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Attorneys for Plaintiff,
JOSE LOZANO SANDOVAL, and all others similarly situated
(additional attorneys listed on next page)

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO
(UNLIMITED JURISDICTION)**

JOSE LOZANO SANDOVAL, on behalf of
himself, and all others similarly situated, and as
an "aggrieved employee" on behalf of other
"aggrieved employees" under the Labor Code
Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

AMERICAN LANDSCAPE AND
MAINTENANCE, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendant(s).

Case No.: CIVDS2011904

CLASS ACTION

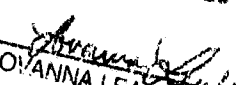
FIRST AMENDED COMPLAINT FOR

1. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
4. Failure to Indemnify (Lab. Code § 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201-203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
8. Civil Penalties (Lab. Code §§ 2698, *et seq.*).

JURY TRIAL DEMANDED

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 18 2020

BY 
JOYANNA LEANDRO, DEPUTY

BY FAX



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SUPERIOR COURT OF CALIFORNIA
SAN BERNARDINO COUNTY

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ADDITIONAL ATTORNEY FOR PLAINTIFF

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Plaintiff JOSE LOZANO SANDOVAL (hereafter "Plaintiff"), on behalf of himself and all others similarly situated, complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this class action and representative based on alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter "the Wage Order") and the Business and Professions Code against defendants AMERICAN LANDSCAPE AND MAINTENANCE, INC., and Does 1-50, inclusive (collectively "Defendants").

2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to him and other similarly situated current and former employees in California for unpaid wages and other related relief. These claims are based on Defendants' alleged failures to (1) pay all wages for all hours worked, (2) provide all rest and meal periods, (3) failure to indemnify, (4) fairly compete, (5) provide accurate written wage statements, and (6) timely pay final wages upon termination of employment. Accordingly, Plaintiff now seeks to recover unpaid wages and related relief through this class action.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff and Class Members, inclusive of all relief, place more than \$25,000 in controversy.

4. There is no basis for federal question subject matter jurisdiction in this case. Specifically, Plaintiff asserts claims on behalf of himself and Class Members that solely arise under California law, rather than federal law.

5. There is also no basis for federal diversity jurisdiction in this case.

6. Venue is proper in San Bernardino County pursuant to California Code of Civil Procedure § 395(a) and § 395.5 in that liability arose in San Bernardino County because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or because each defendant is found, maintains offices, transacts business, and/or has an agent therein.

PARTIES

7. Defendants first hired Plaintiff in or about June of 2013 to work in California as a non-exempt, hourly landscaper, groundskeeper, driver, leadman, and laborer. Plaintiff continuously worked for Defendants until approximately September 27, 2019 when his



employment ended.

8. Plaintiff currently resides in San Bernardino, California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11050 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

9. Defendant AMERICAN LANDSCAPE AND MAINTENANCE, INC. is a corporation organized under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

10. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend the complaint to allege the true names and capacities of the DOE defendants when ascertained.

11. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

12. At all relevant times, in perpetrating the acts and omissions alleged herein, defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and other members of the below-described classes in accordance with applicable California labor laws as alleged herein.

13. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other defendants, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

CLASS ACTION ALLEGATIONS

14. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable classes defined below and



1 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case
2 as a class action.

3 15. **Class Definition:** The class is defined as follows: All persons employed by
4 Defendants in California as non-exempt, hourly employees, including landscapers,
5 groundskeepers, drivers, leadmen, construction workers, maintenance workers, laborers, and in
6 other comparable positions, at any time during the period beginning four years prior to the filing
7 of this action and ending on the date that final judgment is entered in this action.

8 16. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
9 right to amend or modify the class definition with greater specificity, by further division into
10 subclasses and/or by limitation to particular issues.

11 17. **Numerosity:** The Class Members are so numerous that the individual joinder of
12 each individual Class Member is impractical. While Plaintiff does not currently know the exact
13 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
14 minimum required for numerosity under California law.

15 18. **Commonality and Predominance:** Common questions of law and fact exist as
16 to all Class Members and predominate over any questions which affect only individual Class
17 Members. These questions include, but are not limited to:

18 A. Whether Defendants failed to pay all wages earned to Class Members for
19 all hours worked?

20 B. Whether Defendants failed to provide the class with all rest periods as
21 required by section 12 of the Wage Order?

22 C. Whether Defendants failed to provide the class with all meal periods as
23 required by section 11 of the Wage Order?

24 D. Whether Defendants failed to indemnify for all business expenses?

25 E. Whether Defendants engaged in unfair competition within the meaning of
26 Business and Professions Code §§ 17200, *et seq.*, with respect to the class?

