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County of San Diego

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Clerk of the Superior Court
By B. Ramirez ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

David Antonio Leyva, individually and on
behalf of others similarly situated and
aggrieved employees,

Plaintiff,

vs.

MSE Landscape Professionals Inc., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 24CU021058C

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

- (1) Violation of Cal. Labor Code §§ 510, 1194, and 1198 (Unpaid Overtime)
- (2) Violation of Cal. Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums)
- (3) Violation of Cal. Labor Code § 226.7 (Unpaid Rest Period Premiums)
- (4) Violation of Cal. Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages)
- (5) Violation of Cal. Labor Code §§ 201, 202, and 203 (Final Wages Not Timely Paid)
- (6) Violation of Cal. Labor Code §§ 204 and 210 (Wages Not Timely Paid During Employment)
- (7) Violation of Cal. Labor Code § 226(a) (Failure to Provide Accurate Wage Statements)
- (8) Violation of Cal. Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses)
- (9) Violation of Cal. Business & Professions Code § 17200, et seq.
- (10) Violation of Cal. Labor Code § 2699 (Private Attorneys General Act)

DEMAND FOR TRIAL BY JURY

1 Plaintiff David Antonio Leyva (“Plaintiff”), individually and on behalf of other members
2 of the general public similarly situated, and on behalf of other aggrieved employees pursuant to
3 the Private Attorneys General Act, based upon facts that either have evidentiary support or are
4 likely to have evidentiary support after a reasonable opportunity for further investigation and
5 discovery, alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. Plaintiff brings this action against Defendant and DOES 1 THROUGH 50
8 (hereinafter also collectively referred to as “Defendant”) for California Labor Code violations,
9 unfair business practices, and civil penalties stemming from Defendants’ failure to pay overtime
10 compensation, failure to provide meal periods, failure to authorize and permit rest periods, failure
11 to pay minimum wage, failure to timely pay wages, failure to provide accurate wage statements,
12 failure to maintain accurate time and payroll records, and failure to reimburse necessary business-
13 related expenses. In addition, this is a class action lawsuit seeking unpaid wages and interest
14 thereon for unpaid wages for all hours worked at minimum wage and overtime worked at the
15 overtime rate of pay due to defendant’s policy, practice, and/or procedure of rounding down or
16 shaving down employees’ daily hours worked.

17 2. Plaintiff’s First through Ninth Causes of Action are brought as a class action on
18 behalf of himself and similarly situated current and former employees of Defendants (hereinafter
19 collectively referred to as the “Class” or “Class Members,” as defined more fully in paragraph
20 12, below) pursuant to California Code of Civil Procedure section 382. The monetary damages
21 and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court
22 and will be established according to proof at trial.

23 3. Plaintiff’s Tenth Cause of Action is brought as a representative action on behalf
24 of himself and certain other current and former individuals who performed work for Defendant
25 as employees in California during the statutory period (hereinafter collective referred to as the
26 “Aggrieved Employees”) pursuant to California Labor Code sections 2698, et seq. Plaintiff is an
27 aggrieved employee against whom one or more of the alleged violations occurred. The civil
28 penalties sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and

1 will be established according to proof at trial.

2 4. The Court has jurisdiction over this action pursuant to the California Constitution,
3 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes”
4 except those given by statute to other courts. The statutes under which this action is brought do
5 not specify any other basis for jurisdiction.

6 5. This Court has jurisdiction over Defendants because, upon information and belief,
7 Defendants are citizens of California, have sufficient minimum contacts in California, or
8 otherwise intentionally avail themselves of the California market so as to render the exercise of
9 jurisdiction over them by the California courts consistent with traditional notions of fair play and
10 substantial justice.

11 6. Venue is proper in this Court because, upon information and belief, Defendants
12 maintain offices, have agents, and/or transact business in the State of California, County of San
13 Diego.

14 **PARTIES**

15 7. Plaintiff David Antonio Leyva is an individual residing in the County of San
16 Diego, State of California.

17 8. Defendant MSE Landscape Professionals Inc., is and at all times herein mentioned
18 was, a corporation organized and existing under the laws of the State of California, and registered
19 to do business in the state of California.

20 9. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive,
21 and therefore sues these defendants by such fictitious names. The Doe defendants may be
22 individuals, partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges,
23 that, at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent,
24 servant, employee, co-venturer, and/or co-conspirator of each of the other defendants, and was at
25 all times mentioned acting within the scope, purpose, consent, knowledge, ratification and
26 authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this
27 Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and
28 believes and thereon alleges that each of the fictitiously named Doe defendants is responsible in

1 some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged
2 were proximately caused by its conduct. Defendant MSE Landscape Professionals Inc. and Doe
3 Defendants 1 through 50 are collectively referred to herein as "Defendant."

4 10. Defendant was and at all times herein mentioned were, (a) conducting business in
5 the County of San Diego, State of California, and (b) the employer of Plaintiff consistent with the
6 California Labor Code and Industrial Welfare Commission Wage Orders ("Wage Orders").

7 11. Plaintiff further alleges that Defendant, directly or indirectly controlled or affected
8 the working conditions, wages, working hours, and conditions of employment of Plaintiff and the
9 Class so as to make each of said Defendant employers and employees jointly liable under the
10 statutory provisions set forth herein.

11 12. Plaintiff further alleges that Defendant, directly or indirectly controlled or affected
12 the working conditions, wages, working hours, and conditions of employment of Plaintiff, the
13 Class and the Aggrieved Employees so as to make each of said Defendant employers and
14 employers jointly liable under the statutory provisions set forth herein.

15 **CLASS ACTION ALLEGATIONS**

16 13. Plaintiff brings the First through Ninth Causes of Action as a class action on his
17 own behalf and on behalf of all other members of the general public similarly situated, and, thus,
18 seeks class certification under Code of Civil Procedure section 382.

19 14. The proposed class is defined as follows: All current and former non-exempt
20 employees of any of Defendant within the State of California at any time commencing four (4)
21 years preceding the filing of Plaintiff's complaint up until the time that notice of the certified class
22 action is provided to the class (hereinafter referred to as the "Class" or "Class Members.").

23 15. Plaintiff reserves the right to establish other subclasses as appropriate.

24 16. The Class is ascertainable and there is a well-defined community of interest in the
25 litigation:

- 26 a. Numerosity: The Class Members are so numerous that joinder of all Class
27 Members is impracticable. The membership of the entire Class is unknown to
28 Plaintiff at this time; however, the Class is estimated to be over fifty (50)

1 individuals and the identity of such membership is readily ascertainable by
2 inspection of Defendant's employment records.

