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NOE SANDOVAL-OROZCO, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
(UNLIMITED JURISDICTION)

NOE SANDOVAL-OROZCO, on behalf of
himself, all others similarly situated, and
the general public, and as an “aggrieved
employee” on behalf of other “aggrieved
employees” under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff,

vs.

NORTHWEST LANDSCAPE
MAINTENANCE COMPANY, and DOES
1-25, inclusive,

Defendants.

Case No.: **24CV445484**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Pay Minimum Wages (Lab. Code §§ 1194, 1197, and 1198);
4. Failure to Pay Overtime Wages (Lab. Code §§ 510, 1194, and 1198);
5. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
6. Wage Statement Penalties (Lab. Code § 226);
7. Waiting Time Penalties (Lab. Code §§ 201-203);
8. Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
9. Unlawful deductions (Lab. Code § 221);
10. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
11. Penalties Under the Private Attorneys General Act (“PAGA”) (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED

1 Plaintiff, NOE SANDOVAL-OROZCO (hereafter “Plaintiff”), on behalf of himself and
2 all others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action for alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order Nos. 4-2001/16-2001 (hereafter
6 “the Wage Order”), against Defendant NORTHWEST LANDSCAPE MAINTENANCE
7 COMPANY, a California corporation, and DOES 1-25, inclusive (collectively “Defendants” or
8 “NORTHWEST LANDSCAPE”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated current and former California-based hourly workers, for unpaid
11 wages, statutory penalties, interest, and related relief. These claims are based on Defendants’
12 alleged failures to (1) pay all wages earned for all hours worked, (2) provide all meal and rest
13 periods in compliance with California law, (3) only deduct wages lawfully; (4) indemnify Plaintiff
14 and the below-described class for reasonable expenses incurred performing their duties, (5)
15 provide accurate written wage statements, (6) timely pay all wages during and upon termination
16 of employment, and (7) fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages
17 and related relief through this class and representative action.

18 **PARTIES**

19 3. Plaintiff NOE SANDOVAL-OROZCO is a resident of San Jose, California. At all
20 relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of
21 Regulations Section 11040/11160 and an “aggrieved employee” within the meaning of Labor
22 Code Section 2699(c).

23 4. Defendant NORTHWEST LANDSCAPE MAINTENANCE COMPANY is and
24 was a California corporation, located at 283 Kinney Drive, San Jose, CA 95112, and which
25 employed Plaintiff. As such, it is a citizen of California based on Plaintiff’s information and
26 belief.

27 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
28 participation in the conduct alleged herein of the Defendants sued as DOES 1-25, inclusive, but

1 is informed and believes and thereon alleges that said Defendants are legally responsible for the
2 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
3 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
4 when ascertained.

5 6. Plaintiff is informed and believes and thereon alleges that, at all relevant times
6 herein, all Defendants were the agents, employees, servants, masters, and/or employers of the
7 remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course
8 and scope of such agency or employment and with the approval and ratification of each of the
9 other Defendants.

10 7. At all relevant times, in perpetrating the acts and omissions alleged herein,
11 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
12 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
13 described class in accordance with applicable laws as alleged herein.

14 8. Plaintiff is informed and believes and thereon alleges that each and every one of
15 the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants,
16 each acting as agents and/or employees, and/or under the direction and control of each of the other
17 Defendants, and that said acts and failures to act were within the course and scope of said agency,
18 employment, and/or direction and control.

19 **CLASS ALLEGATIONS**

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

25 10. **Class Definition:** The Class is defined as follows: All persons Defendants
26 employed in California as hourly, non-exempt employees, at any time during the period
27 beginning four years prior to the filing of this action and ending on the date that final judgment
28 is entered in this action (“Class” or “Class Members”).

1 11. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
2 right to amend or modify the class definition with greater specificity, by further division into
3 subclasses and/or by limitation to particular issues.

4 12. **Numerosity:** The Class Members are so numerous that the individual joinder of
5 each individual Class Member is impractical. While Plaintiff does not currently know the exact
6 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
7 minimum required for numerosity under California laws.

8 13. **Commonality and Predominance:** Common questions of law and fact exist as to
9 all Class Members and predominate over any questions which affect only individual Class
10 Members. These questions include, but are not limited to:

11 A. Whether Defendants failed to pay all wages earned to Class Members for
12 all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime,
13 prevailing wages, reporting time, meal period premiums, and rest period premiums;

14 B. Whether Defendants failed to include all non-discretionary pay/bonuses
15 into the regular rate of pay;

16 C. Whether Defendants unlawfully deducted wages from Class Members;

17 D. Whether Defendants failed to provide the Class Members with all meal
18 periods in compliance with California law;

19 E. Whether Defendants failed to authorize and permit the Class Members to
20 take all rest periods in compliance with California law;

21 F. Whether Defendants failed to indemnify the Class Members for the
22 reasonable expenses they incurred during the course of performing their duties;

23 G. Whether Defendants knowingly and intentionally failed to provide the
24 class with accurate and complete itemized wage statements;

25 H. Whether Defendants willfully failed to provide the Class Members with all
26 wages earned every pay period during employment;

27 I. Whether Defendants willfully failed to provide the Class Members with
28 timely final wages;

1 J. Whether Defendants failed to provide the Class Members with paid sick
2 leave;

3 K. Whether Defendants failed to maintain accurate employment records
4 pertaining to all of the Class Members;

5 L. Whether Defendants engaged in unfair competition within the meaning of
6 Business and Professions Code sections 17200, *et seq.*, with respect to the Class; and

7 M. Whether Class Members are entitled to restitution of money or property
8 that Defendants may have acquired from them through alleged Labor Code violations.