27 F. Whether Defendants knowingly and intentionally failed to provide the
28 class with accurate wage statements?

G. Whether Defendants willfully failed to provide the class with timely final
wages?

19. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.

1 Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice or
2 a lack of a policy which resulted in Defendants failing to comply with the California Labor Code
3 and the Business and Professions Code as alleged herein.

4 20. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
5 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
6 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
7 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
8 Members.

9 21. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in
10 that they have no known conflicts of interest with Plaintiff or absent Class Members, are
11 experienced in wage and hour class action litigation and are dedicated to vigorously prosecuting
12 this action on behalf of Plaintiff and absent Class Members.

13 22. **Superiority:** A class action is vastly superior to other available means for fair
14 and efficient adjudication of Class Members' claims and would be beneficial to the parties and
15 the Court. Class action treatment will allow a number of similarly situated persons to
16 simultaneously and efficiently prosecute their common claims in a single forum without the
17 unnecessary duplication of effort and expense that numerous individual actions would entail. In
18 addition, the monetary amounts due to many individual Class Members are likely to be relatively
19 small and would thus make it difficult, if not impossible, for individual Class Members to both
20 seek and obtain relief. Moreover, a class action will serve an important public interest by
21 permitting Class Members to effectively pursue the recovery of monies owed to them. Further,
22 a class action will prevent the potential for inconsistent or contradictory judgments inherent in
23 individual litigation.

24 **FIRST CAUSE OF ACTION**

25 **FAILURE TO PROVIDE REST BREAKS**

26 **(Lab. Code §§ 226.7 and 1198)**

27 **(By Plaintiff and the Class against all Defendants)**

28 23. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

24 24. At all relevant times during the applicable limitations period, Plaintiff and the
25 class have been employees of Defendants and entitled to the benefits and protections of
26 California Labor Code §§ 226.7, 1198, and the Wage Order.



1 25. Labor Code § 1198 states,

2 “The maximum hours of work and the standard conditions of labor fixed
3 by the commission shall be the maximum hours of work and the standard
4 conditions of labor for employees. The employment of any employee for
longer hours than those fixed by the order or under conditions of labor
prohibited by the order is unlawful.”

5 26. In relevant part, Section 12 of the Wage Order states:

6 Rest Periods:

7 (A) Every employer shall authorize and permit all employees
8 to take rest periods, which insofar as practicable shall be in the
9 middle of each work period. The authorized rest period time shall
10 be based on the total hours worked daily at the rate often (10)
minutes net rest time per four (4) hours or major fraction thereof.
11 However, a rest period need not be authorized for employees
12 whose total daily work time is less than three and one-half (3 1/2)
hours. Authorized rest period time shall be counted as hours
worked for which there shall be no deduction from wages.

13 (B) If an employer fails to provide an employee a rest period
14 in accordance with the applicable provisions of this Order, the
15 employer shall pay the employee one (1) hour of pay at the
16 employee’s regular rate of compensation for each work day that
the rest period is not provided.

17 27. “[I]n the context of an eight-hour shift, ‘[a]s a general matter,’ one rest break
18 should fall on either side of the meal break. (*Ibid.*)” *Brinker Rest. Corp. v. Superior Court* (2012)
19 53 Cal. 4th 1004, 1032, 273 P.3d 513, 531.

20 28. In addition, Labor Code Section 226.7 states

21 (b) An employer shall not require an employee to work during a meal
22 or rest or recovery period mandated pursuant to an applicable statute, or
23 applicable regulation, standard, or order of the Industrial Welfare
Commission, the Occupational Safety and Health Standards Board, or the
Division of Occupational Safety and Health.

24 (c) If an employer fails to provide an employee a meal or rest or
25 recovery period in accordance with a state law, including, but not limited
26 to, an applicable statute or applicable regulation, standard, or order of the
Industrial Welfare Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety and Health, the
27 employer shall pay the employee one additional hour of pay at the
employee’s regular rate of compensation for each workday that the meal
28 or rest or recovery period is not provided.



1 36. At all relevant times during the applicable limitations period, Plaintiff and the
2 class have been employees of Defendants and entitled to the benefits and protections of
3 California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

4 37. Labor Code § 1198 states,

5 “The maximum hours of work and the standard conditions of labor fixed
6 by the commission shall be the maximum hours of work and the standard
7 conditions of labor for employees. The employment of any employee for
longer hours than those fixed by the order or under conditions of labor
prohibited by the order is unlawful.”