3 b. Typicality: Plaintiff's claims are typical of all other Class Members demonstrated
4 herein. Plaintiff will fairly and adequately protect the interests of the other Class
5 Members with whom he has a well-defined community of interest.

6 c. Adequacy: Plaintiff will fairly and adequately protect the interests of each Class
7 Member, with whom he has a well-defined community of interest and typicality
8 of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to
9 the other Class Members. Plaintiff's attorneys, the proposed class counsel, are
10 versed in the rules governing class action discovery, certification, and settlement.
11 Plaintiff has incurred, and during the pendency of this action will continue to
12 incur, costs and attorneys' fees, that have been, are, and will be necessarily
13 expended for the prosecution of this action for the substantial benefit of each Class
14 Member.

15 d. Superiority: A class action is superior to other available methods for the fair and
16 efficient adjudication of this litigation because individual joinder of all Class
17 Members is impractical.

18 e. Public Policy Considerations: Certification of this lawsuit as a class action will
19 advance public policy objectives. Employers of this great state violate
20 employment and labor laws every day. Current employees are often afraid to
21 assert their rights out of fear of direct or indirect retaliation. However, class
22 actions provide the Class Members who are not named in the complaint
23 anonymity that allows for the vindication of their rights.

24 17. There are common questions of law and fact as to the Class that predominate over
25 questions affecting only individual members. The following common questions of law or fact,
26 among others, exist as to the members of the Class:

27 a. Whether Defendant's failure to pay wages, without abatement, or reduction, in
28 accordance with the California Labor Code was willful;

- 1 b. Whether Defendant had a corporate policy and practice of failing to pay Plaintiff
2 and the other Class Members for all hours worked, and missed, short, late or
3 interrupted meal periods and rest breaks in violation of California law;
- 4 c. Whether Defendant required Plaintiff and the other Class Members to work more
5 than eight (8) hours per day and/or more than forty (40) hours per week and failed
6 to pay the legally required overtime compensation to Plaintiff and the other Class
7 Members;
- 8 d. Whether Defendant deprived Plaintiff and the other Class Members of meal
9 and/or rest periods or required Plaintiff and the other Class Members to work
10 during meal and/or rest periods without compensation;
- 11 e. Whether Defendant failed to pay meal period premium wages to Class Members
12 when they were not provided with a legally compliant meal period;
- 13 f. Whether Defendant failed to pay rest period premium wages to Class Members
14 when they were not authorized and permitted to take legally compliant rest
15 periods;
- 16 g. Whether Defendant failed to pay minimum wages to Plaintiff and the other Class
17 Members for all hours worked;
- 18 h. Whether Defendant failed to pay Plaintiff and the other Class Members the
19 required minimum wage pursuant to California law;
- 20 i. Whether Defendant failed to pay Plaintiff and the other Class Members proper
21 overtime compensation pursuant to California law;
- 22 j. Whether Defendant failed to pay all wages due to Plaintiff and the other Class
23 Members within the time required upon their discharge or resignation from
24 employment;
- 25 k. Whether Defendant failed to reimburse Plaintiff and the other Class Members for
26 all necessary business-related expenses and costs in violation of California Labor
27 Code section 2802;
- 28 l. Whether Defendant failed to pay reporting time wages in violation of the

1 applicable IWC Wage Order;

2 m. Whether Defendant failed to timely pay all wages due to Plaintiff and the other
3 Class Members during their employment;

4 n. Whether Defendant complied with wage reporting as required by the California
5 Labor Code, including section 226;

6 o. Whether Defendant's conduct was with malice, fraud or oppression;

7 p. Whether Defendant's conduct was willful or reckless;

8 q. Whether Defendant engaged in unfair business practices in violation of California
9 Business & Professions Code section 17200, *et seq.* based on their improper
10 withholding of compensation and deduction of wages;

11 r. The appropriate amount of damages, restitution, and/or monetary penalties
12 resulting from Defendant's violation of California law; and

13 s. Whether Plaintiff and the other Class Members are entitled to compensatory
14 damages pursuant to the California Labor Code.

15 **PAGA ALLEGATIONS**

16 18. At all times herein set forth, PAGA was applicable to Plaintiff's employment by
17 Defendant.

18 19. At all times herein set forth, PAGA provides that any provision of law under the
19 California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA
20 for violations of the California Labor Code may, as an alternative, be recovered through a civil
21 action brought by an aggrieved employee on behalf of themselves and other current or former
22 employees pursuant to procedures outlined in California Labor Code section 2699.3.

23 20. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved
24 employee," who is any person that was employed by the alleged violator and against whom one
25 or more of the alleged violations was committed.

26 21. Plaintiff was employed by Defendant and the alleged violations were committed
27 against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff
28 and the other employees are "Aggrieved Employees" as defined by California Labor Code section

1 2699(c) in that they are all current or former employees of Defendant, and one or more of the
2 alleged violations were committed against them.

3 22. Pursuant to California Labor Code sections 2699.3 and 2699.5, aggrieved
4 employees, including Plaintiff, may pursue a civil action arising under PAGA after the following
5 requirements have been met:

6 a. The aggrieved employee shall give written notice by online submission
7 (hereinafter "Employee's Notice") to the Labor & Workforce Development
8 Agency (hereinafter "LWDA") and by U.S. Certified Mail to the employer of the
9 specific provisions of the California Labor Code alleged to have been violated,
10 including the facts and theories to support the alleged violations.

11 b. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer
12 and the aggrieved employee by certified mail that it does not intend to investigate
13 the alleged violation within sixty (60) calendar days of the postmark date of the
14 Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice
15 is not provided within sixty-five (65) calendar days of the postmark date of the
16 Employee's Notice, the aggrieved employee may commence a civil action
17 pursuant to California Labor Code section 2699 to recover civil penalties in
18 addition to any other penalties to which the employee may be entitled.

19 23. On November 6, 2024, Plaintiff provided written notice by online submission to
20 the LWDA and by U.S. Certified Mail to Defendant of the specific provisions of the California
21 Labor Code alleged to have been violated, including the facts and theories to support the alleged
22 violations. Plaintiff has not received an LWDA Notice within sixty-five (65) calendar days of
23 the date of Plaintiff's notice.

24 24. Therefore, Plaintiff has satisfied the administrative prerequisites under California
25 Labor Code section 2699.3(a) to recover civil penalties against Defendant, in addition to other
26 remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510,
27 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

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GENERAL ALLEGATIONS

25. Defendant is a landscaping company offering lawn care and maintenance, irrigation, and design services.

26. Defendant employed Plaintiff to work as a maintenance worker from approximately May 6, 2024 to May 24, 2024.

27. At all relevant times set forth herein, Defendant employed Plaintiff, the Class, and the Aggrieved Employees as hourly-paid or non-exempt employees.