9 14. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
10 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
11 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
12 Code, the Wage Order, and the Business and Professions Code.

13 15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
14 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
15 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
16 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
17 Members.

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

22 17. **Superiority:** A class action is vastly superior to other available means for fair and
23 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
24 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
25 and efficiently prosecute their common claims in a single forum without the unnecessary
26 duplication of effort and expense that numerous individual actions would entail. In addition, the
27 monetary amounts due to many individual Class Members are likely to be relatively small and
28 would thus make it difficult, if not impossible, for individual Class Members to both seek and

1 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
2 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
3 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

4 **STATEMENT OF FACTS**

5 18. Defendants first employed Plaintiff in or around March 2024 to work as a
6 gardener/laborer. Plaintiff was classified as an hourly, non-exempt employee and earned
7 approximately \$20.00 per hour. Plaintiff's employment ended or around May 10, 2024.

8 19. Plaintiff and the Class Members earned their wages at an hourly rate and
9 Defendants issued their paychecks on a weekly basis. At relevant times, Plaintiff and the Class
10 Members worked shifts in excess of eight (8) hours in one workday and/or over forty (40) hours
11 in one work week.

12 20. At all relevant times, Defendants did not provide Plaintiff and the Class Members
13 with the minimum wages to which they were entitled for all work performed and did not
14 compensate Plaintiff and the Class Members for all hours worked pursuant to California Labor
15 Code sections 1194, 1197 and 1197.1. This is so because NORTHWEST LANDSCAPE had a
16 company policy wherein they would disproportionately round down the number of hours worked,
17 resulting in "time shaving" and further resulting in Class Members not being paid for all hours
18 worked. Furthermore, one look at Plaintiff's paystubs indicate that his work hours were rounded,
19 i.e. 32.0 hours worked, which is not in line with reality. Moreover, Plaintiff and others were not
20 paid for travel time in traveling to different locations. In addition, NORTHWEST LANDSCAPE
21 failed to pay its employees proper and accurate reporting time pay.

22 21. Pursuant to California Industrial Welfare Commission Order Nos. 4-2001/16-
23 2001, Section 9(B) and 8(B) respectively, "When tools or equipment are required by the
24 employer or are necessary to the performance of a job, such tools and equipment shall be
25 provided and maintained by the employer, except that an employee whose wages are at least two
26 (2) times the minimum wage provided herein may be required to provide and maintain hand tools
27 and equipment customarily required by the trade or craft." NORTHWEST LANDSCAPE
28 unequivocally required its employees to provide their own hand tools for the performance of their

1 job duties. As such, NORTHWEST LANDSCAPE violated the aforementioned IWC Wage
2 Order in that NORTHWEST LANDSCAPE required its laborers to provide and maintain hand
3 tools and equipment customarily required by the trade but did NOT compensate these employees
4 at least two (2) times the minimum wage at all times.

5 22. At all relevant times, NORTHWEST LANDSCAPE was subject to the prevailing
6 wage laws of the State of California pursuant to Labor Code § 1771, regarding work undertaken
7 on public construction projects. Under Labor Code § 1771, the only legal wage which may be
8 paid to workers on public works projects is the prevailing wage. NORTHWEST LANDSCAPE
9 compensated Plaintiff and other Class Members for their labor on public improvement, or public
10 works construction projects, at a rate of pay below the general prevailing rate of per diem wages
11 for work of a similar character in the locality in which the public work is performed, and less
12 than the general prevailing rate of per diem wages for holiday and overtime work.

13 23. At all relevant times, NORTHWEST LANDSCAPE was also subject to the
14 prevailing wage laws of the State of California pursuant to Labor Code § 1774, regarding work
15 undertaken on public construction projects. NORTHWEST LANDSCAPE violated Labor Code
16 § 1774, because it paid its employees, including Plaintiff, less than the specific prevailing rates
17 of wages to all workmen employed in the execution of the contract of the projects. Plaintiff and
18 others similarly situated worked on public works projects, especially for the State of California.

19 24. At all relevant times, due to the above “off the clock” violations, NORTHWEST
20 LANDSCAPE also violated Labor Code §510 because it failed to pay Plaintiff and other Class
21 Members overtime compensation, even though they worked more than 8 hours per day, 12 hours
22 per day, and/or 40 hours per week throughout their employment. Plaintiff’s and other Class
23 Members’ actual work hours entitled them to overtime compensation, however, NORTHWEST
24 LANDSCAPE did not compensate its hourly, non-exempt employees with the proper and correct
25 amount of overtime, despite the “off the clock” work and time shaving as described above.
26 Furthermore, NORTHWEST LANDSCAPE failed to include bonuses/incentive payments in
27 calculating employees’ regular rate of pay for use in deciphering the correct overtime rate of pay.
28 Additionally, the incentive and bonus payments were also not factored into employees’ regular

1 rate for purposes of receiving meal and rest break premiums per the *Ferra v. Loews* case.

2 25. At all relevant times, NORTHWEST LANDSCAPE also violated Labor Code §
3 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4/16 because it failed
4 to provide Plaintiff and other Class Members with timely 10-minute rest periods for every four
5 hours of work, or majority portion thereof, throughout their employment. NORTHWEST
6 LANDSCAPE did not completely relieve Plaintiff and others of all duty during said rest periods.
7 NORTHWEST LANDSCAPE did not pay to Plaintiff and others one additional hour of pay at
8 Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods
9 was not provided or was interrupted. Rest periods were also simply not part of the company
10 policy and were not enforced at all. Plaintiff and others were not able to take rest breaks due to
11 the workload and in having to meet deadlines. Plaintiff and others did not consistently have the
12 opportunity to take 10-minute, uninterrupted rest periods throughout their shifts.

