

BOKHOUR LAW GROUP, P.C.
Mehrdad Bokhour, Esq., CA Bar No. 285256
mehrdad@bokhourlaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 10/17/2024 4:32 PM
Reviewed By: M. Suarez
Case #24CV438268
Envelope: 17001227**

FALAKASSA LAW, P.C.
Joshua S. Falakassa, CA Bar No. 295045
josh@falakassalaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

Attorneys for Plaintiff and the Putative Classes

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JOSE RIVERA, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

JENSEN LANDSCAPE CONTRACTOR,
LLC., a California Limited Liability Company;
and DOES 1-50, inclusive.

Defendantss.

CASE NO.: 24CV438268

**FIRST AMENDED CLASS AND PAGA
ACTION COMPLAINT:**

- (1) FAILURE TO PAY ALL MINIMUM WAGES;
- (2) UNLAWFUL DEDUCTIONS;
- (3) MEAL PERIOD VIOLATIONS;
- (4) REST PERIOD VIOLATIONS;
- (5) WAGE STATEMENT VIOLATIONS;
- (6) WAITING TIME PENALTIES;
- (7) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES;
- (8) UNFAIR COMPETITION; &
- (9) PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”)

DEMAND FOR JURY TRIAL

1 Plaintiff Jose Rivera (“Plaintiff”), on behalf of himself and all other similarly situated non-
2 exempt employees, alleges and complains of Defendants Jensen Landscape Contractor, LLC and
3 DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendants are providers of landscape construction and integrated landscape
6 management services in Milpitas, California.

7 2. Plaintiff brings this class action lawsuit against Defendants for alleged violations of the
8 California Labor Code and Business and Professions Code.

9 3. As set forth below, Plaintiff alleges that Defendants failed to pay for all hours worked
10 due to its failure to record and pay for all time worked off the clock. Plaintiff further alleges that
11 Defendants unlawfully withheld amounts from the wages of Plaintiff and other non-exempt
12 employees. Next, Plaintiff alleges that Defendants’ meal and rest period policies and practices failed
13 to allow and permit non-exempt employees to take all compliant and timely meal and rest periods or
14 pay premium wages at the “regular rate of pay” in lieu thereof. Plaintiff further alleges that
15 Defendants failed to provide non-exempt employees with accurate written itemized wage statements
16 in violation of Labor Code § 226(a), failed to reimburse all necessary business expenses incurred,
17 and failed to timely pay all final wages upon separation of employment in violation of Labor Code
18 §§ 201-203.

19 4. Plaintiff also brings a claim for civil penalties based on the foregoing Labor Code
20 violations under the Private Attorney General Act (“PAGA”).

21 5. Based on these alleged Labor Code violations, Plaintiff now brings this class action
22 and representative action to recover unpaid wages, restitution, penalties, and other related relief for
23 himself and all other similarly situated non-exempt employees.

24 **JURISDICTION AND VENUE**

25 6. Plaintiff, on behalf of himself and all other similarly situated employees, hereby bring
26 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
27 203, 204, 210, 221, 224, 226(a), 226(e), 226.3, 226.7, 227.3, 512, 516, 1174, 1174.4, 1194, 1197.1,
28 1199, 2802-2804, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in

1 addition to seeking declaratory relief and restitution pursuant to California Business and Professions
2 Code § 17200, *et seq.*

3 7. This class action is brought pursuant to California Code of Civil Procedure § 382.

4 8. This Court has jurisdiction over Defendants' violations of the California Labor Code
5 and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional
6 minimum.

7 9. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
8 §§ 395(a) and 395.5, Defendants operates in California within the County of Santa Clara, and
9 Defendants is within the jurisdiction of this Court for purposes of service of process.

10 **PARTIES**

11 10. At all relevant times herein, Plaintiff, who is over 18, was and currently is a California
12 resident residing in the State of California.

13 11. Plaintiff is informed and believes and alleges that Defendants are authorized to do
14 business within the County of Santa Clara and is and/or was the legal employer of Plaintiff and the
15 Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants'
16 policies and/or practices complained of herein and has been deprived of the rights guaranteed to him
17 by California Labor Code §§ 201-203, 204, 210, 221, 224, 226(a), 226(e), 226.3, 226.7, 227.3, 512,
18 516, 1174, 1174.4, 1194, 1197.1, 1199, 2802-2804, and the California Business and Professions Code
19 § 17200 *et seq.*, and applicable Wage Orders.