28. Throughout the time period involved in this case, Defendant had the authority to hire and terminate Plaintiff, the Class, and the Aggrieved Employees; to directly or indirectly control work rules, working conditions, wages, working hours, and conditions of employment of Plaintiff, the Class, and the Aggrieved Employees; and to hire and terminate the employment of Plaintiff, the Class, and the Aggrieved Employees.

29. At all times herein mentioned, Defendant was subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

30. Plaintiff, the Class, and the Aggrieved Employees worked more minutes per shift than Defendants credited them with having worked, which resulted in them working for periods of time in which they were not paid at the minimum wage or overtime rate, as well as not taking proper and compliant meal breaks. Defendants “rounded” down or “shaved” Plaintiff, the Class, and the Aggrieved Employees’s total daily hours worked at the time of their clock-in and clock-out to the nearest tenth of an hour, to the benefit of Defendants, in policy and/or practice. Plaintiff, the Class, and the Aggrieved Employees were not paid for this time. Despite the fact that California law requires employers to pay employees for all hours worked at least at a minimum wage rate, Defendants rounded down or shaved down Plaintiff, the Class, and the Aggrieved Employees’s daily hours worked, Defendants suffered, permitted, and required its hourly employees to be subject to Defendant’s control without paying wages for that time. This resulted in Plaintiff, the Class, and the Aggrieved Employees’s working time for which they were not compensated any wages, in violation of California Labor Code sections 1194, 1197, and the Wage Orders.

1 31. Plaintiff is informed and believes, and thereon alleges that Defendant engaged in
2 an ongoing and systematic scheme of wage abuse against their hourly-paid or non-exempt
3 employees. As set forth in more detail below, this scheme involved, *inter alia*, regularly requiring
4 Plaintiff, the Class, and the Aggrieved Employees to work off the clock without compensation,
5 thereby failing to pay them for all hours worked, including minimum and overtime wages.
6 Defendant also implemented policies that prohibited Plaintiff, the Class, and the Aggrieved
7 Employees from accurately recording the actual time worked, resulting in a failure to pay
8 Plaintiff, the Class, and the Aggrieved Employees all wages owed. In addition, Defendant
9 routinely failed to permit Plaintiff, the Class, and the Aggrieved Employees to take timely and
10 duty-free meal periods and rest periods in violation of California law. Defendant also failed to
11 reimburse Plaintiff, the Class, and the Aggrieved Employees for all necessary business-related
12 expenses, and failed to pay reporting wages.

13 32. Throughout the time period involved in this case, Defendant implemented policies
14 and/or practices which failed to provide Plaintiff, the Class, and the Aggrieved Employees with
15 timely and duty-free meal periods. Defendant routinely failed to relieve Plaintiff, the Class, and
16 the Aggrieved Employees of all duties during their meal periods, regularly failed to relinquish
17 control over Plaintiff, the Class, and the Aggrieved Employees during their meal periods,
18 regularly failed to permit Plaintiff, the Class, and the Aggrieved Employees a reasonable
19 opportunity to take their meal periods, and regularly impeded or discouraged Plaintiff, the Class,
20 and the Aggrieved Employees from taking thirty (30) minute uninterrupted meal breaks no later
21 than the end of their fifth hour of work and/or from taking a second thirty (30) minute
22 uninterrupted meal break no later than their tenth hour of work for shifts lasting more than ten
23 (10) hours. Defendant also failed to maintain accurate records of meal periods taken by Plaintiff,
24 the Class, and the Aggrieved Employees.

25 33. Throughout the time period involved in this case, Defendant did not adequately
26 inform Plaintiff, the Class, and the Aggrieved Employees of their right to take meal periods under
27 California law. Moreover, Defendant systematically disregarded their own written policies
28 regarding the provision and timing of meal periods for Plaintiff, the Class, and the Aggrieved

1 Employees. Instead, Defendant's actual policy and practice was to schedule Plaintiff, the Class,
2 and the Aggrieved Employees in a way that prohibited them from taking timely and duty-free
3 meal periods, and to require Plaintiff, the Class, and the Aggrieved Employees to work through
4 their meal periods, for which they were not compensated.

5 34. Throughout the time period involved in this case, Defendant failed to pay Plaintiff,
6 the Class, and the Aggrieved Employees premium wages for meal periods that were missed, late,
7 interrupted, or shortened in violation of California law. Defendant knew or should have known
8 that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all meal periods
9 or payment of one additional hour of pay at their regular rate of pay when a meal period was
10 missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendant routinely
11 failed to provide legally compliant meal periods to Plaintiff, the Class, and the Aggrieved
12 Employees, and routinely failed to pay one additional hour of pay to Plaintiff, the Class, and the
13 Aggrieved Employees at their regular rate of pay when a meal period was missed, short, late,
14 and/or interrupted.

15 35. Throughout the time period involved in this case, Defendant has implemented
16 policies and practices which prohibited Plaintiff, the Class, and the Aggrieved Employees from
17 taking timely and duty-free rest periods. Defendant regularly failed to provide, authorize, and
18 permit Plaintiff, the Class, and the Aggrieved Employees to take full, uninterrupted, off-duty rest
19 periods for every shift lasting three and one-half (3.5) to six (6) hours and/or two full,
20 uninterrupted, off-duty rest periods for every shift lasting six (6) to ten (10) hours, and failed to
21 make a good faith effort to authorize, permit, and provide such rest breaks in the middle of each
22 work period.

23 36. Throughout the time period involved in this case, Defendant did not adequately
24 inform Plaintiff, the Class, and the Aggrieved Employees of their right to take rest periods under
25 California law. Moreover, Defendant systematically disregarded their own written policies
26 regarding the provision and timing of rest periods for Plaintiff, the Class, and the Aggrieved
27 Employees. Instead, Defendant's actual policy and practice was to schedule Plaintiff, the Class,
28 and the Aggrieved Employees in a way that regularly prohibited them from taking timely and

1 duty free rest periods, and to regularly require Plaintiff, the Class, and the Aggrieved Employees
2 to work through their rest periods.