13 26. At all relevant times, NORTHWEST LANDSCAPE violated Labor Code §§ 512
14 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4/16 because it
15 failed to provide hourly, non-exempt employees, including Plaintiff and others, the requisite 30-
16 minute, uninterrupted meal periods for every five (5) hours of work throughout their
17 employment. NORTHWEST LANDSCAPE did not completely relieve Plaintiff and other
18 employees of all duty during said meal periods. NORTHWEST LANDSCAPE did not pay to
19 Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular rate of
20 compensation for each workday that one or more statutory meal periods was not provided.
21 Plaintiff and the hourly, non-exempt employees would not always receive uninterrupted meal
22 periods that were before the 5th hour worked. While the meal breaks were supposed to be 12pm,
23 Plaintiff and others started their shifts at 7am or even earlier. As such, taking a meal period at
24 12:00 p.m. or 12:05 p.m. or 12:10 p.m. would be late meal period and would constitute a
25 violation.

26 27. Consequently, it was the normal practice and custom of NORTHWEST
27 LANDSCAPE not to authorize, permit, and enforce timely, uninterrupted, statutory meal periods.
28 If NORTHWEST LANDSCAPE had Plaintiff sign a meal period waiver, it would not be valid

1 and enforceable since Plaintiff and others generally worked more than a 6-hour shift. If
2 NORTHWEST LANDSCAPE had Plaintiff sign an on-duty meal period agreement wherein
3 Plaintiff agreed to work through the meal periods, it would be invalid and unenforceable because
4 the nature of Plaintiff's job does not and did not prevent him from taking a meal period and the
5 company could have hired "breakers" to relieve Plaintiff of his job duties so that he can actually
6 take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement
7 did not allow for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff
8 and others did not always receive statutory, timely meal periods during their employment. To the
9 extent that NORTHWEST LANDSCAPE argues that employees receive meal break premium
10 pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since
11 the PAGA penalties are for the violations themselves, irrespective of whether an employee
12 received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos*
13 *Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice
14 between providing either meal and rest breaks or an additional hour of pay." See *Kirby v. Immoos*
15 *Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour
16 of pay does not excuse the violation; the employer has still committed a violation even if the
17 remedy for the violation has been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016
18 WL 1110302 at *4). As such, the work environment and culture at NORTHWEST LANDSCAPE
19 was not conducive to receiving consistent, timely, statutory meal breaks under California law.
20 Moreover, any meal or rest break premiums paid were not compensated at the weighted average
21 regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

22 28. Furthermore, at all relevant times, and due to the above labor code violations,
23 NORTHWEST LANDSCAPE failed to pay Plaintiff and other Class Members all wages due to
24 them within any time period specified by California Labor Code section 204. Furthermore,
25 Plaintiff and others would unlawfully be paid via personal check as opposed to a business check.
26 NORTHWEST LANDSCAPE was also in violation of California Labor Code section 226(a) by
27 failing to include pertinent information on the wage statements, including but not limited to, the
28 correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages

1 earned, net wages earned, premium pay for missed meal and rest breaks, all deductions, the
2 correct start and end of the pay period, all employee identifying information, the correct and
3 complete name and address of the legal employer, and reimbursement for business expenses,
4 among others. As such, NORTHWEST LANDSCAPE did not provide Plaintiff and other Class
5 Members with complete, accurate itemized wage statements.

6 29. At all relevant times, NORTHWEST LANDSCAPE also failed to keep accurate
7 and complete payroll records showing the actual hours worked per day and the wages paid to
8 Plaintiff and others pursuant to California Labor Code sections 1174(d).

9 30. At all relevant times, NORTHWEST LANDSCAPE also violated Labor Code §
10 203 because it willfully failed to pay Plaintiff and other Class Members earned and due wages
11 upon separation of employment, either immediately upon involuntary termination, or within 72
12 hours of resignation. These earned but unpaid wages include compensation for all hours worked,
13 including minimum wages, overtime compensation, and premium pay for missed meal and rest
14 breaks.

15 31. At all relevant times, Plaintiff and other Class Members incurred necessary,
16 business-related expenses and costs that were not reimbursed by NORTHWEST LANDSCAPE.
17 These costs include, but are not limited to, use of personal cell phones for work purposes, use of
18 personal vehicles without any mileage reimbursement, and use of personal hand tools for work
19 purposes. Moreover, the company deducted \$50.00 for an “equipment deposit 2”, which is an
20 unlawful deduction under Labor Code section 221. Accordingly, NORTHWEST LANDSCAPE
21 was in violation of California Labor Code sections 2800 and 2802.

22 32. At all relevant times, NORTHWEST LANDSCAPE failed to provide sick pay
23 pursuant to Labor Code section 246 and also failed to provide Worker’s Compensation coverage
24 for Plaintiff and other Class Members in violation of Labor Code Section 3700.5.

