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Class

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David W. Slayton,
Executive Officer/Clerk of Court,
By J. Covarrubias, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Juan Antonio Munoz, individually and
on behalf of all similarly situated
individuals,

Plaintiff,

vs.

Brightview Landscape Services, Inc.,
a California corporation; **Michael**
Dozier, an individual; and **Does 1-100**;

Defendants.

CASE NO. **24STCV18063**

CLASS ACTION COMPLAINT FOR:

- 1) Failure to Pay Minimum Wages;**
- 2) Failure to Pay Overtime Wages;**
- 3) Failure to Provide Meal Periods or Premium Pay in Lieu Thereof;**
- 4) Failure to Provide Rest Periods or Premium Pay in Lieu Thereof;**
- 5) Failure to Reimburse Necessary Business Expenses;**
- 6) Failure to Provide and Maintain Accurate Records;**
- 7) Failure to Pay Wages When Due During Employment and at Separation;**
- 8) Failure to Produce Wage Statements (Cal. Lab. Code § 226);**
- 9) Failure to Produce Personnel Records (Cal. Lab. Code § 1198.5); and**
- 10) Violation of California's Unfair Competition Law**

Jury Trial Requested

1 Plaintiff Juan Antonio Munoz (“Plaintiff”), on behalf of himself and all other
2 similarly situated current and former employees (“Class Members”), by and through his
3 counsel of record, alleges as follows against Brightview Landscape Services, Inc., Michael
4 Dozier, and DOES 1-100 (collectively, “Defendants”):

5 **PARTIES**

6 1. Plaintiff **Juan Antonio Munoz** is a resident of Los Angeles, County of Los
7 Angeles, California. Plaintiff was as an hourly, non-exempt employee of Defendants
8 working as a driver/landscaper from approximately October 2022 to April 5, 2024. Plaintiff
9 Juan Antonio Munoz was subject to the policies and practices described in this Complaint
10 at all times during his employment with Defendants.

11 2. Defendant **Brightview Landscape Services, Inc.** (“Brightview”) is a
12 California corporation and is in the business of designing, developing, and maintenance of
13 commercial landscaping projects. On information and belief, Brightview Landscape
14 Services, Inc. has employed at least 50 hourly, non-exempt employees in a variety of
15 capacities through the four years leading to this Complaint within the state of California.
16 Brightview Landscape Services, Inc. is a California stock corporation with its principal place
17 of business at 980 Jolly Road, Suite 300, Blue Bell, Pennsylvania 19422.

18 3. Defendant **Michael Dozier** is the Chief Executive Officer of Brightview
19 Landscape Services, Inc., and on information and belief is a resident of the County of
20 Montgomery, Pennsylvania. Upon information and belief, he violated or caused to be
21 violated the regulations and statutes described in greater detail below. Since Michael Dozier
22 is a managing agent, director, and/or officer of Brightview Landscape Services, Inc. and
23 because he violated or caused to be violated the statutes at issue in this action, he is
24 personally liable for the Labor Code violations and PAGA penalties complained of herein
25 per Labor Code § 558.1.

26 4. Plaintiff is not currently aware of the names and true identities of defendants
27 Does 1-100. Plaintiff reserves the right to amend this complaint to allege their true names
28 and capacities when this information is available. Each Doe defendant is responsible for

1 the damages alleged pursuant to each of the causes of action asserted, either through its
2 own conduct, or vicariously through the conduct of others. Further references in this
3 complaint to any named Defendants includes the fictitiously named defendants.

4 5. At all times alleged herein, each Defendant was an agent, servant, joint
5 employer, employee, partner, and/or joint venture of every other Defendant and was acting
6 within the scope of the Defendants' relationship. Moreover, the conduct of every Defendant
7 was ratified by each Defendant.

8 **VENUE AND JURISDICTION**

9 6. The court has jurisdiction over all causes of action in this complaint pursuant
10 to Article VI, § 10 of the California Constitution. No federal question is at issue; Plaintiff
11 relies solely on California statutes and law, including the Labor Code and Business &
12 Professions Code. Because Defendants conduct substantial business in Los Angeles County,
13 Defendants are within the jurisdiction of the court for service of process. Moreover,
14 Business & Professions Code § 17204 provides that any person acting on their own behalf
15 may bring an action in any court of competent jurisdiction.

16 7. Venue as to Defendants is proper in this Superior Court pursuant to
17 California Code of Civil Procedure § 395. Defendant Brightview Landscape Services, Inc. is
18 registered as a California corporation. A substantial amount of the unlawful acts alleged
19 have directly affected Plaintiff, and similarly situated employees, in Los Angeles County,
20 where Plaintiff was employed by Defendants and earned wages at issue in this action.
21 Accordingly, this Court maintains appropriate jurisdiction over this dispute.