8 38. In relevant part, Labor Code Section 512 states

9 “An employer may not employ an employee for a work period of more
10 than five hours per day without providing the employee with a meal
11 period of not less than 30 minutes, except that if the total work period per
12 day of the employee is no more than six hours, the meal period may be
13 waived by mutual consent of both the employer and employee. An
14 employer may not employ an employee for a work period of more than
15 10 hours per day without providing the employee with a second meal
period of not less than 30 minutes, except that if the total hours worked
is no more than 12 hours, the second meal period may be waived by
mutual consent of the employer and the employee only if the first meal
period was not waived.”

16 39. In relevant part, Section 11 of the Wage Order states:

17 Meal Periods:

18 (A) No employer shall employ any person for a work period
19 of more than five (5) hours without a meal period of not less than
20 30 minutes, except that when a work period of not more than six
21 (6) hours will complete the day’s work the meal period may be
22 waived by mutual consent of the employer and the employee.
23 Unless the employee is relieved of all duty during a 30 minute
24 meal period, the meal period shall be considered an “on duty”
25 meal period and counted as time worked. An “on duty” meal
26 period shall be permitted only when the nature of the work
27 prevents an employee from being relieved of all duty and when
28 by written agreement between the parties an on-the job paid meal
period is agreed to. The written agreement shall state that the
employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period
in accordance with the applicable provisions of this order, the
employer shall pay the employee one (1) hour of pay at the
employee’s regular rate of compensation for each workday that

the meal period is not provided.

40. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the class were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

41. During the relevant time period, Defendants failed to provide Plaintiff with all required meal periods in accordance with California Labor Code § 512 and the Wage Order, including. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with all meal periods required by California Labor Code § 512 and the Wage Order.

42. Defendants failed to provide Plaintiff and the Class with a second 30-minute meal period when they worked more than ten (10) hours in a workday.

43. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all meal periods not provided to him. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with additional wages for all meal periods not provided to them as required by California Labor Code § 226.7.

44. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

45. By reason of the above, Plaintiff and the members of the class are entitled to premium wages for workdays in which one or more meal periods were not provided to them pursuant to California Labor Code § 226.7.

THIRD CAUSE OF ACTION

FAILURE TO PAY EMPLOYEES ALL WAGES FOR ALL HOURS WORKED

(Lab. Code §§ 510, 1194, 1197, and 1198)

(By Plaintiff and the Class against all Defendants)

46. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

47. At all relevant times, Plaintiff and the class have been employees of Defendants

1 and entitled to the benefits and protections of the California Labor Code sections 510, 1194,
2 1197, and 1198 and the Wage Order.

3 48. Section 2 of the applicable Wage Order defines "hours worked" as "the time
4 during which an employee is subject to the control of an employer, and includes all the time the
5 employee is suffered or permitted to work, whether or not required to do so."

6 49. Section 3 of the applicable Wage Order states:

7 (A) Daily Overtime - General Provisions

8 (1) The following overtime provisions are applicable to employees 18
9 years of age or over and to employees 16 or 17 years of age who are not
10 required by law to attend school and are not otherwise prohibited by law
11 from engaging in the subject work. Such employees shall not be employed
12 more than eight (8) hours in any workday or more than 40 hours in any
13 workweek unless the employee receives one and one-half (1 1/2) times
14 such employee's regular rate of pay for all hours worked over 40 hours in
15 the workweek. Eight (8) hours of labor constitutes a day's work.
16 Employment beyond eight (8) hours in any workday or more than six (6)
17 days in any workweek is permissible provided the employee is
18 compensated for such overtime at not less than:

19 (a) One and one-half (1 1/2) times the employee's regular rate of pay
20 for all hours worked in excess of eight (8) hours up to and including 12
21 hours in any workday, and for the first eight (8) hours worked on the
22 seventh (7th) consecutive day of work in a workweek; and

23 (b) Double the employee's regular rate of pay for all hours worked in
24 excess of 12 hours in any workday and for all hours worked in excess of
25 eight (8) hours on the seventh (7th) consecutive day of work in a
26 workweek.

27 50. Labor Code section 510 states:

28 Eight hours of labor constitutes a day's work. Any work in excess of eight
hours in one workday and any work in excess of 40 hours in any one
workweek and the first eight hours worked on the seventh day of work in
any one workweek shall be compensated at the rate of no less than one and
one-half times the regular rate of pay for an employee. Any work in excess
of 12 hours in one day shall be compensated at the rate of no less than
twice the regular rate of pay for an employee. In addition, any work in
excess of eight hours on any seventh day of a workweek shall be
compensated at the rate of no less than twice the regular rate of pay of an
employee. Nothing in this section requires an employer to combine more
than one rate of overtime compensation in order to calculate the amount
to be paid to an employee for any hour of overtime work.



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1 51. Labor Code section 1197 makes it unlawful for an employer to pay an employee
2 less than the minimum wage required under the applicable Wage Order for all hours worked
3 during a payroll period.

