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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

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

Plaintiff,

vs.

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

Defendants.

Case No. CIVDS2009753

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1194, 1194.2, 1197);**
- (2) **FAILURE TO PAY ALL OVERTIME
WAGES OWED (LABOR CODE §§
204, 510, 558, 1194, 1198);**
- (3) **FAILURE TO PROVIDE MEAL
PERIODS (LABOR CODE §§ 226.7,
512, 558);**
- (4) **FAILURE TO AUTHORIZE AND
PERMIT ALL PAID REST PERIODS
(LABOR CODE §§ 226.7, 516, 558);**

1 (5) FAILURE TO REIMBURSE
2 NECESSARY BUSINESS EXPENSES
(LABOR CODE § 2802);

3 (6) FAILURE TO PROVIDE
4 ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE § 226
et seq.);

5 (7) UNFAIR COMPETITION (BUS &
6 PROF CODE § 17200 *et seq.*); and

7 (8) CIVIL PENALTIES UNDER THE
8 LABOR CODE PRIVATE
ATTORNEYS GENERAL ACTION
9 OF 2004 (LABOR CODE § 2698 *et*
10 *seq.*)

11 DEMAND FOR JURY TRIAL
12 UNLIMITED CIVIL CASE
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1 Plaintiff Jose Camargo (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“FAC”) against
3 Defendants Hunter Landscape, Inc., a California corporation and Does 1 through 100, inclusive
4 (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 FAC for recovery of unpaid wages and penalties under California Business & Professions Code
8 § 17200 *et. seq.*, Labor Code §§ 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197,
9 1198, 2802, 2698 *et seq.* and Industrial Welfare Commission Wage Order 5 (“Wage Order 5”),
10 in addition to seeking declaratory relief and restitution. This FAC is brought pursuant to
11 California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’
12 violations of the California Labor Code because the amount in controversy exceeds this Court's
13 jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
16 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
17 County of San Bernardino. Defendants own, maintain offices, transact business, have agent(s)
18 within the County of San Bernardino, and/or otherwise are found within the County of San
19 Bernardino, and Defendants are within the jurisdiction of this Court for purposes of service of
20 process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is, a California resident. During the four years immediately preceding
24 the filing of the lawsuit in this action and within the statute of limitations periods applicable to
25 each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
26 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
27 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
28 §§ 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*;

1 California Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”); and Wage
2 Order 5, which sets employment standards for occupations in the manufacturing industry, which
3 includes the industry in which Plaintiff works for Defendants.

4 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
5 years preceding the filing of the lawsuit and continuing to the present, Defendants did (and
6 continue to do) business as a commercial landscaper. Defendants employed Plaintiff and other,
7 similarly-situated non-exempt employees within, among other counties, San Bernardino County
8 and the state of California and, therefore, were (and are) doing business in San Bernardino County
9 and the State of California.

10 5. Plaintiff does not know the true names or capacities, whether individual, partner,
11 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
12 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
13 amend this FAC when such true names and capacities are discovered. Plaintiff is informed, and
14 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
15 partners, or corporate, were responsible in some manner for the acts and omissions alleged
16 herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 18) to be
17 subject to the unlawful employment practices, wrongs, injuries and damages complained of
18 herein.

19 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
20 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

21 7. At all times herein mentioned, each of said Defendants participated in the doing
22 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
23 Defendants, and each of them, were the agents, servants, and employees of each and every one
24 of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
25 were acting within the course and scope of said agency and employment. Defendants, and each
26 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
27 omissions complained of herein.

28 8. At all times mentioned herein, Defendants, and each of them, were members of

1 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
2 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
3 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
4 members of the Classes.

5 **GENERAL FACTUAL ALLEGATIONS**

6 9. Plaintiff, a current employee, has been employed by Defendants as an hourly,
7 non-exempt employee from approximately November 2015 through approximately June 18,
8 2019, at which time he commenced a medical leave of absence. Plaintiff worked at Defendants'
9 yard located in Colton, California as a Laborer.