22 **CLASS ACTION ALLEGATIONS**

23 8. As a matter of uniform and systemic policy, Defendants failed to authorize
24 and/or permit non-exempt employees the right to take timely, compliant, uninterrupted,
25 and/or duty-free meal and rest breaks pursuant to Labor Code § 226.7 based on, at least,
26 the following uniform policies and practices.

27 9. *First*, Defendants implemented a policy and practice that expressly required
28 Plaintiff and Class Members to remain on-call during meal and rest breaks. Class Members

1 were also required to listen for and respond to calls and messages from Defendants and
2 supervisors regardless of whether they were on a meal or rest period. Class Members were
3 not permitted to leave the premises during their breaks. These policies prohibited
4 employees from using meal and rest periods in a manner of their choosing, free from their
5 employer's dominion and control. In doing so, Defendants illegally deprived employees of
6 lawful meal and rest periods each shift or premium pay in lieu thereof.

7 10. *Second*, Defendants, in fact, interrupted Plaintiff and Class Members during
8 their meal and rest periods to discuss work-related matters and/or instruct them on
9 pending tasks—illegally depriving employees of compliant meal and rest periods or
10 premium pay in lieu thereof.

11 11. *Third*, Defendants also cut breaks short and/or prohibited employees from
12 taking breaks when workloads were high and/or when locations were understaffed.

13 12. In failing to authorize and/or permit timely and/or uninterrupted meal and
14 rest periods, Defendants have also implemented a uniform policy of denying compensation
15 in lieu of meal and rest periods to its non-exempt employees. Defendants denied
16 compensation in lieu of meal and rest periods, including premium wages owed,
17 notwithstanding their actual knowledge that such employees were uniformly denied
18 compliant meal and rest periods.

19 13. Defendants routinely required Plaintiff and Class Members to clock out for
20 meal breaks but continue working and/or stay on-call. This deprived Plaintiff and Class
21 Members of timely, compliant meal breaks, meal premium wages, and minimum wages for
22 all hours worked.

23 14. By requiring employees to work during their meal periods but preventing
24 them from recording that time, Plaintiff and Class Members were forced to work and/or
25 remain on-call off the clock and deprived of owed straight time wages. Additionally, as Class
26 Members worked shifts of at least 8 hours, or weeks of at least 40 hours, or for days of work
27 without one day's rest in seven, some of this time was required to be paid at overtime rates,
28 but was not done so.

15. As part of its operational policies and practices, Defendants did not properly compensate Plaintiff and other Class Members for their time spent on-call. These policies and practices resulted in the Class being deprived of at least minimum wage for all hours worked, and being deprived of earned overtime wages.

16. Finally, Plaintiff and Class Members were not reimbursed for necessary business expenditures, such as using their cellular phones to discharge their duties.

17. Accordingly, Plaintiff brings this action on behalf of himself and as a class action on behalf of the following defined Class:

18. **Non-Exempt Employee Class:**

All non-exempt, hourly employees who worked at least one 3.5-hour shift for Defendants in the State of California from the period four years prior to the filing of the Action and the date of trial ("Class").

19. Common methods of proof exist for determining these issues on a class-wide basis, including but not limited to, Defendants' employment records, payroll records, timesheets, policies, and disciplinary records.

20. **Numerosity.** Plaintiff is informed and believes that, during the class period, at least 50 Class Members have been employed as non-exempt employees by Defendants within the state of California. The number of Class Members is sufficiently numerous such that joinder of all members is impossible or impracticable.

21. **Typicality.** Plaintiff's claims are typical of all Class Members. Like all other Class Members, Plaintiff was subjected to the policies and practices set forth above. Plaintiff's job duties were typical of Class Members in all relevant respects.

22. **Adequacy.** There are no material conflicts between the claims of the representative Plaintiff and Class Members that would make class certification inappropriate. Plaintiff understands his obligation to inform the Court of any relationship, conflicts, or differences with any Class Member. Plaintiff will fairly and adequately protect the interests of the Class Members. Plaintiff is invested in redressing Defendants' illegal practices on behalf of all Class Members. Moreover, Plaintiff has retained competent

counsel experienced in both class action and employment litigation. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement, and will vigorously assert the claims of all Class Members. Plaintiff has incurred, and will continue to incur, costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

23. **Existence and Predominance of Common Issues.** Common questions of law and fact exist as to all Class Members and predominate over issues affecting individual Class Members, including, but not limited to:

- a. Whether Defendants have a common policy and/or practice of failing to accurately record non-exempt employees' time;
- b. Whether Defendants have a common policy and/or practice of failing to accurately compensate non-exempt employees for all time worked;
- c. Whether Defendants unlawfully required Plaintiff and Class Members to remain under Defendants' control and direction while off-the-clock;
- d. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff and Class Members at a minimum wage for all hours worked;
- e. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff and Class Members required overtime wages;
- f. Whether Defendants have a common policy and/or practice of depriving Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;
- g. Whether Defendants unlawfully and/or willfully deprived Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;
- h. Whether Defendants paid Plaintiff and Class Members all required premium wages for non-compliant meal and/or rest periods;
- i. Whether Defendants have a common policy and/or practice of failing to reimburse employees for necessary business expenditures;

- 1 j. Whether Defendants have a common policy and/or practice of failing to
2 maintain accurate payroll records in the State of California;
- 3 k. Whether Defendants unlawfully and/or willfully failed to maintain
4 accurate payroll records in the State of California;
- 5 l. Whether Defendants have a policy and/or practice of failing to provide
6 accurate wage statements reflecting hours worked and wages earned to
7 Plaintiff and Class Members;
- 8 m. Whether Defendants unlawfully and/or willfully failed to provide accurate
9 wage statements reflecting hours worked and wages earned to Plaintiff
10 and Class Members;
- 11 n. Whether Defendants have a policy and/or practice of failing to timely pay
12 wages during employment in violation of Labor Code §§ 204, 210.
- 13 o. Whether Defendants have a policy and/or practice of failing to pay
14 Plaintiff and Class Members final wages owed upon termination;
- 15 p. Whether Defendants unlawfully and/or willfully failed to promptly pay
16 compensation due to Plaintiff and Class Members upon termination of
17 employment in violation of Labor Code §§ 201, 202, and 203;
- 18 q. Whether Defendants have a common policy and/or practice of failing to
19 keep and maintain accurate records subject to Labor Code sections 226 or
20 1198.5;
- 21 r. Whether Defendants have a common policy and/or practice of failing to
22 produce and/or timely produce records in response to a request under
23 Labor Code section 226 or 1198.5;
- 24 s. Whether Defendants have a common policy and/or practice of providing
25 specific records for complying with Labor Code sections 226 or 1198.5
26 requests;
- 27 t. Whether Defendants have a common policy and/or practice of lawfully
28 complying with Labor Code sections 226 or 1198.5 requests via a

subpoena;

- u. Whether Plaintiff and Class Members sustained damages as a result of any of the aforementioned violations, and, if so, the proper measure of those damages, including interest, penalties, costs, attorneys' fees, and equitable relief;
- v. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, by violating the above provisions of law; and
- w. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, by treating Plaintiff and Class Members unfairly by depriving them of meal and/or rest periods, failing to provide them with compensation in lieu of meal and/or rest periods, failing to pay all regular and overtime wages earned, failing to pay wages upon termination, failing to furnish accurate and timely itemized wage statements upon payment of wages, and failing to pay all compensation due upon discharge.

24. **Superiority.** A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by individual Class Members, while substantial, are small compared to the burden and expense of individual prosecution of the complex and expensive litigation necessary to address Defendants' conduct. Even if Class Members themselves could afford individual litigation, the court system would be overwhelmed by individual lawsuits if all Class Members sought redress. In addition, individualized litigation increases the delay and expense to all parties and to the court system resulting from the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far fewer management difficulties; it allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits, and it provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Plaintiff

contemplates providing individual notice to members of the Class through Defendants' records.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

California Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198

Failure to Pay Minimum Wages for All Hours Worked

(Plaintiff and Class Against Defendants)

25. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

26. California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that payment of a wage less than the minimum wage as set by statute, commission, or by the general prevailing rate is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(L) (defining "Hours Worked").

27. Defendants failed to compensate Plaintiff and the Class for all hours worked because Defendants had a policy and/or practice whereby they required and/or pressured Class Members to work off-the-clock while on-call.

28. Defendants required Plaintiff and Class Members to perform work off-the-clock during putative meal periods, but did not compensate them for that time worked, depriving them of minimum wages owed.

29. Defendants failed to compensate Plaintiff and the Class for all hours worked because Defendants had a policy and/or practice of requiring employees to clock out for meal breaks but continue working.

30. Defendants failed to compensate Plaintiff and the Class for all hours worked because Defendants had a policy and/or practice whereby they required Plaintiff and Class Members to be on-call during their putative meal periods, but were not paid for this time based on such time either not being recorded as time worked despite being compensable.

31. Defendants' failure to pay Plaintiff and Class Members minimum wages for all hours worked violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

32. Pursuant to California Labor Code section 1194.2, Plaintiff and Class Members are entitled to recover the amount of underpaid wages, plus liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon, applicable civil penalties, and reasonable attorney's fees and costs.