4 52. California Labor Code § 1194 invalidates any agreement between an employer
5 and an employee to work for less than the minimum or overtime wage required under the
6 applicable Wage Order.

7 53. Labor Code section 1198 makes it unlawful for an employer to employ an
8 employee under conditions that violate the Wage Order.

9 54. Employers must compensate non-exempt employees for “off-the-clock” work
10 (before punching in or after punching out on a time clock) if the employers knew or should have
11 known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22
12 Cal.4th 575, 585.

13 55. Plaintiff is informed and believes that, at all relevant times, Defendants have
14 applied centrally devised policies and practices to him and the Class Members with respect to
15 working conditions and compensation arrangements.

16 56. Defendants compensated Plaintiff and the Class Members with an hourly rate of
17 pay on a bi-weekly basis.

18 57. At all relevant times, Defendants required Plaintiff and the Class Members to
19 report to their first job site at 7:00 a.m. Defendants also required Plaintiff and the Class Members
20 to report to Defendants’ yard before driving to their job sites. Defendants required Plaintiff and
21 the Class Members to arrive at the yard at approximately 5:30 a.m. to clean and load the trucks
22 before driving to their job sites. Defendants also required them to return to the yard after they
23 finished their work at the last job site. On average, it took Plaintiff and the Class Members
24 approximately two to three hours each day to drive from the yard to the first job and from the last
25 job site back to the yard. Defendants, however, failed to compensate them for such drive time or
26 for the time they spent at the yard cleaning and loading the trucks. Defendants only compensated
27 them for the work they performed between the time they arrived at the first job site
28 (approximately 7:00 a.m.) and the time they left the last job site at the end of each workday.
Additionally, Defendants only compensated them for one hour of drive time.

 58. Defendants did not allow Plaintiff and the Class Members to fill out their own



1 time sheets. Instead, the supervisors of Plaintiff and the Class Members filled out their time
2 sheets. Plaintiff and the Class Members often worked between eight (8) to nine (9) hours in a
3 workday. The supervisors of Plaintiff and the Class Members, however, at times reported less
4 hours than they worked and failed to compensate them for all overtime hours worked. Also, at
5 times, Defendants compensated Plaintiff and the Class Members at a rate less than one and one
6 half (1.5) times their regular rates of pay for all overtime hours worked. For example, for the pay
7 period ending on September 1, 2018, Defendants compensated Plaintiff for his overtime hours at
8 a \$20.96 rate which was less than one and one half (1.5) times his regular rate of pay for that pay
period (\$14.00 per hour).

9 59. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
10 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'
11 failure to compensate the class for all hours worked as required by California law, including, but
12 not limited to overtime wages for all overtime hours they worked.

13 60. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
14 Members have suffered damages in an amount, subject to proof, to the extent they were not paid
15 the full amount of wages earned during each pay period during the applicable limitations period.

16 61. Pursuant to Labor Code section 1194, Plaintiff, on behalf of himself and Class
17 Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts
18 of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in
amounts subject to proof.

19 62. Additionally, with respect to this cause of action, on behalf of himself and the
20 class, Plaintiff prays for an award of reasonable costs and attorneys' fees, including interest
21 thereon, as permitted by law, all in amounts subject to proof.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO INDEMNIFY**

24 **(Lab. Code § 2802)**

25 **(By Plaintiff and the Class against all Defendants)**

26 63. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

27 64. At all relevant times, Plaintiff and the class have been non-exempt employees of
28 Defendants and entitled to the benefits and protections of the California Labor Code section
2802 and the Wage Order.



1 65. In pertinent part, California Labor Code section 2802(a) states, "An employer
2 shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee
3 in direct consequence of the discharge of his or her duties."

4 66. At relevant times during the applicable limitations period, Defendants required
5 Plaintiff and Class Members to use their personal vehicles to commute to and from and between
6 their assigned job sites. However, Defendants failed to reimburse Plaintiff and the class for their
7 mileage expenses.

8 67. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
9 Defendants maintained a policy, practice, or a lack of a policy which resulted in Defendants'
10 failure to indemnify Plaintiff and the class for the reasonable expenses they incurred during the
11 course of performing their duties.

12 68. By reason of the above, Plaintiff and the members of the class are entitled to
13 reimbursement for all necessary expenditures and losses and interest due and owing to them
14 within four years (4) of the date of the filing of the Complaint until the date of entry of judgment
15 pursuant to California Labor Code section 2802(b). Further, Plaintiff, on behalf of himself and
16 the class, prays for reasonable attorney's fees pursuant to Labor Code section 2802(c).

17 69. Additionally, with respect to this cause of action, on behalf of himself and the
18 class, Plaintiff prays for an award of reasonable attorney fees and costs, including interest
19 thereon, as permitted by law, all in amounts subject to proof.