20 12. Plaintiff is informed and believes, and based thereon alleges, that during the four years
21 preceding the filing of the Complaint and continuing to the present, Defendants did (and continues to
22 do) business in the State of California, County of Santa Clara.

23 13. Plaintiff does not know the true names or capacities, whether individual, partner, or
24 corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
25 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
26 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and
27 believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, or
28 corporate, were responsible in some manner for the acts and omissions alleged herein and proximately

1 caused Plaintiff and the Classes to be subject to the unlawful employment practices alleged herein.

2 14. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
3 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
4 times herein mentioned, each of the Defendants participated in the acts hereinafter alleged to have
5 been done by the named Defendants. Furthermore, the Defendants, and each of them, were the agents,
6 servants, and employees of each and every one of the other Defendants, as well as the agents of all
7 Defendants, and at all times herein mentioned, were acting within the course and scope of said agency
8 and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified
9 each and every one of the acts or omissions complained of herein.

10 15. At all times mentioned herein, Defendants, and each of them, were members of and
11 engaged in a joint venture, partnership, and common enterprise and acting within the course and
12 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
13 alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the
14 Classes.

15 **COMMON FACTUAL ALLEGATIONS**

16 16. Defendants provide landscape construction and integrated landscape management
17 services in Milpitas, California.

18 17. Plaintiff was employed by Defendants as a non-exempt employee with the title of
19 “Foremen” out of its Milpitas location from February 2002 until his separation from employment on
20 March 20, 2024. Plaintiff and other non-exempt employees (including, but not limited to, Irrigation
21 Technician, Gardener, Technician, Landscape Foreman, Operations Associate, Administrator, and all
22 other non-exempt positions) were responsible for all aspects of the Defendants’ business in the State
23 of California. However, in these roles, Plaintiff and non-exempt employees were often not afforded
24 all protections and rights conferred under the California Labor Code and applicable wage orders.

25 18. First, at all relevant times, Defendants have consistently failed to accurately record
26 and pay for all time worked, including when non-exempt employees were under the employer’s
27 control. This included a policy and practice of failing to properly record non-exempt employees’ time
28 worked, including all time spent working off the clock, including, but not limited to, required pre and

1 post-shift work tasks such as loading the truck and his materials. As a result of this company-wide
2 policy/practice, Plaintiff and other non-exempt employees are not compensated for all the hours they
3 work, violating Labor Code §§ 204, 210, 1194, 1197.1, 1199, and applicable Wage Orders.

4 19. As a result, over a period of time, Plaintiff and other non-exempt employees were not
5 properly paid for all hours worked in violation of Cal. Labor Code §§ 204, 210, 1194, 1197.1, 1199,
6 and applicable Wage Orders.

7 20. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
8 by an applicable state or local law or by an order of the commission a civil penalty, restitution of
9 wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed,
10 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
11 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
12 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
13 underpaid regardless of whether the initial violation was intentionally committed.

14 21. Furthermore, at all relevant times, Defendants unlawfully deducted amounts from
15 Plaintiff and other non-exempt employees' wages in violation of Labor Code §§ 221 and 224 and
16 applicable Wage Orders. Notably, as it pertains to Plaintiff and other non-exempt employees,
17 Defendants unlawfully deducted amounts for "Auto Allow Out." Indeed, Plaintiff and other non-
18 exempt employees drove Jensen company vehicles, and there is no reason for Defendants to deduct
19 any amounts for this non-authorized deduction notated as "Auto Allow Out." For example, **Exhibit**
20 **"A"** is attached as a true and correct copy of Plaintiff's wage statement that includes a deduction of
21 \$15 for "Auto Allow Out." Although Defendants may contend that this deduction was an offset for
22 the payment of \$15 for "Auto Allow In," that amount was counted towards gross wages and subject
23 to tax/other withholdings. As a result, Plaintiff and other non-exempt employees systematically had
24 their wages unlawfully deducted due to Defendants' unlawful policy/practice and are entitled to
25 repayment of such wages, plus penalties and liquidated damages as provided by law.

