

David Mara, Esq. (230498)
Jill Vecchi, Esq. (299333)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 205
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

Attorneys for Jose de Jesus Ortega Velazquez,
on behalf of himself, all others similarly situated,
and on behalf of the general public.

[ADDITIONAL COUNSEL ON NEXT PAGE]

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

SEP 09 2021

BY DEBRA PEDROSA
DEBRA PEDROSA, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

JOSE DE JESUS ORTEGA VELAZQUEZ
on behalf of himself, all others similarly
situated, and on behalf of the general
public,

Plaintiffs,

v.

HUNTER LANDSCAPE, INC.; HUNTER
ENVIRONMENTAL SERVICES, INC;
and DOES 1-100,

Defendants.

JOSE CAMARGO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

HUNTER LANDSCAPE, INC., a
California corporation; HUNTER
ENVIRONMENTAL SERVICES, INC, a
California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No. CIVDS1928062 consolidated with Case
No. CIVDS2009753

**PLAINTIFFS' CONSOLIDATED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR DAMAGES, INJUNCTIVE RELIEF,
DECLARATORY RELIEF, AND
RESTITUTION**

- 1) Failure to Pay All Straight Time Wages;
- 2) Failure to Pay All Overtime Wages;
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 5-2001(11); Cal. Code Regs., tit. 8 § 11050);
- 4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 5-2001(12); Cal. Code Regs. Title 8 § 11050);
- 5) Failure to Authorize and Permit Recovery Periods (Lab. Code § 226.7; Cal. Code Regs. Title 8 § 3395);
- 6) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175);
- 7) Failure to Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802, Cal. Regs., tit. 8, § 11050(8));
- 8) Failure to Pay All Waged Upon Termination of Employment (Lab. Code §§201-203);
- 9) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.); and
- 10) Violations of the Labor Code Private Attorneys General Act of 2004 ("PAGA").

DEMAND FOR JURY TRIAL

LIDMAN LAW, APC

Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen (SBN 238571)
enguyen@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
JOSE CAMARGO

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
JOSE CAMARGO

1 Plaintiffs JOSE DE JESUS ORTEGA VELAZQUEZ (“VELASQUEZ”) and JOSE CAMARGO
2 (“CAMARGO”; VELASQUEZ AND CAMARGO referred to herein collectively as “Plaintiffs”), on
3 behalf of themselves, all others similarly situated, and on behalf of the general public, complains of
4 Defendants HUNTER LANDSCAPE, INC. and HUNTER ENVIRONMENTAL SERVICES, INC.
5 (collectively referred to herein as “DEFENDANTS” or “HUNTER”) and/or DOES and for causes of
6 action and alleges:

7 1. This is a class action pursuant to California Code of Civil Procedure section 382 on behalf of
8 Plaintiffs, and all non-exempt horticulturists, gardeners, arborists, landscape architects,
9 landscapers, and water managers, and/or other workers with similar job designations and titles who
10 are presently or formerly employed by HUNTER and/or DOES and/or their subsidiaries or
11 affiliated companies and/or predecessors within the State of California.

12 2. HUNTER provides landscape, landscape architecture, value engineering, installation,
13 maintenance, water management, and tree care services to its customers. HUNTER provides
14 services to property developers, property managers, general contractors, and landscape architects.

15 3. HUNTER is headquartered in Orange County, California. The company has a strong foothold in
16 Southern California, including the county of San Bernardino.

17 4. Plaintiffs worked out of HUNTER’s Inland Empire location which is located in Colton, California.
18 Colton, California is part of San Bernardino County.

19 5. HUNTER employs non-exempt horticulturists, gardeners, arborists, landscape architects,
20 landscapers, and water managers, and/or other workers with similar job designations or titles to
21 provide services to its customers.

22 6. Throughout the time period that includes the four years prior to filing this action to the present (the
23 “Statutory Period”), HUNTER has maintained uniform policies and practices that violate the wage
24 and hour rights of Plaintiffs and similarly situated horticulturists, gardeners, arborists, landscape
25 architects, landscapers, and water managers, and/or other workers with similar job designations or
26 titles in the manner complained of herein.

27 7. Throughout the statutory period HUNTER has not paid its horticulturists, gardeners, arborists,
28

landscape architects, landscapers, and water managers, and/or other workers with similar job designations or titles for all time they were performing work and/or are subject to HUNTER's control. Failing to pay for all hours worked while under HUNTER's control and/or while suffered or permitted to work has resulted in horticulturists, gardeners, arborists, landscape architects, landscapers, and water managers, and/or other workers with similar job designations or titles being deprived of straight time and/or overtime wages.

8. Throughout the Statutory Period, and through uniform policies and practices applicable to all horticulturists, gardeners, arborists, landscape architects, landscapers, and water managers, and/or other workers with similar job designations or titles, HUNTER failed to provide maintenance workers, maintenance technicians, service technicians, and/or other workers with similar job designations or titles with meal periods that comply with California law and fail to authorize and permit rest periods that comply with California law.

9. Throughout the Statutory Period, and through uniform policies and practices applicable to all horticulturists, gardeners, arborists, landscape architects, landscapers, and water managers, and/or other workers with similar job designations or titles, HUNTER failed to reimburse horticulturists, gardeners, arborists, landscape architects, landscapers, and water managers, and/or other workers with similar job designations or titles for all work-related expenses incurred for business purposes.

10. Throughout the Statutory Period and through uniform policies and practices applicable to all horticulturists, gardeners, arborists, landscape architects, landscapers, and water managers, and/or other workers with similar job designations or titles, HUNTER knowingly and intentionally provides wage statements to employees that fail to specifically itemize everything required under California Labor Code section 226 (a).

11. Throughout the Statutory Period and through uniform policies and practices applicable to all horticulturists, gardeners, arborists, landscape architects, landscapers, and water managers, and/or other workers with similar job designations or titles, HUNTER knowingly and intentionally failed to pay all wages owed to horticulturists, gardeners, arborists, landscape architects, landscapers, and water managers, and/or other workers with similar job designations or titles in a timely manner

at the time horticulturists, gardeners, arborists, landscape architects, landscapers, and water managers, and/or other workers with similar job designations or titles terminated their employment – either voluntarily or involuntarily – with HUNTER.

12. Plaintiffs, on behalf of themselves and all of HUNTER's and/or DOES' non-exempt horticulturists, gardeners, arborists, landscape architects, landscapers, and water managers, and/or other workers with similar job designations or titles employed at any time during the Statutory Period brings this action pursuant to California Labor Code Sections 201-203, 218, 218.5, 222, 223, 224, 226, subd. (b), 226.3, 226.7, 510, 512, 515, 558, 1194, 1194.2, 1197, 2802, 2698, and California Code of Regulations, Title 8, sections 11050 and 3395, seeking unpaid wages, overtime, unpaid reimbursement for business expenses, meal and rest period compensation, statutory and civil penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

13. Plaintiffs, on behalf of themselves and all of HUNTER's and/or DOES' non-exempt horticulturists, gardeners, arborists, landscape architects, landscapers, and water managers, and/or other workers with similar job designations or titles employed at any time during the Statutory Period, pursuant to California Business and Professions Code sections 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits HUNTER and/or DOES enjoyed from their failure to pay all straight time wages, overtime wages, and meal and rest period compensation.