10 10. During his employment with Defendants, Defendants would keep track of
11 Plaintiff's time worked and would unlawfully shave Plaintiff's work time and/or round
12 Plaintiff's work time such that Plaintiff would not be fully paid for all time worked. This time-
13 shaving and/or rounding practice utilized by Defendants was not even handed over time and
14 would almost exclusively round and shave in Defendants' favor such that Plaintiff was routinely
15 unpaid for his time worked. As a result, Defendants failed to pay Plaintiff all required minimum
16 and overtime wages.

17 11. Additionally, during his employment with Defendants, Plaintiff was not fully paid
18 for all time worked due to Defendants' timekeeping policies/practices which failed to require
19 Plaintiff to record his work time. Specifically, Defendants had a policy/practice of having
20 supervisors fill out employee timecards and required Plaintiff and other non-exempt employees
21 to sign their timecard when presented to them. This practice by Defendants resulted in
22 Defendants not properly tracking all time worked by Plaintiff, and also resulted in Defendants
23 not paying Plaintiff for all wages owed for the work he performed, including failing to pay him
24 all required minimum and overtime wages.

25 12. Throughout Plaintiff's employment with Defendants, Plaintiff was not provided
26 with all required meal periods in compliance with California law due to Defendants' unlawful
27 meal period policies/practices. Specifically, Defendants' meal period policies/practices fail to
28 require employees to record the start and stop time for meal periods. Additionally, on the

1 occasions when Plaintiff worked in excess of 10.0 hours, he was not provided with a second 30-
2 minute meal period due to Defendants' meal period policies/practices that fail to provide for a
3 second meal period for shifts over 10.0 hours. These practices resulted in systematically
4 unlawful meal periods. Despite Defendants' failure to keep any records of Plaintiff's meal
5 periods, Plaintiff is informed and believes that Defendants unlawfully automatically deducted
6 thirty minutes from Plaintiff's work time each shift for his meal break regardless of if a meal
7 period was taken or not.

8 13. Although Plaintiff was not provided with all legally-compliant meal periods to
9 which he was entitled, Defendants failed to compensate Plaintiff with the required meal period
10 premium for each workday in which he experienced a meal period violation as mandated by
11 Labor Code § 226.7. Upon information and belief during at least a portion of the class period,
12 Defendants maintained no payroll code or other mechanism for the payment of meal period
13 premium payments under Labor Code § 226.7 in the event that a legally compliant meal period
14 was not provided to Plaintiff and their non-exempt employees.

15 14. Plaintiff was also not authorized and permitted to take all legally required paid
16 rest periods due to Defendants' unlawful rest period policies and practices. Specifically, while
17 at the worksites, Defendants unlawfully combined Plaintiff's rest periods. Accordingly,
18 Defendants' rest period policies and practices fail to authorize and permit paid rest periods for
19 every four hours worked, *or major fraction thereof*.

20 15. Although Plaintiff was not provided with all legally-compliant rest periods to
21 which he was entitled, Defendants failed to compensate Plaintiff with the required rest period
22 premium for each workday in which he experienced a rest period violation as mandated by Labor
23 Code § 226.7. Upon information and belief during at least a portion of the class period,
24 Defendants maintained no payroll code or other mechanism for the payment of rest period
25 premium payments under Labor Code § 226.7 in the event that a legally compliant rest period
26 was not provided to Plaintiff and their non-exempt employees.

27 16. Throughout Plaintiff's employment with Defendants, Plaintiff was required to use
28 his personal cellular phone to discharge his duties. Specifically, Defendants would regularly

1 contact Plaintiff through his personal cellular phone for a variety of required work activities,
2 including, but not limited to, checking the status of his assigned tasks. Defendants knew or
3 should have known that Plaintiff was necessarily incurring expenses due to the use of his
4 personal cellular phone in the direct discharge of his duties. Yet, despite the necessity of Plaintiff
5 using his cellular phone for work activities and Defendants knowing or should have knowing
6 about same, Plaintiff was never reimbursed for a reasonable portion of his cellular phone
7 expenses by Defendants, as mandated by *Cochran v. Schwan's Home Service, Inc.* (2014) 228
8 Cal.App.4th 1137.

9 17. As a result of Defendants' failure to pay all minimum wages, overtime wages, as
10 well as meal and rest period premium wages, Defendants maintained inaccurate payroll records
11 and issued inaccurate wage statements to Plaintiff.