26 22. Moreover, at all relevant times, Plaintiff and other non-exempt employees were denied
27 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
28 Defendants uniform meal period policies/practices, operational requirements, and work demands,

1 Plaintiff and other non-exempt employees often could not take timely and uninterrupted net 30-
2 minute first meal periods before the end of the fifth hour of work. Further, when Plaintiff and other
3 non-exempt employees worked more than 10.0 hours in a shift, they were not allowed and permitted
4 to take a mandated second meal period before the end of the tenth hour of work in violation of the
5 Labor Code and applicable Wage Orders. Indeed, Plaintiff's and other non-exempt employees' meal
6 periods were often interrupted and/or lasted fewer than 30 minutes due to Defendants' meal period
7 policies/procedures, operational requirements, and work demands.

8 23. In addition, for each missed or non-compliant meal period, Defendants failed and
9 continues to fail to maintain a mechanism by which non-exempt employees were paid meal period
10 premiums at the "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11
11 5th 858 and Labor Code § 226.7.

12 24. Accordingly, due to Defendants' uniform meal period practices, non-exempt
13 employees were also regularly denied legally compliant meal periods in violation of Labor Code §§
14 226.7, 510, 516, and applicable Wage Orders.

15 25. Next, at all relevant times, Plaintiff and other non-exempt employees were not
16 provided with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due
17 to Defendants's uniform rest period policies/practices, operational requirements, and work demands.
18 As a result, Plaintiff and other non-exempt employees were and are often unable to take a net 10-
19 minute duty-free rest period for every major fraction of four hours worked. This includes a second
20 rest period for shifts in excess of six hours and a third rest period for shifts in excess of 10.0 hours in
21 a workday. Making matters worse, Plaintiff and other non-exempt employees were not allowed and
22 permitted to leave the work locations during rest periods.

23 26. By not relieving all non-exempt employees of all duties during rest periods,
24 Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services,*
25 *Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve
26 employees of all duties and relinquish control over how employees spend their time."] (Emphasis
27 added). In *Augustus*, the California Supreme Court expressly rejected the employer's assertion that it
28 could provide an on-duty rest period to employees who worked as security guards and further

1 explained: “that employers [must] relinquish any control over how employees spend their break time
2 and relieve their employees of all duties.” *Id.* at 273. Each time non-exempt employees could not take
3 a compliant rest period, Defendants failed and continue to fail to adequately pay rest period premium
4 payments at the “regular rate of pay” as required by Labor Code § 226.7.

5 27. Accordingly, due to Defendants’ uniform rest period policies/practices, non-exempt
6 employees were regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7,
7 512, and applicable Wage Orders.

8 28. As a result of Defendants’ failure to pay Plaintiff and other non-exempt employees for
9 all hours they were subject to the control of Defendants, including all minimum wages, Defendants’
10 unlawful deductions from wages, and Defendants’ failure to pay all meal and rest period premiums
11 at the “regular rate of pay,” Defendants issued wage statements which failed to identify the gross
12 wages earned accurately, the total hours worked, the net wages earned, and the correct corresponding
13 number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

14 29. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
15 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
16 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
17 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
18 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

19 30. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
20 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants violations of
21 Labor Code § 226(a). Consequently, Plaintiff and other non-exempt employees would be entitled to
22 recover penalties under Labor Code § 226(e).

23 31. Moreover, because Defendants failed to pay all minimum wages, Defendants’
24 unlawful deductions from wages, and failure to pay all meal and rest period premiums at the “regular
25 rate of pay,” Defendants also failed and continue to fail to pay Plaintiff and other non-exempt
26 employees all wages owed at their time of separation from employment in violation of Labor Code
27 §§ 201-203. Thus, non-exempt employees would be entitled to recover waiting time penalties under
28 Labor Code §§ 201-203.

32. Finally, at all relevant times, Defendants required Plaintiff and other non-exempt employees to incur necessary business expenses for work-related purposes but did not reimburse non-exempt employees adequately for these expenditures required in violation of Labor Code §§ 2802-2804. Here, Defendants uniformly failed to reimburse non-exempt employees for all necessary costs incurred in discharging their duties, including, but not limited to, the costs of personal cell phone use, uniforms, and work tools for work purposes. Accordingly, due to Defendants' uniform failure to adequately reimburse for necessary business expenditures in violation of Labor Code §§ 2800-2802 and applicable Wage Orders.

