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Attorneys for
JOSE BARAJAS,
on behalf of himself, all others similarly situated,
and on behalf of the general public.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

JOSE BARAJAS on behalf of himself, all
others similarly situated, and on behalf of
the general public,

Plaintiffs,

v.

BENNETT ENTERPRISES, A
CALIFORNIA LANDSCAPE
CONTRACTING CORPORATION; and
DOES 1-100,

Defendants.

Case No. **24STCV12791**

**PLAINTIFF'S CLASS ACTION
COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, AND RESTITUTION**

- 1) Failure to Pay All Straight Time Wages;
- 2) Failure to Pay All Overtime Wages;
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 5-2001(11); Cal. Code Regs., tit. 8 § 11050);
- 4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 5-2001(12); Cal. Code Regs. Title 8 § 11050);
- 5) Failure to Authorize and Permit Recovery Periods (Lab. Code § 226.7; Cal. Code Regs. Title 8 § 3395);
- 6) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175);
- 7) Failure to Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802, Cal. Regs., tit. 8, § 11050(8));
- 8) Failure to Pay All Wages Due at the Time of Termination of Employment (Lab. Code §§ 201-203);
- 9) Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (Lab. Code §§ 233, 234, 246); and,
- 10) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.).

DEMAND FOR JURY TRIAL

1 Plaintiff JOSE BARAJAS, on behalf of himself, all others similarly situated, and on behalf of the
2 general public, complains of Defendant BENNETT ENTERPRISES, A CALIFORNIA
3 LANDSCAPE CONTRACTING CORPORATION (“DEFENDANT” or “BENNETT
4 ENTERPRISES”) and/or DOES and for causes of action and alleges:

5 1. This is a class action pursuant to California Code of Civil Procedure section 382 on behalf
6 of Plaintiff JOSE BARAJAS and all non-exempt, hourly landscapers and/or other workers
7 with similar job designations and titles who are presently or formerly employed by
8 BENNETT ENTERPRISES and/or DOES and/or their subsidiaries or affiliated companies
9 and/or predecessors within the State of California.

10 2. BENNETT ENTERPRISES provides services to both residential and commercial
11 properties, including maintenance, tree trimming, irrigation, landscape design, and
12 construction.

13 3. BENNETT ENTERPRISES is headquartered in Harbor City, California which is located
14 in Los Angeles County.

15 4. BENNETT ENTERPRISES employs non-exempt, hourly landscapers and/or other
16 workers with similar job designations or titles to provide services to its customers.

17 5. Throughout the time period that includes the four years prior to filing this action to the
18 present (the “Statutory Period”), BENNETT ENTERPRISES has maintained uniform
19 policies that violate the wage and hour rights of Plaintiff and similarly situated landscapers,
20 and/or other workers with similar job designations or titles in the manner complained of
21 herein.

22 6. Throughout the statutory period BENNETT ENTERPRISES has not paid its landscapers
23 and/or other workers with similar job designations or titles for all time they were
24 performing work and/or are subject to BENNETT ENTERPRISES’s control. Failing to
25 pay for all hours worked while under BENNETT ENTERPRISES’s control and/or while
26 suffered or permitted to work has resulted in landscapers and/or other workers with similar
27 job designations or titles being deprived of straight time and/or overtime wages.

28 7. Throughout the Statutory Period, and through uniform policies applicable to all landscapers

- 1 and/or other workers with similar job designations or titles, BENNETT ENTERPRISES
2 failed to provide landscapers and/or other workers with similar job designations or titles
3 with meal periods that comply with California law and fail to authorize and permit rest
4 periods that comply with California law.
- 5 8. Throughout the Statutory Period, and through uniform policies applicable to all landscapers
6 and/or other workers with similar job designations or titles, BENNETT ENTERPRISES
7 failed to reimburse landscapers and/or other workers with similar job designations or titles
8 for all work-related expenses incurred for business purposes.
- 9 9. Throughout the Statutory Period and through uniform policies applicable to all landscapers
10 and/or other workers with similar job designations or titles, BENNETT ENTERPRISES
11 knowingly and intentionally provides wage statements to employees that fail to specifically
12 itemize everything required under California Labor Code section 226 (a).
- 13 10. Throughout the Statutory Period and through uniform policies applicable to all landscapers
14 and/or other workers with similar job designations or titles, BENNETT ENTERPRISES
15 knowingly and intentionally failed to pay all wages owed to landscapers and/or other
16 workers with similar job designations or titles in a timely manner at the time landscapers
17 and/or other workers with similar job designations or titles terminated their employment –
18 either voluntarily or involuntarily – with BENNETT ENTERPRISES.
- 19 11. Plaintiff JOSE BARAJAS, on behalf of himself and all of BENNETT ENTERPRISES's
20 and/or DOES' non-exempt landscapers and/or other workers with similar job designations
21 or titles employed at any time during the Statutory Period brings this action pursuant to
22 California Labor Code Sections 218, 218.5, 222, 223, 224, 226, subd. (b), 226.3, 226.7,
23 510, 512, 515, 558, 1194, 1194.2, 1197, 2802, and California Code of Regulations, Title
24 8, sections 11050 and 3395, seeking unpaid wages, overtime, unpaid reimbursement for
25 business expenses, meal and rest period compensation, sick pay/paid time off remedies,
26 penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.
- 27 12. Plaintiff JOSE BARAJAS, on behalf of himself and all of BENNETT ENTERPRISES's
28 and/or DOES' non-exempt landscapers and/or other workers with similar job designations

1 or titles employed at any time during the Statutory Period, pursuant to California Business
2 and Professions Code sections 17200-17208, also seeks injunctive relief, restitution, and
3 disgorgement of all benefits BENNETT ENTERPRISES and/or DOES enjoyed from their
4 failure to pay all straight time wages, overtime wages, and meal and rest period
5 compensation as well as their failure to adopt a compliant sick pay and/or paid time off
6 policy and reimbursement for employees' business expenses.

7 **I. VENUE**

8 13. Venue as to each Defendant, BENNETT ENTERPRISES and/or DOES, is proper in this
9 judicial district, pursuant to California Code of Civil Procedure section 395. Defendant
10 BENNETT ENTERPRISES and/or DOES conduct business and commit California Labor
11 Code violations within Los Angeles County, and each Defendant and/or DOE is within
12 California for service of process purposes. The unlawful acts alleged herein have a direct
13 effect on Plaintiff and those similarly situated within the State of California and within Los
14 Angeles County. Defendant BENNETT ENTERPRISES and/or DOES employ numerous
15 landscapers and/or other workers with similar job designations or titles who perform and/or
16 performed work for BENNETT ENTERPRISES in Los Angeles County, California during
17 the Statutory Period.

18 **II. PARTIES**

19 **A. Plaintiffs.**

20 14. Throughout the Statutory Period, Plaintiff JOSE BARAJAS is and was a resident of
21 California. During the Statutory Period, JOSE BARAJAS was employed by Defendant
22 BENNETT ENTERPRISES and/or DOES in California and performed work in Los
23 Angeles County.

24 15. Plaintiff and the proposed class of similarly situated landscapers and/or other workers with
25 similar job designations or titles are covered by, inter alia, California IWC Occupational
26 Wage Order No. 5-2001, and Title 8, California Code of Regulations, §§ 11050 and 3395.

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1 **B. Defendants.**

2 16. BENNETT ENTERPRISES provides services to both residential and commercial
3 properties, including maintenance, tree trimming, irrigation, landscape design, and
4 construction.

5 17. BENNETT ENTERPRISES has a strong foothold in Southern California, including the
6 County of Los Angeles.

7 18. BENNETT ENTERPRISES employs landscapers and/or other workers with similar job
8 designations or titles to provide services to its customers.

9 19. BENNETT ENTERPRISES employed Plaintiff and similarly situated non-exempt
10 landscapers and/or other workers with similar job designations or titles in California.