12 **CLASS ACTION ALLEGATIONS**

13 18. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
14 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 15 a. The Minimum Wage Class consists of all of Defendants' current and former non-
16 exempt employees in California who were subject to Defendants' timekeeping
17 policies/practices, during the four years preceding the filing of the lawsuit through
18 the present.
- 19 b. The Overtime Class consists of all of Defendants' current and former non-exempt
20 employees in California who worked more than eight hours per day and/or forty
21 hours per week, and were subjected to Defendants' timekeeping policies and
22 practices, during the four years immediately preceding the filing of the lawsuit
23 through the present.
- 24 c. The Meal Period Class consists of all of Defendants' current and former non-
25 exempt employees who worked at least one shift in excess of 5.0 hours and/or
26 one shift in excess of 10.0 during the four years immediately preceding the filing
27 of the lawsuit through the present.
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d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, during the four years immediately preceding the filing of the lawsuit through the present.

e. The Expense Reimbursement Class consists of all of Defendants' current and former non-exempt employees in California who incurred expenses in the discharge of their duties during the four years immediately preceding the filing of the lawsuit through the present.

f. The Wage Statement Class consists of members of the (i) Minimum Wage Class; (ii) Overtime Class (iii) Meal Period Class; and/or (iv) Rest Period Class, during the one year immediately preceding the filing of the lawsuit through the present.

g. The UCL Class consists of members of the: (i) Minimum Wage Class; (ii) Overtime Class; (iii) Meal Period Class; (iv) Rest Period Class; (v) Expense Reimbursement Class; and (vi) Wage Statement Class, during the four years immediately preceding the filing of the lawsuit through the present.

19. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

20. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

21. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

i. Whether Defendants' properly paid all minimum wages and/or overtime wages

at the correct regular rate of pay and/or paid for all hours worked pursuant to Labor Code §§ 204, 510, 558, 1194, 1194.2, 1197, and 1198;

ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

iii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

iv. Whether it was necessary for members of the Expense Reimbursement Class to use their personal cellular phones, and thus incur reasonable expenses, (and to incur other expenses) to perform their job duties, and whether Defendants knew or should have known of said incurring of cellular phone and other business expenses;

v. Whether Defendants' policies and practices (or lack thereof) for reimbursing members of the Expense Reimbursement Class violated California law;

vi. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and

vii. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution.

22. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping, minimum wage payment, overtime wage payment, meal and rest period policies/practices, and reimbursement policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

23. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the

1 statute(s) of limitations period applicable to each cause of action pled in the lawsuit. As alleged
2 herein, Plaintiff, like the members of the Classes, was not provided all legally required minimum
3 and overtime wages, was not provided with all required meal periods, was not authorized and
4 permitted to take all required rest periods, did not receive meal and rest period premium wages
5 when he was not provided compliant meal and rest periods, was not properly reimbursed for all
6 necessarily incurred business expenses, and was not provided with accurate, itemized wage
7 statements.

8 24. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
9 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
10 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
11 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
12 and-hour class actions in state and federal courts in the past and are committed to vigorously
13 prosecuting this action on behalf of the members of the Classes.

14 25. **Superiority:** The California Labor Code is broadly remedial in nature and serves
15 an important public interest in establishing minimum working conditions and standards in
16 California. These laws and labor standards protect the average working employee from
17 exploitation by employers who have the responsibility to follow the laws and who may seek to
18 take advantage of superior economic and bargaining power in setting onerous terms and
19 conditions of employment. The nature of this action and the format of laws available to Plaintiff
20 and members of the Classes make the class action format a particularly efficient and appropriate
21 procedure to redress the violations alleged herein. If each employee were required to file an
22 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
23 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
24 their vastly superior financial and legal resources. Moreover, requiring each member of the
25 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
26 employees who would be disinclined to file an action against their former and/or current
27 employer for real and justifiable fear of retaliation and permanent damages to their careers at
28 subsequent employment. Further, the prosecution of separate actions by the individual class