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

All current or former non-exempt hourly employees who work or worked for Defendants in California during the four years immediately preceding the filing of the Complaint through the date of trial. (the “Class”);

All current or former non-exempt employees who worked for Defendants in California from whom wages were deducted unlawfully from four years prior to the filing of this complaint through the date of trial. (“the Unlawful Deductions Subclass”);

All current or former employees who work or worked for Defendants in California during the one year immediately preceding the filing of the Complaint through the date of trial. (“the Wage Statement Subclass”)

All employees who work or worked for Defendants in California and who left their employment during the three years immediately preceding the filing of the Complaint through the date of trial. (“Waiting Time Penalty Subclass”)

(collectively “the Classes”)

34. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment and payroll records.

1 35. **Common Questions of Law and Fact Predominate/Well-Defined Community of**

2 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
3 non-exempt employees, which predominate over questions affecting only individual members
4 including, without limitation to:

5 1. Whether Defendants failed to properly record and pay for all hours worked by Class
6 Members;

7 2. Whether Defendants unlawfully deducted wages from members of the Class in violation
8 of Labor Code §§ 221, 224;

9 3. Whether Defendants provided legally compliant meal and rest periods or proper
10 compensation at the “regular rate of pay” in lieu thereof to members of the Class;

11 4. Whether Defendants furnished legally compliant wage statements to members of the
12 Wage Statement Subclass pursuant to Labor Code § 226(a);

13 5. Whether the timing and amount of payment of final wages to members of the Waiting
14 Time Penalty Subclass at the time of separation from employment were unlawful; and

15 6. Whether Defendants failed to reimburse Class Members for all necessary business
16 expenses in violation of Labor Code §§ 2802-2804.

17 36. **Predominance of Common Questions:** Common questions of law and fact
18 predominate over questions that affect only individual members of the Classes. The common
19 questions of law set forth above are numerous and substantial and stem from Defendants’ policies
20 and/or practices applicable to each individual class member, such as, without limitation, Defendants’
21 failure to pay for all hours worked, Defendants’ unlawful deductions from wages, Defendants’ failure
22 to provide all compliant meal and rest periods or premiums at the “regular rate of pay” in lieu thereof,
23 Defendants’ failure to provide accurate itemized wage statements, Defendants’ failure to pay wages
24 timely, Defendants’ failure to reimburse for all necessary business expenses, and Defendants’ failure
25 to pay for all wages due upon separation of employment. As such, the common questions predominate
26 over individual questions concerning each class member’s showing as to his or her eligibility for
27 recovery or the amount of his or her damages.

28 37. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because

1 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
2 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
3 Plaintiff, like the members of the Classes, was deprived of minimum wages, had wages unlawfully
4 deducted, was deprived of meal and rest period premium wages, was subject to Defendants' uniform
5 meal and rest period policies/practices, was not provided accurate itemized wage statements, was not
6 reimbursed for all necessary business expenses, and was not timely paid all wages owed upon
7 separation of employment.

8 38. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
9 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
10 attorneys are ready, willing, and able to fully and adequately represent the members of the Classes.
11 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
12 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
13 members of the Classes.

14 39. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
15 important public interest in establishing minimum working conditions and standards in California.
16 These laws and labor standards protect the average working employee from exploitation by
17 employers who have the responsibility to follow the laws and who may seek to take advantage of
18 superior economic and bargaining power in setting onerous terms and conditions of employment. The
19 nature of this action and the format of laws available to Plaintiff and members of the Classes make
20 the class action format a particularly efficient and appropriate procedure to redress the violations
21 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
22 necessarily gain an unconscionable advantage since they could exploit and overwhelm the limited
23 resources of each individual plaintiff with their vastly superior financial and legal resources.

24 40. Moreover, requiring each member of the Classes to pursue an individual remedy would
25 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
26 against their former and/or current employer for real and justifiable fear of retaliation and permanent
27 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
28 the individual class members, even if possible, would create a substantial risk of inconsistent or

1 varying verdicts or adjudications with respect to the individual class members against Defendants
2 herein and which would establish potentially incompatible standards of conduct for Defendants;
3 and/or legal determinations with respect to individual class members which would, as a practical
4 matter, be dispositive of the interest of the other class members not parties to adjudications or which
5 would substantially impair or impede the ability of the class members to protect their interests.
6 Further, the claims of the individual members of the class are not sufficiently large to warrant
7 vigorous individual prosecution considering all of the concomitant costs and expenses attending
8 thereto. As such, the Classes identified in Paragraph 32 are maintainable as Classes under § 382 of
9 the Code of Civil Procedure.