3 37. Throughout the time period involved in this case, Defendant failed to pay Plaintiff,
4 the Class, and the Aggrieved Employees premium wages for rest periods that were missed, late,
5 interrupted, or shortened in violation of California law. Defendant knew or should have known
6 that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all rest periods or
7 payment of one additional hour of pay at their regular rate of pay when a rest period was missed,
8 short, late, and/or interrupted. Notwithstanding this knowledge, Defendant routinely failed to
9 authorize and permit Plaintiff, the Class, and the Aggrieved Employees to take duty-free rest
10 periods, and failed to pay one additional hour of pay to Plaintiff, the Class, and the Aggrieved
11 Employees at their regular rate of pay when a rest period was missed, short, late and/or
12 interrupted.

13 38. Throughout the time period involved in this case, Defendant implemented policies
14 that prohibited Plaintiff, the Class, and the Aggrieved Employees from accurately recording the
15 actual time worked, resulting in a failure to pay Plaintiff, the Class, and the Aggrieved Employees
16 all wages owed.

17 39. Throughout the time period involved in this case, Plaintiff, the Class, and the
18 Aggrieved Employees worked more than eight (8) hours in a day, and/or forty (40) hours in a
19 week.

20 40. Throughout the time period involved in this case, Defendant regularly failed to
21 pay all overtime compensation owed to Plaintiff, the Class, and the Aggrieved Employees when
22 they worked in excess of eight (8) hours in a single work day and/or forty (40) hours in a single
23 work week, or in excess of twelve (12) hours in a single work day and/or eighty (80) hours in a
24 single work week. Defendant knew or should have known that Plaintiff, the Class, and the
25 Aggrieved Employees were entitled to receive certain wages for overtime compensation and that
26 they were not receiving wages for overtime compensation.

27 41. Throughout the time period involved in this case, Defendant failed to pay overtime
28 to Plaintiff, the Class, and the Aggrieved Employees for all overtime hours worked based on

1 regular rates of pay correctly calculated to include all applicable remuneration.

2 42. Throughout the time period involved in this case, Defendant regularly failed to
3 pay Plaintiff, the Class, and the Aggrieved Employees at least minimum wages for all hours
4 worked. Defendant knew or should have known that Plaintiff, the Class, and the Aggrieved
5 Employees were entitled to receive at least minimum wages for all hours worked and that they
6 were not receiving at least minimum wages for all hours worked. Defendant's failure to pay
7 minimum wages included, *inter alia*, failing to pay Plaintiff, the Class, and the Aggrieved
8 Employees at the required minimum wage pursuant to California law, requiring Plaintiff, the
9 Class, and the Aggrieved Employees to perform work off the clock.

10 43. Throughout the time period involved in this case, Defendant regularly failed to
11 pay Plaintiff, the Class, and the Aggrieved Employees all wages owed to them upon discharge or
12 resignation. Defendant knew or should have known that Plaintiff, the Class, and the Aggrieved
13 Employees were entitled to receive all wages owed to them upon termination within the time
14 permissible under California Labor Code section 202. Plaintiff, the Class, and the Aggrieved
15 Employees did not receive payment of all final wages owed to them upon discharge or resignation,
16 including overtime compensation and minimum wages within any time permissible under
17 California Labor Code section 202.

18 44. Throughout the time period involved in this case, Defendant regularly failed to
19 pay Plaintiff, the Class, and the Aggrieved Employees all wages within any time permissible
20 under California law, including, *inter alia*, California Labor Code section 204. Defendant knew
21 or should have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to
22 receive all wages owed to them during their employment. Plaintiff, the Class, and the Aggrieved
23 Employees did not receive payment of all wages, including overtime compensation, minimum
24 wages, and meal and rest period premiums.

25 45. Throughout the time period involved in this case, Defendant regularly failed to
26 provide complete or accurate wage statements to Plaintiff, the Class, and the Aggrieved
27 Employees. Defendant knew or should have known that Plaintiff, the Class, and the Aggrieved
28 Employees were entitled to receive complete and accurate wage statements in accordance with

1 California law, but, in fact, they did not receive complete and accurate wage statements from
2 Defendant. The deficiencies included, *inter alia*, the failure to include the total number of hours
3 worked, the actual gross wages earned, the correct rates of pay, and the address of the legal entity
4 of the employer.

5 46. Throughout the time period involved in this case, Defendant regularly failed to
6 keep complete or accurate payroll records for Plaintiff, the Class, and the Aggrieved Employees.
7 Defendant knew or should have known that Defendant was required to keep complete and
8 accurate payroll records for Plaintiff, the Class, and the Aggrieved Employees in accordance with
9 California law, but, in fact, did not keep complete and accurate payroll records.

10 47. Throughout the time period involved in this case, Defendant regularly failed to
11 maintain accurate records relating to Plaintiff's and the Class' work periods, meal periods, total
12 daily hours, hours per pay period, and applicable pay rates.

13 48. Throughout the time period involved in this case, Defendant failed to reimburse
14 Plaintiff, the Class, and the Aggrieved Employees for all necessary business-related expenses.
15 Defendant knew or should have known that Defendant was required to reimburse Plaintiff, the
16 Class, and the Aggrieved Employees for all necessary business-related expenses and costs, but,
17 in fact, failed to do so in violation of California law.

18 49. Throughout the time period involved in this case, Defendant knew or should have
19 known that they had a duty to compensate Plaintiff, the Class, and the Aggrieved Employees
20 pursuant to California law. Defendant had the financial ability to pay such compensation, but
21 willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff, the
22 Class, and the Aggrieved Employees that they paid all wages owed to them, all in order to increase
23 Defendant's profits.

24 50. California Labor Code section 218 states that nothing in Article 1 of the Labor
25 Code shall limit the right of any wage claimant to "sue directly ... for any wages or penalty due
26 to him [or her] under this article."

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1 **FIRST CAUSE OF ACTION**

2 **Violation of Cal. Labor Code §§ 510, 1194, and 1198**

3 **(Against All Defendants)**

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

6 52. California Labor Code section 1198 and the applicable Industrial Welfare
7 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
8 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
9 rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

10 53. Specifically, the applicable IWC Wage Order provides that Defendant is and was
11 required to pay Plaintiff and the other Class Members employed by Defendant, and working more
12 than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-
13 one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours
14 in a workweek.

15 54. The applicable IWC Wage Order further provides that Defendant is and was
16 required to pay Plaintiff and the Class overtime compensation at a rate of two times their regular
17 rate of pay for all hours worked in excess of twelve (12) hours in a day and for all hours worked
18 in excess of eight (8) hours on the seventh day of work in a workweek.

19 55. California Labor Code section 510 codifies the right to overtime compensation at
20 one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a
21 day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of
22 work, and no overtime compensation at twice the regular hourly rate for hours worked in excess
23 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

24 56. During the relevant time period, Plaintiff and the other Class Members regularly
25 worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

26 57. Plaintiff and similarly situated employees worked more minutes per shift than
27 Defendants credited them with having worked.