20 **FIFTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

22 **(Lab. Code § 226)**

23 **(By Plaintiff and the Class against all Defendants)**

24 70. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 71. At all relevant times during the applicable limitations period, Plaintiff and the
26 class have been employees of Defendants and entitled to the benefits and protections of
27 California Labor Code § 226.

28 72. Pursuant to California Labor Code § 226(a), Plaintiff and the class were entitled
to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement
showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in effect



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1 during the pay period; and d) the corresponding number of hours worked at each hourly rate by
2 the employee.

3 73. Pursuant to California Labor Code § 226(e), an employee suffering injury as a
4 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
5 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
6 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in
7 a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000),
8 and is entitled to an award of costs and reasonable attorney's fees.

9 74. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
10 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
11 injury if the employer fails to provide accurate and complete information as required by
12 California Labor Code § 226(a) and the employee cannot "promptly and easily determine" from
13 the wage statement alone one or more of the following:

14 A. The amount of the gross wages or net wages paid to the employee during
15 the pay period or any of the other information required to be provided on the itemized wage
16 statement pursuant to California Labor Code § 226(a);

17 B. Which deductions the employer made from gross wages to determine the
18 net wages paid to the employee during the pay period;

19 C. The name and address of the employer and, if the employer is a farm
20 labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the
21 name and address of the legal entity that secured the services of the employer during the pay
22 period; and

23 D. The name of the employee and only the last four digits of his or her social
24 security number or an employee identification number other than a social security number.

25 75. "Promptly and easily determine," as stated in California Labor Code § 226(e),
26 means a reasonable person would be able to readily ascertain the information without reference
27 to other documents or information.

28 76. As alleged herein, Defendants failed to provide Plaintiff and the class all wages
owed, including but not limited to, minimum and overtime wages and all premium wages for
unprovided rest and/or meal periods. As a result, Defendants have failed to properly and
accurately itemize each employee's gross wages earned, net wages earned, the total hours

1 worked, the corresponding number of hours worked by employees and other requirements of
2 California Labor Code § 226. In addition to reporting incorrect total hours worked and rates of
3 pay (due to the violations discussed above), Defendants only stated each pay period's end date
4 on Plaintiff and Class Members' wage statements and failed to include each pay period's start
5 date. Further, Defendants included a "P. O. Box" address on Plaintiff and Class Members' wage
6 statements instead of their physical address. Defendants included several pay codes and rates on
7 Plaintiff and Class Members' wage statements without providing them with an explanation as
8 to each pay code or pay rate. As a result, Plaintiff and Class Members were not able to determine
9 if Defendants compensated them accurately for all hours worked. As a result, Defendants
10 provided Plaintiff and Class Members with inaccurate and insufficient wage statements and
11 violated California Labor Code § 226.

12 77. Defendants' failure to provide Plaintiff and the class with accurate wage
13 statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the
14 class with accurate wage statements but intentionally provided wage statements that Defendants
15 knew were not accurate.

16 78. As a result of being provided with inaccurate wage statements by Defendants,
17 Plaintiff and the class have suffered injury. Their legal rights to receive accurate wage statements
18 were violated and they were misled about the amount of wages they had actually earned and
19 were owed. In addition, the absence of accurate information on their wage statements prevented
20 immediate challenges to Defendants' unlawful pay practices, has required discovery and
21 mathematical computations to determine the amounts of wages owed, has caused difficulty and
22 expense in attempting to reconstruct time and pay records and/or has led to the submission of
23 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
24 and the class were not able to ascertain from the wage statements whether Defendants complied
25 with their obligations under California Labor Code § 226(a).

26 79. Pursuant to California Labor Code § 226(e), Plaintiff and the class are entitled
27 to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay
28 period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars
for each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed
an aggregate penalty of four thousand dollars (\$4,000) per class member, and are also entitled
to an award of costs and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES

(Lab. Code §§ 201-203)

(By Plaintiff and the Class against all Defendants)

80. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

81. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

82. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

83. By failing to pay earned minimum, overtime and premium wages to Plaintiff and the Class Members, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

84. Labor Code § 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

85. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the class members all of their earned and unpaid wages have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those legal requirements.

86. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of himself and the class members, in amounts subject to proof not to exceed 30 days of waiting time penalties for each class member.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, *et seq.*)

(By Plaintiff and the Class against all Defendants)

87. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

88. At all relevant times during the applicable limitations period, Plaintiff and the

1 class have been employees of Defendants and entitled to the benefits and protections of the
2 Business and Professions Code §§ 17200, *et seq.*

3 89. The unlawful conduct of Defendants alleged herein amount to and constitutes
4 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
5 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
6 gained a competitive advantage over other comparable companies doing business in California
7 that comply with their legal obligations to compensate employees for all earned wages.