I. VENUE

14. Venue as to each Defendant, HUNTER and/or DOES, is proper in this judicial district, pursuant to California Code of Civil Procedure section 395. HUNTER and/or DOES conduct business and commit California Labor Code violations within San Bernardino County, and each Defendant and/or DOE is within California for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated within the State of California and within San Bernardino County. HUNTER and/or DOES employ numerous maintenance workers, maintenance technicians, service technicians, and/or other workers with similar job designations or titles who perform and/or performed work for HUNTER in San Bernardino County, California

1 during the Statutory Period.

2 II. PARTIES

3 A. Plaintiffs.

4 15. Throughout the Statutory Period, Plaintiffs were and are residents of California. During the
5 Statutory Period, Plaintiffs were employed by Defendant HUNTER and/or DOES in California
6 and performed work in San Bernardino County.

7 16. Plaintiffs and the proposed class of similarly situated horticulturists, gardeners, arborists,
8 landscape architects, landscapers, and water managers, and/or other workers with similar job
9 designations or titles are covered by, inter alia, California IWC Occupational Wage Order No. 5-
10 2001, and Title 8, California Code of Regulations, §§ 11050 and 3395.

11 B. Defendants.

12 17. HUNTER provides landscape, landscape architecture, value engineering, installation,
13 maintenance, water management, and tree care services to its customers. Hunter Landscape, Inc.
14 provides services to property developers, property managers, general contractors, and landscape
15 architects.

16 18. HUNTER has a strong foothold in Southern California, including the county of San Bernardino.

17 19. HUNTER employs horticulturists, gardeners, arborists, landscape architects, landscapers, and
18 water managers, and/or other workers with similar job designations or titles to provide services to
19 its customers.

20 20. HUNTER employed Plaintiffs and similarly situated non-exempt horticulturists, gardeners,
21 arborists, landscape architects, landscapers, and water managers, and/or other workers with similar
22 job designations or titles in California.

23 21. The true names and capacities, whether individual, corporate, associate, or otherwise, of
24 Defendants DOES 1-100, inclusive, are presently unknown to Plaintiffs, who therefore sue these
25 Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiffs are
26 informed and believe, and based thereon allege, that each of the Defendants designated herein as
27 a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
28

1 seek leave of court to amend this Consolidated Complaint to reflect the true names and capacities
2 of the Defendants designated hereinafter as DOES when such identities become known.

- 3 22. Plaintiff is informed and believes, and based thereon alleges, that each Defendant and/or DOE
4 acted in all respects pertinent to this action as the agent of the other Defendants and/or DOES,
5 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
6 each Defendants and/or DOES are legally attributable to the other Defendants and/or DOES.
7 Further, at all times mentioned herein, Defendants, and each of them, were members of and
8 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
9 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
10 Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and all
11 members of the classes.

12 **III. CLASS ACTION ALLEGATIONS**

- 13 23. Plaintiffs bring this action on behalf of himself and all others similarly situated as a class action
14 pursuant to section 382 of the California Code of Civil Procedure. Plaintiffs seek to represent a
15 Class composed of and defined as follows:

16
17 All persons who are employed or have been employed by Defendant in the
18 State of California as non-exempt horticulturists, gardeners, arborists,
19 landscape architects, landscapers, and water managers, and/or other
20 workers with similar job designations or titles during the period of the
21 relevant statute of limitations. ("Class Members")

22
23 Plaintiffs also seek to represent subclasses composed of and defined as follows:

24
25 All Class Members who worked one (1) or more shifts in excess of five (5)
26 hours.

1 All Class Members who worked one (1) or more shifts in excess of six (6)
2 hours.

3
4 All Class Members who worked one (1) or more shifts in excess of ten (10)
5 hours.

6
7 All Class Members who worked one (1) or more shifts in excess of twelve
8 (12) hours.

9
10 All Class Members who worked one (1) or more shifts in excess of two (2)
11 hours.

12
13 All Class Members who worked one (1) or more shifts in excess of three (3)
14 hour and one-half hours, but less than or equal to six (6) hours.

15
16 All Class Members who worked one (1) or more shifts in excess of six (6)
17 hours, but less than or equal to ten (10) hours.

18
19 All Class Members who worked one (1) or more shifts in excess of ten (10)
20 hours.

21
22 All Class Members who worked one (1) or more shifts in which they
23 received a wage statement for the corresponding pay period.

24
25 All Class Members who were not paid wages for meal periods.

26
27 All Class Members who were not paid for all time during which they were
28

subject to the control of Defendant and/or suffered or permitted to work for Defendant during the relevant period of the statute of limitations.

All Class Members who were not reimbursed and/or indemnified for expenses in direct consequence of the discharge of their work duties.

All Class Members who had wages unlawfully deducted.

All Class Members who had to call in for a shift but were not scheduled to perform any installations.

All Class Members who were on standby to perform same day installations.

All Class Members who separated employment within the three (3) years prior to the filing of the instant action.

24. Plaintiffs reserve the right under rule 1855, subdivision (b), California Rules of Court, to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

25. This action has been brought and may properly be maintained as a class action under the provisions of section 382 of the California Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity.

26. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiffs are informed and believe that HUNTER and/or DOES currently employ, and during the liability period employed, over two hundred fifty (250) Class Members in San Bernardino County and dispersed throughout California and who are or have been affected by

HUNTER and/or DOES' policies of wage theft, failure to pay all straight and overtime wages owed, failure to provide meal and/or rest periods without the appropriate legal compensation, willful failure to pay all wages due at time of separation from employment, and knowing and intentional failure to provide accurate and itemized employee wage statements.

27. Accounting for employee turnover during the relevant periods increases this number substantially. Upon information and belief, Plaintiff alleges HUNTER's and/or DOES' employment records will provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

B. Commonality.

28. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

(1) Whether HUNTER and/or DOES violated the Labor Code and/or applicable IWC Wage Orders in failing to pay its non-exempt employees all earned wages at the regular rate for all hours worked.

(2) Whether HUNTER's and/or DOES' uniform policies and/or practices whereby non-exempt employees were pressured and/or incentivized to forego taking meal and/or rest periods.

(3) Whether HUNTER and/or DOES violated Labor Code section 226.7, IWC Wage Order No. 5-2001 or other applicable IWC Wage Orders, and/or California Code of Regulations, Title 8, section 11050, by failing to authorize, permit, and/or provide rest periods to its non-exempt employees for every four (4) hours or major fraction thereof worked and/or failing to pay said employees one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period was not authorized, permitted and/or provided.

(4) Whether HUNTER and/or DOES willfully failed to pay, in a timely manner, wages owed to members of the proposed Class who left HUNTER's and/or

DOES' employ or who were terminated.

(5) Whether HUNTER and/or DOES had uniform policies and/or practices of failing to provide employees accurate and itemized wage statements.

(6) Whether HUNTER and/or DOES had uniform policies and/or practices of failing to timely pay all wages owed to employees who left HUNTER's and/or DOES' employ or who were terminated.

(7) Whether HUNTER and/or DOES had uniform policies and/or practices of failing to reimburse or indemnify Non-Exempt Employees for business expenses incurred as a consequence of the discharge of their work duties.

