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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **ALAMEDA COUNTY**

14 MAURILLIO SALCEDO FLORES,
15 individually and on behalf of all others similarly
situated,

16 Plaintiff

17 v.

18 SWANSON LANDSCAPING, INC., a
19 California Corporation; and DOES 1 through
20, inclusive,

20 Defendants.

21
22 JUAN MANUEL LOPEZ, individually and on
behalf of all others similarly situated,

23 Plaintiffs,

24 vs.

25 SWANSON LANDSCAPING, INC.,
26 GEOFFREY O. SWANSON, and DOES 1-50,
inclusive,

27 Defendants.
28

Case No. HG 20051571
Case No. RG 20062042

ASSIGNED FOR ALL PURPOSES TO
Hon. Brad Seligman
Department 23

**CONSOLIDATED CLASS ACTION
COMPLAINT FOR:**

- (1) **FAILURE TO PAY MINIMUM WAGES;**
- (2) **FAILURE TO PAY OVERTIME and
DOUBLE TIME WAGES;**
- (3) **FAILURE TO PROVIDE MEAL
PERIODS**
- (4) **FAILURE TO PERMIT REST PERIODS;**
- (5) **FAILURE TO PROVIDE ACCURATE
WAGE STATEMENTS;**
- (6) **FAILURE TO PAY EARNED WAGES
UPON SEPARATION OF
EMPLOYMENT;**
- (7) **UNLAWFUL AND/OR UNFAIR
BUSINESS PRACTICES; and**
- (8) **PRIVATE ATTORNEYS' GENERAL
ACT ("PAGA") ENFORCEMENT AND
PENALTIES;**

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**(9) DECLARATORY and INJUNCTIVE
RELIEF; and
(10) ATTORNEY'S FEES.**

DEMAND FOR JURY TRIAL

1 Plaintiffs Maurillio Salcedo Flores and Juan Manuel Lopez, individually and on behalf of
2 others similarly situated (“Plaintiffs”), bring this consolidated class and representative action against
3 Swanson Landscaping, Inc., Geoffrey O. Swanson, and DOES 1-50 (collectively “Defendants” or
4 “Swanson”), claiming unfair business practices and violations of the California Labor Code (“Labor
5 Code”). Plaintiffs seek damages, restitution, statutory penalties, declaratory and injunctive relief,
6 including an equitable accounting, attorneys’ fees and costs of suit.

7
8 **PARTIES**

9 1. Plaintiff Maurillio Flores Salcedo is an individual who resides in California and who
10 was employed by Defendants in California as a non-exempt employee from approximately 2015 to
11 approximately May 2019.

12 2. Plaintiff Juan Manuel Lopez is an individual who resides in California and who was
13 employed by Swanson in California as a non-exempt, skilled landscaper, from approximately 2007
14 to October 2019.

15 3. Defendant Swanson Landscaping, Inc. (“SLI”) is a California corporation allegedly
16 with its principal place of business in Livermore, California. Defendant SLI has a “C-27” license as
17 a landscaping contractor and provides services on residential and commercial construction projects,
18 mostly throughout the San Francisco East Bay Area. SLI is, and at all relevant times was, an
19 employer subject to California’s wage-and-hour laws.

20 4. Upon information and belief, Plaintiffs allege that Defendant Geoffrey O. Swanson
21 (“G. Swanson”) is, and at all times relevant hereto was, a resident and citizen of the State of
22 California. Plaintiffs are informed and believe and on that basis allege that G. Swanson has, and at
23 all relevant times herein had, an ownership interest in SLI. Geoffrey O. Swanson is a natural person,
24 who acted and acts on behalf of SLI and is an owner, director, officer, or managing agent of SLI, as
25 defined by Labor Code § 558.1.

26 5. Plaintiffs are informed and believe, and thereon allege that at all times hereinafter
27 mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers,
28 whose employees were and are engaged throughout this county and the State of California.

1 6. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as
2 DOES 1-50, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiffs will
3 amend this Complaint to allege their true names and capacities when ascertained. Plaintiffs are
4 informed and believe and thereupon allege that each of the fictitiously-named Defendants is
5 responsible in some manner for the occurrences herein alleged and that Plaintiffs' damages as herein
6 alleged are proximately caused by such occurrences.

7 7. Plaintiffs are informed and believe, and thereupon allege, that each defendant acted in
8 all respects pertinent to this consolidated action as the agent of the other defendant, carried out a
9 joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
10 are legally attributable to the other defendant. Furthermore, Defendants in all respects acted as the
11 employer and/or joint employer of Plaintiffs and the Class Members.

12 8. Plaintiffs are informed and believe, and thereupon allege, that each and all of the
13 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
14 DOES 1 through 50, acting as the agent or alter ego for the other, with legal authority to act on the
15 other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
16 official policy of Defendants.

17 9. At all relevant times, Defendants, and each of them, acted within the scope of such
18 agency or employment, or ratified each and every act or omission complained of herein. At all
19 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and
20 all the other Defendants in proximately causing the damages herein alleged.

21 10. Plaintiffs are informed and believe, and thereupon allege, that each of said
22 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
23 omissions, occurrences, and transactions alleged herein.

JURISDICTION AND VENUE

24
25 11. This Court has jurisdiction over all causes of action asserted herein pursuant to the
26 California Constitution, Article VI, §10, which grants the Superior Court original jurisdiction in all
27 cases except those given to other trial courts. The statutes under which this action is brought do not
28 specify any other basis for jurisdiction. Plaintiffs seek damages in this case in an amount exceeding

1 the jurisdictional minimum of this Court and will be established according to proof at trial. The
2 Court also has jurisdiction over certain causes of action pursuant to Business & Professions Code §§
3 17203 and 17204, which provide for exclusive jurisdiction for enforcement of this statute in any
4 court of competent jurisdiction.