8 90. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
9 class have suffered injuries in fact and lost money or property. Plaintiff and the class were
10 deprived of wages for all hours worked and for all rest and meal periods not provided to them
11 and for unpaid wages resulting from not being provided with accurate wage statements.
12 Defendants also failed to reimburse Plaintiff and Class members for all their business expenses.

13 91. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
14 class are entitled to restitution of all monies rightfully belonging to them that Defendants did
15 not pay them or otherwise retained by means of their unlawful and unfair business practices.

16 92. Plaintiff and the class are entitled to reasonable attorneys' fees in connection with
17 their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the
18 substantial benefit doctrine and/or the common fund doctrine.

19 **EIGHTH CAUSE OF ACTION**

20 **CIVIL PENALTIES**

21 **(By Plaintiff and the Aggrieved Employees against all Defendants)**

22 93. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23 94. The "Aggrieved Employees" are all members of the Class defined above who
24 Defendants employed during the period beginning March 16, 2019 and ending on the date that
25 final judgment is entered in this action.

26 95. Labor Code § 204 states

27 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
28 or 204.2, earned by any person in any employment are due and payable twice
during each calendar month, on days designated in advance by the employer as the
regular paydays. Labor performed between the 1st and 15th days, inclusive, of any
calendar month shall be paid for between the 16th and the 26th day of the month
during which the labor was performed, and labor performed between the 16th and
the last day, inclusive, of any calendar month, shall be paid for between the 1st

and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

96. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

97. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

98. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

99. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

1 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
2 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
3 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
4 California Labor Code § 226.3).

5 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
6 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
7 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
8 established by California Labor Code § 558).

9 D. For violations of California Labor Code § 1197, one hundred dollars
10 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
11 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
12 (regardless of whether the initial violations were intentionally committed) (penalty amounts
13 established by California Labor Code § 1197.1).

14 E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
15 1198, and 2802 one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
16 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
17 period for each subsequent violation (penalty amounts established by California Labor Code §
18 2699(f)(2)).

19 100. Plaintiff has complied with the procedures for bringing suit specified in California
20 Labor Code § 2699.3. By letter dated March 13, 2020 and filed on March 16, 2020, Plaintiff filed
21 written notice online with the Labor and Workforce Development Agency ("LWDA") and gave
22 written notice by certified mail to Defendants of the specific provisions of the California Labor
23 Code alleged to have been violated, including the facts and theories to support the alleged
24 violations. A true and correct copy of the notice to the dated March 13, 2020 and filed on March
25 16, 2020 is attached as Exhibit A. Plaintiff accompanied his LWDA notice with a fee in the
26 amount of \$75.00. The LWDA has failed to take action in response within 65 calendar days of
27 the date of Plaintiff's notice, but Plaintiff anticipates that the LWDA will provide written notice
28 to Plaintiff informing him that it does not intend to investigate these allegations.

101. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
connection with their claims for civil penalties.

PRAYER FOR RELIEF

102. WHEREFORE, Plaintiff, on behalf of himself and the class, prays for relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action with respect to Plaintiff's claims for violations of California law;

B. An order that Plaintiff be appointed class representative;

C. An order that counsel for Plaintiff be appointed class counsel;

D. Unpaid wages;

E. Statutory penalties;

F. Civil penalties;

G. Declaratory relief;

H. Actual damages;

I. Restitution;

J. Pre-judgment interest;

K. Costs of suit;

L. Reasonable attorneys' fees; and

M. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: December 17, 2020

By



DAVID SPIVAK
CAROLINE TAHMASSIAN, Attorneys for
Plaintiff, JOSE LOZANO SANDOVAL, and
all others similarly situated



SPIVAK LAW

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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

March 13, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Jose Lozano Sandoval / American Landscape*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Jose Lozano Sandoval (hereafter "Lozano") provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt, hourly landscapers, groundskeepers, drivers, leadmen, construction workers, maintenance workers, laborers, and similar positions (hereafter referred to as "Aggrieved Employees,") by Amercian Landscape And Maitenance, Inc., a California corporation (hereafter referred to as "American Landscape") of violations of California Labor Code §§ 201, 202, 203, 204, 226, 510, 512, 1194, 1197, 1198, and 2802.

At all relevant times, American Landscape has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Lozano and the Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter "the Wage Order"), paragraph 2.F, and "Aggrieved Employees" within the meaning of California Labor Code § 2699(c).