29. The answer to each of these respective questions will generate a common answer capable of resolving class-wide liability in one stroke.

30. Said common questions predominate over any individualized issues and/or questions affecting only individual members.

C. Typicality.

31. The claims of the named Plaintiffs are typical of the claims of the proposed Class. Plaintiffs and all members of the proposed Class sustained injuries and damages arising out of and caused by HUNTER's and/or DOES' common course of conduct in violation of laws and regulations that have the force and effect of law and statutes as alleged.

32. Plaintiffs were subjected to the same uniform policies and/or practices complained of herein that affected all such employees. Thus, as Plaintiffs were subjected to the same unlawful policies and practices as all non-exempt employees, their claims are typical of the class they seek to represent.

D. Adequacy of Representation.

33. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class.

34. Plaintiffs are ready and willing to take the time necessary to help litigate this case.

35. Plaintiffs have no conflicts that will disallow them to fairly and adequately represent and protect the interests of the members of the Class.

36. Counsel who represent Plaintiffs are competent and experienced in litigating large employment

1 class actions.

2 37. Specifically, David Mara, Esq., Jill Vecchi, Esq., Paul K. Haines, Esq., Scott M. Lidman, Esq.,
3 Elizabeth Nguyen, Esq. and Romina Tamiry, Esq. are California lawyers in good standing.

4 38. Counsel who represent Plaintiffs are competent and experienced in litigating large employment
5 class actions.

6 39. The lawyers at Mara Law Firm, Haines Law Group, APC, and Lidman Law, APC have been named
7 class counsel in numerous cases and their practice is primarily focused on representing classes,
8 large and small, on the basis of California Labor Code and IWC Wage Order Violations similar to
9 those alleged herein. The attorneys at these firms are also frequently called upon to and do author
10 amicus briefs on behalf of the Consumer Attorneys of California on cases in the appellate courts
11 and Supreme Court of California involving important issues relating to those alleged herein.

12 40. Mara Law Firm, PC, Haines Law Group, APC and Lidman Law, APC have the resources to take
13 this case to trial and judgment, if necessary.

14 41. All of Plaintiffs' attorneys have the experience, ability, and ways and means to vigorously
15 prosecute this case.

16 **E. Superiority of Class Action.**

17 42. A class action is superior to other available means for the fair and efficient adjudication of this
18 controversy. Individual joinder of all Class Members is not practicable, and questions of law and
19 fact common to the Class predominate over any questions affecting only individual members of
20 the Class. Each member of the Class has been damaged and is entitled to recovery by reason of
21 HUNTER's and/or DOES' illegal policies and/or practices of failing to pay all straight time and
22 overtime wages owed, failing to permit or authorize rest periods, failing to provide meal periods,
23 knowingly and intentionally failing to comply with wage statement requirements, and failing to
24 pay all wages due at termination.

25 43. Class action treatment will allow those similarly situated persons to litigate their claims in the
26 manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are
27 unaware of any difficulties that are likely to be encountered in the management of this action that
28

would preclude its maintenance as a class action.

44. Because such common questions predominate over any individualized issues and/or questions affecting only individual members, class resolution is superior to other methods for fair and efficient adjudication.

IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST HUNTER AND/OR DOES: Failure to Pay All Straight Time Wages (Lab. Code §§ 1194, 1197)

45. Plaintiffs and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Consolidated Complaint herein as if fully plead.

46. Defendant and/or DOES have had a continuous policy of not paying Plaintiffs and those similarly situated for all hours worked.

47. It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages. California Labor Code section 222 prohibits the withholding of part of a wage. California Labor Code section 223 prohibits the payment of less than a statutory or contractual wage scale. California Labor Code section 1197 prohibits the payment of less than the minimum wage. California Labor Code section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. California Labor Code section 1194.2 states that an employee receiving less than the legal minimum wage is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. California Labor Code section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

48. IWC Wage Order 5-2001(5) requires employers to pay “reporting time pay.” Each workday an employee is required to report to work, but is not put to work or is furnished with less than half of his or her usually or scheduled day’s work, must be paid for half of the usual or scheduled day’s

work, but in no event less than two hours nor more than four hours, at his or her regular rate of pay. If an employee is required to report to work a second time in any one workday and is furnished less than two hours of work on the second reporting, he or she must be paid for two hours at his or her regular rate of pay.

49. Plaintiffs and those similarly situated Class Members were employed by HUNTER and/or DOES at all relevant times. HUNTER and/or DOES were required to compensate Plaintiffs for all hours worked and were prohibited from making deductions that had the effect of reducing the agreed upon wage.

50. HUNTER and/or DOES have had a continuous policy of not paying Plaintiffs and those similarly situated for all hours worked. For example, HUNTER fails to pay Class Members for the following hours worked: pre-and post-shift work, work performed longer than the scheduled shift end time, and all other time during which Class Members are subject to the control of HUNTER and/or suffered or permitted to work during periods of time for which HUNTER is not paying them. Failing to pay for all hours worked while under HUNTER's control and/or while suffered or permitted to work has resulted in Plaintiffs and Class Members being deprived of straight time wages throughout the Statutory Period.

51. HUNTER and/or DOES have had a continuous policy of requiring Plaintiffs and the Class Members to conduct work before clocking in, including but not limited to, loading equipment into a work truck. Because Plaintiffs and the Class Members were not clocked in during this time but were required to perform work duties, they have not been paid for all the hours they worked. Additionally, HUNTER would keep track of the time worked by Plaintiffs and the Class Members and would unlawfully shave their work time and/or round their work time such that they would not be fully paid for all time worked. This time-shaving and/or rounding practice utilized by HUNTER was not even handed over time and would almost exclusively round and shave in HUNTER's favor such that Plaintiffs and the Class Members were routinely unpaid for their time worked.

52. HUNTER and/or DOES have had a continuous policy of failing to pay Plaintiffs and the Class

Members for hours worked after the scheduled shift end time and/or have had a continuous policy of changing Plaintiffs' and the Class Members' recorded time worked to reduce the number of hours worked by Plaintiff and the Class Members. As a result, Plaintiffs and the Class Members are not paid for all of the hours they work.

53. Failing to pay for all hours worked while under HUNTER's control and/or while suffered or permitted to work has resulted in Class Members being deprived of straight time and/or overtime wages throughout the Statutory Period.

54. HUNTER and/or DOES have a continuous and consistent policy of failing to pay full wages to Plaintiffs and the Class Members by deducting a portion of the wages earned by Plaintiffs and the Class Members when they worked through their meal periods, are not relieved of all work duties during their meal periods, are not allowed to leave the work location during meal periods, and/or when HUNTER recorded a meal period for Plaintiffs and the Class Members when no meal period was taken. Specifically, Plaintiffs and the Class Members worked through their meal periods to satisfy their demanding work duties imposed by HUNTER, thereby denying them the right to be completely free from employer control under California law.

55. HUNTER and/or DOES have a continuous and consistent policy of clocking-out Plaintiffs and those similarly situated for a thirty (30) minute meal period and/or otherwise recording a meal period, even though Plaintiffs and all members of the Class work through their meal periods. Thus, HUNTER and/or DOES do not pay Plaintiffs and each and every member of the Class for all time worked each and every day they work without a meal period and have time deducted.