SECOND CAUSE OF ACTION

California Labor Code §§ 510 and 1198

Failure to Pay Overtime Wages

(Plaintiff and Class Against Defendants)

33. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

34. California Labor Code sections 510, 1198, and Industrial Wage Order No. 5 provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis. Specifically, Industrial Wage Order No. 5 provides that Defendants were required to pay Plaintiff and Class Members working more than eight hours in a day or more than forty hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight hours in a day or more than forty hours in a workweek.

35. Throughout the Class Period, Plaintiff and Class Members were not paid overtime premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a day, in excess of eight hours on the seventh consecutive day of work in a workweek, and/or in excess of 40 hours in a week because all hours worked were not recorded as compensable time as a direct consequence of Defendants' policies and practices.

36. Defendants routinely required Plaintiff and Class Members to perform extra

1 duties/remain on call off-the-clock without compensation in addition to their regularly
2 scheduled shifts. Class Members worked shifts of at least 8 hours, or weeks of at least 40
3 hours, or for days of work without one day's rest in seven, some of this time was required
4 to be paid at overtime rates, but was not done so. By requiring employees to work/remain
5 on-call off-the-clock but preventing them from recording that time, Plaintiff and Class
6 Members were deprived of owed overtime wages.

7 37. Defendants failed to compensate Plaintiff and the Class for all hours worked
8 because Defendants had a policy and/or practice whereby they required and/or pressured
9 Class Members to work off-the-clock while on-call, and were not compensated for overtime
10 wages earned due to Defendants' on-call policies and practices.

11 38. Defendants failed to compensate Plaintiff and the Class for overtime wages
12 earned because Defendants had a policy and/or practice of requiring employees to clock
13 out for meal breaks but continue working.

14 39. Defendants knew or should have known that their policies and practices
15 forced Plaintiff and Class Members to work in excess of eight hours per workday and/or 40
16 hours per workweek without being compensated for all hours worked. Because Plaintiff and
17 Class Members worked shifts of more than eight hours a day or forty hours a week on the
18 clock, some of this work qualified for overtime premium pay. Therefore, Plaintiff and Class
19 Members were not paid overtime wages at the correct rate of pay for all of the overtime
20 hours worked.

21 **THIRD CAUSE OF ACTION**

22 ***California Labor Code §§ 226.7, 512(a), and 1198***

23 ***Failure to Provide Meal Periods or Premium Pay in Lieu Thereof***

24 **(Plaintiff and Class Against Defendants)**

25 40. Plaintiff repeats and incorporates by reference all allegations contained in the
26 preceding paragraphs as if fully set forth herein.

27 41. Labor Code section 512(a) provides that an employer may not require, cause,
28 or permit an employee to work for a period of more than five hours per day without

1 providing the employee with a meal period of not less than thirty minutes, except that if the
2 total work period per day of the employee is not more than six hours, the meal period may
3 be waived by mutual consent of both the employer and the employee. Under California law,
4 first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior*
5 *Court*, 53 Cal. 4th 1004, 1041-104 (2012). An employee is also entitled to a second meal
6 period for shifts in which the employee works in excess of ten hours.

7 42. Labor Code section 226.7, 512(a), and 1198 provide that no employer shall
8 require an employee to work during any meal period mandated by an applicable order of
9 the IWC, including Industrial Wage Order No. 5. “An off-duty meal period, therefore, is one
10 in which the employee is relieved of all duty during the 30-minute meal period . . . an
11 employer’s obligation is to provide an off-duty meal period: an uninterrupted 30–minute
12 period during which the employee is relieved of all duty.” *Brinker Rest. Corp. v. Superior*
13 *Court*, 53 Cal. 4th 1004, 1035 (2012). The employee must also be “free to leave the
14 premises.” *Id.* at 1036.

15 43. Defendants also failed to relieve Plaintiff and Class Members from all duty
16 when on their meal period by requiring Plaintiff and Class Members to comply with an
17 unlawful and systematic policy and practice whereby Defendants required Plaintiff and
18 Class Members to remain on-call during all meal periods. Additionally, Defendants
19 pressured Plaintiff and Class Members to prioritize completing assigned work by working
20 through their meal periods, skipping them, or by interrupting their meal periods, or by
21 taking them late. Numerous Class Members, including Plaintiff, were required to take late
22 meal periods, skip them, interrupt them, or remain on duty due to the combination of
23 Defendants’ scheduling practices and policies.

24 44. Defendants failed to provide compliant breaks free from control because they
25 prohibited Plaintiff and the Class from leaving the premises during breaks.

26 45. Defendants failed to provide Plaintiff and the Class compliant meal breaks or
27 meal break premium payments in lieu thereof because Defendants had a policy and/or
28 practice of requiring employees to clock out for meal breaks but continue working.

1 46. By requiring employees to work off-the-clock but preventing them from
2 recording that time, Plaintiff and Class Members worked in excess of 10 hours in a day.
3 However, their hours were recorded as less than 10 hours in a day, and they were not
4 provided a second meal break they were entitled to, nor meal period premium payments in
5 lieu thereof.