10 **FIRST CAUSE OF ACTION**
11 **MINIMUM WAGE VIOLATIONS**
12 **(AGAINST ALL DEFENDANTS)**

13 41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 42. Section 4 of the applicable Wage Order(s) and Labor Code §§ 1197 and 1182.12
15 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by
16 state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the
17 legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together
18 with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
19 wages and interest accrued thereon.

20 43. At all relevant times herein, Defendants failed to record all time accurately worked,
21 including, but not limited to, failing to record time worked properly and all time spent working off-
22 the-clock, including, but not limited to, required pre shift and post shift tasks such as load the truck
23 and his materials, which resulted in these individuals not being paid for all hours they actually
24 suffered or permitted to work. Accordingly, Plaintiff and members of the Classes were not
25 compensated for all hours worked, including all hours they were subject to the control of Defendants
26 and/or suffered or permitted to work under the Labor Code and applicable Wage Orders.

27 44. Labor Code § 1198 makes an employee's employment unlawful under conditions the
28 Industrial Welfare Commission prohibits. Labor Code §§ 1194(a) and 1194.2(a) provide that an

1 employer who has failed to pay its employees the legal minimum wage is liable to pay those
2 employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal
3 to the wages due and interest thereon.

4 45. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
5 Plaintiff and the Classes have sustained economic damages, including but not limited to unpaid wages
6 and lost interest, in an amount to be established at trial, and they are entitled to recover economic and
7 statutory damages and penalties and other appropriate relief as a result of Defendants' violations of
8 the Labor Code and applicable Wage Orders.

9 46. Defendants' practice and uniform administration of corporate policy regarding illegal
10 employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members
11 of the Classes in a civil action for the unpaid amount of minimum wages, liquidated damages,
12 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
13 Code §§ 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

14 **SECOND CAUSE OF ACTION**

15 **UNLAWFUL DEDUCTIONS FROM WAGES**

16 **(AGAINST ALL DEFENDANTS)**

17 47. Plaintiff re-alleges and incorporates all previous paragraphs by reference.

18 48. An employer can lawfully withhold amounts from an employee's wages only when:
19 (1) required or empowered to do so by state or federal law; (2) when a deduction is expressly
20 authorized in writing by the employee to cover insurance premiums, benefit plan contributions or
21 other deductions not amounting to a rebate on the employee's wages; or (3) when a deduction to
22 cover health, welfare or pension contributions is expressly authorized by a wage or collective
23 bargaining agreement. (Labor Code §§ 221, 224)

24 49. During the entire relevant statutory period, Defendants systematically made unlawful
25 deductions from Plaintiff's wages for "Auto Allow Out", amongst other things, when Defendants
26 were not authorized by to do so by law or by Plaintiff or other non-exempt employees.

27 50. In committing the foregoing acts, Defendants acted oppressively, maliciously,
28 fraudulently, and/or outrageously toward Plaintiff and members of the Unlawful Deductions

1 Subclass, with conscious disregard for their known rights and to cause and/or willfully disregard the
2 probability of causing, unjust and cruel hardship to Plaintiff and members of the Unlawful Deductions
3 Subclass. In so acting, Defendants intended to and did vex, injure, and annoy Plaintiff and members
4 of the Unlawful Deductions Subclass. Therefore, an assessment of punitive damages should be made
5 against Defendants in an amount sufficient to punish them and to prevent them from willfully
6 engaging in future unlawful conduct.

7 51. Plaintiff and the Unlawful Deductions Subclass are entitled to all appropriate remedies
8 provided by the California Labor Code and applicable IWC Wage Orders, including unpaid wages,
9 liquidated damages, civil penalties, attorney fees, and costs of suit. In addition, Plaintiff is entitled to
10 injunctive relief to prevent future violations of their rights under the California Labor Code and
11 applicable IWC Wage Orders.

12 **THIRD CAUSE OF ACTION**

13 **MEAL PERIOD VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

15 52. Plaintiff re-alleges and incorporates all previous paragraphs by reference.