25 33. For the reasons stated herein, Plaintiff alleges that as a result of Defendants’
26 unlawful practices and policies, Plaintiff and the Class Members were:

27 A. Not provided with all off duty meal periods;

28 B. Not authorized and permitted to take all rest break periods;

1 C. Not paid one hour's pay for each workday in which Defendants failed to
2 authorize and permit them to take one or more timely rest periods;

3 D. Not paid one hour's pay for each workday in which Defendants failed to
4 provide them with one or more timely meal periods;

5 E. Not paid all wages earned, including, but not limited to, minimum, regular,
6 overtime, doubletime, prevailing wages, and reporting time pay;

7 F. Not indemnified for all necessary business expenditures incurred during
8 the discharge of their duties;

9 G. Not provided with paid sick leave;

10 H. Not provided with accurate and complete wage statements; and

11 I. Not timely paid all earned and unpaid wages at the time their employment
12 ended.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REST BREAKS**

15 **(Lab. Code §§ 226.7 and 1198)**

16 **(By Plaintiff and the Class against all Defendants)**

17 34. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

18 35. At all relevant times during the applicable limitations period, Plaintiff and the
19 class have been employees of Defendants and entitled to the benefits and protections of
20 California Labor Code §§ 226.7, 1198, and the Wage Order.

21 36. Labor Code § 1198 states,

22 "The maximum hours of work and the standard conditions of labor fixed
23 by the commission shall be the maximum hours of work and the standard
24 conditions of labor for employees. The employment of any employee for
longer hours than those fixed by the order or under conditions of labor
prohibited by the order is unlawful."

25 37. In relevant part, Wage Order 4-2001/16-2001, Sections 12 and 11 respectively
26 states:

27 Rest Periods:

28 (A) Every employer shall authorize and permit all employees
to take rest periods, which insofar as practicable shall be in the

1 middle of each work period. The authorized rest period time shall
2 be based on the total hours worked daily at the rate often (10)
3 minutes net rest time per four (4) hours or major fraction thereof.
4 However, a rest period need not be authorized for employees
5 whose total daily work time is less than three and one-half (3 1/2)
6 hours. Authorized rest period time shall be counted as hours
7 worked for which there shall be no deduction from wages.

8 (B) If an employer fails to provide an employee a rest period
9 in accordance with the applicable provisions of this Order, the
10 employer shall pay the employee one (1) hour of pay at the
11 employee's regular rate of compensation for each work day that
12 the rest period is not provided.

13 38. In addition, Labor Code Section 226.7 states

14 (b) An employer shall not require an employee to work during a meal
15 or rest or recovery period mandated pursuant to an applicable statute, or
16 applicable regulation, standard, or order of the Industrial Welfare
17 Commission, the Occupational Safety and Health Standards Board, or the
18 Division of Occupational Safety and Health.

19 (c) If an employer fails to provide an employee a meal or rest or
20 recovery period in accordance with a state law, including, but not limited
21 to, an applicable statute or applicable regulation, standard, or order of the
22 Industrial Welfare Commission, the Occupational Safety and Health
23 Standards Board, or the Division of Occupational Safety and Health, the
24 employer shall pay the employee one additional hour of pay at the
25 employee's regular rate of compensation for each workday that the meal
26 or rest or recovery period is not provided.

27 39. Pursuant to the Wage Order, Plaintiff and the Class were entitled to be provided
28 with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction
thereof.

40. Defendants failed to provide Plaintiff with all required rest breaks in accordance
with the Wage Order. Plaintiff and the Class Members did not take timely, uninterrupted rest
breaks of at least two per day wherein they were relieved of all duty. It was not company policy
and not part of the culture for employees such as Plaintiff and the Class Members to take
uninterrupted rest breaks since it was the normal practice and custom of NORTHWEST
LANDSCAPE not to authorize, permit, and enforce statutory rest periods. Plaintiff is informed
and believes and thereon alleges that, at relevant times within the applicable limitations period,

1 Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not
2 providing the class with all rest breaks required by California law.

3 41. Defendants failed to pay Plaintiff the additional wages required by California
4 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes
5 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
6 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not
7 providing the class with additional wages for all rest breaks not provided to them as required by
8 California Labor Code § 226.7.

9 42. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered
10 damages in amounts subject to proof to the extent they were not paid additional wages owed for
11 all rest breaks not provided to them.

12 43. By reason of the above, Plaintiff and the members of the class are entitled to
13 premium wages for workdays in which one or more rest breaks were not provided to them
14 pursuant to California Labor Code § 226.7.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PROVIDE MEAL PERIODS**

17 **(Lab. Code §§ 226.7, 512, and 1198)**

18 **(By Plaintiff and the Class against all Defendants)**

19 44. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

20 45. At all relevant times during the applicable limitations period, Plaintiff and the
21 class have been employees of Defendants and entitled to the benefits and protections of
22 California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

23 46. Labor Code § 1198 states,

24 "The maximum hours of work and the standard conditions of labor fixed
25 by the commission shall be the maximum hours of work and the standard
26 conditions of labor for employees. The employment of any employee for
longer hours than those fixed by the order or under conditions of labor
prohibited by the order is unlawful."

27 47. In relevant part, Labor Code Section 512 states

28 "An employer may not employ an employee for a work period of more

1 than five hours per day without providing the employee with a meal
2 period of not less than 30 minutes, except that if the total work period per
3 day of the employee is no more than six hours, the meal period may be
4 waived by mutual consent of both the employer and employee. An
5 employer may not employ an employee for a work period of more than
6 10 hours per day without providing the employee with a second meal
7 period of not less than 30 minutes, except that if the total hours worked
8 is no more than 12 hours, the second meal period may be waived by
9 mutual consent of the employer and the employee only if the first meal
10 period was not waived.”

11
12 48. In relevant part, Wage Order 4-2001/16-2001, Section 11 and 10 respectively,
13 states:

14 Meal Periods:

15 (A) No employer shall employ any person for a work period of more
16 than five (5) hours without a meal period of not less than 30
17 minutes, except that when a work period of not more than six (6)
18 hours will complete the day’s work the meal period may be
19 waived by mutual consent of the employer and the employee...

