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and GEOFFREY O. SWANSON

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7  
8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**

10 MAURILLIO SALCEDO FLORES, )  
11 individually and on behalf of all others )  
12 similarly situated, )

13 Plaintiff )  
14 v. )

15 SWANSON LANDSCAPING, INC., a )  
16 California Corporation; and DOES 1 through )  
20, inclusive, )

17 Defendants.

Case No. HG 20051571  
Case No. RG 20062042

ASSIGNED FOR ALL PURPOSES TO  
Hon. Brad Seligman  
Department 23

**DEFENDANTS' ANSWER TO  
PLAINTIFFS' UNVERIFIED  
CONSOLIDATED COMPLAINT**

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JUAN MANUEL LOPEZ, individually and on  
19 behalf of all others similarly situated,

20 Plaintiffs,

21 vs.

22 SWANSON LANDSCAPING, INC.,  
23 GEOFFREY O. SWANSON, and DOES 1-50,  
24 inclusive,  

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Defendants.

25  
26 Defendants SWANSON LANDSCAPING, INC. and Geoffrey O. Swanson  
27 (“Defendants”) submit the following response to the unverified Consolidated Complaint filed by  
28 Plaintiffs MAURILLIO SALCEDO FLORES and JUAN MANUEL LOPEZ (“Plaintiffs”).

1 **GENERAL DENIAL**

2 Pursuant to the provisions of the California Code of Civil Procedure section 431.30(d),  
3 Defendants deny generally and specifically each, every, and all of the allegations contained in  
4 Plaintiffs' Consolidated Complaint and every cause of action alleged therein against them, and  
5 further denies that Plaintiffs are entitled to any equitable relief or that Plaintiffs were damaged in  
6 the sums alleged, or at all, by reasons of Defendants' conduct or the conduct of any of  
7 Defendants' authorized agents or employees. Defendants further deny, generally and specifically,  
8 that Plaintiffs' asserted class is proper for certification. In addition, Defendants deny that the  
9 purported Plaintiffs' class member or purported represented employee has been, is, or will be,  
10 damaged in the amount alleged, or any manner or sum whatsoever, or is entitled to any recovery  
11 or remedy of any type whatsoever by any of Defendants' acts, conduct, or omissions.

12 **AFFIRMATIVE DEFENSES**

13 Without admitting any of the allegations in the Consolidated Complaint, and without  
14 waiving or excusing the burden of proof of the named Plaintiffs or the purported class members,  
15 or admitting Defendants have any burden of proof, Defendants hereby assert the following  
16 separate and distinct affirmative defenses.

17 **FIRST AFFIRMATIVE DEFENSE**

18 **(Failure to State a Cause of Action)**

19 Plaintiffs' Consolidated Complaint fails to state any claim upon which relief can be  
20 granted against Defendants.

21 **SECOND AFFIRMATIVE DEFENSE**

22 **(Statute of Limitations)**

23 Defendants allege that each purported cause of action of the Consolidated Complaint is  
24 barred, in whole or in part, by the applicable statute of limitation, including, without limitation,  
25 California Code of Civil Procedure sections 338, 339 and 340; and the four-year limitations  
26 period contained in California Business and Professions Code section 17200, *et seq.*

27 **THIRD AFFIRMATIVE DEFENSE**

28 **(Failure to Mitigate Damages)**

1 Defendants allege that Plaintiffs failed and neglected to mitigate the alleged damages,  
2 injuries, and/or losses and, therefore, any recovery against Defendants is barred or reduced  
3 accordingly.

4 **FOURTH AFFIRMATIVE DEFENSE**  
5 **(Avoidable Consequences)**

6 If any loss, injury, damage or detriment occurred as alleged in the Consolidated  
7 Complaint, some or all of such loss would have been avoided if Plaintiffs had made reasonable  
8 use of the corrective measures Defendants made available to Plaintiffs during their employment  
9 or had exercised due care and avoided such alleged harm. Accordingly, Plaintiffs recovery from  
10 Defendants, if any, should be barred or, in the alternative, reduced by the amount of damages that  
11 Plaintiffs could have reasonably avoided.

12 **FIFTH AFFIRMATIVE DEFENSE**  
13 **(Estoppel)**

14  
15 Defendants allege that Plaintiffs are estopped from recovering for any damages, injuries,  
16 and/or losses from Defendants as a result of Plaintiffs' conduct, including without limitation  
17 Plaintiffs' inexcusable delay in raising the claims alleged in this action.