6 47. Defendants did not pay Plaintiff and Class Members all meal period premium
7 wages when meal periods were missed, interrupted by work, and taken late, in violation of
8 Wage Order No. 5 and Labor Code sections 226.7 and 512(a).

9 48. Defendants' conduct violates Wage Order No. 5 and Labor Code sections
10 512(a), 226.7, and 1198. Plaintiff and Class Members are entitled to one additional hour of
11 pay at their regular rate of compensation for each workday that a compliant meal period
12 was not provided, and interest thereon, along with applicable civil penalties.

13 **FOURTH CAUSE OF ACTION**

14 ***California Labor Code §§ 226.7 and 1198***

15 ***Failure to Provide Rest Periods or Premium Pay in Lieu Thereof***

16 **(Plaintiff and Class Against Defendants)**

17 49. Plaintiff repeats and incorporates by reference all allegations contained in the
18 preceding paragraphs as if fully set forth herein.

19 50. At all times relevant to this complaint, Defendants knew it was obligated to
20 provide compliant rest breaks to its non-exempt employees pursuant to Labor Code
21 § 226.7.

22 51. Labor Code § 226.7 provides:

- 23 (a) No employer shall require any employee to work during any meal or rest
24 period mandated by an applicable order of the Industrial Welfare
25 Commission.
26 (b) If any employer fails to provide an employee a meal period or rest period in
27 accordance with an applicable order of the Industrial Welfare Commission,
28 the employer shall pay the employee one additional hour of pay at the

1 employee's regular rate of compensation for each work day that the meal or
2 rest period is not provided.

3 52. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require
4 an employee to work during any rest or meal period mandated by an applicable order of the
5 IWC, including Wage Order No. 5. Employers must authorize and permit employees to be
6 relieved of all duty during their rest and meal periods: "A rest period, in short, must be a
7 period of rest."¹ *Augustus v. ABM Sec. Servs., Inc.*, 385 P.3d 823, 834 (2016).

8 53. Employees must also be free to leave the employer's premises during their
9 rest period. *See id.* at 270 ("In the context of a 10-minute break that employers must provide
10 during the work period, a broad and intrusive degree of control exists when an employer
11 requires employees to remain on call and respond during breaks. An employee on call
12 cannot take a brief walk—five minutes out, five minutes back—if at the farthest extent of
13 the walk he or she is not in a position to respond. Employees similarly cannot use their 10
14 minutes to take care of other personal matters that require truly uninterrupted time."); *see*
15 *also* Department of Industrial Relations, "Rest Periods," available at
16 https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm ("Q. Can my employer require that I
17 stay on the work premises during my rest period? A. No, your employer cannot impose any
18 restraints not inherent in the rest period requirement itself.").

19 54. Defendants failed to relieve Plaintiff and Class Members from all duty when
20 on their rest period by requiring Plaintiff and Class Members to comply with an unlawful
21 and systematic policy and practice that interfered with their ability to take compliant rest
22 periods whereby they required Plaintiff and Class Members to remain on-call throughout
23 rest periods. Additionally, Defendants pressured Plaintiff and Class Members to prioritize
24 completing assigned work by working through their rest periods, skipping them, or by
25

26 ¹ Employees must also be free to leave the premises. *Augustus*, 2 Cal. 5th at 270; *see also*
27 Department of Industrial Relations, "Rest Periods/Lactation Accommodations," available
28 at https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm ("Q. Can my employer require
that I stay on the work premises during my rest period? A. No, your employer cannot
impose any restraints not inherent in the rest period requirement itself.").

1 interrupting their rest periods, or by taking them late.

2 55. Defendants failed to provide compliant breaks free from control because they
3 prohibited Plaintiff and the Class from leaving the premises during breaks.

4 56. As a direct and proximate result of Defendants' willful and unlawful conduct,
5 Plaintiff and Class Members have sustained damages, including lost compensation
6 resulting from missed or non-compliant rest periods, in an amount to be established at
7 trial.

8 57. Pursuant to Wage Order No. 5 and Labor Code § 226.7(b), Plaintiff and Class
9 Members are entitled to recover from Defendants an additional hour of pay at their regular
10 rates of pay for each shift that a compliant rest period was not provided. Defendant was
11 aware that its actions were a violation of applicable law but consistently refused to pay
12 premium pay as required by law.

13 **FIFTH CAUSE OF ACTION**

14 ***California Labor Code § 2802***

15 ***Failure to Reimburse Necessary Business Expenses***

16 **(Plaintiff and Class Against Defendants)**

17 58. Plaintiff repeats and incorporates by reference every allegation in this
18 complaint as if fully set forth herein.