20 (B) If an employer fails to provide an employee a meal period in
21 accordance with the applicable provisions of this order, the
22 employer shall pay the employee one (1) hour of pay at the
23 employee’s regular rate of compensation for each workday that
24 the meal period is not provided. (*Wage Order 16-2001 section*
25 *10(F)*)

26 49. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
27 class were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each
28 day they worked five or more hours. Pursuant to California Labor Code § 512, they were also
entitled to a second 30-minute meal period when they worked more than ten (10) hours in a
workday.

50. During the relevant time period, Defendants failed to provide Plaintiff and the
Class Members with timely, off-duty meal periods in accordance with California Labor Code §
512 and the Wage Order. Plaintiff and the Class Members would receive their meal breaks after
the 5th hour worked or they would be interrupted during their breaks. Moreover, NORTHWEST
LANDSCAPE had no policy in place regarding keeping track of whether employees such as
Plaintiff and the Class Members were receiving timely, uninterrupted meal periods.

51. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing Plaintiff and the class with all timely meal periods required by California Labor Code § 512 and the Wage Order.

52. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all meal periods not provided to him. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with additional wages for all meal periods not provided to them as required by California Labor Code § 226.7.

53. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

54. By reason of the above, Plaintiff and the members of the class are entitled to premium wages for workdays in which one or more meal periods were not provided to them pursuant to California Labor Code § 226.7.

THIRD CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Lab. Code §§ 1194, 1197, and 1198)

(Plaintiff and the Class against Defendants)

55. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

56. At all relevant times, Plaintiff and the other Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code sections 1194, 1197, and 1198 and the Wage Order.

57. Section 2 of the Wage Order defines “hours worked” 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.”

58. Section 4 of the Wage Order requires an employer to pay non-exempt employees

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

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

5 60. Labor Code section 1197 makes it unlawful for an employer to pay an employee
6 less than the minimum wage required under the applicable Wage Order for all hours worked
7 during a payroll period.

8 61. Labor Code section 1198 makes it unlawful for an employer to employ an
9 employee under conditions that violate the Wage Order.

10 62. In conjunction, these provisions of the Labor Code require employers to pay non-
11 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
12 worked, including unrecorded hours when the employer knew or reasonably should have known
13 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
14 Cal.4th 575, 585.)

15 63. At all relevant times, Defendants did not provide Plaintiff and the Class Members
16 with the minimum wages to which they were entitled for all work performed. Plaintiff and the
17 Class Members were not paid for all hours worked, because the company would routinely time
18 shave and round down hours to the detriment of the employees, which would translate into
19 employees not getting paid for all hours worked in contravention of California's minimum wage
20 laws. Moreover, to the extent Plaintiff and the Class Members worked through their meal periods
21 or their meal periods were interrupted by work obligations, Plaintiff and the Class Members did
22 not receive compensation for all hours worked in violation of California's minimum wage laws.

23 64. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
24 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
25 failure to compensate Plaintiff and the other Class Members minimum wages for all hours
26 worked as required by California law.

27 65. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
28 Members have suffered damages, in an amount subject to proof, to the extent they were not paid

1 the minimum wages earned during each pay period during the applicable limitations period.

2 66. Pursuant to Labor Code section 1194, Plaintiff, on behalf of himself and Class
3 Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of
4 unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts
5 subject to proof.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME WAGES**

8 **(Lab. Code §§ 510, 1194, and 1198)**

9 **(Plaintiff and the Class against Defendants)**

10 67. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

11 68. At all relevant times, Plaintiff and the other Class Members have been non-exempt
12 employees of Defendants and entitled to the benefits and protections of California Labor Code
13 sections 510, 1194, and 1198 and the Wage Order.

14 69. Section 3 of the Wage Order states:

15 (A) Daily Overtime - General Provisions

16 (1) The following overtime provisions are applicable to employees 18 years of
17 age or over and to employees 16 or 17 years of age who are not required by law
18 to attend school and are not otherwise prohibited by law from engaging in the
19 subject work. Such employees shall not be employed more than eight (8) hours in
20 any workday or more than 40 hours in any workweek unless the employee
21 receives one and one-half (1 ½) times such employee's regular rate of pay for all
22 hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes
a day's work. Employment beyond eight (8) hours in any workday or more than
six (6) days in any workweek is permissible provided the employee is
compensated for such overtime at not less than:

23 (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours
24 worked in excess of eight (8) hours up to and including 12 hours in any workday,
25 and for the first eight (8) hours worked on the seventh (7th) consecutive day of
work in a workweek.

26 (b) Double the employee's regular rate of pay for all hours worked in excess of
27 12 hours in any workday and for all hours worked in excess of eight (8) hours on
the seventh (7th) consecutive day of work in a workweek.

28 (c) The overtime rate of compensation required to be paid to a nonexempt full-

1 time salaried employee shall be computed by using the employee's regular hourly
2 salary as one-fortieth (1/40) of the employee's weekly salary.

3 70. Labor Code section 510 states:

4 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
5 in one workday and any work in excess of 40 hours in any one workweek and the
6 first eight hours worked on the seventh day of work in any one workweek shall
7 be compensated at the rate of no less than one and one-half times the regular rate
8 of pay for an employee. Any work in excess of 12 hours in one day shall be
9 compensated at the rate of no less than twice the regular rate of pay for an
10 employee. In addition, any work in excess of eight hours on any seventh day of a
11 workweek shall be compensated at the rate of no less than twice the regular rate
12 of pay of an employee. Nothing in this section requires an employer to combine
13 more than one rate of overtime compensation in order to calculate the amount to
14 be paid to an employee for any hour of overtime work.