18 **SIXTH AFFIRMATIVE DEFENSE**  
19 **(Waiver)**

20  
21 Defendants allege that Plaintiffs have waived any right to recover on any claim against  
22 Defendants as a result of Plaintiffs' conduct.

23 **SEVENTH AFFIRMATIVE DEFENSE**  
24 **(Laches)**

25  
26 Defendants allege that Plaintiffs' claims are barred, in whole or in part, by the doctrine of  
27 laches, as Plaintiffs' lack of diligence in pursuing its purported claims has severely prejudiced  
28 Defendants.

1 **EIGHTH AFFIRMATIVE DEFENSE**

2 **(Unclean Hands)**

3 Defendants allege that Plaintiffs' claims are barred, in whole or in part, by the doctrine of  
4 unclean hands.

5 **NINTH AFFIRMATIVE DEFENSE**

6 **(Conformance with Existing Laws and Regulations)**

7  
8 All conduct and activities of Defendants alleged in the Consolidated Complaint  
9 conformed to statutes, government regulations and industry standards based upon the state of  
10 knowledge existing at the time(s) alleged in the Consolidated Complaint.

11  
12 **TENTH AFFIRMATIVE DEFENSE**

13 **(Good Faith)**

14 The acts and statements of Defendants were fair and reasonable and were performed in  
15 good faith based on all the relevant facts known to Defendants.

16 **ELEVENTH AFFIRMATIVE DEFENSE**

17 **(Plaintiffs' Willful Acts)**

18  
19 If any loss, injury, damage or detriment occurred as alleged in Plaintiffs' Consolidated  
20 Complaint, some or all such loss, injury, damage or detriment was caused and contributed to by  
21 the willful acts of Plaintiffs. Accordingly, Plaintiffs' recovery from Defendants, if any, should be  
22 barred or, in the alternative, reduced in proportion to the percentage of Plaintiffs' fault.

23 **TWELFTH AFFIRMATIVE DEFENSE**

24 **(Consent)**

25  
26 Plaintiffs consented to and approved all the acts and omissions about which Plaintiffs now  
27 complain. Accordingly, Plaintiffs are barred from pursuing their claims.  
28



1 Consolidated Complaint, including, but not limited to, Plaintiffs' failure to file an administrative  
2 charge with the Labor Workforce Development Agency setting forth the claims asserted in the  
3 Complaint with the requisite specificity and as required by the Private Attorneys General Act  
4 ("PAGA").

5 **EIGHTEENTH AFFIRMATIVE DEFENSE**

6 **(Negligence)**

7  
8 The Consolidated Complaint, and each purported cause of action alleged therein is barred,  
9 in whole or in part, by California Labor Code section 2865 to the extent that Plaintiffs and/or  
10 putative class members failed substantially to comply with the directions of Defendants, and such  
11 failure proximately caused the alleged losses for which they seek relief.

12 **NINETEENTH AFFIRMATIVE DEFENSE**

13 **(Lack of Standing)**

14  
15 Defendants allege that some or all of Plaintiffs' claims are barred, in whole or in part,  
16 because Plaintiffs lack standing to assert or recover the claims asserted on behalf of themselves,  
17 the State, or the representative group they seek to represent.

18 **TWENTIETH AFFIRMATIVE DEFENSE**

19 **(Lack of Standing)**

20 Defendants allege that Plaintiffs lack standing to sue under the Unfair Competition Law,  
21 California Business and Professions Code section 17200, *et seq.*, because they have not suffered  
22 an injury in fact and a loss of money or property.

23 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

24 **(Legitimate Business Purpose)**

25 Defendants allege that they cannot be liable for any alleged violations of California  
26 Business and Professions Code section 17200, *et seq.*, because their actions, conduct, and  
27 dealings with regards to Plaintiffs were lawful, and were carried out in good faith and for  
28 legitimate business purposes.

1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 **(Conduct Not Fraudulent or Deceptive)**

3 Defendants allege that some or all of Plaintiffs' claims are barred, in whole or in part,  
4 Because Defendants' practices alleged are not "fraudulent" or "deceptive" within the meaning of  
5 California Business and Professions Code section 17200, *et seq.*

6 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

7 **(Improper Class Action)**

8 On information and belief, Plaintiffs have failed to allege the requirements, and cannot  
9 satisfy the requirements, for the maintenance. of a class action, including, without limitation,  
10 numerosity, ascertainability, predominance, typicality, adequacy (of the proposed representatives  
11 and proposed class counsel), and superiority.