28 58. Defendants “rounded” down or “shaved” Plaintiff and similarly situated

1 employees' total daily hours worked to the nearest tenth of an hour at the clock-in and clock-out
2 times, to the benefit of Defendants without Plaintiff and similarly situated employees being paid
3 wages for this time. Plaintiff and other similarly situated employees were not paid for this time.
4 The foregoing resulted in time during each workday which Plaintiff and similarly situated
5 employees were under control of Defendants, but were not compensated at their overtime rate of
6 pay when they worked more than eight hours in a day or 40 hours in a week, in violation of Labor
7 Code sections 510, 1194, and 1198.

8 59. During the relevant time period, Defendant intentionally and willfully failed to pay
9 overtime wages owed to Plaintiff and the other Class Members.

10 60. Defendant's failure to pay Plaintiff and the other Class Members the unpaid
11 balance of overtime compensation, as required by California laws, violates the provisions of
12 California Labor Code sections 510 and 1198, and is therefore unlawful.

13 61. Pursuant to California Labor Code section 1194, Plaintiff and the other Class
14 Members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
15 attorneys' fees.

16 **SECOND CAUSE OF ACTION**

17 **Violation of Cal. Labor Code §§ 226.7 and 512(a)**

18 **(Against All Defendants)**

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

21 63. At all relevant times, the relevant IWC Order and California Labor Code sections
22 226.7 and 512(a) were applicable to Plaintiff and the other Class Members' employment by
23 Defendant.

24 64. At all relevant times, California Labor Code section 226.7 provides that no
25 employer shall require an employee to work during any meal or rest period mandated by an
26 applicable order of the California IWC.

27 65. At all relevant times, the applicable IWC Wage Order and California Labor Code
28 section 512(a) provide that an employer may not require, cause or permit an employee to work

1 for a work period of more than five (5) hours per day without providing the employee with a meal
2 period of not less than thirty (30) minutes, except that if the total work period per day of the
3 employee is no more than six (6) hours, the meal period may be waived by mutual consent of
4 both the employer and employee.

5 66. At all relevant times, California Labor Code section 512(a) further provides that
6 an employer may not require, cause or permit an employee to work for a work period of more
7 than ten (10) hours per day without providing the employee with a second uninterrupted meal
8 period of not less than thirty (30) minutes, except that if the total hours worked is no more than
9 twelve (12) hours, the second meal period may be waived by mutual consent of the employer and
10 the employee only if the first meal period was not waived.

11 67. During the relevant time period, Plaintiff and the other Class Members who were
12 scheduled to work for a period of time longer than six (6) hours, and who did not waive their
13 legally-mandated meal periods by mutual consent, were required to work for periods longer than
14 five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

15 68. During the relevant time period, Plaintiff and the other Class Members who were
16 scheduled to work for a period of time in excess of ten (10) hours were required to work for
17 periods longer than ten (10) hours without a second uninterrupted meal period of not less than
18 thirty (30) minutes.

19 69. During the relevant time period, Defendants “rounded” down or “shaved” Plaintiff
20 and similarly situated employees’ total number of hours (or fraction thereof) in which they took
21 lunch. This policy of rounding meal periods made it such that Plaintiff and other similarly situated
22 employees were not provided with legally compliant meal breaks and were not paid meal period
23 premiums for any meal breaks that were less than thirty (30) minutes in duration.

24 70. During the relevant time period, Defendant intentionally and willfully required
25 Plaintiff and the other Class Members to miss their meal periods and to take meal periods that
26 were late, shortened, or interrupted, and failed to compensate Plaintiff and the other Class
27 Members the full meal period premium for missed, shortened, late, or interrupted meal periods.

28 71. During the relevant time period, Defendant failed to pay Plaintiff and the other

1 Class Members the full meal period premiums due pursuant to California Labor Code section
2 226.7.

3 72. Defendant's conduct violates the applicable IWC Wage Order and California
4 Labor Code sections 226.7 and 512(a).

5 73. Pursuant to the applicable IWC Wage Order and California Labor Code section
6 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendant one
7 additional hour of pay at the employee's regular rate of compensation for each work day that the
8 meal period was not provided.

9 **THIRD CAUSE OF ACTION**

10 **Violation of Cal. Labor Code § 226.7**

11 **(Against All Defendants)**

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

14 75. At all times herein set forth, the applicable IWC Wage Order and California Labor
15 Code section 226.7 were applicable to Plaintiff and the other Class Members' employment by
16 Defendant.

17 76. At all relevant times, California Labor Code section 226.7 provides that no
18 employer shall require an employee to work during any rest period mandated by an applicable
19 order of the California IWC.

20 77. At all relevant times, the applicable IWC Wage Order provides that "[e]very
21 employer shall authorize and permit all employees to take rest periods, which insofar as
22 practicable shall be in the middle of each work period" and that the "rest period time shall be
23 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
24 hours or major fraction thereof unless the total daily work time is less than three and one-half
25 (3.5) hours."

26 78. During the relevant time period, Defendant required Plaintiff and other Class
27 Members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest
28 period per each four (4) hour period worked.

79. During the relevant time period, Defendant willfully required Plaintiff and the other Class Members to work during rest periods, failed to allow Plaintiff and the other Class Member to take any rest period and/or failed to authorize and permit Plaintiff and the other Class Members to take uninterrupted, duty-free rest breaks.

80. During the relevant time period, Defendant failed to pay Plaintiff and the other Class Members the full rest period premium due pursuant to California Labor Code section 226.7 for work performed during rest periods, and/or for failure to authorize and permit Plaintiff and other Class Members from taking uninterrupted rest periods.

81. Defendant's conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

82. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendant one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

FOURTH CAUSE OF ACTION

Violation of Cal. Labor Code §§ 1194, 1197, and 1197.1

(Against All Defendants)

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

84. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees and the payment of a lesser wage than the minimum so fixed is unlawful.

85. During the relevant time period, Defendant regularly failed to pay minimum wage to Plaintiff and the other Class Members as required pursuant to California Labor Code sections 1194, 1197, and 1197.1.

86. Defendant's failure to pay Plaintiff and the other Class Members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections, Plaintiff and the other Class Members are entitled to recover the unpaid balance

1 of their minimum wage compensation as well as interest, costs, and attorneys' fees, and liquidated
2 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

3 87. Pursuant to California Labor Code section 1194.2, Plaintiff and the other Class
4 Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
5 unpaid and interest thereon.