19 59. Labor Code section 2802 provides that "[a]n employer shall indemnify his or
20 his employee for all necessary expenditures or losses incurred by the employee in direct
21 consequence of the discharge of his or his duties, or of his or his obedience to the directions
22 of the employer." Lab. Code § 2802.

23 60. Defendants failed to reimburse Plaintiff and Class Members for all business-
24 related expenses that were necessary to perform their job, including requiring Plaintiff and
25 the Class to use their personal cell phones for Defendants' business. *See Cochran v.*
26 *Schwan's Home Services, Inc.*, 228 Cal. App. 4th 1137 (2014).

27 61. By unlawfully failing to pay Plaintiff and Class Members, Defendants are
28 liable for the costs Plaintiff and Class Members incurred plus attorneys' fees and costs. Lab.

1 Code § 2802.

2 **SIXTH CAUSE OF ACTION**

3 ***California Labor Code §§ 226(a)/(f)/(h), 226.3, and 1174(d)***

4 ***Failure to Provide and Maintain Accurate Records***

5 **(Plaintiff and Class Against Defendants)**

6 62. Plaintiff repeats and incorporates by reference all allegations contained in the
7 preceding paragraphs as if fully set forth herein.

8 63. Labor Code § 226 requires employers to furnish employees with an accurate,
9 itemized statement in writing showing, among other things, (1) gross wages earned; (2)
10 total hours worked by the employee (for hourly-paid, non-exempt employees); (3) net
11 wages earned; and (4) all applicable hourly rates in effect during the pay period and the
12 corresponding number of hours worked at each hourly rate by the employee.

13 64. At all times relevant to this complaint, Defendants' failure to pay premium
14 wages for missed meal and rest periods and minimum and/or overtime wages for work-off-
15 the-clock rendered Class Members' wage statements inaccurate by failing to accurately
16 reflect Plaintiff's and Class Member's time worked, as well as gross and net wages earned.

17 65. Injury. Defendants knowingly and intentionally failed to comply with Labor
18 Code § 226, causing injury and damages to Plaintiff and Class Members. Plaintiff and all
19 those similarly situated were injured by these failures because, among other things, they
20 were confused about whether they were paid properly and/or they were misinformed about
21 how much compensation was owed.

22 66. Relief. Labor Code § 226(e)(1) provides that an employee suffering injury as
23 a result of not being provided with an accurate itemized wage statement is entitled to
24 recover the greater of all actual damages suffered or fifty (\$50) dollars for the initial
25 violation and one hundred (\$100) dollars for each subsequent violation, up to \$4,000.
26 Pursuant to Labor Code §§ 226(e) and (g), Plaintiff and all others similarly situated are
27 entitled to injunctive relief to ensure Defendants' compliance with Labor Code § 226, as
28 well as attorney's fees and costs of suit.

67. Additionally, Defendants' actions in regard to Labor Code § 248.2(d)(2)(A) constitute violations of Labor Code sections 233 and 245, *et seq.* As a result, Plaintiff and the Class are accordingly entitled to all applicable civil penalties, and reasonable attorney's fees and costs in an amount subject to proof at trial. Lab. Code §§ 233 and 245, *et seq.*

SEVENTH CAUSE OF ACTION

California Labor Code §§ 201, 202, 203, 204, 210

Failure to Pay Wages When Due

(Plaintiff and Class Against Defendants)

68. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

69. Labor Code § 201 provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages² shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of quitting."

70. Defendants do not include definite periods of service in their contracts of employment for Class Members employed working at California job sites. Plaintiff's contract of employment did not include a definite term.

² Labor Code § 200 defines "wages" as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." "Labor" is defined as "labor, work, or service . . . if the labor to be paid for is performed personally by the person demanding payment." Additionally, in *Naranjo v. Spectrum Security Services, Inc.*, 13 Cal. 5th 93 (2022), the California Supreme Court recently held that failure to pay premiums for violating the California Labor Code's meal and rest break provisions constitutes "wages" for purposes of waiting time penalties.

1 71. Labor Code § 203 provides, in relevant part that, “[i]f an employer willfully
2 fails to pay, without abatement or reduction, in accordance with § 201, 201.5, 202, and
3 205.5, any wages of an employee who is discharged or who quits, the wages of the employee
4 shall continue as a penalty from the due date thereof at the same rate until paid or until an
5 action therefor is commenced; but the wages shall not continue for more than 30 days.”

6 72. Labor Code § 204 provides that all wages, other than those mentioned in
7 Section 201 and 202, are due and payable twice during each calendar month, on days
8 designated in advance by the employer as regular paydays.

9 73. Failure to Timely Pay Wages Due. As set forth above, Defendants failed to
10 timely pay the minimum wages, overtime wages, and meal and rest period premiums
11 resulting from its deficient timekeeping and meal and rest period policies upon its regularly
12 scheduled paydays.