15 71. Labor Code section 1194 invalidates any agreement between an employer and an
16 employee to work for less than the minimum wage required under the applicable Wage Order.

17 72. Labor Code section 1198 makes it unlawful for an employer to employ an
18 employee under conditions that violate the Wage Order.

19 73. In conjunction, these provisions of the Labor Code require employers to pay non-
20 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
21 worked, including unrecorded hours when the employer knew or reasonably should have known
22 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
23 Cal.4th 575, 585.)

24 74. At all relevant times, Defendants required Plaintiff and the Class Members to
25 perform "off the clock". As such, Plaintiff and the Class Members often worked more than eight
26 (8) hours per day and more than forty (40) hours per week. Defendants, however, failed to pay
27 Plaintiff and the other Class Members for this off-the-clock work, and failed to compensate them
28 at one and one-half times their respective regular rates of pay for all overtime hours worked.
Moreover, despite providing bonuses and other incentive payments, Defendants did not factor in
those payments in calculating employees' correct regular rate of pay in order to then calculate
the correct overtime rate of pay.

75. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'

1 failure to compensate Plaintiff and the other Class Members for all overtime hours worked as
2 required by California law.

3 76. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
4 Members have suffered damages, in an amount subject to proof, to the extent they were not paid
5 the full amount of overtime wages earned during each pay period during the applicable limitations
6 period.

7 77. Pursuant to Labor Code section 1194, Plaintiff, on behalf of himself and Class
8 Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of
9 unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts
10 subject to proof.

11 **FIFTH CAUSE OF ACTION**

12 **FAILURE TO INDEMNIFY**

13 **(Lab. Code §§ 1198 & 2802)**

14 **(Plaintiff and the Class against all Defendants)**

15 78. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

16 79. At all relevant times, Plaintiff and the Class Members have been non-exempt
17 employees of Defendants and entitled to the benefits and protections of the California Labor Code
18 §§ 1198 and 2802 and the Wage Order.

19 80. In pertinent part, California Labor Code § 2802(a) states:

20 "An employer shall indemnify his or her employee[s] for all
21 necessary expenditures incurred by the employee in direct
22 consequence of the discharge of his or her duties."

23 81. Wage Order 4-2001/16-2001 Sections 9(B) and 8(B) state:

24 When tools or equipment are required by the employer or are
25 necessary to the performance of a job, such tools and equipment
26 shall be provided and maintained by the employer, except that an
27 employee whose wages are at least two (2) times the minimum
28 wage provided herein may be required to provide and maintain
hand tools and equipment customarily required by the trade or
craft.

82. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

83. At all relevant times, as a condition for employment, Defendants required Plaintiff and the Class Members to use personal tools, personal cell phones, and personal vehicles for work purposes. Defendants, however, failed to reimburse Plaintiff and the Class Members for these required business expenses.

84. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

85. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class Members are entitled to reimbursement for all necessary expenditures and losses and interest thereon, due and owing to them within four years of the date of the filing of the Complaint until the entry of judgment.

86. Accordingly, with respect to this cause of action, on behalf of himself and the Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys' fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(Plaintiff and the Class against all Defendants)

87. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

88. At all relevant times during the applicable limitations period, Plaintiff and the other Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code section 226.

89. Pursuant to California Labor Code section 226(a), Plaintiff and the other class members were entitled to receive, biweekly or at the time of each payment of wages, an accurate itemized statement showing:

- 1 (1) Gross wages earned,
- 2 (2) Total hours worked by the employee, except for any employee whose
- 3 compensation is solely based on a salary and who is exempt from payment of overtime under
- 4 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 5 (3) The number of piece rate units earned and any applicable piece rate if the
- 6 employee is paid on a piece-rate basis,
- 7 (4) All deductions, provided that all deductions made on written orders of the
- 8 employee may be aggregated and shown as one item,
- 9 (5) Net wages earned,
- 10 (6) The inclusive dates of the period for which the employee is paid,
- 11 (7) The name of the employee and his or her social security number, except
- 12 that by January 1, 2008, only the last four digits of his or her social security number or an
- 13 employee identification number other than a social security number may be shown on the itemized
- 14 statement,
- 15 (8) The name and address of the legal entity that is the employer, and
- 16 (9) All applicable hourly rates in effect during the pay period and the
- 17 corresponding number of hours worked at each hourly rate by the employee.
- 18 90. Pursuant to California Labor Code section 226(e), an employee suffering injury as
- 19 a result of a knowing and intentional failure by an employer to comply with subdivision (a) is
- 20 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
- 21 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
- 22 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
- 23 is entitled to an award of costs and reasonable attorneys' fees.
- 24 91. Pursuant to California Labor Code section 226(e), an employee is deemed to suffer
- 25 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
- 26 injury if the employer fails to provide accurate and complete information as required by California
- 27 Labor Code section 226(a) and the employee cannot "promptly and easily determine" from the
- 28 wage statement alone one or more of the following:

1 A. The amount of the gross wages or net wages paid to the employee during
2 the pay period or any of the other information required to be provided on the itemized wage
3 statement pursuant to California Labor Code section 226(a);

4 B. Which deductions the employer made from gross wages to determine the
5 net wages paid to the employee during the pay period;

6 C. The name and address of the employer and, if the employer is a farm labor
7 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
8 and address of the legal entity that secured the services of the employer during the pay period;
9 and

10 D. The name of the employee and only the last four digits of his or her social
11 security number or an employee identification number other than a social security number.

12 92. “Promptly and easily determine,” as stated in California Labor Code section
13 226(e), means a reasonable person would be able to readily ascertain the information without
14 reference to other documents or information.