6 **FIFTH CAUSE OF ACTION**

7 **Violation of Cal. Labor Code §§ 201, 202, and 203**

8 **(Against All Defendants)**

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

11 89. At all relevant times herein set forth, California Labor Code sections 201 and 202
12 provide that if an employer discharges an employee, the wages earned and unpaid at the time of
13 discharge are due and payable immediately, and if an employee quits his or her employment, his
14 or her wages shall become due and payable not later seventy-two (72) hours thereafter, unless the
15 employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case
16 the employee is entitled to his or her wages at the time of quitting.

17 90. During the relevant time period, the employment of Plaintiff and many other Class
18 Members with Defendant ended, *i.e.* was terminated by quitting or discharge. Defendant
19 intentionally and willfully failed to pay Plaintiff and other Class Members who are no longer
20 employed by Defendant all of their wages, earned and unpaid, including but not limited to
21 minimum wages, straight time wages, and overtime wages, within seventy-two (72) hours of their
22 leaving Defendant's employ.

23 91. Defendant's failure to pay Plaintiff and other Class Members who are no longer
24 employed by Defendant their wages, earned and unpaid, within seventy-two (72) hours of their
25 leaving Defendant's employ, is in violation of California Labor Code sections 201 and 202.

26 92. California Labor Code section 203 provides that if an employer willfully fails to
27 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
28 continue as a penalty from the due date thereof at the same rate until paid or until an action is

1 commenced; but the wages shall not continue for more than thirty (30) days.

2 93. Plaintiff and other Class Members who are no longer employed by Defendant are
3 entitled to recover from Defendant the statutory penalty wages for each day they were not paid,
4 up to a thirty (30) day maximum pursuant to California Labor Code section 203.

5 **SIXTH CAUSE OF ACTION**

6 **Violation of Cal. Labor Code §§ 204 and 210**

7 **(Against All Defendants)**

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

10 95. At all times herein set forth, California Labor Code section 204 provides that all
11 wages earned by any person in any employment between the 1st and 15th days, inclusive, of any
12 calendar month, other than those wages due upon termination of an employee, are due and payable
13 between the 16th and 26th day of the month during which the labor was performed.

14 96. At all times herein set forth, California Labor Code section 204 provides that all
15 wages earned by any person in any employment between the 16th and the last day, inclusive, of
16 any calendar month, other than those wages due upon termination of an employee, are due and
17 payable between the 1st and the 10th day of the following month.

18 97. At all times herein set forth, California Labor Code section 204 provides that all
19 wages earned for labor in excess of the normal work period shall be paid no later than the payday
20 for the next regular payroll period.

21 98. During the relevant time period, Defendant intentionally and willfully failed to pay
22 Plaintiff and other Class Members all wages due to them, within any time period permissible
23 under California Labor Code section 204.

24 99. Plaintiff and other Class Members are entitled to recover all available remedies for
25 Defendant's violations of California Labor Code section 204, including statutory penalties
26 pursuant to Labor Code section 210(b).

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1 **SEVENTH CAUSE OF ACTION**

2 **Violation of Cal. Labor Code § 226(a)**

3 **(Against All Defendants)**

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

6 101. At all material times set forth herein, California Labor Code section 226(a)
7 provides that every employer shall furnish each of his or her employees an accurate itemized
8 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3)
9 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
10 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
11 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates
12 of the period for which the employee is paid, (7) the name of the employee and his or her social
13 security number, (8) the name and address of the legal entity that is the employer, and (9) all
14 applicable hourly rates in effect during the pay period and the corresponding number of hours
15 worked at each hourly rate by the employee. The deductions made from payments of wages shall
16 be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and
17 a copy of the statement or a record of the deductions shall be kept on file by the employer for at
18 least three years at the place of employment or at a central location within the State of California.

19 102. Defendant has intentionally and willfully failed to provide Plaintiff and the Class
20 with complete and accurate wage statements. The deficiencies include, but are not limited to the
21 failure list the total number of hours worked and the actual gross wages earned.

22 103. Because of Defendant's violation of California Labor Code section 226(a),
23 Plaintiff and the Class have suffered injury and damage to their statutorily-protected rights.

24 104. More specifically, Plaintiff and the Class have been injured by Defendant's
25 intentional and willful violation of California Labor Code section 226(a) because they were
26 denied both their legal right to receive, and their protected interest in receiving, accurate and
27 itemized wage statements pursuant to California Labor Code section 226(a).

28 105. Plaintiff and the Class are entitled to recover from Defendant the greater of their

1 actual damages caused by Defendant's failure to comply with California Labor Code section
2 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

3 106. Plaintiff and the Class are also entitled to injunctive relief to ensure compliance
4 with this section, pursuant to California Labor Code section 226(g).

5 **EIGHTH CAUSE OF ACTION**

6 **Violation of Cal. Labor Code §§ 2800 and 2802**

7 **(Against All Defendants)**

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

10 108. Pursuant to California Labor Code sections 2800 and 2802, an employer must
11 reimburse its employee for all necessary expenditures incurred by the employee in direct
12 consequence of the discharge of his or her job duties or in direct consequence of his or her job
13 duties or in direct consequence of his or her obedience to the directions of the employer.

14 109. Plaintiff and the Class incurred necessary business-related expenses and costs that
15 were not fully reimbursed by Defendant. Defendant's failure to reimburse for all necessary
16 business-related expenses and costs included their failure to reimburse Plaintiff and the Class for
17 costs incurred as a result of, including but not limited to, simple negligence.

18 110. Defendant has intentionally and willfully failed to reimburse Plaintiff and the
19 Class for all necessary business-related expenses and costs. Plaintiff and the Class are entitled to
20 recover from Defendant their business-related expenses and costs incurred during the course and
21 scope of their employment, plus interest accrued from the date on which the employee incurred
22 the necessary expenditures at the same rate as judgments in civil actions in the State of California.

23 **NINTH CAUSE OF ACTION**

24 **Violation of Cal. Business & Professions Code §§ 17200, et seq.**

25 **(Against All Defendants)**

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

28 112. Defendant's conduct, as alleged herein, has been, and continues to be, unfair,

1 unlawful and harmful to Plaintiff and the Class, to the general public, and Defendant's
2 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public interest
3 within the meaning of Code of Civil Procedure section 1021.5.