11 20. The true names and capacities, whether individual, corporate, associate, or otherwise, of
12 Defendants DOES 1-100, inclusive, are presently unknown to Plaintiff, who therefore sues
13 these Defendants by such fictitious names under Code of Civil Procedure section 474.
14 Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
15 designated herein as a DOE is legally responsible in some manner for the unlawful acts
16 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the
17 true names and capacities of the Defendants designated hereinafter as DOES when such
18 identities become known.

19 21. Plaintiff is informed and believes, and based thereon alleges, that each Defendant and/or
20 DOE acted in all respects pertinent to this action as the agent of the other Defendants and/or
21 DOES, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
22 and the acts of each Defendants and/or DOES are legally attributable to the other
23 Defendants and/or DOES.

24 **III. CLASS ACTION ALLEGATIONS**

25 22. Plaintiff brings this action on behalf of himself and all others similarly situated as a class
26 action pursuant to section 382 of the California Code of Civil Procedure. Plaintiff seeks to
27 represent a Class composed of and defined as follows:
28

1 All California citizens who are employed or have been employed by
2 Defendant in the State of California as non-exempt landscapers
3 and/or other workers with similar job designations or titles during
4 the period of the relevant statute of limitations. ("Class Members")
5

6 Plaintiff also seeks to represent subclasses composed of and defined as follows:
7

8 All Class Members who worked one (1) or more shifts in excess of
9 five (5) hours.
10

11 All Class Members who worked one (1) or more shifts in excess of
12 six (6) hours.
13

14 All Class Members who worked one (1) or more shifts in excess of
15 ten (10) hours.
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17 All Class Members who worked one (1) or more shifts in excess of
18 twelve (12) hours.
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20 All Class Members who worked one (1) or more shifts in excess of
21 two (2) hours.
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23 All Class Members who worked one (1) or more shifts in excess of
24 three (3) hour and one-half hours, but less than or equal to six (6)
25 hours.
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27 All Class Members who worked one (1) or more shifts in excess of
28 six (6) hours, but less than or equal to ten (10) hours.

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All Class Members who worked one (1) or more shifts in excess of ten (10) hours.

All Class Members who worked one (1) or more shifts in which they received a wage statement for the corresponding pay period.

All Class Members who were not paid wages for meal periods.

All Class Members who were not paid for all time during which they were subject to the control of Defendant and/or suffered or permitted to work for Defendant during the relevant period of the statute of limitations.

All Class Members who were not reimbursed and/or indemnified for expenses in direct consequence of the discharge of their work duties.

All Class Members who had wages unlawfully deducted.

All Class Members who were not permitted to use sick pay and/or paid time off.

23. Plaintiff reserves the right under rule 1855, subdivision (b), California Rules of Court, to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.
24. This action has been brought and may properly be maintained as a class action under the provisions of section 382 of the California Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily

ascertainable.

A. Numerosity.

25. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that BENNETT ENTERPRISES and/or DOES currently employ, and during the liability period employed, over fifty (50) Class Members in Los Angeles County and dispersed throughout California during the liability period and who are or have been affected by BENNETT ENTERPRISES's and/or DOES' policies of wage theft, failure to pay all straight and overtime wages owed, failure to provide meal and/or rest periods without the appropriate legal compensation, failure to implement a lawful sick pay policy, willful failure to pay all wages due at time of separation from employment, and knowing and intentional failure to provide accurate and itemized employee wage statements.

26. Accounting for employee turnover during the relevant periods increases this number substantially. Upon information and belief, Plaintiff alleges BENNETT ENTERPRISES's and/or DOES' employment records will provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

B. Commonality.

27. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

(1) Whether BENNETT ENTERPRISES and/or DOES violated the Labor Code and/or applicable IWC Wage Orders in failing to pay its non-exempt employees all earned wages at the regular rate for all hours worked.

(2) Whether BENNETT ENTERPRISES's and/or DOES' uniform policies and/or practices whereby non-exempt employees were pressured and/or incentivized to forego taking meal and/or rest periods.

1 (3) Whether BENNETT ENTERPRISES and/or DOES violated
2 Labor Code section 226.7, IWC Wage Order No. 5-2001 or other applicable
3 IWC Wage Orders, and/or California Code of Regulations, Title 8, section
4 11050, by failing to authorize, permit, and/or provide rest periods to its non-
5 exempt employees for every four (4) hours or major fraction thereof worked
6 and/or failing to pay said employees one (1) hour of pay at the employee's
7 regular rate of compensation for each work day that the rest period was not
8 authorized, permitted and/or provided.

9 (4) Whether BENNETT ENTERPRISES and/or DOES
10 willfully failed to pay, in a timely manner, wages owed to members of the
11 proposed Class who left BENNETT ENTERPRISES's and/or DOES'
12 employ or who were terminated.

13 (5) Whether BENNETT ENTERPRISES and/or DOES had
14 uniform policies and/or practices of failing to provide employees accurate
15 and itemized wage statements.

16 (6) Whether BENNETT ENTERPRISES and/or DOES had
17 uniform policies and/or practices of failing to timely pay all wages owed to
18 employees who left BENNETT ENTERPRISES's and/or DOES' employ
19 or who were terminated.

20 (7) Whether BENNETT ENTERPRISES and/or DOES had
21 uniform policies and/or practices of failing to reimburse or indemnify Non-
22 Exempt Employees for business expenses incurred as a consequence of the
23 discharge of their work duties.

24 (8) Whether Defendant and/or DOES violated *California Labor*
25 *Code* sections 233 and 234 by adopting uniform policies and/or practices
26 which counts sick leave taken pursuant to *California Labor Code* section
27 233 as an unauthorized absence that may result in discipline, discharge,
28 demotion, or termination.

1 (9) Whether Defendant and/or DOES violated *California Labor*
2 *Code* section 246 by having uniform policies and/or practices of failing to
3 provide Class Members wage statements itemizing the amount of
4 accrued/available sick leave.

5 (10)

6 28. The answer to each of these respective questions will generate a common answer capable
7 of resolving class-wide liability in one stroke.

8 29. Said common questions predominate over any individualized issues and/or questions
9 affecting only individual members.

10 **C. Typicality.**

11 30. The claims of the named Plaintiff are typical of the claims of the proposed Class. Plaintiff
12 and all members of the proposed Class sustained injuries and damages arising out of and
13 caused by BENNETT ENTERPRISES's and/or DOES' common course of conduct in
14 violation of laws and regulations that have the force and effect of law and statutes as
15 alleged.

16 31. Plaintiff JOSE BARAJAS was subjected to the same uniform policies and/or practices
17 complained of herein that affected all such employees. Thus, as JOSE BARAJAS was
18 subjected to the same unlawful policies and practices as all non-exempt employees, his
19 claims are typical of the class he seeks to represent.

20 **D. Adequacy of Representation.**

21 32. Plaintiff will fairly and adequately represent and protect the interests of the members of the
22 Class.

23 33. Plaintiff is ready and willing to take the time necessary to help litigate this case.

24 34. Plaintiff has no conflicts that will disallow him to fairly and adequately represent and
25 protect the interests of the members of the Class.

26 35. Counsel who represent Plaintiff are competent and experienced in litigating large
27 employment class actions.