56. Plaintiffs and the Class Members are informed and believe and thereon allege that as a direct result of HUNTER's and/or DOES' uniform policies and/or practices, Plaintiffs and the Class Members have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses and attorneys' fees in seeking to compel HUNTER and/or DOES to fully perform their obligations under state law, all to their respective damage in amounts, according to proof at trial.

57. As a direct result of HUNTER's and/or DOES' policy of illegal wage theft, Plaintiffs and those

1 similarly situated have been damaged in an amount to be proven at trial.

2 58. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described below.

3 **SECOND CAUSE OF ACTION AGAINST HUNTER AND/OR DOES: Failure to Pay All Overtime**

4 **Wages (Lab. Code §§ 510, 1194)**

5 59. Plaintiffs and those similarly situated Class Members hereby incorporate by reference each and
6 every other paragraph in this Consolidated Complaint herein as if fully plead.

7 60. It is fundamental that an employer must pay its employees for all time worked. California Labor
8 Code sections 218 and 218.5 provides a right of action for nonpayment of wages. California Labor
9 Code section 222 prohibits the withholding of part of a wage. California Labor Code section 223
10 prohibits the payment of less than a statutory or contractual wage scale. California Labor Code
11 section 1197 prohibits the payment of less than the minimum wage. California Labor Code section
12 224 only permits deductions from wages when the employer is required or empowered to do so by
13 state or federal law or when the deduction is expressly authorized in writing by the employee for
14 specified purposes that do not have the effect of reducing the agreed upon wage.

15 61. HUNTER and/or DOES failed to pay overtime when employees worked over eight (8) hours per
16 day and when employees worked over forty (40) hours per week per Labor Code section 510.

17 62. Plaintiffs and those similarly situated Class Members were employed by HUNTER and/or DOES
18 at all relevant times. HUNTER and/or DOES were required to compensate Plaintiffs for all
19 overtime hours worked and were prohibited from making deductions that had the effect of reducing
20 the agreed upon wage.

21 63. HUNTER and/or DOES failed to pay for the overtime that was due, pursuant to IWC Wage Order
22 No. 5-2001, item 3(A) and Labor Code section 510.

23 64. HUNTER and/or DOES have had a continuous policy of not paying Plaintiffs and those similarly
24 situated for all hours worked. For example, HUNTER fails to pay Class Members for the following
25 hours worked: pre-and post-shift work, work performed longer than the scheduled shift end time,
26 and all other time during which Class Members are subject to the control of HUNTER and/or
27 suffered or permitted to work during periods of time for which HUNTER is not paying them.
28

1 Failing to pay for all hours worked while under HUNTER's control and/or while suffered or
2 permitted to work has resulted in Plaintiffs and Class Members being deprived of straight time
3 wages throughout the Statutory Period. Failing to pay for all hours worked while under HUNTER's
4 control and/or while suffered or permitted to work has resulted in Plaintiffs and Class Members
5 being deprived of overtime wages throughout the Statutory Period.

6 65. HUNTER and/or DOES have had a continuous policy of altering, changing, and/or failing to
7 record all of Plaintiffs' and the Class Members' time worked to eliminate and/or reduce the number
8 of overtime hours worked and/or to only pay employees their regular rate of pay for these hours.
9 Additionally, HUNTER would keep track of the time worked by Plaintiffs and the Class Members
10 and would unlawfully shave their work time and/or round their work time such that they would
11 not be fully paid for all time worked. This time-shaving and/or rounding practice utilized by
12 HUNTER was not even handed over time and would almost exclusively round and shave in
13 HUNTER's favor such that Plaintiffs and the Class Members were routinely unpaid for their time
14 worked.

15 66. Under Wage Order 5-2001 section 3(B)(1), no employer shall be deemed to have violated the daily
16 overtime provisions by instituting, pursuant to the election procedures set forth in this wage order,
17 a regularly scheduled alternative workweek schedule of not more than ten (10) hours per day
18 within a 40 hour workweek without the payment of an overtime rate of compensation. Each
19 proposal for an alternative workweek schedule shall be in the form of a written agreement proposed
20 by the employer. The proposed agreement must designate a regularly scheduled alternative
21 workweek in which the specified number of work days and work hours are regularly recurring. In
22 order to be valid, the proposed alternative workweek schedule must be adopted in a secret ballot
23 election, before the performance of work, by at least a two-thirds (2/3) vote of the affected
24 employees in the work unit. The election shall be held during regular working hours at the
25 employees' work site. Failure to comply with the provisions set forth in Wage Order 5-2001
26 section 3(C)(2) shall make the election null and void.

27 67. HUNTER and/or DOES did not validly implement an alternative workweek schedule. HUNTER
28

and/or DOES failed to hold a secret ballot election before the performance of work prior to having employees work alternative workweek schedules. HUNTER and/or DOES failed to make a disclosure in writing to the affected employees which included the effects of the proposed arrangement on Plaintiffs' and the Class Members' wages, hours, and benefits. Because HUNTER and/or DOES did not validly implement an alternative workweek schedule, HUNTER and/or DOES owe overtime wages to Plaintiffs and the Class Members.

68. Plaintiffs and the Class Members are informed and believe and thereon allege that as a direct result of HUNTER's and/or DOES' uniform policies and/or practices, Plaintiffs and the Class Members have suffered, and continue to suffer, substantial unpaid overtime wages, and lost interest on such overtime wages, and expenses and attorneys' fees in seeking to compel HUNTER and/or DOES to fully perform their obligations under state law, all to their respective damage in amounts according to proof at time of trial. HUNTER and/or DOES committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention on injuring Plaintiffs and the Class Members. HUNTER and/or DOES acted with malice or in conscious disregard of Plaintiffs' and the Class Member's rights. In addition to compensation, Plaintiffs are also entitled to any penalties allowed by law.

69. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described below.

THIRD CAUSE OF ACTION AGAINST HUNTER AND/OR DOES: Failure to Provide Meal Periods, or Compensation in Lieu Thereof (Lab. Code §§ 226.7, 512, IWC Wage Order No. 5-2001(11); Cal. Code Regs., tit. 8, § 11050)

70. Plaintiffs and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Consolidated Complaint herein as if fully plead.

71. Under California Labor Code section 512 and IWC Wage Order No. 5, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During these meal periods of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute

meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

72. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of less than thirty (30) minutes.

73. Under California Labor Code section 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, 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.

74. HUNTER and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods to Plaintiff and Class Members who worked for work periods of more than five (5) consecutive hours. As such, Plaintiffs and Class Members were required to work over five (5) consecutive hours at a time without being provided a thirty (30) minute uninterrupted meal period within that time.

75. HUNTER and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods to Plaintiffs and Class Members for every five (5) continuous hours worked.

76. HUNTER's and/or DOES' business model is such that Class Members were assigned too much work and insufficient help due to chronic understaffing to be able to take meal periods. Thus, Class Members are not able to take meal periods.

77. Throughout the statutory period, HUNTER and/or DOES had a pattern and practice of assigning too much work to be completed in too short of time frames, resulting in Plaintiffs and those similarly situated not being able to take meal periods.