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

10 13. Venue in is proper under Business & Professions Code § 17203 and California Code
11 of Civil Procedure § 395.5 because a substantial part of Swanson’s unlawful conduct occurred in this
12 County, Swanson had and has on-going projects in this County, Swanson conducts substantial
13 business in this County, Swanson’s liability arose in this County, and Swanson maintains an
14 executive office in Livermore, California, which is located in this County.

15 **FACTUAL ALLEGATIONS**

16 14. Swanson provides landscaping services on various residential and commercial
17 construction projects, throughout California, including in the San Francisco East Bay Area. As part
18 of its business, Swanson employed skilled landscapers to perform services and to work on projects
19 under its management and control.

20 15. Plaintiffs were, at all relevant times herein, employed by Swanson as non-exempt
21 employees who were paid hourly or by salary, in on-site construction occupations, as defined by
22 Industrial Welfare Commission Wage Order 16-2001, 8 CCR § 11160(2)(C) (“Wage Order 16”).

23 16. Swanson has provided landscaping services on projects located in Livermore,
24 Pleasanton, San Ramon, Dublin, Hayward, Union City, Concord, Alamo, Danville, and Walnut
25 Creek, among other cities in California.

26 17. For at least the past four years, Swanson has had a policy and practice of failing to
27 pay its non-exempt employees, including Plaintiffs, for all hours worked, including minimum wages,
28 overtime and double time pay as required by both the Labor Code and Wage Order 16. During the

1 class period, Swanson had an illegal policy and practice of paying salaries to Plaintiffs and Class
2 Members. Furthermore, Swanson has refused to pay its non-exempt employees the proper overtime
3 and double time pay rate for all overtime hours worked. Swanson regularly required Plaintiffs and
4 the Class to work more than eight hours in a day, but Defendants regularly did not pay Plaintiffs and
5 Class Members the proper overtime and double time rates for their work over eight hours in a day or
6 forty hours in a week. In fact, Swanson has an illegal policy and practice of paying at a regular rate
7 the actual hours that Plaintiffs and Class Members worked over eight hours in a day, in an unlawful
8 attempt to avoid paying overtime rates for overtime hours. Those hours in excess of 40 hours a week
9 were paid, if they were paid at all, in cash at a regular rate instead of overtime or double time rate.

10 18. During the respective periods in which Plaintiffs were employed by Swanson,
11 Swanson had a policy and practice of failing to provide Plaintiffs and Class Members with a meal
12 period of at least 30 minutes as required by Labor Code §§ 226.7 and 512 and Wage Order 16, §
13 10(B). When Swanson required Plaintiffs and Class Members to work more than 10 hours in a day,
14 it had a policy and practice of failing to provide Plaintiffs and Class Members with a second meal
15 period of at least 30 minutes as required by Labor Code §§ 226.7 and 512 and Wage Order 16, §
16 10(B). Plaintiffs allege that they and, on information and belief, other Class Members never waived
17 their right to a second meal period. Further, Plaintiffs and other Class Members often worked more
18 than 12 hours in a day. Under Labor Code § 512(a), second meal periods are not waivable for
19 employees who work more than 12 hours a day. In violation of the Labor Code and applicable
20 Wage Orders, Plaintiffs and Class Members did not receive payment of one (1) additional hour of
21 pay and Plaintiffs' and Class Members' regular rate of pay when they did not receive a timely,
22 uninterrupted meal period.

23 19. Since at least 2016, Swanson had a policy and practice of either not providing
24 mandated rest breaks or, on some occasions, combining both rest periods with a lunch break,
25 providing a 50-minute break to Plaintiffs and Class Members. All these practices are in violation of
26 the rest break requirements pursuant to Labor Code § 226.7 and Wage Order 16, § 11(A). In
27 addition, on those occasions when Swanson required Plaintiffs and Class Members to work more
28 than 10 hours, Swanson had a policy and practice of failing to authorize a third uninterrupted rest

1 period of not less than 10 minutes, as required by Labor Code § 226.7 and Wage Order 16, § 11(A).
2 In addition, on those occasions when Plaintiffs and Class Members did not receive an uninterrupted
3 ten-minute rest break, Plaintiffs and, on information and belief, Class Members did not receive
4 payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of pay when
5 a rest period was missed, interrupted, or on-duty. For example, Plaintiffs and Class Members worked
6 shifts entitling them to one or more rest periods, and they were not authorized and/or permitted to
7 take the required rest periods at the appropriate interval and they were not paid for those required
8 rest periods that they were neither authorized nor permitted to take.

9 20. Labor Code § 226 provides that every employer is required, "semimonthly or at the
10 time of each payment of wages," to give each employee an itemized wage statement that accurately
11 showed the following information: (1) gross wages earned; (2) total hours worked by the employee;
12 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
13 piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the
14 employee may be aggregated and shown as one time; (5) net wages earned; (6) the inclusive dates of
15 the period for which the employee is paid; (7) the name of the employee and only the last four digits
16 of his or her social security number or an employee identification number other than a social security
17 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
18 hourly rates in effect during the pay period and the corresponding number of hours worked at each
19 hourly rate by the employee. Swanson had a policy and practice of failing to provide proposed Class
20 Members, including Plaintiffs, with a properly itemized wage statement with each paycheck in
21 compliance with California law. Specifically, Swanson's wage statements did not indicate the total
22 hours worked by the employee—including the overtime hours that were paid in cash—and failed to
23 indicate the applicable wage rate and net wages earned. Thus, Plaintiffs and Class Members often
24 could not understand what work they were being paid for and what rate they had been paid.

25 21. Plaintiffs are informed and believe, and thereupon allege that Defendants knew or
26 should have known that the Waiting Time Subclass was entitled to timely payment of wages due
27 upon separation of employment. In violation of the Labor Code, Swanson had a policy and practice
28 of failing to pay the Waiting Time Subclass all wages within permissible time periods.

1 22. Plaintiffs are informed and believe, and thereupon allege that Defendants knew or
2 should have known they had a duty to compensate Plaintiffs and Class Members, and Defendants
3 had the financial ability to pay such compensation but willfully, knowingly, and intentionally failed
4 to do so in order to increase Defendants' profits.