13 74. Relief. Defendants’ failure to pay Plaintiff and those Class Members wages on
14 their regularly scheduled pay dates subjects Defendants to civil penalties in the amount of
15 \$100 per employee per initial violation and \$200 per employee for every subsequent
16 violation of Labor Code § 204 pursuant to Labor Code § 210.

17 75. Failure to Pay Upon Termination. Plaintiff and many Class Members have left
18 Defendants’ employ during the Class Period. As discussed above, Defendants knowingly
19 failed to pay Plaintiff and Class Members all earned wages upon termination. Instead,
20 Defendants willfully and intentionally refused to pay the earned rest and/or meal period
21 premiums and earned minimum wages as alleged herein to Plaintiff and Class Members in
22 violation of Labor Code §§ 201 and 202.

23 76. Relief. Defendants’ failure to pay Plaintiff and those Class Members who are
24 no longer employed by Defendants their wages earned and unpaid at the time of discharge,
25 or within seventy-two (72) hours of their leaving Defendants’ employment, violates Labor
26 Code §§ 201 and 202. Plaintiff and Class Members are therefore entitled to recover from
27 Defendants the statutory penalty wages for each day they were not paid, at their regular
28 rate of pay, up to a 30-day maximum penalty under Labor Code § 203.

1 **EIGHTH CAUSE OF ACTION**

2 ***Failure to Produce Payroll Records***

3 ***Labor Code § 226, et seq.***

4 **(Plaintiff and Class Against Defendants)**

5 77. Plaintiff repeats and incorporates by reference all the allegations of this
6 Complaint as though fully set forth herein.

7 78. California labor Code section 226(a) requires employers to keep copies of an
8 employee's accurate itemized statements, *i.e.*, their paystubs, on file for at least three years.

9 79. California Labor Code Section 226(b) states, in pertinent part, "An employer
10 that is required by this code or any regulation adopted pursuant to this code to keep the
11 information required by subdivision (a) shall afford current and former employees the right
12 to inspect or receive a copy of records pertaining to their employment, upon reasonable
13 request to the employer."

14 80. California Labor Code Section 226(c) states, in pertinent part, "An employer
15 who receives a written or oral request to inspect or receive a copy of records pursuant to
16 subdivision (b) pertaining to a current or former employee shall comply with the request
17 as soon as practicable, but no later than 21 calendar days from the date of the request."

18 81. California Labor Code Section 226(f) states, "A failure by an employer to
19 permit a current or former employee to inspect or receive a copy of records within the time
20 set forth in subdivision (c) entitles the current or former employee or the Labor
21 Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.

22 82. California Labor Code Section 226(h) states, "An employee may also bring an
23 action for injunctive relief to ensure compliance with this section, and is entitled to an
24 award of costs and reasonable attorney's fees.

25 83. Upon information and belief, Defendants instituted a uniform and systematic
26 policy and/or practice of denying current and/or former employees the right to inspect and
27 receive a complete copy of personnel records required to be maintained and produced
28 under Section 226.

84. For instance, on May 23, 2024, Plaintiff's legal counsel requested from Defendants via written correspondence production of Plaintiff's payroll records and wage statements in accordance with Labor Code § 226(b). These letters were sent to Defendants' at their agent for service of process and address listed as Plaintiff's employer on his paystubs, and were delivered per records provided by the U.S. Postal Service.

85. Per Labor Code § 226(c), Defendants were required to produce Plaintiff's payroll records and wage statements to their legal counsel within 21-days from the date of the written request or by June 13, 2024.

86. Defendants failed to produce Plaintiff's complete payroll records and wage statements by June 13, 2024, or anytime thereafter.

87. Defendants failed to comply with their production obligations to Plaintiffs under Labor Code § 226(c).

88. As a result of the violations described hereinabove, Plaintiff lost money and/or property, including but not limited to the cost of purchasing paper and envelopes, postage fees, processing fees involved in requesting their records, as well as the costs incurred in bringing this action.

89. Defendants violated Labor Code § 226(c) with respect to Plaintiff and similarly situated Class Members, entitling them to a \$750.00 penalty plus reasonable attorney's fees and costs, and injunctive relief, from Defendants for this violation per Labor Code § 226(f) and (h).

NINTH CAUSE OF ACTION

Failure to Produce Personnel Records

Labor Code § 1198.5

(Plaintiff and Class Against Defendants)

90. Plaintiff repeats and incorporates by reference all the allegations of this Complaint as though fully set forth herein.

91. California Labor Code Section 1198.5(a) states, "Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the

1 personnel records that the employer maintains relating to the employee's performance or
2 to any grievance concerning the employee."