4 113. Defendant's activities as alleged herein are violations of California law, and
5 constitute unlawful business acts and practices in violation of California Business & Professions
6 Code section 17200, *et seq.*

7 114. A violation of California Business & Professions Code section 17200, *et seq.* may
8 be predicated on the violation of any state or federal law. In this instant case, Defendant's policies
9 and practices of requiring employees, including Plaintiff and the Class, to work overtime without
10 paying them proper compensation violate California Labor Code sections 510 and 1198.
11 Additionally, Defendant's policies and practices of requiring employees, including Plaintiff and
12 the Class, to work through their meal and rest periods without paying them proper compensation
13 violate California Labor Code sections 226.7 and 512(a). Moreover, Defendant's policies and
14 practices of failing to timely pay wages to Plaintiff and the Class violate California Labor Code
15 sections 201, 202, 203 and 204.

16 115. Defendant also violated California Labor Code sections 221, 226(a), 1194, 1197,
17 1197.1, 510, 1174(d), 2800, and 2802.

18 116. As a result of the herein described violations of California law, Defendant
19 unlawfully gained an unfair advantage over other businesses.

20 117. Plaintiff and the Class have been personally injured by Defendant's unlawful
21 business acts and practices as alleged herein, including but not necessarily limited to the loss of
22 money and/or property.

23 118. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
24 Plaintiff and the Class are entitled to restitution of the wages withheld and retained by Defendant
25 during a period that commences four years prior to the filing of this Complaint; an award of
26 attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable
27 laws; and an award of costs.

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2
3 **TENTH CAUSE OF ACTION**

4 **Violation of California Labor Code § 2699, Et Seq. (“Private Attorneys General Act”)**
5 **(Against All Defendants)**

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

8 120. PAGA expressly establishes that any provision of the California Labor Code
9 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
10 departments, divisions, commissions, boards, agencies or employees for a violation of the
11 California Labor Code, may be recovered through a civil action brought by an aggrieved
12 employee on behalf of himself or herself, and other current or former employees.

13 121. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
14 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is
15 authorized to exercise the same discretion, subject to the same limitations and conditions, to assess
16 a civil penalty.

17 122. Plaintiff and the other hourly-paid or non-exempt employees or individuals who
18 performed work for Defendant during the statutory period are “aggrieved employees” as defined
19 by California Labor Code section 2699(c) in that they are all current or former employees of
20 Defendant, and one or more of the alleged violations was committed against them. As set forth in
21 detail above, during all times relevant to this Action, Defendant has routinely subjected Plaintiff
22 and the Aggrieved Employees to violations of California Labor Codes by:

23 **Failure to Pay Overtime**

24 123. Defendant’s failure to pay legally required overtime wages to Plaintiff and the
25 other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or unfair
26 activity prohibited by California Labor Code sections 510 and 1198.

27 **Failure to Provide Meal Periods**

28 124. Defendant’s failure to provide legally required meal periods to Plaintiff and the

1 other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or unfair
2 activity prohibited by California Labor Code sections 226.7 and 512(a).

3 **Failure to Provide Rest Periods**

4 125. Defendant's failure to provide legally required rest periods to Plaintiff and the
5 other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or unfair
6 activity prohibited by California Labor Code section 226.7.

7 **Failure to Pay Minimum Wages**

8 126. Defendant's failure to pay legally required minimum wages to Plaintiff and the
9 other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or unfair
10 activity prohibited by California Labor Code sections 1194, 1197 and 1197.1.

11 **Failure to Timely Pay Wages Upon Termination**

12 127. Defendant's failure to timely pay wages to Plaintiff and the other Aggrieved
13 Employees upon termination in accordance with Labor Code sections 201 and 202 constitutes
14 unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

15 **Failure to Timely Pay Wages During Employment**

16 128. Defendant's failure to timely pay wages to Plaintiff and the other Aggrieved
17 Employees during employment in accordance with Labor Code section 204 constitutes unlawful
18 and/or unfair activity prohibited by California Labor Code section 204.

19 **Failure to Provide Complete and Accurate Wage Statements**

20 129. Defendant's failure to provide complete and accurate wage statements to Plaintiff
21 and the other Aggrieved Employees in accordance with Labor Code section 226(a) constitutes
22 unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

23 **Failure to Keep Complete and Accurate Payroll Records**

24 130. Defendant's failure to keep complete and accurate payroll records relating to
25 Plaintiff and the other Aggrieved Employees in accordance with California Labor Code section
26 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section
27 1174(d).

28 //

1 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

2 131. Defendants' failure to reimburse Plaintiff and the other aggrieved employees for
3 necessary business-related expenses and costs in accordance with California Labor Code sections
4 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code
5 sections 2800 and 2802.

6 132. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on
7 behalf of all Aggrieved Employees, requests and is entitled to recover from Defendant and each
8 of them, business expenses, unpaid wages, and/or untimely wages according to proof, interest,
9 attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all statutory
10 penalties against Defendant, and each of them, including but not limited to:

- 11 a. Penalties under California Labor Code section 2699 in the amount of a hundred
12 dollars (\$100) for each aggrieved employee per pay period for the initial violation,
13 and two hundred dollars (\$200) for each aggrieved employee per pay period for
14 each subsequent violation;
- 15 b. Penalties under California Code of Regulations Title 8 section 11010, et seq. in
16 the amount of fifty dollars (\$50) for each aggrieved employee per pay period for
17 the initial violation, and one hundred dollars (\$100) for each subsequent violation;
18 and
- 19 c. Penalties under California Labor Code section 210 in addition to, and entirely
20 independent and apart from, any other penalty provided in the California Labor
21 Code in the amount of a hundred dollars (\$100) for each aggrieved employee per
22 pay period for the initial violation, and two hundred dollars (\$200) for each
23 aggrieved employee per pay period for each subsequent violation; and
- 24 d. Any and all additional penalties and sums as provided by the California Labor
25 Code and/or other statutes.

26 133. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
27 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
28 Workforce Development Agency for the enforcement of labor laws and education of employers

1 and employees about their rights and responsibilities and twenty-five percent (25%) to the
2 aggrieved employees.

3 134. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and
4 costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable
5 statute.

6 135. Plaintiff has exhausted his administrative remedies pursuant to Labor Code section
7 2699.3. On November 6, 2024, Plaintiff, through his counsel of record, by online filing with the
8 Labor and Workforce Development Agency ("LWDA") and by certified mail to the Defendant,
9 notified Defendant and the LWDA of the specific provisions of the Labor Code and IWC Wage
10 Orders that Defendant has violated, including the facts and theories to support the violations, and
11 of Plaintiff's intent to bring a claim for civil penalties under PAGA. Plaintiff also paid the filing
12 fee required under Labor Code section 2699.3. As of the filing of this Complaint, more than sixty-
13 five (65) days have elapsed since the mailing of Plaintiff's November 6, 2024 notice, and the
14 Labor and Workforce Development Agency has not indicated that it intends to investigate the
15 violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover
16 penalties for himself and other Aggrieved Employees pursuant to Labor Code section 2699.3.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general
19 public similarly situated, prays for relief and judgment against Defendant, jointly and severally,
20 as follows:

21 **Class Certification**

- 22 1. That this action be certified as a class action;
- 23 2. That Plaintiff be appointed as the representative of the Class;
- 24 3. That counsel for Plaintiff be appointed as Class Counsel; and
- 25 4. That Defendant provide to Class Counsel immediately the names and most
26 current/last known contact information (address, e-mail and telephone numbers) of all class
27 members.