12 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

13 **(Inability to Certify Class)**

14 On information and belief, Plaintiffs have failed to state a class that can be properly  
15 certified.

16 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

17 **(Plaintiffs' Claims Not Typical)**

18 On information and belief, this case is not suitable for class certification because, among  
19 other reasons, Plaintiffs' claims are not typical of the putative class they purport to represent.

20 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

21 **(Plaintiffs Not Adequate Class Representative)**

22 On information and belief, Plaintiffs do not adequately represent the putative class.

23 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

24 **(Common Issues Do Not Predominate)**

25 On information and belief, class treatment is not proper because common issues of law  
26 and fact do not predominate over individual issues.  
27

1 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

2  
3 **(No Injunctive Relief)**

4 Defendants allege that Plaintiffs are not entitled to injunctive relief sought in the  
5 Consolidated Complaint because Plaintiffs have adequate remedies at law for the claims and  
6 injuries alleged therein and/or because the alleged conduct that Plaintiffs seek to enjoin is neither  
7 actively occurring nor threatened.

8 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

9  
10 **(Labor Code section 2699.3)**

11 For some or all of Plaintiffs' claims under PAGA, Plaintiffs have not satisfied the  
12 requirements of Labor Code section 2699.3 with regards to Defendants.

13 **THIRTIETH AFFIRMATIVE DEFENSE**

14  
15 **(No Statutory Recovery)**

16 Defendants allege that some or all of Plaintiffs' claims are barred, in whole or in part,  
17 because a claim for statutory penalties cannot be asserted in a PAGA representative action.

18 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

19  
20 **(No Duplicative Civil Penalties)**

21 Defendants allege that some or all of Plaintiffs claims are barred, in whole or in part,  
22 because a claim for civil penalties under PAGA may not be asserted in addition to any other  
23 claim for civil penalties for the same underlying violation or conduct.

24 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

25 **(Excessive Fines)**

26 Defendants allege that PAGA imposes excessive fines in violation of Amendment 8 of the  
27 California Constitution.  
28





1 Even assuming arguendo, that Plaintiffs can prove a technical violation of a provision of the  
2 California Labor Code or any applicable IWC Wage Order, Plaintiffs should not be awarded  
3 statutory penalties or additional compensation to the extent that Defendants fully or substantially  
4 complied with such statutory provision. At no time prior to filing the Consolidated Complaint did  
5 Plaintiffs inform Defendants that they were not taking meal or rest breaks as instructed or  
6 provided.

7 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

8 **(Safe Harbour)**

9 Plaintiffs' claims based upon California Business and Professions Code section 17200, *et*  
10 *seq.* are barred because the conduct falls within a safe harbor. Defendants have not violated the  
11 California Labor Code, or any other statutes or Wage Order, with respect to Plaintiffs or the  
12 putative class, in the manner, or to the extent, alleged by Plaintiffs, if at all.

13 **FORTIETH AFFIRMATIVE DEFENSE**

14 **(Restitution, Disgorgement, Equitable and Injunctive Relief Are Barred)**

15 Plaintiffs' claims seeking recovery in the form of restitution, disgorgement, equitable  
16 relief or injunctive relief under California Business and Professions Code section 17200, *et seq.*,  
17 are barred with respect to any alleged violations that have been discontinued, ceased, or are not  
18 likely to recur.

19 **FORTY-FIRST AFFIRMATIVE DEFENSE**

20 **(Reservation of Right to Assert Other Affirmative Defenses)**

21 Defendants hereby reserves their right to amend their Answer herein to add any additional  
22 affirmative defenses they deem necessary.

23 WHEREFORE, Defendants pray for judgment as follows:

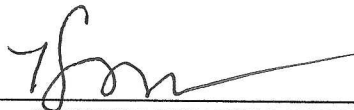
- 24
- 25 1. That class certification be denied;
  - 26 2. That Plaintiffs take nothing by reason of the Consolidated Complaint, and that the  
27 same be dismissed with prejudice on the merits;
  - 28 3. That Defendants be awarded judgment in their favor against Plaintiffs;

- 1           4. That Defendants recover all their costs and any recoverable attorneys' fees  
2                   pursuant to Labor Code section 218.5 or any applicable law; and  
3           5. That Defendants be granted such other and further relief as this Court may deem  
4                   just and proper.

5  
6  
7 Dated: October 2, 2020

8                                   Respectfully submitted,

9                                   INTEGRATED GENERAL COUNSEL, P.C.

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11                                   

12                                   By: KRISTEN HAYES KUSE  
13                                   Attorney for Defendants  
14                                   SWANSON LANDSCAPING, INC. and  
15                                   GEOFFREY O. SWANSON