5 23. Defendants have also violated California common and statutory law as described with
6 more particularity below.

7 8 **NATURE OF ACTION**

9 24. Plaintiffs bring this action under Code of Civil Procedure § 382 on behalf of
10 themselves and all others similarly situated who were affected by Defendants' Labor Code, Business
11 and Professions Code §§ 17200, and IWC Wage Order violations.

12 25. Plaintiffs seek recovery of, among other things, all allowable compensation and other
13 sums for the violations described below, including unpaid minimum wages and overtime and double
14 time wages, liquidated damages for failure to pay minimum and overtime wages, penalties/premium
15 pay for missed meal and rest periods, penalties, restitution and restoration of sums owed and
16 property unlawfully held, declaratory and injunctive relief, interest, attorneys' fees, and costs.

17 26. Plaintiffs' action is brought under the Industrial Welfare Commission Wage Orders
18 and applicable California Code of Regulations, and Labor Code §§ 201-203, 204, 210, 218, 223,
19 226, 226.3, 226.6, 226.7, 232.5, 510-512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197,
20 1197.1, 1198, 1199, and 2698 *et seq.* and Code of Civil Procedure § 1021.5.

21 27. Under California Business and Professions Code ("Bus. & Prof. Code") §§ 17200 *et*
22 *seq.*, and pursuant to the class action procedures provided for in this statute, Plaintiffs, on behalf of
23 themselves and the proposed Class, also seek restitution of all benefits Defendants have received
24 from—including but not limited to—their failure to pay compensation due for all hours worked,
25 their failure to maintain proper records of hours worked, and their failure to permit proper meal and
26 rest breaks to their employees.

27 28. The "Class Period" is designated as the time from four years prior to the filing of this
28 action to the date the class is certified, based upon the allegation that the violations of California's

1 wage-and-hour laws as described more fully below, have been ongoing for at least the four years
2 prior to the filing of the complaint in this consolidated action.

3 29. During the Class Period, Swanson has had a consistent policy of permitting,
4 encouraging, and/or requiring Plaintiffs and proposed Class Members to engage in the following
5 activities, among others, without compensating its employees for the time they spent performing
6 these activities as required by California’s wage-and-hours laws and common law: (1) working until
7 6:00 p.m., 7:00 p.m. or even 8:00 p.m. on the field without proper compensation for all hours
8 worked, including over 8 hours in a day and (2) working through meal and rest breaks.

9
10 **CLASS ACTION ALLEGATIONS**

11 30. Plaintiffs bring this action individually and as a class action on behalf of a proposed
12 class defined as follows:

13 All persons currently or formerly employed by Defendants as non-exempt employees (paid
14 hourly or by salary) in the State of California within four years prior to the filing of this
15 action to the date the class is certified (“Class”).

16 31. Plaintiffs also seek to certify the following subclass:

17 **Waiting Time Subclass**

18 All Class Members who separated from their employment status with Defendants
19 at any time within three years prior to the filing of this action to the date the class
20 is certified (“Subclass” or “Waiting Time Subclass”).

21 32. This action is brought, and may properly be maintained, as a class action pursuant to
22 California Code of Civil Procedure § 382 because there is a well-defined community of interest in
23 the litigation, and the proposed class is easily ascertainable. This action presents questions of
24 common interest and satisfies the numerosity, commonality, typicality, adequacy, predominance,
25 and superiority requirements of this provision.

26 33. Plaintiffs reserve the right under California Rules of Court, Rule 3.765(b), to amend
27 or modify the class description with greater specificity or further division into subclasses or
28 limitation to particular issues.

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1 **Numerosity:**

2 34. The Class is so numerous that the individual joinder of all of its members is
3 impracticable. While the exact number and identities of Class Members are unknown to Plaintiffs at
4 this time and can only be ascertained through appropriate discovery, Plaintiffs are informed and
5 believe that the Class includes more than 50 persons.

6 35. A class action is the only available method for the fair and efficient adjudication of
7 this controversy. The members of the Class are so numerous that joinder of all members is
8 impractical, if not impossible, insofar as the Plaintiffs are informed and believe and, on that basis,
9 allege that the total number of Class Members is more than 50 individuals. The identity of Class
10 Members can be determined upon analysis of, inter alia, employee and payroll records maintained by
11 Swanson.

12 **Commonality:**

13 36. Common questions of fact and law exist as to all members of the Class that
14 predominate over any questions affecting only individual Class Members. These common legal and
15 factual questions, which do not vary from Class Member to Class Member and which may be
16 determined without reference to the individual circumstances of any Class Member include, but are
17 not limited to, the following:

18 (a) whether Defendants had a policy or practice of failing to pay Plaintiffs and
19 Class Members all wages due, including minimum wages, overtime, and double time pay for all the
20 hours worked by Plaintiffs and Class Members;

21 (b) whether Defendants had a policy or practice of requiring Plaintiffs and Class
22 Members to work more than 8 hours in a day, over twelve (12) hours in a day, over forty (40) hours
23 in a week, and/or seven (7) consecutive days without proper overtime compensation;

24 (c) whether Defendants had a policy or practice of violating Labor Code § 226.7,
25 by failing to permit timely meal breaks to Plaintiffs and Class Members as required under Wage
26 Order 16, §10 without proper premium pay;

1 (d) whether Defendants had a policy or practice of not providing rest breaks to
2 Plaintiffs and Class Members, in violation of Labor Code § 226.7 and Wage Order 16 § 11(A)
3 without proper premium pay;

4 (e) whether Defendants had a policy or practice of combining both rest periods
5 with a lunch break, in violation of Labor Code § 226.7 and Wage Order 16, § 11(A) without proper
6 premium pay;

7 (f) whether Defendants had a policy or practice of failing to provide Plaintiffs
8 and Class Members who worked more than 10 hours in a day with their required third rest periods as
9 required under Wage Order 16, §11 without proper premium pay;

10 (g) whether Defendants, in violation of Cal. Labor Code §§ 226 and 1174, had a
11 systematic policy or practice of failing to keep and provide timely and accurate itemized wage
12 statements of all of the hours worked by Plaintiffs and Class Members and their applicable hourly
13 rates;

14 (h) whether Defendants had a policy or practice of failing to the Waiting Time
15 Subclass all wages due upon termination or within seventy-two (72) hours of resignation, , in
16 violation of Labor Code §§ 201-203;

17 (i) whether Defendants' conduct was willful or reckless;

18 (j) whether Defendants engaged in unfair business practices in violation of Bus.
19 & Prof. Code §§ 17200 *et seq.*

20 (k) whether Plaintiffs and Members of the Class are entitled to equitable relief
21 under Bus. & Prof. Code §§ 17200 *et seq.*; and

22 (l) what amounts Plaintiffs and Class Members are entitled to receive in interest
23 on unpaid compensation due and owing to them.