1 members, even if possible, would create a substantial risk of inconsistent or varying verdicts or
2 adjudications with respect to the individual class members against Defendants herein; and which
3 would establish potentially incompatible standards of conduct for Defendants; and/or legal
4 determinations with respect to individual class members which would, as a practical matter, be
5 dispositive of the interest of the other class members not parties to adjudications or which would
6 substantially impair or impede the ability of the class members to protect their interests. Further,
7 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
8 individual prosecution considering all of the concomitant costs and expenses attending thereto.
9 As such, the Classes identified in Paragraph 18 are maintainable as a Class under § 382 of the
10 Code of Civil Procedure.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY ALL MINIMUM WAGES OWED**

13 **(AGAINST ALL DEFENDANTS)**

14 26. Plaintiff re-alleges and incorporates by reference all previous paragraphs as
15 though fully set forth herein.

16 27. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194
17 and 1198 which provide that all non-exempt employees are entitled to all minimum wages for
18 all hours worked, and provide a private right of action for the failure to pay all minimum wage
19 compensation for all work performed.

20 28. At all times relevant herein, Defendants were required to properly compensate
21 Plaintiff and the members of the Minimum Wage Class for all hours worked pursuant to
22 California Labor Code §§ 1194, 1197 and 1198, and Wage Order 5. Wage Order 5, Section 4
23 requires an employer to pay to every employee on the established payday for the period involved
24 not less than the applicable minimum wage for all hours worked in the payroll period.
25 Defendants caused Plaintiff and the members of the Minimum Wage Class to work hours in a
26 workweek but did not properly compensate Plaintiff and the members of the Minimum Wage
27 Class at least minimum wages for such hours.

28 29. At all times relevant herein, Defendants lacked good faith and had no reasonable

1 grounds for believing that their practices in failing to pay all minimum wages owed at the
2 applicable rate was not a violation of any provision of the Labor Code relating to minimum wage,
3 or an order of the Industrial Welfare Commission. Defendants therefore, in addition to owing
4 minimum wages to Plaintiff and the members of the Minimum Wage Class, also owe liquidated
5 damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to
6 Labor Code § 1194.2.

7 30. The foregoing practices and policies are unlawful and create entitlement to
8 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the
9 unpaid amount of minimum wages owing, including interest thereon, as well as statutory
10 penalties, liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to
11 Labor Code §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 5,
12 California Code of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and
13 Civil Code §§ 3287(b) and 3289.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY ALL OVERTIME WAGES OWED**

16 **(AGAINST ALL DEFENDANTS)**

17 31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 32. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194
19 and 1198 which provide that all non-exempt employees are entitled to all overtime wages for all
20 overtime worked (hours in excess of 8 in one day and/or 40 in one week), and provide a private
21 right of action for the failure to pay all overtime compensation for overtime work performed.

22 33. At all times relevant herein, Defendants were required to properly compensate
23 Plaintiff and the members of the Overtime Class for all overtime hours worked pursuant to
24 California Labor Code §§ 510 and 1194, and Wage Order 5. Labor Code § 510 and Wage Order
25 5, Section 3 require an employer to pay an employee "one and one-half (1½) times the regular
26 rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours per
27 workweek. Labor Code § 510 and Wage Order 5, Section 3 also require an employer to pay an
28 employee double the employee's regular rate for work in excess of 12 hours each workday and/or

1 in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused
2 Plaintiff and the members of the Overtime Class to work in excess of 8 hours in a workday and/or
3 40 hours in a workweek but did not properly compensate Plaintiff and the members of the
4 Overtime Class at one and one-half their regular rate of pay for such hours.

5 34. The foregoing practices and policies are unlawful and create entitlement to
6 recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid
7 amount of overtime premium owing, including interest thereon, as well as statutory penalties,
8 civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6,
9 510, 558, 1194 and 1198, Wage Order 5, California Code of Civil Procedure § 1021.5 California
10 Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

11 **THIRD CAUSE OF ACTION**

12 **FAILURE TO PROVIDE MEAL PERIODS**

13 **(AGAINST ALL DEFENDANTS)**

14 35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 failed in their affirmative obligation to provide all of their non-exempt employees in California,
17 including Plaintiff and members of the Meal Period Class, with all legally compliant meal
18 periods in accordance with the mandates of the California Labor Code and Wage Order 5, § 11.
19 Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and
20 members of the Meal Period Class at their respective regular rates of compensation, in
21 accordance with California Labor Code §§ 226.7, and 512.