78. HUNTER and/or DOES would not permit Plaintiffs and the Class to take 30-minute meal periods unless specifically scheduled by HUNTER and/or DOES or unless Plaintiffs and the Class were expressly told to by HUNTER and/or DOES. This routinely resulted in Plaintiffs and the Class Members not being able to take a meal period, if at all, until after the fifth hour.

79. HUNTER's and/or DOES' business model was such that Plaintiffs and Class Members were

1 assigned too much work that could not reasonably be completed in their assigned shift, work,
2 and/or route, resulting in Plaintiffs and the Class Members routinely and regularly being forced to
3 eat their meals while working.

4 80. HUNTER and/or DOES unlawfully did not allow Plaintiff and the Class Members to leave the
5 work location during meal periods.

6 81. Throughout the statutory period, HUNTER and/or DOES valued productivity over providing meal
7 periods and, because of this, meal breaks were not priorities to HUNTER and/or DOES.

8 82. Because of HUNTER and/or DOES demanding policies on completion times, Plaintiffs and those
9 similarly situated felt that stopping work to exercise their rights to take meal periods would
10 sacrifice their jobs with HUNTER and/or DOES.

11 83. HUNTER and/or DOES did not have a policy of providing a second meal period before the end of
12 the tenth hour.

13 84. Failing to provide compensation for such unprovided or improperly provided meal periods, as
14 alleged above, HUNTER and/or DOES willfully violated the provisions of California Labor Code
15 sections 226.7, 512, and IWC Wage Order No. 5.

16 85. As a result of the unlawful acts of HUNTER and/or DOES, Plaintiffs and the Class they seek to
17 represent have been deprived of premium wages, in amounts to be determined at trial, and are
18 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs,
19 pursuant to Labor Code section 226.7, and IWC Wage Order No. 5-2001. Plaintiffs and the Class
20 they seek to represent did not willfully waive their right to take meal periods through mutual
21 consent with HUNTER LANDSCAPE and/or DOES.

22 86. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described below.

23 **FOURTH CAUSE OF ACTION AGAINST HUNTER AND/OR DOES: Failure to Authorize and**
24 **Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 5-2001(12); Cal. Code Regs. Title 8**
25 **§ 11050)**

26 87. Plaintiffs and those similarly situated Class Members hereby incorporate by reference each and
27 every other paragraph in this Consolidated Complaint herein, as if fully plead.
28

- 1 88. Under IWC Wage Order No. 5, every employer shall authorize and permit all employees to take
2 rest periods, “[t]he authorized rest period time shall be based on the total hours worked daily at the
3 rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof.” IWC
4 Wage Order 5-2001(12). The time spent on rest periods “shall be counted as hours worked for
5 which there shall be no deduction from wages.” *Id.*
- 6 89. Under California Labor Code section 226.7, if the employer does not provide an employee a rest
7 period in accordance with the above requirements, the employer shall pay the employee one (1)
8 hour of pay at the employee’s regular rate of compensation for each workday that the rest break is
9 not provided.
- 10 90. At all relevant times, HUNTER and/or DOES failed to authorize and/or permit rest period time
11 based upon the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
12 hours or major fraction thereof.
- 13 91. In the alternative, HUNTER’s and/or DOES’ business model was such that Class Members were
14 assigned too much work that could not be reasonably completed within their assigned shift,
15 resulting in Class Members routinely and regularly being forced to work through their rest periods.
- 16 92. Throughout the statutory period, HUNTER and/or DOES had a pattern and practice of assigning
17 too much work to be completed in too short of time frames, resulting in Plaintiff and those similarly
18 situated not to take rest periods.
- 19 93. Because of HUNTER’s and/or DOES’ demanding policies on task completion times, Plaintiffs
20 and those similarly situated felt that exercising their rights to take rest breaks would sacrifice their
21 jobs with HUNTER and/or DOES.
- 22 94. Throughout the statutory period, HUNTER’s and/or DOES’ uniform policies and practices
23 resulted in Class Members not receiving rest breaks.
- 24 95. Throughout the statutory period, HUNTER and/or DOES valued productivity over providing rest
25 periods and, because of this, rest periods were not priorities to HUNTER and/or DOES.
- 26 96. Throughout the statutory period, HUNTER’s and/or DOES’ policies promoting productivity
27 subjugated the rights of Plaintiffs and Class Members to rest periods.
28

1 97. HUNTER and/or DOES did not allow Plaintiffs and the Class Members to leave the work location
2 during rest periods.

3 98. HUNTER and/or DOES did not allow Plaintiffs and the Class Members to leave the work location
4 for any reason, including to use the restroom. As Plaintiffs and the Class Members work out in the
5 field providing services to HUNTER's and/or DOES' customers, they did not have a work facility
6 near them during their shifts. HUNTER and/or DOES did not permit Plaintiffs and the Class
7 Members to use the restrooms at their customer's locations. Because Plaintiffs and the Class
8 Members were not able to leave the work location and were not able to use the customer's
9 restrooms, they were prevented from taking any breaks, even to use the restroom.

10 99. As a result of the unlawful acts of HUNTER and/or DOES, Plaintiffs and the Class they seek to
11 represent have been deprived of premium wages, in amounts to be determined at trial, and are
12 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs,
13 pursuant to Labor Code section 226.7, and IWC Wage Order No. 5-2001.

14 100. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described below.

15 **FIFTH CAUSE OF ACTION AGAINST HUNTER AND/OR DOES: Failure to Provide Recovery**
16 **Periods (Lab. Code § 226.7; Cal. Code Regs. Title 8 § 3395)**

17 101. Plaintiffs and those similarly situated Class Members hereby incorporate by reference each and
18 every other paragraph in this Consolidated Complaint herein as if fully plead.

19 102. Under California Code of Regulations, Title 8, section 3395(d)(1), "[w]hen the outdoor
20 temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain
21 one or more areas with shade at all times while employees are present that are either open to the
22 air or provided with ventilation or cooling." Cal. Code of Reg. Title 8, § 3395(d)(1). Furthermore,
23 "[t]he amount of shade present shall be at least enough to accommodate the number of employees
24 on recovery or rest periods, so that they can sit in a normal posture fully in the shade without
25 having to be in physical contact with each other." *Id.*

26 103. "Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade
27 when they feel need to do so to protect themselves from overheating." Cal. Code of Reg. Title 8,
28