24 **Typicality:**

25 37. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs and all Class
26 Members sustained injuries and damages arising out of and caused by Defendants' policies,
27 practices, and common course of conduct in violation of law as alleged herein.

28

1 **Adequacy of Representation:**

2 38. Plaintiffs are adequate representatives of the Class, in that their claims are typical of
3 those of the Class. Plaintiffs have the same interests in the litigation of this case as the Class
4 Members; they are committed to vigorous prosecution of this case and have retained competent
5 counsel experienced in class action and wage-and-hour litigation of this nature. Plaintiffs are not
6 subject to any individual defenses unique from those conceivably applicable to the Class as a whole
7 and anticipate no management difficulties in this litigation.

8 **Predominance:**

9 39. Defendants have engaged in a common course of wage-and-hour abuse toward
10 Plaintiffs and Class Members. The common issues arising from this conduct that affect Plaintiffs and
11 Class Members predominate over any individual issues. Adjudication of these common issues in a
12 single action has important and desirable advantages of judicial economy.

13 **Superiority of Class Action:**

14 40. A class action is superior to other available methods for the fair and efficient
15 adjudication of this controversy because individual litigation of the claims of all Class Members is
16 impracticable. Even if every Class Member could afford individual litigation, the court system could
17 not. It would be unduly burdensome to the courts in which individual litigation of numerous cases
18 would proceed. Individualized litigation would also present the potential for varying, inconsistent, or
19 contradictory judgments and would magnify the delay and expense to all parties and to the court
20 system resulting from multiple trials of the same complex factual issues. Moreover, individual
21 actions by Class Members may establish inconsistent standards of conduct for Swanson. By contrast,
22 the conduct of this action as a class action, with respect to some or all of the issues presented herein,
23 presents fewer management difficulties, conserves the resources of the parties and the court system,
24 and protects the rights of each Class Member.

25 41. Defendants have acted or refused to act in respects generally applicable to the Class,
26 thereby making appropriate relief with regard to the Members of the Class as a whole, as requested
27 herein.

28

1 **Public Policy Considerations:**

2 42. Employers in the State of California violate employment and labor laws every day.
3 Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation.
4 Former employees are fearful of bringing actions because they believe their former employers
5 might damage their future endeavors through negative references and/or other means. Class actions
6 provide class members who are not named in the complaint with a type of anonymity that allows
7 for the vindication of their rights while affording them privacy protections.
8

9 **FIRST CAUSE OF ACTION**

10 **Failure to Pay Minimum Wages**

11 **(brought by Plaintiffs on behalf of themselves and all Class Members**

12 **against all Defendants)**

13 **(Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1997; Violation of IWC Wage Order §3-4)**

14 43. Plaintiffs, individually and on behalf of themselves and all employees similarly
15 situated, refer to and hereby incorporate by reference all preceding paragraphs as though fully set
16 forth herein.

17 44. Pursuant to Labor Code § 1194, “any employee receiving less than the legal minimum
18 wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil
19 action the unpaid balance of the full amount of this minimum wage or overtime compensation,
20 including interest thereon, reasonable attorney’s fees, and costs of suit.”

21 45. Pursuant to Labor Code § 1197, “The minimum wage for employees fixed by the
22 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
23 and the payment of a lower wage than the minimum so fixed is unlawful.”

24 46. As alleged in the foregoing paragraphs, throughout the Class Period, Defendants
25 regularly failed to pay at least minimum wage to Plaintiffs and Class Members for all hours
26 worked pursuant to Labor Code §§ 1194 and 1197, when they failed to pay proper compensation
27 for all hours worked including time when Plaintiffs and Class Members were paid on a salary basis
28 and time worked off-the-clock. To the extent these hours do not qualify for the payment of
overtime, Plaintiff and Class Members were not being paid at least the lawful minimum wage for
their work.

1 half times (1½) times their regular rate of pay when working and for all hours worked in excess of
2 eight (8) hours in a day or more than forty (40) hours in a workweek and for the first eight (8) hours
3 of work on the seventh day of work in a workweek.

4 54. The applicable IWC Wage Orders further provide that Defendants are and were
5 required to overtime compensation to Plaintiff and Class Members at a rate of two times their regular
6 rate of pay when working and for all hours worked in excess of twelve (12) hours in a day or in
7 excess of eight (8) hours on the seventh day of work in a workweek.

8 55. As alleged in the foregoing paragraphs, throughout the Class Period, Plaintiffs and
9 Class Members were required to work more than the eight hours per day. Although Defendants
10 regularly required Plaintiffs and the Class to work more than 40 hours in a week, and often worked
11 as much as 60 hours or more per week. Defendants, however, did not pay Plaintiffs and Class
12 Members overtime and double time compensation for all the hours they worked over 8 hours in a
13 day and 40 hours in a week.

14 56. At all times herein relevant, Labor Code § 510 and California Code of Regulations
15 Title 8 § 11160 applied to Plaintiffs' work with Defendants and continue to apply to Class Members'
16 employment with Defendants. Labor Code § 510 and California Code of Regulations Title 8,
17 § 11160 state that "employers must pay one and a half times an employee's 'regular rate' if he or she
18 works more than 40 hours per week or more than eight hours per day." Lab. Code § 510(a). In
19 addition, Labor Code provides that "[a]ny work in excess of 12 hours in one day shall be
20 compensated at the rate of no less than twice the regular rate of pay for an employee." Lab. Code §
21 510(a).