22 37. As a result, Defendants are responsible for paying premium compensation for
23 meal period violations including interest thereon, as well as statutory penalties, civil penalties,
24 and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 5, California Code
25 of Civil Procedure § 1021.5 and Civil Code §§ 3287(b) and 3289.

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27 **FOURTH CAUSE OF ACTION**

1 **FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS**
2 **(AGAINST ALL DEFENDANTS)**

3 38. Plaintiff re-alleges and incorporates by reference all previous paragraphs as
4 though fully set forth herein.

5 39. Wage Order 5, § 12 and California Labor Code §§ 226.7 and 516 establish the
6 right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
7 minutes net rest time for each four (4) hour period worked, or *major fraction thereof*.

8 40. As alleged herein, Defendants failed to authorize and permit Plaintiff and
9 members of the Rest Period Class to take all required and paid rest periods.

10 41. The foregoing violations create an entitlement to recovery by Plaintiff and
11 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
12 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
13 according to California Labor Code §§ 226.7, 516, 558, Wage Order 5, California Code of Civil
14 Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

15 **FIFTH CAUSE OF ACTION**
16 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
17 **(AGAINST ALL DEFENDANTS)**

18 42. Plaintiff re-alleges and incorporates by reference all previous paragraphs as
19 though fully set forth herein.

20 43. It was necessary and at the obedience and/or direction of Defendants for Plaintiff
21 and members of the Expense Reimbursement Class to use their personal cellular phones to
22 perform their job duties, and thereby incur expenses. It was also necessary for members of the
23 Expense Reimbursement Class to necessarily incur other business expenses in the direct
24 discharge of their duties.

25 44. Defendants knew or should have known that Plaintiff and members of the
26 Expense Reimbursement Class necessarily incurred expenses as part of the use of personal
27 cellular phones for the discharge of their duties at Defendants' direction, and also incurred other
28 business expenses.

1 45. Although Plaintiff and members of the Class incurred these expenses in the direct
2 discharge of their job duties, Defendants did not reimburse these employees for such necessary
3 work expenditures during the four years preceding the filing of the lawsuit.

4 46. At all relevant times herein, Defendants were subject to Labor Code § 2802,
5 which states that “an employer shall indemnify his or her employees for all necessary
6 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
7 her duties, or of his or obedience to the directions of the employer.”

8 47. As a proximate result of Defendants’ policies and/or practices in violation of
9 Labor Code §§ 2802 and 2804, and Wage Order 5, § 9, Plaintiff and members of the Expense
10 Reimbursement Class were damaged in sums, which will be shown according to proof.

11 48. Plaintiff and members of the Expense Reimbursement Class are entitled to
12 attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

13 49. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
14 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
15 Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall
16 accrue from the date on which they incurred the initial necessary expenditure.

17 **SIXTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**
19 **(AGAINST ALL DEFENDANTS)**

20 50. Plaintiff re-alleges and incorporates by reference all previous paragraphs as
21 though fully set forth herein.

22 51. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
24 and the Wage Statement Class Members with accurate, itemized wage statements that included
25 among other requirements, accurate total gross wages earned, meal and rest period premiums,
26 and total net wages earned in violation of Labor Code § 226 *et seq.*

27 52. Defendants’ failure to furnish Plaintiff and the members of the Wage Statement
28 Class with complete and accurate, itemized wage statements resulted in actual injury, as said

1 failures led to, among other things, accurate total gross wages earned, meal and rest period
2 premiums, and total net wages earned in violation of Labor Code § 226 *et seq.*

3 53. Defendants' failures created an entitlement to Plaintiff and members of the Wage
4 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
5 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to
6 suit pursuant to Labor Code § 226 *et seq.*

7 **SEVENTH CAUSE OF ACTION**

8 **UNFAIR COMPETITION**

9 **(AGAINST ALL DEFENDANTS)**

10 54. Plaintiff re-alleges and incorporates by reference all previous paragraphs as
11 though fully set forth herein.