§ 3395(d)(3). “Such access to shade shall be permitted at all times.” *Id.*

104. Under California Code of Regulations section 3395(c), employees shall have access to potable drinking water. The water must be located as close as practicable to the areas where employees are working. Where drinking water is not plumbed or otherwise continuously supplied, it must be provided in sufficient quantity at the beginning of the work shift to provide one quart per employee per hour for drinking for the entire shift. Employers may begin the shift with smaller quantities of water if they have effective procedures for replenishment during the shift as needed to allow employees to drink one quart or more per hour. The frequent drinking of water must be encouraged.
105. Under California Code of Regulations section 3395(e), employers shall implement high-heat procedures when the temperature exceeds 95 degrees Fahrenheit. These procedures include: (1) Ensuring that effective communication by voice, observation, or electronic means is maintained so that employees at the work site can contact a supervisor when necessary. An electronic device, such as a cell phone or text messaging device, may be used for this purpose only if reception in the area is reliable; (2) Observing employees for alertness and signs or symptoms of heat illness; (3) Designating one or more employees on each worksite as authorized to call for emergency medical services, and allowing other employees to call for emergency services when no designated employee is available; (4) Reminding employees throughout the work shift to drink plenty of water; and (5) Pre-shift meetings before the commencement of work to review the high heat procedures, encourage employees to drink plenty of water, and remind employees of their right to take a cool-down rest when necessary. The employer shall ensure effective employee observation/monitoring by implementing one or more of the following: (A) Supervisor or designee observation of 20 or fewer employees; (B) Mandatory buddy system; (C) Regular communication with sole employee such as by radio or cellular phone; or (D) Other effective means of observation.
106. Under California Code of Regulations section 3395(i), employers shall establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees. The Heat Illness Prevention Plan may be included as part of the employer's

Illness and Injury Prevention Program required by section 3203, and shall, at a minimum, contain:
(1) Procedures for the provision of water and access to shade; (2) the high heat procedures referred to above; (3) Emergency Response Procedures; and (4) Acclimatization methods and procedures.

107. While working for HUNTER and/or DOES, Plaintiffs and the Class Members worked in outdoor places of employment. Plaintiffs and the Class Members work outdoors in Southern California, California. Plaintiffs and the Class Members worked shifts during which the temperature exceeded eighty (80) degrees Fahrenheit. Plaintiffs and the Class Members worked shifts during which the temperature exceeded ninety-five (95) degrees Fahrenheit.

108. HUNTER and/or DOES failed to permit access to shade and preventative cool down rest and/or recovery periods to Plaintiffs and the Class Members when the temperature reached eighty (80) degrees Fahrenheit. HUNTER and/or DOES did not allow and encourage Plaintiffs and the Class Members to take preventative cool-down rest recovery periods in shaded areas when the applicable temperatures are reached. Thus, HUNTER and/or DOES failed to permit, allow, or encourage Plaintiffs and the Class Members to take preventative cool down recovery periods in the shade to protect against overheating when the temperature exceeds eighty (80) degrees Fahrenheit.

109. HUNTER and/or DOES failed to utilize any alternative procedures for providing access to shade or equivalent protection to Plaintiffs and the Class Members. HUNTER and/or DOES failed to implement other cooling measures in lieu of shade at least as effective as shade in allowing employees to cool.

110. HUNTER and/or DOES have a consistent policy and/or practice of failing to provide Plaintiffs and the Class Members with drinking water. Plaintiffs and the Class Members were forced to pitch in and buy water for themselves and other employees. HUNTER and/or DOES never provided Plaintiffs and the Class Members with water.

111. HUNTER and/or DOES failed to follow the applicable high-heat procedures and failed to establish, implement, and maintain an effective heat illness prevention program.

112. Therefore, HUNTER and/or DOES failed to provide preventative cool down rest and/or recovery periods to Plaintiffs and the Class Members in accordance with California Code of Regulations,

1 Title 8, section 3395.

2 113. As a result of the unlawful acts of HUNTER and/or DOES, Plaintiffs and the Class they seek to
3 represent have been deprived of premium wages, in amounts to be determined at trial, and are
4 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs,
5 pursuant to Labor Code section 226.7.

6 114. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described below.

7 **SIXTH CAUSE OF ACTION AGAINST HUNTER AND/OR DOES: Knowing and Intentional**
8 **Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174,**
9 **1175; IWC Wage Order No. 5-2001(7)(A) and (B); Cal. Code Regs., Title 8, § 11050)**

10 115. Plaintiffs and those similarly situated Class Members hereby incorporate by reference each and
11 every other paragraph in this Consolidated Complaint herein as if fully plead.

12 116. California Labor Code section 226 subdivision (a) requires HUNTER and/or DOES to, inter alia,
13 itemize in wage statements and accurately report the total hours worked, inclusive dates of pay
14 period, rates of pay in effect and total wages earned. HUNTER and/or DOES have knowingly and
15 intentionally failed to comply with California Labor Code section 226, subdivision (a), on each
16 and every wage statement provided to Plaintiffs and members of the proposed Class.

17 117. California Labor Code section 1174 requires HUNTER and/or DOES to maintain and preserve, in
18 a centralized location, records showing the daily hours worked by and the wages paid to its
19 employees. HUNTER and/or DOES have knowingly and intentionally failed to comply with
20 California Labor Code section 1174. The failure of HUNTER and/or DOES, and each of them, to
21 comply with California Labor Code section 1174 is unlawful pursuant to California Labor Code
22 section 1175.

23 118. HUNTER and/or DOES failed to maintain accurate time records - as required by IWC Wage Order
24 No. 5-2001(7), and Cal. Code Regs., Title 8 section 11050 - showing, among other things, when
25 the employee begins and ends each work period, the total daily hours worked in itemized wage
26 statements, total wages, bonuses and/or incentives earned, and all deductions made.

27 119. HUNTER and/or DOES have knowingly and intentionally failed to provide Plaintiffs and the Class
28

Members with accurate itemized wage statements which show: “(1) gross wages earned, (2) total hours worked by the employee, . . . (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 only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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[.]” California Labor Code section 226(a).

120. HUNTER and/or DOES knowingly and intentionally did not include the gross wages earned on wage statements. HUNTER therefore knowingly and intentionally failed to itemize the gross wages earned on Plaintiffs’ and the Class Members’ wage statements.

121. In every pay period during the period of the relevant statute of limitations, HUNTER and/or DOES knowingly and intentionally did not itemize the total hours worked on wage statements as California Labor Code section 226, subsection (a), requires. In every pay period during the period of the relevant statute of limitations, HUNTER and/or DOES knowingly and intentionally did not include the total hours worked on wage statements. HUNTER and/or DOES therefore knowingly and intentionally failed to itemize the total hours worked on Plaintiffs’ and the Class Members’ wage statements.

122. HUNTER and/or DOES have a continuous policy of not paying Plaintiffs and the Class Members for all hours worked. HUNTER and/or DOES have not paid for all the time Plaintiffs and the Class Members worked throughout the day, including, but not limited to rounding, before shifts start, after shifts end, and/or any other time in the day when the employees were performing work tasks, subject to the control of HUNTER and/or DOES and/or otherwise had work duties. Further, HUNTER and/or DOES would require Plaintiffs and the Class Members to conduct work before clocking in, including but not limited to, loading equipment into a work truck. In addition,

HUNTER and/or DOES do not pay Plaintiffs and the Class Members if they work longer than their scheduled shift length.

123. Additionally, HUNTER and/or DOES have had a continuous policy of not paying Plaintiffs and the Class Members for all hours worked in that HUNTER and/or DOES continuously and consistently clocked Plaintiffs and the Class Members out for a thirty (30) minute meal period and/or otherwise recorded a meal period, even though Plaintiffs and the Class Members work through their meal periods and/or were unable to take meal periods. Thus, HUNTER and/or DOES shave/steal earned wages from Plaintiffs and the Class Members every day they work without a meal period and have time deducted.

124. In every pay period during the period of the relevant statute of limitations, HUNTER and/or DOES knowingly and intentionally did not include the net wages earned on wage statements.