22 57. California Code of Regulations Title 8, § 11160(3)(a)(1) provides that "employees
23 shall not be employed more than eight (8) hours in any workday or more than 40 hours in any
24 workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate
25 of pay for all hours worked over 40 hours in the workweek. Employment beyond eight (8) hours in
26 any workday or more than six (6) days in any workweek is permissible provided the employee is
27 compensated [...]: (a) One and one-half times regular rate of pay for all hours worked in excess of
28 eight (8) hours [...]; and (b) Double the employee's regular rate of pay for all hours worked in

1 excess of 12 hours in any workday [...]” For example, Swanson violated California law by not
2 paying overtime wages for all overtime hours worked when Plaintiffs and Class Members worked in
3 excess of twelve (12) hours in a day, such as when Swanson required Plaintiffs and Class Members
4 to arrive at work between 7:00 to 8:00 a.m., to receive their assignment, clean the trucks and load the
5 trucks with materials, equipment, and tools, traveling to the jobsites and working there until 6 p.m., 7
6 p.m. or up to 8 p.m., and not paying them overtime and double time wages for these overtime hours
7 worked.

8 58. Employees, therefore, regularly worked more than 8 hours in a day, but Swanson
9 failed to compensate them with premium wages for the overtime and double time hours they worked.

10 59. Defendant G. Swanson is liable for violations of Wage Order No. 16 and California
11 Code of Regulations Title 8 § 11160 because he is “other person acting on behalf of an employer”
12 pursuant to Labor Code § 558.1.

13 60. In violation of state law, Defendants knowingly and willfully refused to perform their
14 obligations and compensate Plaintiff and Class Members for all wages earned and all hours worked.

15 61. As a direct and proximate result of Defendants’ unlawful conduct, as set forth herein,
16 Plaintiffs and the Class Members have sustained damages, including but not limited to loss of
17 earnings. Plaintiffs seek to recover unpaid wages and penalties, attorney’s fees and costs of suit
18 under Labor Code §§ 1194, 1194.2, and 218, and further relief, as described below.

19
20 **THIRD CAUSE OF ACTION**

21 **Failure to Provide Meal Breaks**

22 **(brought by Plaintiffs on behalf of themselves and all Class Members**
23 **against all Defendants)**

24 **(Violation of Labor Code §§ 266.7 and 512; Violation of IWC Wage Order 16 § 10)**

25 62. Plaintiffs, individually and on behalf of all employees similarly situated, refer to and
26 hereby incorporate by reference all preceding paragraphs, as though fully set forth herein.

27 63. As alleged in the foregoing paragraphs, throughout the Class Period, Swanson had a
28 policy and practice of failing to provide Plaintiffs and Class Members with a meal period of at least
30 minutes as required by Labor Code §§ 226.7 and 512 and Wage Order 16, § 10(A). When
Swanson required Plaintiffs and Class Members to work more than 10 hours in a day, Swanson had a

1 policy and practice of refusing and/or failing to provide employees a second meal period of not less
2 than 30 minutes as required by Labor Code § 512 (a) and Wage Order 16, § 10(B). In addition, on
3 those occasions, Plaintiffs allege that they and, on information and belief, other Class Members did
4 not waive their rights to a meal period.

5 64. At all times herein relevant, Labor Code §§ 512 and 226.7 and California Code of
6 Regulations Title 8 § 11160 have applied and continue to apply to Plaintiffs and the Class
7 Members' employment with Defendants. Labor Code § 512 (a) provides that "[a]n employer shall
8 not employ an employee for a work period of more than five hours per day without providing the
9 employee with a meal period of not less than 30 minutes." Lab. Code § 512 (a). Labor Code § 512
10 also provides that "[a]n employer shall not employ an employee for a work period of more than 10
11 hours per day without providing the employee with a second meal period of not less than 30
12 minutes." Lab. Code § 512 (a). Labor Code § 226.7 states "An employer shall not require any
13 employee to work during any meal or rest period mandated pursuant to an applicable statute, or
14 applicable regulation, standard, or order of the Industrial Welfare Commission [...]" Lab. Code §
15 226.7(b).

16 65. Section 10 of Wage Order 16 provides in relevant part that:

17
18 (A) No employer shall employ any person for a work period of more than five (5)
19 hours without a meal period of not less than 30 minutes, except that when a work
20 period of not more than six (6) hours will complete the day's work the meal period
21 may be waived by mutual consent of employer and employee (See Labor Code
22 Section 512).

23 (B) An employer may not employ an employee for a work period of more than ten
24 (10) hours per day without providing the employee with a second meal period of not
25 less than 30 minutes, except that if the total hours worked is no more than 12 hours,
26 the second meal period may be waived by mutual consent of employer and employee
27 only if the first meal period was not waived (See Labor Code Section 512).

28 66. Defendants failed to permit Plaintiffs and Class Members to take compliant meal
periods as required by law because their meal periods were missed, late, short and/or interrupted.

1 67. Labor Code § 226.7(b) and section 10 of Wage Order 16 require an employer to pay
2 an employee one (1) additional hour of pay at the employee’s regular rate of compensation for each
3 work day that a compliant meal period is not provided.

4 68. During the class period, Defendants failed to pay Plaintiffs and Class Members meal
5 period premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code §
6 226.7(b) and section 10 of Wage Order 16.

7 69. Defendant G. Swanson is liable for violations of Labor Code § 226.7, Wage Order
8 No. 16, and California Code of Regulations Title 8 § 11160 because he is “other person acting on
9 behalf of an employer” pursuant to Labor Code § 558.1.