16 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
17 their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff
18 and members of the Class, with all required meal periods in accordance with the mandates of the
19 California Labor Code and applicable Wage Orders, for the reasons set forth in the Common
20 Allegations section of this Complaint.

21 54. Despite Defendants' violations, Defendants have not paid an additional hour of pay at
22 the "regular rate of pay" to Plaintiff and Class members at their respective regular rates of pay for
23 each violation, per California Labor Code § 226.7.

24 55. As a result, Defendants is responsible for paying premium compensation for meal
25 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
26 applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

27 **FOURTH CAUSE OF ACTION**

28 **REST PERIOD VIOLATIONS**

1 **(AGAINST ALL DEFENDANTS)**

2 56. Plaintiff re-alleges and incorporates all previous paragraphs by reference.

3 57. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish
4 the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for
5 each four (4) hour period worked, or a major fraction thereof.

6 58. Due to their unlawful rest period policy/practices and operational requirements/work
7 demands, Defendants did not authorize and permit Plaintiff and Class members to take all rest periods
8 to which they were legally entitled.

9 59. Despite Defendants' violations, Defendants have not paid an additional hour of pay at
10 the "regular rate of pay" to Plaintiff and Class members at their respective regular rates of pay for
11 each violation, per California Labor Code § 226.7.

12 60. The foregoing violations create an entitlement to recovery by Plaintiff and members
13 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
14 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
15 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

16 **FIFTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

18 **(AGAINST ALL DEFENDANTS)**

19 61. Plaintiff re-alleges and incorporates all previous paragraphs by reference.

20 62. Labor Code 226(a) states in pertinent part the following:

21 "(a) An employer, semimonthly or at the time of each payment of wages, shall
22 furnish to his or her employee, either as a detachable part of the check, draft, or
23 voucher paying the employee's wages, or separately if wages are paid by personal
24 check or cash, an accurate itemized statement in writing showing (1) gross wages
25 earned, (2) total hours worked by the employee, (3) the number of piece-rate units
26 earned and any applicable piece rate if the employee is paid on a piece-rate basis,
27 (4) all deductions, provided that all deductions made on written orders of the
28 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
inclusive dates of the period for which the employee is paid, (7) 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, (8) the name

1 and address of the legal entity that is the employer, and (9) all applicable hourly
2 rates in effect during the pay period and the corresponding number of hours worked
3 at each hourly rate by the employee.”

4 63. As set forth above, during the Class Period, Defendants issued and continues to issue
5 wage statements to its employees, including Plaintiff and members of the Wage Statement Subclass,
6 which are inadequate under Labor Code Section § 226(a).

7 64. As a result of Defendants’ failure to pay Plaintiff and the Wage Statement Subclass
8 for all minimum wages and missed meal and rest period premiums at the appropriate legal rate,
9 unlawful deductions from wages, Defendants failed to include required information on Plaintiff and
10 the Wage Statement Subclass’ wage statements, including, but not limited to, the gross wages earned,
11 the net wages earned in violation of Labor Code section 226(a), (1,2,5 and 9).

12 65. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing
13 and intentional.

14 66. As a result of Defendants’ issuance of inaccurate itemized wage statements to Plaintiff
15 and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor
16 Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an initial
17 penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty
18 of \$4,000 per Plaintiff and per every member of the Wage Statement Subclass from Defendants’
19 pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys’ fees.

20 **SIXTH CAUSE OF ACTION**

21 **WAITING TIME PENALTIES**

22 **(AGAINST ALL DEFENDANTS)**

23 67. Plaintiff re-alleges and incorporates all previous paragraphs by reference.

24 68. The actionable period for this cause of action is three years before filing this Complaint
25 through the present and ongoing until the violation is corrected or the class is certified.

26 69. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing
27 to Plaintiff and the Waiting Time Subclass during the actionable period for this cause of action at or
28 around the time their employment is terminated or ended.

70. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, the employer is liable for penalties for continued compensation up to thirty (30) workdays.

71. Defendants willfully failed to pay the Waiting Time Subclass for all hours worked, including all minimum wages, and their meal and rest period premiums at the “regular rate of pay” and failed to repay the unlawful deductions from wages before or upon termination or separation from employment with Defendants as required by Labor Code §§ 201 and 202.