28 36. Specifically, David Mara, Esq. and Jill Vecchi, Esq. of Mara Law Firm, PC, and Peter

- 1 Horton, Esq. of Lawyers for Employee and Consumer Rights are California lawyers in
2 good standing.
- 3 37. Counsel who represent Plaintiff are competent and experienced in litigating large
4 employment class actions.
- 5 38. Counsel who represent Plaintiff have been named class counsel in numerous cases.
- 6 39. Counsel who represent Plaintiff's practice is primarily focused on representing classes,
7 large and small, on the basis of *California Labor Code* and IWC Wage Order Violations
8 similar to those alleged herein. The attorneys at Mara Law Firm, PC, are also frequently
9 called upon to and do author amicus briefs on behalf of the Consumer Attorneys of
10 California on cases in the appellate courts and Supreme Court of California involving
11 important issues relating to those alleged herein.
- 12 40. Counsel who represent Plaintiff have the resources to take this case to trial and judgment,
13 if necessary.
- 14 41. The lawyers representing Plaintiff have the experience, ability, and ways and means to
15 vigorously prosecute this case.
- 16 **E. Superiority of Class Action.**
- 17 42. A class action is superior to other available means for the fair and efficient adjudication of
18 this controversy. Individual joinder of all Class Members is not practicable, and questions
19 of law and fact common to the Class predominate over any questions affecting only
20 individual members of the Class. Each member of the Class has been damaged and is
21 entitled to recovery by reason of BENNETT ENTERPRISES's and/or DOES' illegal
22 policies and/or practices of failing to pay all straight time and overtime wages owed, failing
23 to permit or authorize rest periods, failing to provide meal periods, failing to adopt a lawful
24 sick pay/paid time off policy, knowingly and intentionally failing to comply with wage
25 statement requirements, and failing to pay all wages due at termination.
- 26 43. Class action treatment will allow those similarly situated persons to litigate their claims in
27 the manner that is most efficient and economical for the parties and the judicial system.
28 Plaintiff is unaware of any difficulties that are likely to be encountered in the management

of this action that would preclude its maintenance as a class action.

44. Because such common questions predominate over any individualized issues and/or questions affecting only individual members, class resolution is superior to other methods for fair and efficient adjudication.

IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST BENNETT ENTERPRISES AND/OR DOES:

Failure to Pay All Straight Time Wages

45. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

46. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those similarly situated for all hours worked.

47. It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages. California Labor Code section 222 prohibits the withholding of part of a wage. California Labor Code section 223 prohibits the payment of less than a statutory or contractual wage scale. California Labor Code section 1197 prohibits the payment of less than the minimum wage. California Labor Code section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. California Labor Code section 1194.2 states that an employee receiving less than the legal minimum wage is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. California Labor Code section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

48. IWC Wage Order 5-2001(5) requires employers to pay “reporting time pay.” Each workday an employee is required to report to work, but is not put to work or is furnished with less than half of his or her usually or scheduled day’s work, must be paid for half of the usual

1 or scheduled day's work, but in no event less than two hours nor more than four hours, at
2 his or her regular rate of pay. If an employee is required to report to work a second time in
3 any one workday and is furnished less than two hours of work on the second reporting, he
4 or she must be paid for two hours at his or her regular rate of pay.

5 49. Plaintiff and those similarly situated Class Members were employed by BENNETT
6 ENTERPRISES and/or DOES at all relevant times. BENNETT ENTERPRISES and/or
7 DOES were required to compensate Plaintiff for all hours worked and were prohibited from
8 making deductions that had the effect of reducing the agreed upon wage.

9 50. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those
10 similarly situated for all hours worked. BENNETT ENTERPRISES and/or DOES fail to
11 pay Class Members for the following hours worked: pre-and post-shift work, work
12 performed longer than the scheduled shift end time, and all other time during which Class
13 Members are subject to the control of BENNETT ENTERPRISES and/or DOES and/or
14 suffered or permitted to work during periods of time for which BENNETT ENTERPRISES
15 and/or DOES are not paying them. For example, BENNETT ENTERPRISES and/or
16 DOES fail to record and/or pay Plaintiff and the Class Members for all of the hours they
17 worked by requiring Plaintiff and the Class Members to work additional time after they
18 clock out. Failing to pay for all hours worked while under BENNETT ENTERPRISES's
19 and/or DOES' control and/or while suffered or permitted to work has resulted in Plaintiff
20 and Class Members being deprived of straight time wages throughout the Statutory Period.

21 51. Further, Defendant and/or DOES have a continuous and consistent policy of failing to pay
22 full wages to Plaintiff and the Class Members by deducting a portion of the wages earned
23 by Plaintiff and the Class Members when they worked through their meal periods, are not
24 relieved of all work duties during their meal periods, are not allowed to leave the work
25 location during meal periods, and/or when BENNETT ENTERPRISES and/or DOES
26 recorded a meal period for Plaintiff and the Class Members when no meal period was taken.
27 Specifically, Plaintiff and the Class Members work through their meal periods to satisfy
28 the demanding work duties imposed by BENNETT ENTERPRISES and/or DOES, thereby

- 1 denying them the right to be completely free from employer control under California law.
- 2 52. Defendant and/or DOES have a continuous and consistent policy of clocking-out Plaintiff
- 3 and those similarly situated for a thirty (30) minute meal period and/or otherwise recording
- 4 a meal period, even though Plaintiff and all members of the Class work through their meal
- 5 periods. Thus, BENNETT ENTERPRISES and/or DOES do not pay Plaintiff and the Class
- 6 Members for all time worked each and every day they work without a meal period and
- 7 have time deducted.
- 8 53. Plaintiff and the Class Members are informed and believe and thereon allege that as a direct
- 9 result of Defendant's and/or DOES' uniform policies and/or practices, Plaintiff and the
- 10 Class Members have suffered, and continue to suffer, substantial unpaid wages, and lost
- 11 interest on such wages, and expenses and attorneys' fees in seeking to compel BENNETT
- 12 ENTERPRISES and/or DOES to fully perform their obligations under state law, all to their
- 13 respective damage in amounts, according to proof at trial.
- 14 54. As a direct result of BENNETT ENTERPRISES's and/or DOES' policy of illegal wage
- 15 theft, Plaintiff and those similarly situated have been damaged in an amount to be proven
- 16 at trial.
- 17 55. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
- 18 below.

19 **SECOND CAUSE OF ACTION AGAINST BENNETT ENTERPRISES AND/OR DOES:**

20 **Failure to Pay All Overtime Wages**

- 21 56. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
- 22 and every other paragraph in this Complaint herein as if fully plead.
- 23 57. It is fundamental that an employer must pay its employees for all time worked. California
- 24 Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages.
- 25 California Labor Code section 222 prohibits the withholding of part of a wage. California
- 26 Labor Code section 223 prohibits the payment of less than a statutory or contractual wage
- 27 scale. California Labor Code section 1197 prohibits the payment of less than the minimum
- 28 wage. California Labor Code section 224 only permits deductions from wages when the

1 employer is required or empowered to do so by state or federal law or when the deduction
2 is expressly authorized in writing by the employee for specified purposes that do not have
3 the effect of reducing the agreed upon wage.

4 58. BENNETT ENTERPRISES and/or DOES failed to pay overtime when employees worked
5 over eight (8) hours per day and when employees worked over forty (40) hours per week.

6 59. Plaintiff and those similarly situated Class Members were employed by BENNETT
7 ENTERPRISES and/or DOES at all relevant times. BENNETT ENTERPRISES and/or
8 DOES were required to compensate Plaintiff for all overtime hours worked and were
9 prohibited from making deductions that had the effect of reducing the agreed upon wage.

10 60. BENNETT ENTERPRISES and/or DOES failed to pay for the overtime that was due,
11 pursuant to IWC Wage Order No. 5-2001, item 3(A).

12 61. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those
13 similarly situated for all hours worked. BENNETT ENTERPRISES and/or DOES fail to
14 pay Class Members for the following hours worked: pre-and post-shift work, work
15 performed longer than the scheduled shift end time, and all other time during which Class
16 Members are subject to the control of BENNETT ENTERPRISES and/or DOES and/or
17 suffered or permitted to work during periods of time for which BENNETT ENTERPRISES
18 and/or DOES are not paying them. For example, BENNETT ENTERPRISES and/or DOES
19 would fail to record and/or pay Plaintiff and the Class Members for all of the hours they
20 worked by requiring Plaintiff and the Class Members to work additional time after they
21 clocked out. Failing to pay for all hours worked while under BENNETT ENTERPRISES's
22 and/or DOES' control and/or while suffered or permitted to work has resulted in Plaintiff
23 and Class Members being deprived of overtime wages throughout the Statutory Period.

