were prevented from being relieved of all duties to take timely, uninterrupted meal periods. TRUGREEN further knew or should have known that it did not pay Mr. Douglas, Jr. and other aggrieved employees all meal period premiums when meal periods were missed, late, interrupted, and/or shortened.

Furthermore, TRUGREEN 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, Mr. Douglas, Jr. and other aggrieved employees have not received all premium pay for missed, interrupted, late and/or shortened meal periods. Alternatively, to the extent that TRUGREEN did pay other aggrieved employees premium pay for missed, late, interrupted, and/or shortened meal periods, TRUGREEN did not pay other aggrieved employees at the correct rate of pay for premiums because TRUGREEN systematically failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, TRUGREEN failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Douglas, Jr. and other aggrieved employees are entitled to 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, TRUGREEN regularly failed to authorize and permit Mr. Douglas, Jr. 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, TRUGREEN's company-wide practices of scheduling and dispatching its employees to complete lawn care appointments, understaffing/single-

staffing its routes, and assigning heavy workloads resulted in a lack of rest period coverage and prevented Mr. Douglas, Jr. and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. TRUGREEN also failed to schedule rest periods, which, coupled with TRUGREEN's failure to provide adequate rest period coverage, further led to Mr. Douglas, Jr. and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, during the relevant time period, TRUGREEN maintained a company-wide on-premises rest period policy, which effectively required that Mr. Douglas, Jr. and/or other aggrieved employees remain on the premises during their rest periods. Because Mr. Douglas, Jr. and/or other aggrieved employees were restricted from leaving the jobsites during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, TRUGREEN effectively maintained control over Mr. Douglas, Jr. and/or other aggrieved employees during rest periods.

As a result of TRUGREEN's practices and policies, Mr. Douglas, Jr. 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. Douglas, Jr. had to regularly forgo at least one rest period nearly every shift due to the heavy workload and a lack of rest period coverage.

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

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

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. TRUGREEN has not provided Mr. Douglas, Jr. 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, TRUGREEN has knowingly and intentionally provided Mr. Douglas, Jr. and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, TRUGREEN issued uniform wage statements to Mr. Douglas, Jr. and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, TRUGREEN violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

Because TRUGREEN did not record the time Mr. Douglas, Jr. and other aggrieved employees spent working off-the-clock, TRUGREEN did not list the correct amount of gross wages and net wages earned by Mr. Douglas, Jr. and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, TRUGREEN failed to accurately list the total number of hours worked by Mr. Douglas, Jr. 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).

Further, because TRUGREEN did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, TRUGREEN 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). TRUGREEN also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

In addition, and separately from these violations, TRUGREEN issued uniform wage statements to Mr. Douglas, Jr. and other aggrieved employees that failed to list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, TRUGREEN systematically, and on a company-wide basis, issued wage statements to Mr. Douglas, Jr. and other aggrieved employees that fail to list the employing entity's correct address. Mr. Douglas, Jr.'s and other aggrieved employees' wage statements incorrectly list the employer's address as "1790 KIRBY PARKWAY, MEMPHIS, TN 38138," but according to the California Secretary of State's website, TRUGREEN LIMITED PARTNERSHIP's complete entity address should be "1790 KIRBY PARKWAY STE 300, MEMPHIS, TN 38138-7411" (emphasis added).

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 of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which

employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), TRUGREEN willfully failed to maintain accurate payroll records for Mr. Douglas, Jr. 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, TRUGREEN failed, on a company-wide basis, to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Douglas, Jr. and other aggrieved employees, in violation of section 1198. Furthermore, in light of TRUGREEN’s failure to provide Mr. Douglas, Jr. and other aggrieved employees with second 30-minute meal periods to which they were entitled, TRUGREEN kept no records of meal start and end times for second meal periods.

Mr. Douglas, Jr. 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, TRUGREEN failed to pay Mr. Douglas, Jr. and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Douglas, Jr. 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, TRUGREEN have 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. For example, TRUGREEN terminated Mr. Douglas, Jr. on or about June 3, 2023; however, TRUGREEN did not provide Mr. Douglas, Jr. with his final wages until the next regular payday, which was several days after his date of termination. Thus, TRUGREEN failed to pay Mr. Douglas, Jr. his final wages immediately, in violation of California Labor Code section 201.

Additionally, during the relevant time period, TRUGREEN willfully failed to pay Mr. Douglas, Jr. and other aggrieved employees who are no longer employed by TRUGREEN all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving TRUGREEN's employ.