16530 VENTURA BLVD., STE 203
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SPIVAKLAW.COM

Statement of Facts

In or about June of 2013, American Landscape first employed Lozano to work in California as a non-exempt, hourly landscaper, groundskeeper, driver, leadman, and laborer until approximately September 27, 2019 when his employment ended.

At all relevant times, American Landscape compensated Lozano and other Aggrieved Employees with an hourly rate of pay on a biweekly basis.

At all relevant times, American Landscape required Lozano and the Aggrieved Employees to report to their first job site at 7:00 a.m. American Landscape also required Lozano and the Aggrieved Employees to report to its yard before driving to their job sites. American Landscape required Lozano and the Aggrieved Employees to arrive at the yard at approximately 5:30 a.m. to clean and load the trucks before driving to their job sites. American Landscape also required them to return to the yard after they finished their work at the last job site. On average, it took Lozano and the Aggrieved Employees approximately two to three hours each day to drive from the yard to the first job and from the last job site back to the yard. American Landscape, however, failed to compensate them for such drive time or for the time they spent at the yard cleaning and loading the trucks. American Landscape only compensated them for the work they performed between the time they arrived at the first job site (approximately 7:00 a.m.) and the time they left the last job site at the end of each workday. Additionally, American Landscape only compensated them for one hour of drive time.

American Landscape did not allow Lozano and the Aggrieved Employees to fill out their own time sheets. Instead, the supervisor of Lozano and the Aggrieved Employees filled out their time sheets. Lozano and the Aggrieved Employees often worked between eight (8) to nine (9) hours in a workday. The supervisors of Lozano and the Aggrieved Employees, however, at times reported less hours than they worked and failed to compensate them for all overtime hours worked. Also, at times, American Landscape compensated Lozano and the Aggrieved Employees at a rate less than one and one half (1.5) times their

regular rates of pay for all overtime hours worked. For example, for the pay period ending on September 1, 2018, American Landscape compensated Lozano for his overtime hours at a \$20.96 rate which was less than one and one half (1.5) times his regular rate of pay for that pay period (\$14.00 per hour).

At all relevant times, American Landscape failed to provide Lozano and the Aggrieved Employees with all timely rest and meal periods as provided under California law. American Landscape failed to provide Lozano and the Aggrieved Employees with a second 30-minute meal period and/or a third ten-minute rest break when they worked more than ten (10) hours in a workday. Further, American Landscape required Lozano and other Aggrieved Employees to combine their two 15-minute rest breaks with their 30-minute meal period to take a one-hour break. American Landscape also failed to pay premium wages for days on which it failed to provide Lozano and the Aggrieved Employees with rest and/or meal periods as provided by California Law.

American Landscape often required Lozano and the Aggrieved Employees to use their personal vehicles to commute to and from and between their assigned job sites. American Landscape, however, failed to reimburse them for the mileage expenses they incurred during their employment.

Finally, American Landscape provided Lozano and the Aggrieved Employees with inaccurate and insufficient wage statements. In addition to reporting incorrect total hours worked and rates of pay (due to the violations discussed above), American Landscape only stated each pay period's end date on Lozano and the Aggrieved Employees' wage statements and failed to include each pay period's start date. Further, American Landscape included a "P. O. Box" address on Lozano and the Aggrieved Employees' wage statements instead of its physical address. American Landscape included several pay codes and rates on Lozano and the Aggrieved Employees' wage statements without providing them with an explanation as to each pay code or pay rate. As a result, Lozano and the Aggrieved Employees were not able to determine if they were compensated accurately for all hours worked.

For the reasons herein, Lozano alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and Aggrieved Employees:

- a) American Landscape failed to provide Lozano and other Aggrieved Employees with all rest breaks and meal periods;
- b) American Landscape failed to compensate Lozano and other Aggrieved Employees at one hour's pay for each day in which they were not provided the rest breaks required by law;
- c) American Landscape failed to compensate Lozano and other Aggrieved Employees at one hour's pay for each day in which they were not provided the meal periods required by law;
- d) American Landscape failed to compensate Lozano and other Aggrieved Employees for all hours worked at the correct rates of pay;
- e) American Landscape failed to indemnify Lozano and other Aggrieved Employees for all business expenses;
- f) American Landscape failed to provide Lozano and other Aggrieved Employees with accurate wage statements; and
- g) American Landscape failed to timely pay Lozano and other Aggrieved Employees all earned and unpaid wages during their employment at American Landscape and at the time such employment ended.