12 55. Defendants have engaged and continue to engage in unfair and/or unlawful
13 business practices in California in violation of California Business and Professions Code § 17200
14 *et seq.*, by failing to properly pay all minimum and overtime wages, failing to provide all required
15 meal periods and failing to authorize and permit all required rest periods, failing to pay meal and
16 rest period premium wage payments, and failing to reimburse all necessary business
17 expenditures.

18 56. Defendants' utilization of these unfair and/or unlawful business practices
19 deprived Plaintiff and continues to deprive members of the Classes of compensation to which
20 they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair
21 advantage over Defendants' competitors who have been and/or are currently employing workers
22 and attempting to do so in honest compliance with applicable wage and hour laws.

23 57. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct
24 alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full
25 restitution of monies, as necessary and according to proof, to restore any and all monies withheld,
26 acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203
27 and 17208.

28 58. The acts complained of herein occurred within the last four years immediately

1 preceding the filing of the lawsuit in this action.

2 59. Plaintiff was compelled to retain the services of counsel to file this court action
3 to protect his interests and those of the Classes, to obtain restitution and injunctive relief on
4 behalf of Defendants' current commission-paid employees, and to enforce important rights
5 affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees
6 and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

7 **EIGHTH CAUSE OF ACTION**

8 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

9 **(AGAINST ALL DEFENDANTS)**

10 60. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

11 61. Defendants have committed several Labor Code violations against Plaintiff and
12 other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code
13 § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this
14 representative action against Defendants to recover the civil penalties due to Plaintiff, the other
15 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
16 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
17 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
18 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
19 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for
20 each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3)
21 \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor
22 Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00
23 for each subsequent violation per employee per pay period for those violations of the Labor Code
24 for which no civil penalty is specifically provided, based on the following Labor Code violations:

- 25 a) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to
26 pay Plaintiff and other aggrieved employees all overtime compensation earned;
27
28

- b) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked;
- c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees;
- d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required and paid rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees;
- e) Defendant violated Labor Code § 226 by failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements;
- f) Defendant violated Labor Code §2802, by failing to reimburse Plaintiff and other aggrieved employees for all necessary business expenditures incurred in the discharge of their duties;
- g) Defendant violated Labor Code § 204 by failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month; and
- h) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees.

62. On April 22, 2020, Plaintiff notified Defendants via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 61 (a)-(h). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Labor Code Private Attorneys General Act with respect to these violations.

63. Plaintiff was compelled to retain the services of counsel to file this court action to

1 protect his interests and the interests of other aggrieved employees, and to assess and collect the
2 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs,
3 which he is entitled to receive under California Labor Code § 2699.

4 **PRAYER**

5 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose
6 behalf this suit is brought against Defendants, as follows:

- 7 1. For an order certifying the proposed Classes;
- 8 2. For an order appointing Plaintiff as representative of the Classes;
- 9 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 10 4. Upon the First Cause of Action, for compensatory, consequential, general and
11 special damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1194.2, 1197,
12 1197.1 and 1198;
- 13 5. Upon the Second Cause of Action, for compensatory, consequential, general and
14 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 15 6. Upon the Third Cause of Action, for compensatory, consequential, general and
16 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 17 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
18 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 19 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
20 special damages according to proof pursuant to Labor Code § 2802;
- 21 9. Upon the Sixth Cause of Action, for statutory wage statement penalties pursuant
22 to Labor Code § 226 *et seq.*;
- 23 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
24 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts
25 or practices declared by this Court to be in violation of Business and Professions Code § 17200
26 *et seq.*;
- 27 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
28 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§

558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations cited in Paragraph 61 (a)-(h) above;

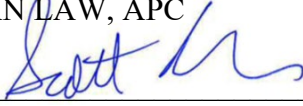
12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

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

Dated: June 29, 2020

Respectfully submitted,
LIDMAN LAW, APC

By: 

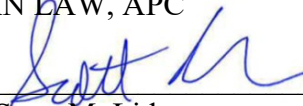
Scott M. Lidman
Attorneys for Plaintiff
JOSE CAMARGO

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: June 29, 2020

Respectfully submitted,
LIDMAN LAW, APC

By: 

Scott M. Lidman
Attorneys for Plaintiff
JOSE CAMARGO