24 62. Defendant and/or DOES have had a continuous policy of altering, changing, and/or failing
25 to record all of Plaintiff's and the Class Members' time worked to eliminate and/or reduce
26 the number of overtime hours worked and/or to only pay employees their straight time rate
27 of pay for these hours.

28 63. Additionally, Defendant and/or DOES have had a continuous policy of not paying Plaintiff

1 and the Class Members for all hours worked in that Defendant and/or DOES continuously
2 and consistently clocked Plaintiff and the Class Members out for a thirty (30) minute meal
3 period and/or otherwise recorded a meal period and/or deducted time for a meal period,
4 even though Plaintiff and the Class Members work through their meal periods, are not
5 relieved of all duties during meal periods, were not able to leave the work location during
6 meal periods, and/or were unable to take meal periods wherever they wanted. Thus,
7 Defendant and/or DOES shaves/steals earned wages from Plaintiff and the Class Members
8 every day they work without a lawful meal period and have time deducted for a meal
9 period. When employees work over eight (8) hours in a day, these hours are owed at an
10 overtime rate.

11 64. Likewise, Plaintiff and the Class Members are informed and believe and thereon allege that
12 Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff and the Class
13 Members by deducting a portion of the wages earned by Plaintiff and the Class Members
14 when they worked through their meal periods, are not relieved of all work duties during
15 their meal periods, are not allowed to leave the work location during meal periods, and/or
16 when Defendant and/or DOES recorded a meal period for Plaintiff and the Class Members
17 when no meal period was taken. Specifically, Plaintiff and the Class Members worked
18 through their meal periods to satisfy their demanding work duties imposed by Defendant
19 and/or DOES, thereby denying them the right to be completely free from employer control
20 under California law. When employees work over eight (8) hours in a day, these hours are
21 owed at an overtime rate.

22 65. Plaintiff and the Class Members are informed and believe and thereon allege that as a direct
23 result of Defendant's and/or DOES' uniform policies and/or practices, Plaintiff and the
24 Class Members have suffered, and continue to suffer, substantial unpaid overtime wages,
25 and lost interest on such overtime wages, and expenses and attorneys' fees in seeking to
26 compel BENNETT ENTERPRISES and/or DOES to fully perform their obligations under
27 state law, all to their respective damage in amounts according to proof at time of trial.
28 BENNETT ENTERPRISES and/or DOES committed the acts alleged herein knowingly

1 and willfully, with the wrongful and deliberate intention on injuring Plaintiff and the Class
2 Members. BENNETT ENTERPRISES and/or DOES acted with malice or in conscious
3 disregard of Plaintiff's and the Class Member's rights. In addition to compensation,
4 Plaintiff is also entitled to any penalties allowed by law.

5 66. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
6 below.

7 **THIRD CAUSE OF ACTION AGAINST BENNETT ENTERPRISES AND/OR DOES:**

8 **Failure to Provide Meal Periods, or Compensation in Lieu Thereof (Lab. Code §§ 226.7, 512,**
9 **IWC Wage Order No. 5-2001(11); Cal. Code Regs., tit. 8, § 11050)**

10 67. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
11 and every other paragraph in this Complaint herein as if fully plead.

12 68. Under California Labor Code section 512 and IWC Wage Order No. 5, no employer shall
13 employ any person for a work period of more than five (5) hours without providing a meal
14 period of not less than thirty (30) minutes. During these meal periods of not less than thirty
15 (30) minutes, the employee is to be completely free of the employer's control and must not
16 perform any work for the employer. If the employee does perform work for the employer
17 during the thirty (30) minute meal period, the employee has not been provided a meal
18 period in accordance with the law. Also, the employee is to be compensated for any work
19 performed during the thirty (30) minute meal period.

20 69. In addition, an employer may not employ an employee for a work period of more than ten
21 (10) hours per day without providing the employee with another meal period of less than
22 thirty (30) minutes.

23 70. Under California Labor Code section 226.7, if the employer does not provide an employee
24 a meal period in accordance with the above requirements, the employer shall pay the
25 employee one (1) hour of pay at the employee's regular rate of compensation for each
26 workday that the meal period is not provided.

27 71. BENNETT ENTERPRISES and/or DOES failed to provide thirty (30) minute,
28 uninterrupted meal periods to Plaintiff and Class Members who worked for work periods

1 of more than five (5) consecutive hours. As such, Plaintiff and Class Members were
2 required to work over five (5) consecutive hours at a time without being provided a thirty
3 (30) minute uninterrupted meal period within that time.

4 72. BENNETT ENTERPRISES's and/or DOES' business model is such that Plaintiff and the
5 Class Members were assigned too much work and insufficient help due to chronic
6 understaffing to be able to take meal periods. Thus, Plaintiff and the Class Members are
7 not able to take meal periods.

8 73. Throughout the statutory period, BENNETT ENTERPRISES and/or DOES had a pattern
9 and practice of assigning too much work to be completed in too short of time frames,
10 resulting in Plaintiff and those similarly situated not being able to take meal periods.

11 74. BENNETT ENTERPRISES and/or DOES would not permit Plaintiff and the Class to take
12 30-minute meal periods unless specifically scheduled by BENNETT ENTERPRISES
13 and/or DOES or unless Plaintiff and the Class were expressly told to by BENNETT
14 ENTERPRISES and/or DOES. This routinely resulted in Plaintiff and the Class Members
15 not being able to take a meal period, if at all, until after the fifth hour.

16 75. BENNETT ENTERPRISES's and/or DOES' business model was such that Plaintiff and
17 Class Members were assigned too much work that could not reasonably be completed in
18 their assigned shift, work, and/or route, resulting in Plaintiff and the Class Members
19 routinely and regularly being forced to eat their meals while working.

20 76. BENNETT ENTERPRISES and/or DOES unlawfully did not allow Plaintiff and the Class
21 Members to leave the work location during meal periods.

22 77. Alternatively, Plaintiff and the Class Members were always responsible for their tools,
23 including during meal period time. If Plaintiff's and the Class Members' tools were stolen,
24 Defendant and/or DOES would hold Plaintiff and the Class Members financially
25 responsible for the tools. Plaintiff and the Class Members were also responsible for
26 ensuring that no damage happened to Defendant's and/or DOES' truck. This included
27 during Plaintiff's and the Class Members' meal period time.

28 78. Further, BENNETT ENTERPRISES and/or DOES fail to keep records of when Plaintiff

1 and the Class Members took meal periods.

2 79. Throughout the statutory period, BENNETT ENTERPRISES and/or DOES valued
3 productivity over providing meal periods and, because of this, meal breaks were not
4 priorities to BENNETT ENTERPRISES and/or DOES.

5 80. Because of BENNETT ENTERPRISES and/or DOES demanding policies on completion
6 times, Plaintiff and those similarly situated felt that stopping work to exercise their rights
7 to take meal periods would sacrifice their jobs with BENNETT ENTERPRISES and/or
8 DOES.

9 81. BENNETT ENTERPRISES and/or DOES did not have a policy of providing a second meal
10 period before the end of the tenth hour.

11 82. Failing to provide compensation for such unprovided or improperly provided meal periods,
12 as alleged above, BENNETT ENTERPRISES and/or DOES willfully violated the
13 provisions of California Labor Code sections 226.7, 512, and IWC Wage Order No. 5.

14 83. As a result of the unlawful acts of BENNETT ENTERPRISES and/or DOES, Plaintiff and
15 the Class he seeks to represent have been deprived of premium wages, in amounts to be
16 determined at trial, and are entitled to recovery of such amounts, plus interest and penalties
17 thereon, attorneys' fees and costs, pursuant to Labor Code section 226.7, and IWC Wage
18 Order No. 5-2001. Plaintiff and the Class he seeks to represent did not willfully waive their
19 right to take meal periods through mutual consent with BENNETT ENTERPRISES and/or
20 DOES.