15 93. As alleged herein, Defendants failed to provide Plaintiff and the other class
16 members with all meal and rest periods in compliance with California law. They also failed to
17 provide them with premium wages on workdays they failed to provide them with one or more
18 meal and/or rest periods in compliance with California law. Further, Defendants failed to
19 compensate Plaintiff and the other Class Members for all hours worked. As a result, Defendants
20 have failed to properly itemize Plaintiff and the other Class Members’ gross and net wages earned,
21 total hours worked, hourly rate of pay, the corresponding number of hours worked at each hourly
22 rate, and other requirements of California Labor Code § 226. As a result, Defendants have violated
23 California Labor Code § 226.

24 94. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
25 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
26 the other Class Members with accurate wage statements but intentionally provided wage
27 statements that Defendants knew were not accurate.

28 95. As a result of being provided with inaccurate wage statements by Defendants,

1 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
2 wage statements were violated and they were misled about the amount of wages they had actually
3 earned and were owed. In addition, the absence of accurate information on their wage statements
4 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
5 and mathematical computations to determine the amounts of wages owed, has caused difficulty
6 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
7 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
8 and the other Class Members were not able to ascertain from the wage statements whether
9 Defendants complied with their obligations under California Labor Code section 226(a).

10 96. Pursuant to California Labor Code section 226(e), Plaintiff and the other class
11 members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)
12 for the initial pay period in which a violation of California Labor Code section 226(a) occurred
13 and one hundred dollars for each violation of California Labor Code section 226(a) in a
14 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
15 Class Member, and are also entitled to an award of costs and reasonable attorneys' fees.

16 97. Accordingly, with respect to this cause of action, on behalf of himself and the other
17 Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs
18 and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to
19 proof.

20 **SEVENTH CAUSE OF ACTION**

21 **WAITING TIME PENALTIES**

22 **(Lab. Code §§ 201-203)**

23 **(Plaintiff and the Class against all Defendants)**

24 98. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

25 99. At all relevant times during the applicable limitations period, Plaintiff and the
26 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
27 of California Labor Code sections 201 to 203 and the Wage Order.

28 100. Labor Code section 201 provides that all earned and unpaid wages of an employee

1 who is discharged are due and payable immediately at the time of discharge.

2 101. Labor Code section 202 provides that all earned and unpaid wages of an employee
3 who quits after providing at least 72-hours notice before quitting are due and payable at the time
4 of quitting and that all earned and unpaid wages of an employee who quits without providing at
5 least 72-hours notice before quitting are due and payable within 72 hours.

6 102. By failing to pay all earned minimum, regular, overtime, and premium wages to
7 Plaintiffs and the class as described above, Defendants failed to timely pay Plaintiff and the class
8 all earned and unpaid wages in violation of Labor Code section 201 or 202.

9 103. Plaintiff is informed and believes that Defendants' failures to timely pay all final
10 wages to them and the class members have been willful in that Defendants have the ability to pay
11 final wages in accordance with Labor Code sections 201 and 202 but have intentionally adopted
12 policies or practice that are incompatible with those requirements.

13 104. Labor Code section 203 provides that the wages of an employee continue on a
14 daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned
15 and unpaid wages to the employee in accordance with Labor Code section 201 or 202.

16 105. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
17 and the class all of their earned and unpaid wages have been willful in that, at all relevant times,
18 Defendants have deliberately maintained policies and practices that violate the requirements of
19 the Labor Code and the Wage Order even though, at all relevant times, they have had the ability
20 to comply with those legal requirements.

21 106. Pursuant to Labor Code section 203, Plaintiff seeks waiting time penalties on
22 behalf of himself and the Class Members, in amounts subject to proof not to exceed 30 days of
23 waiting time penalties for each class member.

24 **EIGHTH CAUSE OF ACTION**

25 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

26 **(Lab. Code §§ 204)**

27 **(Plaintiff and the Class against all Defendants)**

28 107. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

108. California Labor Code Section 204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work.

109. At all times relevant during the liability period, Defendants failed to pay Plaintiff and the Class Members the full amount of all owed wages when due as required by California Labor Code Section 204.

110. Defendants failed to pay Plaintiff and the Class Members all wages earned each pay period. Plaintiff is informed, believes, and thereon alleges, that all times relevant during the liability period, Defendants maintained a policy or practice of not paying Plaintiff and the Class Members wages for all hours worked, including overtime hours and premium pay for missed rest breaks and meal breaks.

111. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent he was not paid all wages each pay period. The precise amount of unpaid wages is not presently known to Plaintiff but can be determined directly from Defendants' records or indirectly based on information from Defendants' records.

112. Under this cause of action, Plaintiff prays for penalties on behalf of himself and Class Members due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

NINTH CAUSE OF ACTION

UNLAWFUL DEDUCTIONS

(Lab. Code §§ 221)

(Plaintiff and the Class against all Defendants)

113. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

114. Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

115. At all relevant times, NORTHWEST LANDSCAPE deducted \$50.00 from Plaintiff's and the Class Members' paychecks for an "equipment deposit 2", which is an unlawful

1 deduction under Labor Code section 221.

2 116. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
3 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
4 deduction of wages belonging to Plaintiff and the other Class Members in violation of California
5 law.

6 **TENTH CAUSE OF ACTION**

7 **UNFAIR COMPETITION**

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

9 **(Plaintiff and the Class against all Defendants)**

10 117. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

11 118. At all relevant times during the applicable limitations period, Plaintiff and the
12 other Class Members have been employees of Defendants and entitled to the benefits and
13 protections of the Business and Professions Code sections 17200, et seq.