Accordingly, Lozano now seeks civil penalties on behalf of himself and other Aggrieved Employees based on American Landscape's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to “all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis.” § 1. The term “Public Housekeeping Industry” means “any industry, business, or establishment which provides meals, housing, or maintenance services” and includes “Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units[.]” § 2(P) (emphasis added). At all relevant times during the applicable limitations period, American Landscape employed Lozano as a landscaper, groundskeeper, maintenance worker and construction worker and provided landscaping and maintenance services to its customers. Accordingly, Lozano and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure To Provide Rest Breaks And Meal Periods **(Lab. Code §§ 226.7, 512, and 1198)**

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was no waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

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

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is

less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Regarding timing of the rest breaks, "in the context of an eight-hour shift, '[a]s a general matter,' one rest break should fall on either side of the meal break." *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1031-1032.

American Landscape intentionally and improperly failed to provide all timely rest breaks and/or meal periods to Lozano and other Aggrieved Employees as required by law. In failing to do so, American Landscape violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Lozano seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

**Failure To Pay All Wages Earned For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code § 1197, “The minimum wage for employees fixed by the [Industrial Welfare] commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Section 4 of Wage Order states,

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, Section 2 of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, California Labor Code § 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee

receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

At all relevant times during the applicable limitations period, American Landscape failed to compensate Lozano and other Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay.

Accordingly, Lozano seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved

Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);

2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages (penalties set by California Labor Code § 1197.1).

Failure to Reimburse for Expenses
(Lab. Code §§ 2802)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

As describe above, during the applicable limitations period, American Landscape required Lozano and other Aggrieved Employees to incur certain business expenses which it failed to indemnify them for both during and after their employment ended. Accordingly, Lozano seeks civil penalties on behalf of himself and other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 2802, and \$200

for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, American Landscape violated California Labor Code § 226, in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by

the Aggrieved Employee and other requirements of California Labor Code § 226. American Landscape also failed to include the dates of each pay period and its correct address on the wage statements it provided to Lozano and the Aggrieved Employees.

Accordingly, Lozano seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of American Landscape's failures to pay Lozano and the Aggrieved Employees within the time periods set by California Labor Code § 204, American Landscape failed to timely pay all wages due during employment.

Accordingly, Lozano seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204, and \$200 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, for each subsequent violations (penalties set by Labor Code § 210).

Failures to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

By failing to pay wages to Lozano and other Aggrieved Employees as set forth above, American Landscape is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and other Aggrieved Employees, Lozano seeks civil penalties from American Landscape as follows:

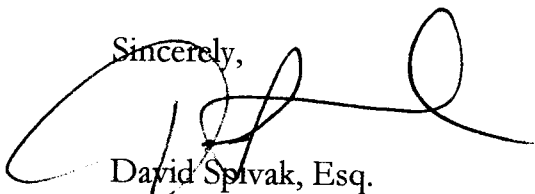
1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.
david@spivaklaw.com

Encls. as stated

cc: Walter Haines, Esq.
Jose Lozano Sandoval

Americian Landscape And Maitenance, Inc.
c/o Virginia Pollock
Human Resource Manager
P.O. Box 925
Loma Linda, CA 92354

LWDA / American Landscape

3/13/2020

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Americian Landscape And Maitenance, Inc.

c/o Dan Stauffer

Agent for Service of Process/CEO

515 New Jersey St.

Redlands, CA 92373

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3 **PROOF OF SERVICE**

4 State of California,
5 County of Los Angeles

6 1. I am a citizen of the United States and am employed in the County
7 of Los Angeles, State of California. I am over the age of 18 years, and not a
8 party to the within action. My business address is 16530 Ventura Blvd., Suite
9 312, Encino, California 91436.

10 2. I am familiar with the practice of The Spivak Law Firm, for
11 collection and processing of correspondence for mailing with the United
12 States Postal Service. It is the practice that correspondence is deposited
13 with the United States Postal Service the same day it is submitted for
14 mailing.

15 On Thursday, December 17, 2020, I served the foregoing document
16 described as **FIRST AMENDED COMPLAINT** on interested parties by placing a true
17 and correct copy thereof enclosed in a sealed envelope, with postage fully
18 prepaid, addressed as follows:

19 **William Tooke, Esq.**
20 **Law Offices of Mirau, Edwards,**
21 **Cannon, Lewin & Tooke**
22 **1806 Orange Tree Lane, Suite C**
23 **Redlands, CA 90071-1422**
24 **wtooke@mechlaw.com**

25 XXXX (BY EMAIL) Based on a court order or an agreement of the parties to
26 accept electronic service, I caused the documents to be sent to the persons
27 at the electronic service addresses listed above from my electronic service
28 address shant@spivaklaw.com.

EXECUTED on Thursday, December 17, 2020, at Pasadena, California.

XXXX (State) I declare under penalty of perjury under the laws of the State
of California that the above is true and correct.

____ (Federal) I declare that I am employed in the office of a member of the
bar of this court at whose direction the service was made.

24
25 

26 SHANT JALTROSSIAN
27
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