10 70. As a direct and proximate result of Defendants’ unlawful conduct, as set forth herein,
11 Plaintiffs and the Class Members have sustained damages, including a loss of wages and
12 compensation, in an amount to be established at trial, plus prejudgment interest pursuant to statute.

13
14 **FOURTH CAUSE OF ACTION**

15 **Failure to Provide Rest Breaks**

16 **(brought by Plaintiffs on behalf of themselves and all Class Members
17 against all Defendants)**

18 **(Violation of Labor Code § 226.7; Violation of IWC Wage Order 16 § 11)**

19 71. Plaintiffs, individually and on behalf of all employees similarly situated, refer to and
20 hereby incorporate by reference all preceding paragraphs, as though fully set forth herein.

21 72. As alleged in the foregoing paragraphs, throughout the Class Period, Swanson has
22 had a policy and practice of either not authorizing rest breaks or, on occasions, combining two ten-
23 minute rest periods with a lunch break, providing a 50-minute break to Plaintiffs and Class
24 Members, in violation of the rest break requirements pursuant to Labor Code § 226.7 and Wage
25 Order 16, § 11(A). In addition, on those occasions when Swanson required Plaintiffs and Class
26 Members to work more than 10 hours, Swanson had a policy and practice of failing to authorize a
27 third uninterrupted rest period of not less than 10 minutes, as required by Labor Code § 226.7 and
28 Wage Order 16, § 11(A).

 73. At all times herein relevant, Labor Code § 226.7 and California Code of Regulations
Title 8 § 11160 have applied and continue to apply to Plaintiffs and the Class Members’ employment

1 with Defendants. Labor Code § 226.7 states “An employer shall not require any employee to work
2 during any meal or rest period mandated pursuant to an applicable statute, or applicable regulation,
3 standard, or order of the Industrial Welfare Commission [...]” Lab. Code § 226.7(b).

4 74. Section 11 of Wage Order 16 provides in relevant part that:

5
6 (A) Every employer shall authorize and permit all employees to take rest periods,
7 which insofar as practicable shall be in the middle of each work period. [...] The
8 authorized rest period time shall be based on the total hours worked daily at the rate
9 of ten (10) minutes net rest time per four (4) hours or major fraction thereof [...]

10 (B) Rest periods need not be authorized in limited circumstances when the disruption
11 of continuous operations would jeopardize the product or process of the work.
12 However, the employer shall make up the missed rest period within the same
13 workday or compensate the employee for the missed ten (10) minutes of rest time at
14 his/her regular rate of pay within the same pay period.

15 (C) A rest period need not be authorized for employees whose total daily work time is
16 less than three and one-half (3½) hours.

17 75. During the Class Period, Defendants failed to authorize and permit Plaintiffs and
18 Class Members to take compliant rest periods as required by law, because they were required to
19 work through their daily rest periods, were not permitted to take timely rest periods, were required to
20 remain on-duty during rest periods, and/or were not authorized to take their rest periods.

21 76. Labor Code § 226.7(c) and section 11 of Wage Order 16 require an employer to pay
22 an employee one (1) additional hour of pay at the employee’s regular rate of compensation for each
23 work day that a compliant rest period is not provided.

24 77. During the Class Period, Defendants failed to pay Plaintiffs and Class Members rest
25 period premiums for missed, late, and/or interrupted rest breaks pursuant to Labor Code § 226.7(b)
26 and section 11 of Wage Order 16.

27 78. Defendant G. Swanson is liable for violations of Labor Code § 226.7, Wage Order 16,
28 and California Code of Regulations Title 8 § 11160 because he is “other person acting on behalf of
an employer” pursuant to Labor Code § 558.1.

1 Members. For example, Swanson’s wage statements did not show the actual rates paid to Plaintiffs
2 and Class Members and the actual hours worked by Plaintiffs and the Class. Although Plaintiffs and
3 Class Members recorded their time on their time cards, their wage statements did not reflect all the
4 hours worked and the overtime and double time pay that they were entitled to as a result of working
5 more than eight hours in a day and forty hours in a week.

6 84. Defendant G. Swanson is liable for violations of Labor Code § 226 because he is
7 “other person acting on behalf of an employer” pursuant to Labor Code § 558.1.

8 85. Defendants knowingly and intentionally failed to provide timely, accurate, and
9 itemized wage statements to Plaintiffs and Class Members in accordance with Labor Code § 226.
10 The statements provided to Plaintiffs and Class Members have not accurately reflected, among other
11 items, actual hours worked, actual gross wages earned, the total hours worked by employees,
12 including overtime, and the net wages earned. Plaintiffs and the Class are therefore entitled to the
13 damages and penalties provided for under Labor Code § 226 (e).

14 86. Defendants’ violations of California Labor Code § 226(a) prevented Plaintiffs and
15 Class Members from knowing, understanding, and disputing the wages paid to them and resulted in
16 an unjustified economic enrichment to Defendants. As a result of Defendants’ knowing and
17 intentional failure to comply with California Labor Code § 226(a), Plaintiffs and Class Members
18 have suffered an injury, in the exact amount of damages and/or penalties to be shown according to
19 proof at trial.

20 87. Class Members that are still employed by Defendants are also entitled to injunctive
21 relief under Labor Code § 226(h), compelling Defendants to comply with Labor Code § 226.
22 Accordingly, affected Class Members seek the recovery of attorneys’ fees and costs incurred in
23 obtaining this injunctive relief.

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1 **SIXTH CAUSE OF ACTION**

2 **Failure to Pay Earned Wages Upon Discharge (Waiting Time Penalties)**
3 **(Brought by Plaintiffs on behalf of themselves and the Waiting Time Subclass against all**
4 **Defendants)**

5 88. Plaintiffs, individually and on behalf of all employees similarly situated, incorporate
6 by reference in this cause of action each allegation of all preceding paragraphs, as though fully set
7 forth herein.

8 89. Labor Code § 201 requires Swanson to pay its discharged employees all wages due
9 immediately upon discharge.