21 84. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
22 below.

23 **FOURTH CAUSE OF ACTION AGAINST BENNETT ENTERPRISES AND/OR DOES:**

24 **Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 5-**
25 **2001(12); Cal. Code Regs. Title 8 § 11050)**

26 85. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
27 and every other paragraph in this Complaint herein, as if fully plead.

28 86. Under IWC Wage Order No. 5, every employer shall authorize and permit all employees

- 1 to take rest periods, “[t]he authorized rest period time shall be based on the total hours
2 worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major
3 fraction thereof.” IWC Wage Order 5-2001(12). The time spent on rest periods “shall be
4 counted as hours worked for which there shall be no deduction from wages.” *Id.*
- 5 87. Under California Labor Code section 226.7, if the employer does not provide an employee
6 a rest period in accordance with the above requirements, the employer shall pay the
7 employee one (1) hour of pay at the employee’s regular rate of compensation for each
8 workday that the rest break is not provided.
- 9 88. At all relevant times, Defendant and/or DOES failed to authorize and/or permit rest period
10 time based upon the total hours worked daily at the rate of ten (10) minutes net rest time
11 per four (4) hours or major fraction thereof.
- 12 89. In the alternative, BENNETT ENTERPRISES’s and/or DOES’ business model was such
13 that Class Members were assigned too much work that could not be reasonably completed
14 within their assigned shift, resulting in Class Members routinely and regularly being forced
15 to work through their rest periods.
- 16 90. Throughout the statutory period, BENNETT ENTERPRISES and/or DOES had a pattern
17 and practice of assigning too much work to be completed in too short of time frames,
18 resulting in Plaintiff and those similarly situated not to take rest periods.
- 19 91. Because of BENNETT ENTERPRISES’s and/or DOES’ demanding policies on task
20 completion times, Plaintiff and those similarly situated felt that exercising their rights to
21 take rest breaks would sacrifice their jobs with BENNETT ENTERPRISES and/or DOES.
- 22 92. Throughout the statutory period, BENNETT ENTERPRISES’s and/or DOES’ uniform
23 policies and practices resulted in Class Members not receiving rest breaks.
- 24 93. Throughout the statutory period, BENNETT ENTERPRISES and/or DOES valued
25 productivity over providing rest periods and, because of this, rest periods were not priorities
26 to BENNETT ENTERPRISES and/or DOES.
- 27 94. Throughout the statutory period, BENNETT ENTERPRISES’s and/or DOES’ policies
28 promoting productivity subjugated Plaintiff’s and those similarly situated’s rights to rest

1 periods.

2 95. BENNETT ENTERPRISES and/or DOES did not allow Plaintiff and the Class Members
3 to leave the work location during rest periods.

4 96. In addition, Plaintiff and the Class Members were always responsible for their tools,
5 including during rest period time. If Plaintiff's and the Class Members' tools were stolen,
6 BENNETT ENTERPRISES and/or DOES would hold Plaintiff and the Class Members
7 financially responsible for the tools. Plaintiff and the Class Members were also responsible
8 for ensuring that no damage happened to BENNETT ENTERPRISES's and/or DOES'
9 truck. This included during Plaintiff's and the Class Members' rest period time.

10 97. As a result of the unlawful acts of BENNETT ENTERPRISES and/or DOES, Plaintiff and
11 the Class he seeks to represent have been deprived of premium wages, in amounts to be
12 determined at trial, and are entitled to recovery of such amounts, plus interest and penalties
13 thereon, attorneys' fees and costs, pursuant to Labor Code section 226.7, and IWC Wage
14 Order No. 5-2001.

15 98. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
16 below.

17 **FIFTH CAUSE OF ACTION AGAINST BENNETT ENTERPRISES AND/OR DOES:**

18 **Failure to Provide Recovery Periods (Lab. Code § 226.7; Cal. Code Regs. Title 8 § 3395)**

19 99. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
20 and every other paragraph in this Complaint herein as if fully plead.

21 100. Under California Code of Regulations, Title 8, section 3395(d)(1), "[w]hen the outdoor
22 temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and
23 maintain one or more areas with shade at all times while employees are present that are
24 either open to the air or provided with ventilation or cooling." Cal. Code of Reg. Title 8, §
25 3395(d)(1). Furthermore, "[t]he amount of shade present shall be at least enough to
26 accommodate the number of employees on recovery or rest periods, so that they can sit in
27 a normal posture fully in the shade without having to be in physical contact with each
28 other." *Id.*

- 1 101. “Employees shall be allowed and encouraged to take a preventative cool-down rest in the
2 shade when they feel need to do so to protect themselves from overheating.” Cal. Code of
3 Reg. Title 8, § 3395(d)(3). “Such access to shade shall be permitted at all times.” *Id.*
- 4 102. Under California Code of Regulations section 3395(c), employees shall have access to
5 potable drinking water. The water must be located as close as practicable to the areas where
6 employees are working. Where drinking water is not plumbed or otherwise continuously
7 supplied, it must be provided in sufficient quantity at the beginning of the work shift to
8 provide one quart per employee per hour for drinking for the entire shift. Employers may
9 begin the shift with smaller quantities of water if they have effective procedures for
10 replenishment during the shift as needed to allow employees to drink one quart or more per
11 hour. The frequent drinking of water must be encouraged.
- 12 103. Under California Code of Regulations section 3395(e), employers shall implement high-
13 heat procedures when the temperature exceeds 95 degrees Fahrenheit. These procedures
14 include: (1) Ensuring that effective communication by voice, observation, or electronic
15 means is maintained so that employees at the work site can contact a supervisor when
16 necessary. An electronic device, such as a cell phone or text messaging device, may be
17 used for this purpose only if reception in the area is reliable; (2) Observing employees for
18 alertness and signs or symptoms of heat illness; (3) Designating one or more employees on
19 each worksite as authorized to call for emergency medical services, and allowing other
20 employees to call for emergency services when no designated employee is available; (4)
21 Reminding employees throughout the work shift to drink plenty of water; and (5) Pre-shift
22 meetings before the commencement of work to review the high heat procedures, encourage
23 employees to drink plenty of water, and remind employees of their right to take a cool-
24 down rest when necessary. The employer shall ensure effective employee
25 observation/monitoring by implementing one or more of the following: (A) Supervisor or
26 designee observation of 20 or fewer employees; (B) Mandatory buddy system; (C) Regular
27 communication with sole employee such as by radio or cellular phone; or (D) Other
28 effective means of observation.

1 104. Under California Code of Regulations section 3395(i), employers shall establish,
2 implement, and maintain, an effective heat illness prevention plan. The plan shall be in
3 writing in both English and the language understood by the majority of the employees and
4 shall be made available at the worksite to employees. The Heat Illness Prevention Plan may
5 be included as part of the employer's Illness and Injury Prevention Program required by
6 section 3203, and shall, at a minimum, contain: (1) Procedures for the provision of water
7 and access to shade; (2) the high heat procedures referred to above; (3) Emergency
8 Response Procedures; and (4) Acclimatization methods and procedures.

9 105. While working for BENNETT ENTERPRISES and/or DOES, Plaintiff and the Class
10 Members worked in outdoor places of employment. Plaintiff and the Class Members work
11 outdoors in Southern California, California. Plaintiff and the Class Members worked shifts
12 during which the temperature exceeded eighty (80) degrees Fahrenheit. Plaintiff and the
13 Class Members worked shifts during which the temperature exceeded ninety-five (95)
14 degrees Fahrenheit.

15 106. BENNETT ENTERPRISES and/or DOES failed to permit access to shade and preventative
16 cool down rest and/or recovery periods to Plaintiff and the Class Members when the
17 temperature reached eighty (80) degrees Fahrenheit. BENNETT ENTERPRISES and/or
18 DOES did not allow and encourage Plaintiff and the Class Members to take preventative
19 cool-down rest recovery periods in shaded areas when the applicable temperatures are
20 reached. Thus, BENNETT ENTERPRISES and/or DOES failed to permit, allow, or
21 encourage Plaintiff and the Class Members to take preventative cool down recovery
22 periods in the shade to protect against overheating when the temperature exceeds eighty
23 (80) degrees Fahrenheit.