125. As a result of the knowing and intentional failure by HUNTER and/or DOES to comply with itemized employee wage statement provisions, Plaintiffs and the Class Members have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

126. HUNTER and/or DOES knowingly and intentionally did not include Plaintiffs' and the Class Members' last four digits of his or her social security number or an employee identification number other than the social security number.

127. Under California Labor Code section 226.3, "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226." The penalties provided for in California Labor Code section 226.3 are in addition to other penalties provided by law.

128. As a direct result of HUNTER and/or DOES unlawful acts, Plaintiffs and the Class they intend to represent have been damaged and are entitled to recovery of such amounts, plus interest thereon,

attorneys' fees, and costs, pursuant to California Labor Code section 226.

129. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described below.

SEVENTH CAUSE OF ACTION AGAINST HUNTER AND/OR DOES: Failure to Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802; IWC Wage Order No. 5; Cal. Code Regs., Title 8, § 11050)

130. Plaintiffs and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Consolidated Complaint herein as if fully plead.

131. An employer shall indemnify employees for all necessary expenditures or losses incurred by the employees in direct consequence of the discharge of the employees' duties, or the employees' obedience to the directions of the employer. Further, an employer shall not collect or receive from an employee any part of wages theretofore paid by employer to employee.

132. HUNTER and/or DOES have had a continuous policy and/or practice of failing to reimburse and/or indemnify Plaintiffs and the Class Members for expenses for company and/or business-related purposes.

133. HUNTER and/or DOES have had a continuous policy and/or practice of failing to reimburse and/or indemnify Plaintiffs and the Class Members for expenses incurred as a direct consequence of the discharge of their work duties.

134. HUNTER and/or DOES have had a continuous policy and/or practice of failing to reimburse and/or indemnify Plaintiffs and the Class Members for expenses incurred in direct consequence of employees' obedience to the directions of HUNTER and/or DOES.

135. HUNTER and/or DOES have had a continuous policy and/or practice of failing to reimburse and/or indemnify Plaintiffs and the Class Members. Plaintiffs and the Class Members incurred expenses in the discharge of their duties without receiving reimbursement from HUNTER.

136. HUNTER, for example, fails to reimburse for all work-related expenses, such as, but not limited to, but are not limited to, having to use their personal cell phone for business purposes and having to buy and maintain tools necessary to perform their jobs.

137. HUNTER and/or DOES have had a continuous policy and/or practice of illegally deducting wages,

1 earned bonuses and/or incentives from employees.

2 138. Said continuous policy and/or practice of failing to reimburse Plaintiffs and Class Members and
3 deducting wages from employees is illegal under California Labor Code sections 221, 2802, and
4 Cal. Code Regs. Title 8, section 11050(8).

5 139. As a direct result of HUNTER's and/or DOES' policy of failing to reimburse Plaintiffs and Class
6 Members and deducting wages from employees, Plaintiffs and those similarly situated have been
7 damaged in an amount to be proven at trial.

8 140. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described below.

9 **EIGHTH CAUSE OF ACTION AGAINST HUNTER AND/OR DOES: Failure to Pay All Wages**
10 **Upon Termination of Employment (Labor Code, §§ 201-203)**

11 141. Plaintiffs and those similarly situated Class Members hereby incorporate by reference each and
12 every other paragraph in this Consolidated Complaint herein as if fully plead.

13 142. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to
14 pay all wages immediately at the time of termination of employment in the event the employer
15 discharges the employee or the employee provides at least 72 hours of notice of his/her intent to
16 quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said
17 employee's wages become due and payable not later than 72 hours upon said employee's last date
18 of employment.

19 143. HUNTER failed to timely pay Plaintiffs and Class Members who separated employment all of
20 their final wages at the time of termination, which include, among other things, underpaid
21 minimum, regular and overtime wages and meal and rest period premium wages. Further,
22 Plaintiffs are informed and believes, and based thereon allege, that as a matter of uniform policy
23 and practice, HUNTER continue to fail to pay Class members who separated employment all
24 earned wages at the end of employment in a timely manner pursuant to the requirements of Labor
25 Code §§ 201-203. HUNTER's failure to pay all final wages was willful within the meaning of
26 Labor Code § 203.

27 144. HUNTER's willful failure to timely pay earned wages upon separation from employment results
28

1 in a continued payment of wages up to thirty (30) days from the time the wages were due.
2 Therefore, Plaintiffs and Class members are entitled to compensation pursuant to Labor Code §
3 203, plus reasonable attorneys' fees and costs of suit.

4 **NINTH CAUSE OF ACTION AGAINST HUNTER LANDSCAPE AND/OR DOES: Violation of**
5 **Unfair Competition Law (California Bus. & Prof. Code, § 17200, et seq.)**

6 145. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and
7 every other paragraph in this Consolidated Complaint herein as if fully plead.

8 146. HUNTER and/or DOES failure to pay all straight time and overtime wages earned, failure to
9 provide compliant meal and/or rest breaks and/or compensation in lieu thereof, failure to itemize
10 and keep accurate records, failure to pay all wages due at time of termination, as alleged herein,
11 constitutes unlawful activity prohibited by California Business and Professions Code section
12 17200, et seq.

13 147. The actions of HUNTER and/or DOES in failing to pay Plaintiffs and members of the proposed
14 Class in a lawful manner, as alleged herein, constitutes false, unfair, fraudulent and deceptive
15 business practices, within the meaning of California Business and Professions Code section 17200,
16 et seq.

17 148. Plaintiffs are entitled to an injunction and other equitable relief against such unlawful practices in
18 order to prevent future damage, for which there is no adequate remedy at law, and to avoid a
19 multiplicity of lawsuits. Plaintiffs bring this cause individually and as members of the general
20 public actually harmed and as a representative of all others subject to HUNTER and/or DOES
21 unlawful acts and practices.

22 149. As a result of their unlawful acts, HUNTER and/or DOES have reaped and continue to reap unfair
23 benefits at the expense of Plaintiffs and the proposed Class they seek to represent. HUNTER and/or
24 DOES should be enjoined from this activity and made to disgorge these ill-gotten gains and restore
25 Plaintiffs and the members of the proposed Class pursuant to Business and Professions Code
26 section 17203. Plaintiffs are informed and believe, and thereon allege, that HUNTER and/or DOES
27 are unjustly enriched through their policy of not all wages owed to Plaintiffs and members of the
28

proposed Class.

150. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and members of the proposed class are prejudiced HUNTER and/or DOES unfair trade practices.

151. As a direct and proximate result of the unfair business practices of HUNTER and/or DOES, and each of them, Plaintiffs, individually and on behalf of all employees similarly situated, are entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all wages and premium pay which have been unlawfully withheld from Plaintiffs and members of the proposed Class as a result of the business acts and practices described herein and enjoining HUNTER and/or DOES from engaging in the practices described herein.

152. The illegal conduct alleged herein is continuing, and there is no indication that HUNTER and/or DOES will cease and desist from such activity in the future. Plaintiffs allege that if HUNTER and/or DOES are not enjoined from the conduct set forth in this Consolidated Complaint, they will continue the unlawful activity discussed herein.