Mr. Douglas, Jr. 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 § 246 – Failure to Provide Written Notice of Paid Sick Leave

California's Healthy Workplaces, Healthy Families Act of 2014 was enacted to provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Effective January 1, 2024, California Labor Code section 246(b)(4) requires employers to provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Codified at California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249, section 246(i) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages.

During the relevant time period, TRUGREEN failed, on a company-wide basis, to provide Mr. Douglas, Jr. and other aggrieved employees written notice on wage statements and/or other separate written statements that listed the amount of paid sick leave (or equivalent paid leave or paid time off) available to them. TRUGREEN's ongoing and systematic failure to provide written notice of sick leave benefits to Mr. Douglas, Jr. and other aggrieved employees violates California Labor Code section 246(i).

Mr. Douglas, Jr. and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, TRUGREEN, on a company-wide basis, required that Mr. Douglas, Jr. and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to fully reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Douglas, Jr. was required to use his personal cellular phone to communicate with his supervisors and coworkers to discuss routes and work-related issues. Although TRUGREEN required Mr. Douglas, Jr. and other aggrieved employees to use their personal mobile devices and/or mobile data to carry out their work-related duties, TRUGREEN failed to reimburse them for their costs incurred.

TRUGREEN could have provided Mr. Douglas, Jr. and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, or TRUGREEN could have reimbursed employees for the costs of their mobile device usage. Instead, TRUGREEN passed these operating costs off onto Mr. Douglas, Jr. and other aggrieved employees. At all relevant times, Mr. Douglas, Jr. did not earn at least two (2) times the minimum wage.

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

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the

use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

On information and belief, TRUGREEN failed to provide Mr. Douglas, Jr. and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). TRUGREEN's failure to provide Mr. Douglas, Jr. and other aggrieved employees with written notice of basic information regarding their employment with TRUGREEN is in violation of Labor Code section 2810.5.

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

California Labor Code § 558(a)

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

Accordingly, Mr. Douglas, Jr. 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. Douglas, Jr., 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 TRUGREEN for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Douglas, Jr. 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:

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

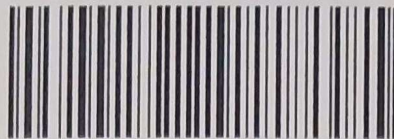
Best Regards,

A handwritten signature in black ink, reading "Sairah Budhwani". The signature is fluid and cursive, with a small dot at the end.

Sairah Budhwani

Copy: TRUGREEN LIMITED PARTNERSHIP (via U.S. Certified Mail); TRUGREEN
COMPANIES L.L.C. (via U.S. Certified Mail); TRUGREEN, INC. (via U.S. Certified Mail)

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



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**TRUGREEN LIMITED
PARTNERSHIP
1790 KIRBY PARKWAY, STE 300
MEMPHIS, TN 38138**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

TRUGREEN LIMITED
PARTNERSHIP
1790 KIRBY PARKWAY, STE 300
MEMPHIS, TN 38138

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DOUGLAS V.

TRUGREEN

Signature

TRUGREEN COMPANIES L.L.C.
1790 KIRBY PARKWAY, STE 300
MEMPHIS, TN 38138

7022 2410 0000 2406 0989

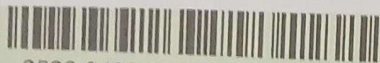
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MEMPHIS, TN 38138



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Service Type

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☐ Delivery Restricted Delivery

☐ Registered Mail Restricted Delivery

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☐ Registered Mail™

☐ Registered Mail Restricted Delivery

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TRUGREEN

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TRUGREEN, INC.
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MEMPHIS, TN 38138

7022 2410 0000 2406 0996

PS

See Reverse for Instructions

TRUGREEN, INC.
1790 KIRBY PARKWAY, STE 300
MEMPHIS, TN 38138

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.

TRUGREEN, INC.
1790 KIRBY PARKWAY, STE 300
MEMPHIS, TN 38138



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2. Article Number (Transfer from service label)

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☐ Agent

☐ Addressee

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C. Date of Delivery

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☐ Signature Confirmation™

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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 **May 20, 2024**, 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:

CT Corporation System
330 N Brand Blvd.
Glendale, CA 91203

Registered Agent for Defendants:
TRUGREEN LIMITED PARTNERSHIP
TRUGREEN COMPANIES L.L.C.
TRUGREEN, 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).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **May 20, 2024**, at Los Angeles, California.

Riley McIntire
Type/Print Name

Signature