24 107. BENNETT ENTERPRISES and/or DOES failed to utilize any alternative procedures for
25 providing access to shade or equivalent protection to Plaintiff and the Class Members.
26 BENNETT ENTERPRISES and/or DOES failed to implement other cooling measures in
27 lieu of shade at least as effective as shade in allowing employees to cool.

28 108. BENNETT ENTERPRISES and/or DOES have a consistent policy and/or practice of

1 failing to provide Plaintiff and the Class Members with drinking water.

2 109. BENNETT ENTERPRISES and/or DOES failed to follow the applicable high-heat
3 procedures and failed to establish, implement, and maintain an effective heat illness
4 prevention program.

5 110. Therefore, BENNETT ENTERPRISES and/or DOES failed to provide preventative cool
6 down rest and/or recovery periods to Plaintiff and the Class Members in accordance with
7 California Code of Regulations, Title 8, section 3395.

8 111. As a result of the unlawful acts of BENNETT ENTERPRISES and/or DOES, Plaintiff and
9 the Class he seeks to represent have been deprived of premium wages, in amounts to be
10 determined at trial, and are entitled to recovery of such amounts, plus interest and penalties
11 thereon, attorneys' fees and costs, pursuant to Labor Code section 226.7.

12 112. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
13 below.

14 **SIXTH CAUSE OF ACTION AGAINST BENNETT ENTERPRISES AND/OR DOES:**
15 **Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement**
16 **Provisions (Lab. Code §§ 226, 1174, 1175; IWC Wage Order No. 5; Cal. Code Regs., Title 8,**
17 **§ 11050)**

18 113. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
19 and every other paragraph in this Complaint herein as if fully plead.

20 114. California Labor Code section 226 subdivision (a) requires Defendant and/or DOES to,
21 inter alia, itemize in wage statements and accurately report the total hours worked and total
22 wages earned. BENNETT ENTERPRISES and/or DOES have knowingly and intentionally
23 failed to comply with California Labor Code section 226, subdivision (a), on each and
24 every wage statement provided to Plaintiff JOSE BARAJAS and members of the proposed
25 Class.

26 115. California Labor Code section 1174 requires BENNETT ENTERPRISES and/or DOES to
27 maintain and preserve, in a centralized location, records showing the daily hours worked
28 by and the wages paid to its employees. BENNETT ENTERPRISES and/or DOES have

1 knowingly and intentionally failed to comply with California Labor Code section 1174.
2 The failure of BENNETT ENTERPRISES and/or DOES, and each of them, to comply with
3 California Labor Code section 1174 is unlawful pursuant to California Labor Code section
4 1175.

5 116. BENNETT ENTERPRISES and/or DOES failed to maintain accurate time records - as
6 required by IWC Wage Order No. 5-2001(7), and Cal. Code Regs., Title 8 section 11050 -
7 showing, among other things, when the employee begins and ends each work period, the
8 total daily hours worked in itemized wage statements, total wages, bonuses and/or
9 incentives earned, and all deductions made.

10 117. BENNETT ENTERPRISES and/or DOES have knowingly and intentionally failed to
11 provide Plaintiff and the Class Members with accurate itemized wage statements which
12 show: “(1) gross wages earned, (2) total hours worked by the employee, . . . (4) all
13 deductions, provided that all deductions made on written orders of the employee may be
14 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
15 period for which the employee is paid, (7) the name of the employee and only the last four
16 digits of his or her social security number or an employee identification number other than
17 a social security number, (8) the name and address of the legal entity that is the employer
18 and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section
19 1682, the name and address of the legal entity that secured the services of the employer,
20 and (9) all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate by the employee[.]” California Labor Code
22 section 226(a).

23 118. BENNETT ENTERPRISES and/or DOES knowingly and intentionally did not include the
24 gross wages earned on wage statements. BENNETT ENTERPRISES therefore knowingly
25 and intentionally failed to itemize the gross wages earned on Plaintiff’s and the Class
26 Members’ wage statements.

27 119. In every pay period during the period of the relevant statute of limitations, BENNETT
28 ENTERPRISES and/or DOES knowingly and intentionally did not itemize the total hours

1 worked on wage statements as California Labor Code section 226, subsection (a), requires.
2 In every pay period during the period of the relevant statute of limitations, BENNETT
3 ENTERPRISES and/or DOES knowingly and intentionally did not include the total hours
4 worked on wage statements. BENNETT ENTERPRISES and/or DOES therefore
5 knowingly and intentionally failed to itemize the total hours worked on Plaintiff's and the
6 Class Members' wage statements.

7 120. BENNETT ENTERPRISES and/or DOES have a continuous policy of not paying Plaintiff
8 and the Class Members for all hours worked. BENNETT ENTERPRISES and/or DOES
9 have not paid for all the time Plaintiff and the Class Members worked throughout the day,
10 including, but not limited to rounding, before shifts start, after shifts end, and/or any other
11 time in the day when the employees were performing work tasks, subject to the control of
12 BENNETT ENTERPRISES and/or DOES and/or otherwise had work duties. Additionally,
13 BENNETT ENTERPRISES and/or DOES have had a continuous policy of not paying
14 Plaintiff and the Class Members for all hours worked in that BENNETT ENTERPRISES
15 and/or DOES continuously and consistently clocked Plaintiff and the Class Members out
16 for a thirty (30) minute meal period and/or otherwise recorded a meal period, even though
17 Plaintiff and the Class Members work through their meal periods and/or were unable to
18 take meal periods. Thus, BENNETT ENTERPRISES and/or DOES shave/steal earned
19 wages from Plaintiff and the Class Members every day they work without a meal period
20 and have time deducted. In every pay period during the period of the relevant statute of
21 limitations, BENNETT ENTERPRISES and/or DOES knowingly and intentionally did not
22 include the net wages earned on wage statements.

23 121. Moreover, BENNETT ENTERPRISES and/or DOES failed to include all meal, rest, and
24 recovery period premiums that were owed to Plaintiff and the Class Members on wage
25 statements.

26 122. Further, BENNETT ENTERPRISES and/or DOES knowingly and intentionally did not
27 include Plaintiff's and the Class Members' last four digits of his or her social security
28 number or an employee identification number other than the social security number.

1 123. Defendant and/or DOES also fail to provide Plaintiff and Class Members with written
2 notice that sets forth the amount of sick leave available for use, either in employees'
3 itemized wage statements or in a separate writing provided to employees on the designated
4 pay date.

5 124. As a result of the knowing and intentional failure by BENNETT ENTERPRISES and/or
6 DOES to comply with itemized employee wage statement provisions, Plaintiff and the
7 Class Members have been able to reconstruct only a reasonable estimate of the hours
8 worked and have, therefore, not received full compensation.

9 125. Under California Labor Code section 226.3, "[a]ny employer who violates subdivision (a)
10 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars
11 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)
12 per employee for each violation in a subsequent citation, for which the employer fails to
13 provide the employee a wage deduction statement or fails to keep the records required in
14 subdivision (a) of Section 226." The penalties provided for in California Labor Code
15 section 226.3 are in addition to other penalties provided by law.

16 126. As a direct result of BENNETT ENTERPRISES and/or DOES unlawful acts, Plaintiff and
17 the Class he intends to represent have been damaged and are entitled to recovery of such
18 amounts, plus interest thereon, attorneys' fees, and costs, pursuant to California Labor
19 Code section 226.

20 127. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
21 below.

22 **SEVENTH CAUSE OF ACTION AGAINST BENNETT ENTERPRISES AND/OR DOES:**

23 **Failure to Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802; IWC Wage Order No. 4;**
24 **Cal. Code Regs., Title 8, § 11050)**

25 128. Plaintiff and those similarly situated Class members hereby incorporate by reference each
26 and every other paragraph in this Complaint herein as if fully plead.