72. As a result, Defendants is liable to the Waiting Time Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Time Subclass pursuant to Labor Code § 203. *See, e.g.,* DLSE Manual, 4.3.4 (Failure to pay any wages due upon termination entitles an employee to recover waiting time penalties).

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES

(AGAINST ALL DEFENDANTS)

73. Plaintiff re-alleges and incorporates all previous paragraphs by reference.

74. Labor Code 2802(a) states in pertinent part the following: “(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

75. As set forth above, Plaintiff and Class members must be compensated for all necessary business expenditures, including, but not limited to, a reasonable portion of their monthly personal cell phone bills incurred in the discharge of their duties. (See *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement claim and

1 adopting the logic of *Cochran*).

2 76. At all relevant times, Defendants have failed to comply with Labor Code Section 2802
3 and the applicable Wage Orders by failing to reimburse Plaintiff and the Class for all necessary
4 business expenditures.

5 **EIGHT CAUSE OF ACTION**

6 **UNFAIR COMPETITION**

7 **(AGAINST ALL DEFENDANTS)**

8 77. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 78. Defendants have engaged and continue to engage in unfair and/or unlawful business
10 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
11 failing to pay for all hours worked, by unlawfully deducting from wages, by failing to provide all
12 legally required meal and rest periods or pay premium payments at the “regular rate of pay” in lieu
13 thereof, by failing to provide accurate wage statements, by failing to reimburse for all necessary
14 business expenses adequately, and by failing to pay all earned wages at the time of separation from
15 employment.

16 79. Defendants’ utilization of these unfair and/or unlawful business practices deprived
17 Plaintiff and continues to deprive members of the Classes of compensation to which they are legally
18 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over
19 Defendants competitors who have been and/or are currently employing workers and attempting to do
20 so in honest compliance with applicable wage and hour laws.

21 80. Because Plaintiff is a victim of Defendants’ unfair and/or unlawful conduct alleged
22 herein, Plaintiff, for himself and on behalf of the members of the Classes, seeks full restitution of
23 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
24 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

25 81. The acts complained of herein occurred within the last four years immediately
26 preceding the filing of the Complaint in this action.

27 82. Plaintiff was compelled to retain the services of counsel to file this court action to
28 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of

1 Defendants' current hourly non-exempt employees, and to enforce important rights affecting the
2 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
3 he is entitled to recover under Code of Civil Procedure § 1021.5.

4 **NINTH CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACT**

6 **(AGAINST ALL DEFENDANTS)**

7 83. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 84. Defendants have committed several Labor Code violations against Plaintiff and other
9 similarly aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code
10 § 2698 *et seq.*, acting on behalf of himself and other similarly aggrieved employees, brings this PAGA
11 representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly
12 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
13 (a) and (f) including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each
14 subsequent violation per employee per pay period for those violations of the Labor Code for which
15 no civil penalty is specifically provided based on the following Labor Code violations:

16 a) Failing to pay Plaintiff and similarly Aggrieve Employees for all minimum wages for
17 all hours worked or for which they were subject to the control of the employer;

18 b) Unlawfully deducting wages in violation of Labor Code §§ 221, 224;

19 c) Failing to provide Plaintiff and other similarly Aggrieved Employees with all of their
20 statutorily-mandated meal periods in violation of Labor Code §§ 204, 510, 1194, and 1198;

21 d) Failing to authorize and permit Plaintiff and other similarly Aggrieved employees
22 with all of their statutorily-mandated rest periods in violation of Labor Code §§ 226.7 and 516;

23 e) Failing to furnish Plaintiff and other similarly situated employees with complete,
24 accurate, itemized wage statements in violations of Labor Code § 226(a) and applicable Wage Orders;

25 f) Failing to pay final wages in a timely manner in violation of Labor Code §§ 201-203
26 and applicable Wage Orders; and

27 g) Failing to reimburse Plaintiff and other aggrieved employees with all necessary
28 business expenditures in violation of Labor Code §§ 2802-2804 and applicable Wage Orders.