3 92. California Labor Code Section 1198.5(b)(1) states, in pertinent part, "The
4 employer shall make the contents of those personnel records available for inspection to the
5 current or former employee, or his or her representative...not later than 30 calendar days
6 from the date the employer receives a written request[.]" An employer must also provide
7 attendance records in response to a Labor Code § 1198.5 request.³

8 93. California Labor Code Section 1198.5(k) states, "If an employer fails to permit
9 a current or former employee, or his or her representative, to inspect or copy personnel
10 records within the times specified in this section, or times agreed to by mutual agreement
11 as provided in this section, the current or former employee or the Labor Commissioner may
12 recover a penalty of seven hundred fifty dollars (\$750) from the employer."

13 94. California Labor Code Section 1198.5(l) states, "A current or former employee
14 may also bring an action for injunctive relief to obtain compliance with this section, and
15 may recover costs and reasonable attorney's fees in such an action."

16 95. Upon information and belief, Defendants instituted a uniform and systematic
17 policy and/or practice of denying current and/or former employees the right to inspect and
18 receive a complete copy of personnel records required to be maintained and produced
19 under Section 1198.5.

20 96. For example, on May 23, 2024, Plaintiff's legal counsel requested from
21 Defendants via written correspondence production of Plaintiff's personnel records and
22 attendance records in accordance with Labor Code § 1198.5(b)(1). These letters were sent
23 to Defendants' at their agent for service of process and address listed as Plaintiff's employer
24 on his paystubs, and were delivered per records provided by the U.S. Postal Service.

25 97. Per Labor Code § 1198.5(b)(1), Defendants were required to produce
26

27 ³ See DLSE, FAQ: Right to Inspect Personnel Files, California Department of Labor
28 Standards and Enforcement, available at:
https://www.dir.ca.gov/dlse/faq_righttoinspectpersonnelfiles.htm.

1 Plaintiffs' personnel records to their legal counsel within 30-days from the date of receipt
2 of the written request or by June 22, 2024.

3 98. Defendants failed to produce Plaintiffs' complete personnel records and
4 attendance records by June 22, 2024, or anytime thereafter.

5 99. As a result of the violations described hereinabove, Plaintiff lost money
6 and/or property, including but not limited to the cost of purchasing paper and envelopes,
7 postage fees, processing fees involved in requesting their records, as well as the costs
8 incurred in bringing this action.

9 100. Defendants' policies and practices are in violation of Labor Code 1198.5(a)
10 and (b)(1). Plaintiff and similarly situated Class Members are entitled to a \$750.00 penalty
11 plus reasonable attorney's fees and costs, and injunctive relief, from Defendants for this
12 violation per Labor Code 1198.5(k) and (l).

13 **TENTH CAUSE OF ACTION**

14 ***California Business and Professions Code §§ 17200, et seq.***

15 ***Violation of California's Unfair Competition Law***

16 **(Plaintiff and Class Against Defendants)**

17 101. Plaintiff repeats and incorporates by reference every allegation in this
18 complaint as if fully set forth herein.

19 102. Defendants are each a "person" as defined by California Business &
20 Professions Code § 17201, as it is a natural person, corporation, firm, partnership, joint
21 stock company, and/or association.

22 103. Unlawful Business Practices. Defendants' knowing violations of the Labor
23 Code and IWC Wage Order No. 5 constitute an unlawful business practice as set forth in
24 Business & Professions Code § 17200, *et seq.*

25 104. Defendants' failure to abide by the laws discussed herein provide Defendants
26 an unfair advantage over their competitors at the expense of their workers. Instead,
27 Defendants cut corners in the name of higher profits and at the expense of employee well-
28 being. Defendants' action thereby constitutes an unfair, fraudulent, and/or unlawful

business practice under Business & Professions Code § 17200, *et seq.*

105. Relief. Plaintiff brings this cause of action seeking equitable and injunctive relief to stop Defendants' willful and ongoing misconduct, and to seek restitution of the amounts Defendants acquired through the unfair, unlawful, and fraudulent business practices described herein. In addition, Plaintiff seeks an award of costs and attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

DEMAND FOR JURY TRIAL

Pursuant to California Code of Civil Procedure § 631, Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays judgment as follows:

A. For an Order:

a. Certifying the Class;

b. Appointing Plaintiff as representative of the Class;

c. Appointing Plaintiff's counsel as Class Counsel;

B. For actual and liquidated damages according to proof at trial;

C. For statutory and civil penalties and special damages, according to proof at trial;

D. For pre- and post-judgment interest on monetary damages;

E. For preliminary and permanent injunctive relief;

F. For reasonable attorney's fees and costs and expert fees and costs as allowed by law; and

G. For such other relief as this Court deems just and proper.

Dated: July 18, 2024

Respectfully submitted,
KING & SIEGEL LLP

By: Elliot J. Siegel
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Lawrence W. Beall, Esq.
Attorneys for Plaintiff and the Putative Class