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

2 5. That the Court declare, adjudge and decree that Defendant violated California
3 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay
4 all overtime wages due to Plaintiff and other Class Members;

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

7 7. For pre-judgment interest on any unpaid overtime compensation commencing
8 from the date such amounts were due;

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

11 9. For such other and further relief as the Court may deem just and proper.

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

13 10. That the Court declare, adjudge and decree that Defendant violated California
14 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
15 provide all meal periods (including second meal periods) to Plaintiff and the Class;

16 11. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at
17 each employee's regular rate of compensation for each workday that a meal period was not
18 provided;

19 12. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 13. For premium wages pursuant to California Labor Code section 226.7;

22 14. For pre-judgment interest on any unpaid wages from the date such amounts were
23 due;

24 15. For reasonable attorneys' fees and costs of suit incurred herein; and

25 16. For such other and further relief as the Court may deem just and proper.

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

27 17. That the Court declare, adjudge and decree that Defendant violated California
28 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest

1 periods to Plaintiff and the Class;

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

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

7 20. For premium wages pursuant to California Labor Code section 226.7;

8 21. For pre-judgment interest on any unpaid wages from the date such amounts were
9 due; and

10 22. For such other and further relief as the Court may deem just and proper.

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

12 23. That the Court declare, adjudge and decree that Defendant violated California
13 Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to
14 Plaintiff and the Class;

15 24. For general unpaid wages and such general and special damages as may be
16 appropriate;

17 25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
18 Plaintiff and the Class in the amount as may be established according to proof at trial;

19 26. For pre-judgment interest on any unpaid compensation from the date such amounts
20 were due;

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

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

24 29. For such other and further relief as the Court may deem just and proper.

25 **As to the Fifth Cause of Action**

26 30. That the Court declare, adjudge and decree that Defendant violated California
27 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the
28 time of termination of the employment of Plaintiff and other Class Members no longer employed

by Defendant;

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

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and other Class Members who have left Defendant's employ;

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

34. For such other and further relief as the Court may deem just and proper.

As to the Sixth Cause of Action

35. That the Court declare, adjudge and decree that Defendant violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the Class;

36. For statutory penalties pursuant to California Labor Code section 210;

37. For such other and further relief as the Court deems just and proper.

As to the Seventh Cause of Action

38. That the Court declare, adjudge and decree that Defendant violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the Class, and willfully failed to provide accurate itemized wage statements thereto;

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

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

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

As to the Eight Cause of Action

42. That the Court declare, adjudge and decree that Defendant violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the Class for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

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

- 1 44. For the imposition of civil penalties and/or statutory penalties;
2 45. For reasonable attorneys' fees and costs of suit incurred herein; and
3 46. For such other and further relief as the Court may deem just and proper.

4 **As to the Ninth Cause of Action**

5 47. That the Court declare, adjudge and decree that Defendant violated California
6 Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and the Class
7 all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff
8 and the Class, failing to pay at least minimum wages to Plaintiff and the Class, failing to pay
9 Plaintiff's and other Class Members' wages timely as required by California Labor Code section
10 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800, and
11 2802;

12 48. For restitution of unpaid wages to Plaintiff and the Class and all pre-judgment
13 interest from the day such amounts were due and payable;

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

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

19 51. For injunctive relief to ensure compliance with this section, pursuant to California
20 Business and Professions Code sections 17200, *et seq.*; and

21 52. For such other and further relief as the Court may deem just and proper.

22 **As to the Tenth Cause of Action**

23 53. For civil penalties and wages as permitted by law pursuant to California Labor
24 Code sections 2699(a), (f) and (g) and 558 plus costs and attorneys' fees for violation of California
25 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1,
26 1198, 1198.5, 2800 and 2802; and

27 //

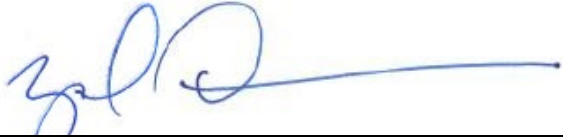
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54. For such other and further relief as the Court may deem equitable and appropriate.

Dated: March 10, 2025

DOMB & RAUCHWERGER, LLP

By:



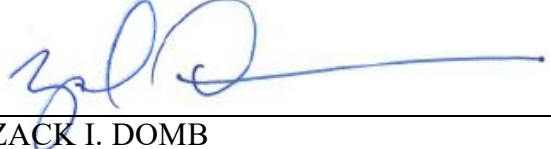
ZACK I. DOMB
DEVIN E. RAUCHWERGER
MELISSA N. AVILA
ERIC Y. HAHN
Attorneys for Plaintiff
David Antonio Leyva

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury as to all causes of action triable by a jury.

Dated: March 10, 2025

DOMB & RAUCHWERGER, LLP

By: 

ZACK I. DOMB
DEVIN E. RAUCHWERGER
MELISSA N. AVILA
ERIC Y. HAHN
Attorneys for Plaintiff
David Antonio Leyva

**PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)**

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Domb & Rauchwerger LLP and my business address is 1055 East Colorado Blvd., Fifth Floor, Pasadena, California 91106. My e-mail address is jessica@dombrauchwerger.com.

On March 10, 2025, I served the foregoing document(s) entitled:

• FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on all the appearing and/or interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelope(s) addressed as follows:

MSE Landscape Professionals, Inc.
c/o Virginia Sunelli, Agent for Service
1035 E Vista Wy, #125
Vista, CA 92084

Defendant, MSE Landscape Professionals
Inc.

Courtesy Copies

MSE Landscape Professionals, Inc.
c/o Kevan Farrer - CFO
1951 Don Lee Place
Escondido, CA 92029

MSE Landscape Professionals, Inc.
c/o Kevan Farrer - CFO
P.O. Box 461982
Escondido, CA 92046

☒ **[by MAIL]** - I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☐ **[by ELECTRONIC SERVICE]** - Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification address listed above.

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

Executed March 10, 2025, at Sacramento County, California.

Jessica Delgado

Print Name

By:

Jessica Delgado
Signature