10 90. Labor Code § 202 requires that if an employee voluntarily leaves his or her
11 employment, “his or her wages shall become due and payable not later than 72 hours thereafter,
12 unless the employee has given 72 hours previous notice of his or her intention to quit, in which case
13 the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other
14 provision of law, an employee who quits without providing a 72-hour notice shall be entitled to
15 receive payment by mail if he or she so requests and designates a mailing address.”

16 91. During the Class Period, Defendants willfully failed to pay the Waiting Time
17 Subclass all their earned wages upon termination, including, but not limited to, proper minimum
18 wage and overtime compensation, meal period premiums, and rest period premiums either at the
19 time of discharge or within seventy-two (72) hours of their leaving Defendants’ employ.

20 92. Defendants’ failure to pay the Waiting Time Subclass all their earned wages at the
21 time of discharge or within seventy-two (72) hours of their leaving Defendants’ employ is in
22 violation of Labor Code §§ 201 and 202.

23 93. Labor Code § 203 provides that if an employer willfully fails to timely pay any wages
24 that are due upon discharge or resignation, the employer must, as a penalty, continue to pay the
25 employee’s wages until the back wages are paid in full or an action is commenced. The penalty
26 cannot exceed 30 days of wages. Plaintiffs and Waiting Time Subclass members who have been
27 discharged or who have quit are entitled to all unpaid compensation, pursuant to Labor Code § 203,
28 but, as alleged above, to date have not received such compensation.

1 94. Defendant G. Swanson is liable for violations of Labor Code § 203, Wage Order No.
2 16, and California Code of Regulations Title 8 § 11160 because he is “other person acting on behalf
3 of an employer” pursuant to Labor Code § 558.1.

4 95. As a consequence of Defendants’ willful conduct in not paying compensation for all
5 hours worked, Plaintiffs and the Waiting Time Subclass are entitled to up to 30 days’ wages as a
6 penalty under Labor Code § 203, together with interest thereon.

7
8 **SEVENTH CAUSE OF ACTION**

9 **Unlawful Business Practices under California Unfair Competition Act**
10 **(brought by Plaintiffs on behalf of themselves and all Class Members**
11 **against Defendant SLI and DOES 1-50)**
12 **(Violation of Business and Professions Code §§ 17200, et seq.)**

13 96. Plaintiffs, individually and on behalf of all employees similarly situated, incorporate
14 in this cause of action each and every allegation of all preceding paragraphs, as though fully set forth
15 herein.

16 97. Plaintiffs further bring this cause of action on behalf of the proposed Class, seeking
17 statutory relief to stop the misconduct of Defendants, as complained herein, and to compel restitution
18 and disgorgement of all profits obtained by Defendants through the unfair and unlawful business
19 practices described herein.

20 98. Beginning at an exact date unknown to Plaintiffs, but at least since 2016, Defendants
21 have committed unlawful acts as defined by Business & Professions Code § 17200. Defendants have
22 engaged in unlawful, unfair and deceptive business practices including, but not limited to, the
23 following:

24 (a) Failure to pay all wages earned (including minimum wage and overtime wages) to
25 Plaintiffs and Class Members in violation of Labor Code §§ 510, 1182.12, 1194, 1194.2, 1197, and
26 1198;

27 (b) Failure to pay the proper wage rate for all hours worked;

28 (c) Failure to provide compliant meal periods without paying Plaintiffs and Class
Members premium wages for every day said meal periods were not provided in violation of Labor
Code §§ 226.7 and 512;

1 (d) Failure to authorize or permit compliant rest breaks without paying Plaintiff and Class
2 Members premium wages for every day said rest breaks were not authorized or permitted in
3 violation of Labor Code § 226.7;

4 (e) Failure to timely pay all earned wages to members of the Waiting Time Subclass
5 upon separation of employment in violation of Labor Code §§ 201, 202, and 203;

6 (f) Violations of Labor Code § 226 (Failure to provide accurate itemized wage
7 statements);

8 (g) Violations of Labor Code §§1174 and 1174.5 (failure to maintain accurate records);

9 99. The conduct of Defendants, as alleged herein, constitutes unlawful practices as set
10 forth in Business & Professions Code §§ 17200, et seq. Specifically, Defendants conduct business
11 activities while failing to comply with California's wage-and-hour laws and the California common
12 law and statutory law as described herein.

13 100. Section 17200 of the Business & Professions Code prohibits unfair competition by
14 prohibiting unlawful, unfair, or fraudulent business practices or acts.

15 101. Defendants' failure to adopt policies in accordance with and/or adhere to these laws,
16 all of which are binding upon and burdensome to Defendants' competitors, engenders an unfair
17 competitive advantage for Defendants, thereby constituting an unfair business practice, as set forth
18 in Business & Professions Code §§ 17200, et seq.

19 102. Defendants' conduct as herein alleged has damaged Plaintiffs and members of the
20 Class by, among other items, wrongfully denying to them earned wages, overtime pay, and meal and
21 rest breaks and therefore was substantially injurious to Plaintiffs and the Class.

22 103. Under the circumstances alleged, it would be inequitable and result in a miscarriage
23 of justice for Plaintiffs and Class Members if Defendants were to retain the property of Plaintiffs and
24 Class Members, entitling Plaintiffs and the proposed Class to restitution of the unfair benefits
25 obtained and disgorgement of Defendants' ill-gotten gains.

26 104. As a result of Defendants' unlawful and unfair business practices, Plaintiffs and Class
27 Members are entitled to and seek restitution and disgorgement, and other appropriate relief available
28 under Bus. & Prof. Code §§ 17200 et. seq.

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105. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendants’ conduct, as alleged herein, has been and continues to be unfair, unlawful, and harmful to Plaintiffs, Class Members, and the general public. Based on Defendants’ conduct as alleged herein, Plaintiffs and Class Members are entitled to an award of attorneys’ fees pursuant to California Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION
Civil Penalties under Private Attorneys General Act
(brought by Plaintiffs on behalf of themselves and all Class Members
against all Defendants)
(Enforcement of Labor Code § 2698, *et seq.*)

106. Plaintiffs reallege and incorporate in this cause of action each and every allegation of all preceding paragraphs, as though fully set forth herein.