27 129. An employer shall indemnify employees for all necessary expenditures or losses incurred
28 by the employees in direct consequence of the discharge of the employees' duties, or the

1 employees' obedience to the directions of the employer. Further, an employer shall not
2 collect or receive from an employee any part of wages theretofore paid by employer to
3 employee.

4 130. BENNETT ENTERPRISES and/or DOES have had a continuous policy and/or practice of
5 failing to reimburse and/or indemnify Plaintiff and the Class Members for expenses for
6 company and/or business-related purposes.

7 131. BENNETT ENTERPRISES and/or DOES have had a continuous policy and/or practice of
8 failing to reimburse and/or indemnify Plaintiff and the Class Members for expenses
9 incurred as a direct consequence of the discharge of their work duties.

10 132. BENNETT ENTERPRISES and/or DOES have had a continuous policy and/or practice of
11 failing to reimburse and/or indemnify Plaintiff and the Class Members for expenses
12 incurred in direct consequence of employees' obedience to the directions of BENNETT
13 ENTERPRISES and/or DOES.

14 133. BENNETT ENTERPRISES and/or DOES have had a continuous policy and/or practice of
15 failing to reimburse and/or indemnify Plaintiff and the Class Members. Plaintiff and the
16 Class Members incurred expenses in the discharge of their duties without receiving
17 reimbursement from BENNETT ENTERPRISES and/or DOES.

18 134. Plaintiff and the Class Members incurred expenses in the discharge of their duties without
19 receiving reimbursement from BENNETT ENTERPRISES and/or DOES. These expenses
20 include, but are not limited to, to purchase tools. Plaintiff had to purchase tools, such as a
21 rose pruner and holster for use in his position with BENNETT ENTERPRISES and/or
22 DOES. Plaintiff and the Class Members also have to purchase safety glasses if the ones
23 provided by BENNETT ENTERPRISES and/or DOES break.

24 135. In addition, Plaintiff and the Class Members have to incur expenses associated with
25 laundering and maintaining their work uniforms.

26 136. Further, if tools provided to Plaintiff and the Class Members by BENNETT
27 ENTERPRISES and/or DOES are stolen or lost, BENNETT ENTERPRISES and/or DOES
28 charge Plaintiff and the Class Members to replace the tool.

1 137. BENNETT ENTERPRISES and/or DOES have had a continuous policy and/or practice of
2 illegally deducting wages, earned bonuses and/or incentives from employees.

3 138. Said continuous policy and/or practice of failing to reimburse Plaintiff and Class Members
4 and deducting wages from employees is illegal under California Labor Code sections 221,
5 2802, and Cal. Code Regs. Title 8, section 11050(8).

6 139. As a direct result of BENNETT ENTERPRISES's and/or DOES' policy of failing to
7 reimburse Plaintiff and Class Members and deducting wages from employees, Plaintiff and
8 those similarly situated have been damaged in an amount to be proven at trial.

9 140. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
10 below.

11 **EIGHTH CAUSE OF ACTION AGAINST BENNETT ENTERPRISES AND/OR DOES:**

12 **Failure to Pay All Wages Due at the Time of Termination from Employment (Lab. Code §§**
13 **201-203)**

14 141. Plaintiff and those similarly situated Class members hereby incorporate by reference each
15 and every other paragraph in this Complaint herein as if fully plead.

16 142. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant
17 and/or DOES, Defendants and/or DOES did not timely pay him all straight time wages
18 owed at the time of his termination.

19 143. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant
20 and/or DOES, Defendant and/or DOES did not timely pay him all overtime wages owed at
21 the time of his termination.

22 144. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant
23 and/or DOES, Defendants and/or DOES did not timely pay him meal, rest, and/or recovery
24 period premiums owed at the time of his termination.

25 145. Numerous members of the Class are no longer employed by Defendant and/or DOES. They
26 were either fired or they quit Defendant's and/or DOES' employ. Defendant and/or DOES
27 did not pay all timely wages owed at the time of their termination. Defendant and/or DOES
28 did not pay all premium wages owed at the time of their termination.

1 146. *California Labor Code* sections 201 and 202 provide that if an employer discharges an
2 employee, the wages earned and unpaid at the time of discharge are due and payable
3 immediately, and if an employee quits his or her employment, his or her wages shall
4 become due and payable no later than seventy-two (72) hours thereafter, unless the
5 employee has given seventy-two (72) hours' notice of his or her intention to quit, in which
6 case the employee is entitled to his or her wages at the time of quitting.

7 147. During the relevant time period, Defendant and/or DOES intentionally and willfully fail to
8 pay Plaintiff's and the Class Members' who are no longer employed by Defendant and/or
9 DOES their wages that were earned and unpaid within seventy-two (72) hours of their
10 leaving Defendant's and/or DOES' employ in violation of *California Labor Code* sections
11 201 and 202.

12 148. *California Labor Code* section 203 provides that, if an employer willfully fails to pay,
13 without abatement or reduction, in accordance with *California Labor Code* sections 201,
14 201.5, 202 and 205.5, any wages of an employee who is discharged or who quits, the wages
15 of the employee shall continue at the same rate, for up to thirty (30) days from the due date
16 thereof, until paid or until an action therefore is commenced.

17 149. Defendant and/or DOES fail to provide Plaintiff and formerly employed Class Members
18 all their final wages at their time of termination in accordance with *California Labor Code*
19 sections 201 and 202.

20 150. For example, Defendant and/or DOES terminated Plaintiff's employment on or about
21 January 29, 2024. At the time of his termination, Defendant and/or DOES required Plaintiff
22 to sign paperwork regarding his termination. Because Plaintiff refused to sign this
23 paperwork, Defendant and/or DOES refused to give Plaintiff his final paycheck at the time
24 his employment was terminated.

25 151. In addition, as discussed herein, Defendant and/or DOES have had a consistent policy
26 and/or practice of not paying Plaintiff and similarly situated hourly, non-exempt employees
27 for all of the hours they worked, including, but not limited to, rounding, before "shifts"
28 start, after "shifts" end, and/or any other time in the day when Plaintiff and similarly

1 situated hourly non-exempt employees were performing work tasks, subject to the control
2 of Defendant and/or DOES and/or otherwise had work duties but were not paid by
3 Defendant and/or DOES. Further, Defendant and/or DOES would fail to record and/or pay
4 Plaintiff and the Class Members for all of the hours they worked by requiring Plaintiff and
5 the Class Members to work additional time after they clocked out. Failing to pay for all
6 hours worked while under Defendant's and/or DOES' control and/or while suffered or
7 permitted to work resulted in hourly, non-exempt employees being deprived of straight
8 time and/or overtime wages.

9 152. Additionally, Defendant and/or DOES fail to pay all meal, rest, and recovery period
10 premiums owed to Plaintiff and Class Members.

11 153. Defendant's and/or DOES' failure to pay Class Members who are no longer employed by
12 Defendant and/or DOES all wages that were earned and unpaid at the time of termination
13 or within seventy-two (72) hours of their leaving Defendant's and/or DOES' employ is in
14 violation of *California Labor Code* sections 201 and 202.

15 154. Defendant and/or DOES fail to pay Plaintiff and Class Members a sum certain at the time
16 of their termination or within seventy-two (72) hours of their resignation and have failed
17 to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of *California*
18 *Labor Code* section 203, Plaintiff and Class Members are entitled to a penalty in the amount
19 of their daily wage, multiplied by thirty (30) days.

20 155. Defendant's and/or DOES' failure to pay said wages to Plaintiff and members of the Class
21 he seeks to represent, was willful in that Defendant and/or DOES and each of them knew
22 the wages to be due, but failed to pay them.