85. On or about May 7, 2024, Plaintiff notified Defendants Jensen Landscape Contractor, LLC. (“Defendants”) and the California Labor and Workforce Development Agency (“LWDA”) via email of Defendants’ violations of the California Labor Code § 2698 *et seq.*, with respect to violations of the California Labor Code identified in Paragraph 83 (a)-(g). Now that sixty-five days have passed since Plaintiff notified Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

86. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of similarly aggrieved employees and to assess and collect the civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 210, 1194, 1197, 1197.1, and 1198 and reasonable attorneys' fees and costs;
5. Upon the Second Cause of Action for compensatory, consequential, general, and special damages and civil penalties according to proof pursuant to Labor Code §§ 221 and 224;
6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and reasonable costs and attorney's fees;

1 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
2 Labor Code §§ 201-203;

3 10. Upon the Seventh Cause of Action, for unreimbursed expenses, interest, and
4 attorney's fees and costs pursuant to Labor Code § 2802;

5 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
6 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
7 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

8 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other similarly
9 Aggrieved Employees, and the State of California according to proof pursuant to Labor Code § 2699
10 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation and \$200 for each
11 subsequent violation per employee per pay period for those violations of the Labor Code for which
12 no civil penalty is specifically provided under the Labor Code, and for reasonable attorneys' fees and
13 costs;

14 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
15 § 218.6 and Civil Code §§ 3287 and 3289;

16 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
17 218.5, 226, 1194, Code of Civil Procedure § 1021.5; and

18 15. For such other relief that the Court may deem just and proper.
19

20 Dated: October 17, 2024

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

21
22
23 By: _____

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff and the Putative Classes
24
25
26
27
28

EXHIBIT “A”

CO. FILE DEPT. CLOCK VCHR. NO.
 GDJ 010384 006108 221-A 0000130036 1

SEQ 000275

JENSEN LANDSCAPE CONTRACTOR LLC
 1250 AMES AVE STE 100
 MILPITAS, CA 95035-6362
 408-446-1118

Taxable Marital Status: Married
 Exemptions/Allowances:
 Federal: 5
 CA: 5

Social Security Number: XXX-XX-3598

Earnings	rate	hours	this period	year to date
Regular	40.2600	40.00	1,610.40	19,807.92
Overtime	60.3900	8.00	483.12	483.12
Auto Allow In			15.00	195.00
Union Benefits			146.40	1,525.00
Gross Pay			\$2,254.92	22,011.04

Deductions	Statutory		
	Federal Income Tax	-183.08	1,503.68
	Social Security Tax	-139.80	1,364.68
	Medicare Tax	-32.70	319.16
	CA State Income Tax	-75.37	456.31
	CA SDI Tax	-24.80	242.12
	Other		
	Auto Allow Out	-15.00	195.00
	Union Benefits	-146.40	1,525.00
	Net Pay	\$1,637.77	
	Checking 1	-1,637.77	
	Net Check	\$0.00	

Your federal taxable wages this period are
 \$2,254.92

Earnings Statement



Period Beginning: 03/20/2022
 Period Ending: 03/26/2022
 Pay Date: 04/01/2022

JOSE LUIS RIVERA

Other Benefits and Information

	this period	total to date
Totl Hrs Worked	48.00	

Important Notes

YOUR COMPANY'S PHONE NUMBER IS 213-797-5934

BASIS OF PAY: HOURLY

IF NO CA Spsl Used IS LISTED YOU HAVE USED ZERO HRS

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

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the action; my business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

On October 17, 2024, I served the following document(s) described as **FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this action:

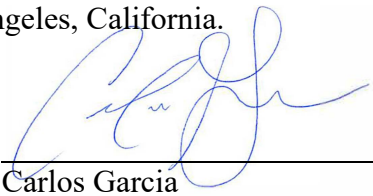
Tao Y. Leung, Esq.
Tao.leung@hoganlovells.com
Ronnie Arenas, Esq.
Ronnie.areans@hoganlovells.com
Laura Penaranda, Esq.
Laura.penaranda@hoganlovells.com
HOGAN LOVELLS U.S., LLP
1999 Avenue of the Stars, Suite 1400
Los Angeles, California 90067

Counsel for defendant Jensen Landscape Contractor, LLC

BY ELECTRONIC SERVICE: I transmitted the above-referenced document(s) via electronic service provider First Legal to the person(s) identified above at the email address(es) indicated and did not, within a reasonable time after transmission, receive any message or communication indicating that delivery failed or that any other error had occurred which would delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

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

Executed on October 17, 2024, at Los Angeles, California.



Carlos Garcia