107. Plaintiffs, as aggrieved employees, bring this claim under Labor Code §§ 2698-2699 in a representative capacity on behalf of current and former employees of Defendants subjected to the alleged unlawful practices.

108. The Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698 *et seq.*, grants California employees the right to bring a civil action for violation of any provision of the Labor Code on behalf of themselves and other current or former employees in order to recover civil penalties. In passing PAGA, the California Legislature “declared that adequate financing of labor law enforcement was necessary to achieve maximum compliance with state labor laws, that staffing levels for labor law enforcement agencies had declined and were unlikely to keep pace with the future growth of the labor market, and that it was therefore in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations.” *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969, 980. Because PAGA deputizes employees to act as private attorneys general, class action requirements do not apply to representative actions brought under PAGA. *Id.*

109. PAGA permits an aggrieved employee to collect the civil penalty authorized by law and normally collectible by the California Labor and Workforce Development Agency. To address violations for which no penalty had been established, section 2699(f) creates a private right of

1 action for aggrieved employees and default penalty in the amount of \$100 for each aggrieved
2 employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay
3 period for each subsequent violation. Labor Code § 2699(f).

4 110. Plaintiffs hereby seek to collect these civil penalties for the above-described Labor
5 Code violations, including, but not limited to, the following: (1) the penalties provided for
6 violations of Labor Code §§ 201-203, 204, 510, 1182.12, 1194, 1194.2, 1197 and 1198 for failure
7 to timely pay all earned wages (including minimum wages and overtime wages) owed to Plaintiffs
8 and other aggrieved employees during employment and upon separation of employment as herein
9 alleged; (2) the penalties provided for unlawfully receiving and withholding earned wages,
10 authorized under Labor Code § 225.5; (3) the penalties provided for failure to provide accurate
11 itemized wage statements to Plaintiffs and other aggrieved employees, authorized under Labor
12 Code § 226.3; and (4) the penalties provided for violation of Labor Code §§ 226.7 and 512 for
13 failure to provide meal periods to Plaintiffs and other aggrieved employees and failure to pay
14 premium wages for missed meal periods; . In addition, Plaintiffs seek to collect civil penalties for
15 violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5, 1182.12,
16 1194, 1194.2, 1197, and 1198, as authorized by Labor Code §§ 2699(a) and 2699.3.

17 111. Plaintiffs are “aggrieved employees” because they were employed by the alleged
18 violators and had one or more of the alleged violations committed against them; therefore, they are
19 properly suited to represent the interests of all other aggrieved employees.

20 112. Plaintiffs have exhausted the procedural requirements under Labor Code § 2699.3
21 as to Defendants and are therefore able to pursue a claim for penalties on behalf of themselves and
22 all other aggrieved employees under PAGA.

23 113. Pursuant to Labor Code §§ 2699(a), 2699.2, and 2699.5, Plaintiffs are entitled to
24 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
25 cited above.

26 114. Labor Code § 2699(g) further provides that any employee who prevails in an action
27 for civil penalties is entitled to an award of reasonable attorney’s fees and costs. Plaintiffs hereby
28 seek to recover their attorney’s fees and costs under this one-way fee and cost shifting statute.

1 **RELIEF SOUGHT**

2
3 **WHEREFORE**, Plaintiffs, on behalf of themselves and the proposed Class, pray for
4 judgment and the following specific relief against Defendants, jointly and severally, as follows:

5 A. That the Court determine that this action may be maintained as a class action under
6 California Code of Civil Procedure §382;

7 B. That Maurillio Salcedo Flores and Juan Manuel Lopez be appointed class
8 representatives;

9 C. That Aegis Law Firm, PC and Molteni Employment Law be appointed class counsel
10 for all purposes;

11 D. That Plaintiffs and the Class be awarded damages for the amount of unpaid
12 compensation, including interest thereon, liquidated damages, and penalties subject to proof at trial;

13 E. That Plaintiffs and the Class be awarded statutory penalties to the extent permitted by
14 law, including those pursuant to the Labor Code and Wage Order 16;

15 F. That Defendants be ordered and enjoined to pay restitution to Plaintiffs and the Class
16 due to Defendants' unlawful activities, pursuant to Business and Professions Code §§ 17200 et seq.;

17 G. That Defendants be ordered to restore and disgorge all funds to each employee
18 acquired by means of any act or practice declared by this Court to be unlawful, unfair, or
19 fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§
20 17200, et seq.;

21 H. That Defendants be ordered to pay pre-judgment interest;

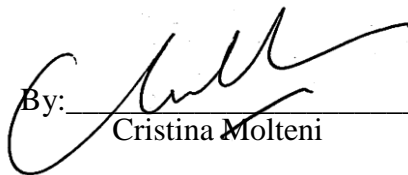
22 I. That Plaintiffs and other aggrieved employees be awarded penalties pursuant to
23 PAGA;

24 J. That Plaintiffs and the Class be awarded reasonable attorneys' fees, costs, and intent
25 to the extent permitted by law, including, but not limited to, PAGA, Labor Code §§ 226(e) and 1194,
26 and California Code of Civil Procedure § 1021.5; and


27 K. An award of such other relief as this Court may deem appropriate.
28

1 Dated: August 27, 2020

MOLTENI EMPLOYMENT LAW

2
3 By:  _____
4 Cristina Molteni

5 AEGIS LAW FIRM, PC

6 By:  _____
7 Clare M. Wernet

8 Attorneys for Plaintiffs and the Proposed Class

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DEMAND FOR JURY TRIAL


Plaintiffs, on behalf of themselves and all others similarly situated, hereby request a jury trial on the claims so triable.

Dated: August 27, 2020

MOLTENI EMPLOYMENT LAW

By:  _____
Cristina Molteni

AEGIS LAW FIRM, PC

By:  _____
Clare M. Wernet

Attorneys for Plaintiffs and the Proposed Class