23 156. As a consequence of Defendant's and/or DOES' willful conduct in not paying wages owed
24 at the time of separation from employment, Plaintiff and members of the proposed Class
25 are entitled to thirty (30) days' worth of wages as a penalty under *California Labor Code*
26 section 203, together with interest thereon and attorneys' fees and costs.

27 157. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
28 below.

NINTH CAUSE OF ACTION AGAINST BENNETT ENTERPRISES AND/OR DOES:

Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (Lab. Code §§ 233, 234, 246)

158. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

159. Section 246(a)(1) of the *California Labor Code* states: “An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.”

160. *California Labor Code* section 246, subdivision (b)(1), provides, in pertinent part, “an employee shall accrue paid sick days at the rate of not less than one (1) hour per every thirty (30) hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later.”

161. *California Labor Code* section 246(c) states: “An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.”

162. *California Labor Code* section 233(c) states: “An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.”

163. *California Labor Code* section 233(d) provides relief for violations of this section, stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.”

164. *California Labor Code* section 234 further forbids employers from adopting an “absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.”

1 165. *California Labor Code* section 246(k) provides that, “[a]n employee may determine how
2 much paid sick leave they need to use, provided that an employer may set a renewable
3 minimum increment, not to exceed two hours, for the use of paid sick leave.”

4 166. *California Labor Code* section 246(i) requires: “An employer shall provide an employee
5 with written notice that sets forth the amount of paid sick leave available, or paid time off
6 leave an employer provides in lieu of sick leave, for use on either the employee’s itemized
7 wage statement described in Section 226 or in a separate writing provided on the designated
8 pay date with the employee’s payment of wages. If an employer provides unlimited paid
9 sick leave or unlimited paid time off to an employee, the employer may satisfy this section
10 by indicating on the notice or the employee’s itemized wage statement “unlimited.”

11 167. Defendant and/or DOES fail to provide Plaintiff and Class Members with paid sick days
12 in accordance with these provisions.

13 168. Defendant and/or DOES operate under an absence control policy that counts sick leave
14 taken pursuant to *California Labor Code* section 233 as an unauthorized absence that may
15 result in discipline, discharge, demotion, or termination. Thus, Defendant’s and/or DOES’
16 sick pay policy punishes Plaintiff and Class Members by way of suspension and/or
17 termination for use of protected and appropriate sick leave.

18 169. Further, Defendant’s and/or DOES’ sick pay policy fails to pay Plaintiff and Class
19 Members sick pay for all appropriate and protected purposes enumerated in *California*
20 *Labor Code* sections 233, 234, and 246, and Defendant and/or DOES fail to itemize the
21 amount of accrued/available sick leave Plaintiff and Class Members have on wage
22 statements each pay period.

23 170. As a result of the unlawful acts of Defendant and/or DOES, Plaintiff and the Class he seeks
24 to represent have been incurred damages, in amounts to be determined at trial, and are
25 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees
26 and costs, pursuant to *California Labor Code* sections 233(e) and 246.

27 171. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
28 below.

TENTH CAUSE OF ACTION AGAINST BENNETT ENTERPRISES AND/OR DOES:

Violation of Unfair Competition Law (California Bus. & Prof. Code, § 17200, et seq.)

172. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

173. BENNETT ENTERPRISES and/or DOES failure to pay all straight time and overtime wages earned, failure to provide compliant meal and/or rest breaks and/or compensation in lieu thereof, failure to itemize and keep accurate records, failure to pay all wages due at time of termination, failure to adopt a compliant sick pay policy, as alleged herein, constitutes unlawful activity prohibited by California Business and Professions Code section 17200, et seq.

174. The actions of BENNETT ENTERPRISES and/or DOES in failing to pay Plaintiff and members of the proposed Class in a lawful manner, as alleged herein, constitutes false, unfair, fraudulent and deceptive business practices, within the meaning of California Business and Professions Code section 17200, et seq.

175. Plaintiff is entitled to an injunction and other equitable relief against such unlawful practices in order to prevent future damage, for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits. Plaintiff brings this cause individually and as members of the general public actually harmed and as a representative of all others subject to BENNETT ENTERPRISES and/or DOES unlawful acts and practices.

176. As a result of their unlawful acts, BENNETT ENTERPRISES and/or DOES have reaped and continue to reap unfair benefits at the expense of Plaintiff and the proposed Class he seeks to represent. BENNETT ENTERPRISES and/or DOES should be enjoined from this activity and made to disgorge these ill-gotten gains and restore Plaintiff and the members of the proposed Class pursuant to Business and Professions Code section 17203. Plaintiff is informed and believes, and thereon alleges, that Defendants and/or DOES are unjustly enriched through their policy of not all wages owed to Plaintiff and members of the proposed Class.

177. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of the

1 proposed class are prejudiced BENNETT ENTERPRISES and/or DOES unfair trade
2 practices.

3 178. As a direct and proximate result of the unfair business practices of BENNETT
4 ENTERPRISES and/or DOES, and each of them, Plaintiff, individually and on behalf of
5 all employees similarly situated, are entitled to equitable and injunctive relief, including
6 full restitution and/or disgorgement of all wages and premium pay which have been
7 unlawfully withheld from Plaintiff and members of the proposed Class as a result of the
8 business acts and practices described herein and enjoining BENNETT ENTERPRISES
9 and/or DOES from engaging in the practices described herein.

10 179. The illegal conduct alleged herein is continuing, and there is no indication that BENNETT
11 ENTERPRISES and/or DOES will cease and desist from such activity in the future.
12 Plaintiff alleges that if BENNETT ENTERPRISES and/or DOES are not enjoined from the
13 conduct set forth in this Complaint, they will continue the unlawful activity discussed
14 herein.

15 180. Plaintiff further requests that the Court issue a preliminary and permanent injunction
16 prohibiting BENNETT ENTERPRISES and/or DOES from continuing to not pay Plaintiff
17 and the members of the proposed Class overtime wages as discussed herein.

18 181. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
19 below.

20 **V. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment as follows:

- 22 A. That the Court determine that this action may be maintained as a class action;
23 B. For compensatory damages, in an amount according to proof at trial, with interest
24 thereon;
25 C. For economic and/or special damages in an amount according to proof with interest
26 thereon;
27 D. For unpaid straight time and overtime wages, in an amount according to proof at trial,
28 with interest thereon;

- 1 E. For compensation for all time worked;
- 2 F. For compensation for not being provided paid rest breaks;
- 3 G. For compensation for not being provided paid meal periods;
- 4 H. For damages and/or monies owed for failure to comply with itemized employee wage
- 5 statement provisions;
- 6 I. For all reimbursements of business expenses;
- 7 J. For damages and/or monies owed for adopting an unlawful sick pay policy;
- 8 K. That Defendant be found to have engaged in unfair competition in violation of sections
- 9 17200 et seq. of the California Business and Professions Code;
- 10 L. That Defendant be ordered and enjoined to make restitution to the Class due to their
- 11 unfair competition, including disgorgement of their wrongfully withheld wages
- 12 pursuant to California Business and Professions Code sections 17203 and 17204;
- 13 M. That an order of specific performance of all penalties owed be issued under Business
- 14 and Professions Code sections 17202;
- 15 N. That Defendant be enjoined from continuing the illegal course of conduct, alleged
- 16 herein;
- 17 O. That Defendant further be enjoined to cease and desist from unfair competition in
- 18 violation of section 17200 et seq. of the California Business and Professions Code;
- 19 P. That Defendant be enjoined from further acts of restraint of trade or unfair competition;
- 20 Q. For attorneys' fees;
- 21 R. For Liquidated Damages;
- 22 S. For interest accrued to date;
- 23 T. For costs of suit and expenses incurred herein; and
- 24 U. For any such other and further relief as the Court deems just and proper.
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DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

Dated:

MARA LAW FIRM, PC



David Mara, Esq.
Jill Vecchi, Esq.
Attorneys for Plaintiff JOSE BARAJAS on behalf of
himself, all others similarly situated, and on behalf of
the general public.