14 119. The unlawful conduct of Defendants alleged herein amounts to and constitutes
15 unfair competition within the meaning of California Business & Professions Code sections 17200,
16 et seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
17 unfairly gained a competitive advantage over other comparable companies doing business in
18 California that comply with their legal obligations to, among other things, pay their employees
19 premium wages for workdays in which they did not provide employees with one or more meal
20 and rest periods, reimburse their employees for reasonable expenses incurred during the course
21 of performing their duties, provide suitable seating for their employees, provide paid sick leave
22 to their employees, and pay their employees all earned wages for all minimum, regular, and
23 overtime hours worked at the correct rates of pay. Defendants have violated California Labor
24 Code §§ 201, 202, 203, 204, 221, 226, 226.7, 233, 246, 510, 512, 558, 1174, 1194, 1197, 1198,
25 1771, 1774, 2802, and 3700.5.

26 120. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
27 other Class Members have suffered injuries in fact and lost money or property. Defendants
28 deprived Plaintiff and the other Class Members of minimum, overtime, and premium wages and

1 reimbursement for expenses that Plaintiff and the other Class Members incurred during the course
2 of performing their duties.

3 121. Pursuant to California Business & Professions Code section 17203, Plaintiff and
4 the other Class Members are entitled to restitution of all monies rightfully belonging to them that
5 Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
6 and unfair business practices.

7 122. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
8 connection with their unfair competition claims pursuant to California Code of Civil Procedure
9 section 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

10 **ELEVENTH CAUSE OF ACTION**

11 **CIVIL PENALTIES UNDER PAGA**

12 **(By Plaintiff and the Class against all Defendants)**

13 123. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 124. The "Aggrieved Employees" are all members of the class defined above who
15 Defendants employed during the period beginning May 16, 2023 and ending on the date that final
16 judgment is entered in this action.

17 125. During the applicable time period, Defendants violated California Labor Code §§
18 201, 202, 203, 204, 221, 226, 226.7, 233, 246, 510, 512, 558, 1174, 1194, 1197, 1198, 1771, 1774,
19 2802, 3700.5, and the Wage Order.

20 126. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
21 behalf of himself or himself and other current or former employees, to bring a civil action to
22 recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

23 127. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
24 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
25 §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 558, 1174, 1194, 1197, 1198, 1771, 1774,
26 2802, and 3700.5 during the applicable limitations period in the following amounts:

27 A. For violations of California Labor Code § 204, one hundred dollars
28 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars

1 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
2 (penalty amounts established by California Labor Code § 210).

3 B. For violations of California Labor Code § 221, one hundred dollars (\$100.00)
4 for each Aggrieved Employee for each initial and intentional violation (if found to be neither
5 willful nor intentional) and \$200 for each aggrieved employee for each initial violation of
6 California Labor Code § 221 (if found to be either willful or intentional) and for each subsequent
7 violation of California Labor Code § 221 (regardless of whether they are found to be either willful
8 or intentional) (penalties set by California Labor Code § 225.5).

9 C. For violations of California Labor Code § 226(a), two hundred fifty dollars
10 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
11 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
12 California Labor Code § 226.3).

13 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
14 (\$50.00) for each Aggrieved Employee for each initial violation and one hundred dollars
15 (\$100.00) for each Aggrieved Employee for each subsequent violation per pay period (penalty
16 amounts established by California Labor Code § 558).

17 E. For violations of California Labor Code § 1174, five hundred dollars
18 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
19 California Labor Code § 1174.5).

20 F. For violations of California Labor Code § 1197, one hundred dollars
21 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
22 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation per pay period
23 (regardless of whether the initial violations were intentionally committed) (penalty amounts
24 established by California Labor Code § 1197.1).

25 G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 233, 246,
26 1194, 1198, 1771, 1774, 2802, and 3700.5, one hundred dollars (\$100.00) for each Aggrieved
27 Employee per pay period for each initial violation and two hundred dollars (\$200.00) for each
28 Aggrieved Employee per pay period for each subsequent violation (penalty amounts established

1 by California Labor Code § 2699(f)(2)).

2 128. Plaintiff has complied with the procedures for bringing suit specified in California
3 Labor Code § 2699.3. By letters dated May 16, 2024 and June 14, 2024, Plaintiff filed written
4 notices online with the Labor and Workforce Development Agency (“LWDA”) and gave written
5 notice by certified mail to Defendants of the specific provisions of the California Labor Code
6 alleged to have been violated, including the facts and theories to support the alleged violations.
7 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
8 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice.

9 129. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
10 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
11 connection with their claims for civil penalties.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
14 relief and judgment against Defendants as follows:

- 15 A. An order that the action be certified as a class action;
- 16 B. An order that Plaintiff be appointed class representative;
- 17 C. An order that counsel for Plaintiff be appointed class counsel;
- 18 D. Unpaid Wages;
- 19 E. Actual Damages;
- 20 F. Statutory Damages;
- 21 G. Liquidated Damages;
- 22 H. Restitution;
- 23 I. Declaratory and injunctive relief;
- 24 J. Equitable relief;
- 25 K. Pre-judgment interest;
- 26 L. Statutory penalties;
- 27 M. Civil penalties;
- 28 N. Costs of suit;

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- O. Interest;
- P. Reasonable attorneys’ fees; and
- Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

MESSRELIAN LAW INC.

Dated: August 20, 2024

By Maralle Messrelian
HAROUT MESSRELIAN
MARALLE MESSRELIAN, Attorneys for
Plaintiff, NOE SANDOVAL-OROZCO, and all
others similarly situated