153. Plaintiffs further request that the Court issue a preliminary and permanent injunction prohibiting HUNTER and/or DOES from continuing to not pay Plaintiffs and the members of the proposed Class overtime wages as discussed herein.

154. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described below.

TENTH CAUSE OF ACTION AGAINST HUNTER AND/OR DOES: Violations of the Private Attorneys General Act of 2004 (“PAGA”) (Labor Code §2698 et seq.).

155. Plaintiffs and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Consolidated Complaint herein as if fully plead.

156. Plaintiffs, by virtue of their employment with HUNTER, and HUNTER’s failure to provide meal and rest periods, overtime compensation, all wages for all work performed at the statutory minimum agreed upon rate, accurate itemized wage statements, all wages due at termination, and reimbursement for business expenses – for the reasons stated herein above – are aggrieved employees with standing to bring an action under the Private Attorney General Act (“PAGA”). Plaintiffs, as representative of the people of the State of California, will seek any and all penalties

otherwise capable of being collected by the Labor Workforce Development Agency, Labor Commission and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in Labor Code Section 2699.5, which provides that Section 2699.3(a) applies to any alleged violation of the following provisions: Sections 201 through 203, 204, 205.5, 221, 222, 223, 224, 226, 226.7, 510, 512, 558, 1174, 1182.121194, 1197, 1197.1, 1198, 1199, and 2802.

157. On August 30, 2019, pursuant to California Labor Code section 2699.3, VELASQUEZ provided notice to the Labor and Workforce Development Agency (“LWDA”). This notice outlined the California Labor Code violations VELASQUEZ alleges against HUNTER and/or DOES. The violations alleged in this notice also form the basis for the allegations herein.

158. On April 22, 2020, pursuant to California Labor Code section 2699.3, CAMARGO provided notice to the Labor and Workforce Development Agency (“LWDA”). This notice outlined the California Labor Code violations CAMARGO alleges against HUNTER and/or DOES. The violations alleged in this notice also form the basis for the allegations herein.

159. Plaintiffs bring this action against HUNTER on behalf of themselves, the State of California and all other similarly situated aggrieved employees who work and/or worked as non-exempt, hourly all non-exempt horticulturists, gardeners, arborists, landscape architects, landscapers, and water managers, and/or other workers with similar job designations and titles.

160. Plaintiffs are informed and believe that HUNTER has violated and continues to violate provisions of the California Labor Code and applicable Wage Orders related to meal and rest periods, overtime compensation, wages for all work performed, itemized wage statements, and all wages due at termination.

161. Plaintiffs, as personal representatives of the general public and the State of California, will and do seek to recover any and all civil penalties for each and every violation shown to exist or to have occurred during the one-year period of filing this action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with PAGA, with at least 75% of the penalties

1 recovered being provided to the State of California and the LWDA.

2 **V. PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiffs pray for judgment as follows:

- 4 A. That the Court determine that this action may be maintained as a class action;
- 5 B. For compensatory damages, in an amount according to proof at trial, with interest thereon;
- 6 C. For economic and/or special damages in an amount according to proof with interest thereon;
- 7 D. For unpaid straight time and overtime wages, in an amount according to proof at trial, with
- 8 interest thereon;
- 9 E. For compensation for all time worked;
- 10 F. For compensation for not being provided paid rest breaks;
- 11 G. For compensation for not being provided paid meal periods;
- 12 H. For damages and/or monies owed for failure to comply with itemized employee wage
- 13 statement provisions;
- 14 I. For waiting time penalties for failure to pay all wages upon termination of employment;
- 15 J. For all reimbursements of business expenses;
- 16 K. That Defendant be found to have engaged in unfair competition in violation of sections 17200
- 17 et seq. of the California Business and Professions Code;
- 18 L. That Defendant be ordered and enjoined to make restitution to the Class due to their unfair
- 19 competition, including disgorgement of their wrongfully withheld wages pursuant to
- 20 California Business and Professions Code sections 17203 and 17204;
- 21 M. That an order of specific performance of all penalties owed be issued under Business and
- 22 Professions Code sections 17202;
- 23 N. That Defendant be enjoined from continuing the illegal course of conduct, alleged herein;
- 24 O. That Defendant further be enjoined to cease and desist from unfair competition in violation of
- 25 section 17200 et seq. of the California Business and Professions Code;
- 26 P. That Defendant be enjoined from further acts of restraint of trade or unfair competition;
- 27 Q. For attorneys' fees;
- 28

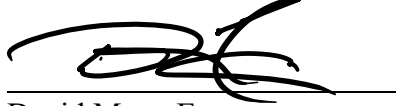
- 1 R. For Liquidated Damages;
2 S. For interest accrued to date;
3 T. For civil penalties for each violation of the PAGA;
4 U. For costs of suit and expenses incurred herein; and
5 V. For any such other and further relief as the Court deems just and proper.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiffs demand a jury trial.

8 Dated: September 9, 2021

MARA LAW FIRM, PC

9 
10

11 David Mara, Esq.

Jill Vecchi, Esq.

12 Attorneys for Plaintiff JOSE DE JESUS ORTEGA

13 VELAZQUEZ on behalf of himself, all others similarly
situated, and on behalf of the general public.

14 Dated: September 9, 2021

LIDMAN LAW, APC

15
16 By:


17

18 Scott M. Lidman

19 Attorneys for Plaintiff JOSE CAMARGO on behalf of
20 himself, all others similarly situated, and on behalf of the
21 general public
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 150, El Segundo, California 90245.

On September 9, 2021, I served the foregoing document(s) described as: **PLAINTIFFS' CONSOLIDATED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES, INJUNCTIVE RELIEF, DECLARATORY RELIEF, AND RESTITUTION** on the interested party(ies) in this action as follows:

MARA LAW FIRM, PC

David Mara (SBN 230498)

dmara@maralawfirm.com

Jill Vecchi (SBN 299333)

jvecchi@maralawfirm.com

2650 Camino Del Rio North, Suite 205

San Diego, California 92108

Tel: (619) 234-2833

Fax: (619) 234-4048

Attorneys for Plaintiff JOSE DE JESUS ORTEGA VELAZQUEZ

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Matthew M. Sonne

msonne@sheppardmullin.com

Jason M. Guyser

Jguyser@shepardmullin.com

650 Town Center Drive, 10th Floor

Costa Mesa, California 92626

Tel: (714) 513-5100

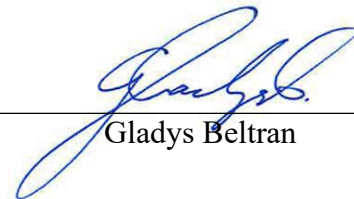
Fax: (714) 513-5130

Attorneys for Defendant HUNTER LANDSCAPE, INC.

☒ (BY MAIL) I am "readily familiar" with Lidman Law, APC's practice of collection and processing correspondence for mailing. I enclosed the document(s) in a sealed envelope or package addressed to the persons at the address(es) listed above. Under the practice the correspondence would be deposited with the U.S. postal service on the same day with postage thereof fully prepaid at El Segundo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage date is more than one day after date of deposit for mailing in affidavit.

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

Executed on September 9, 2021 at El Segundo, California.



Gladys Beltran