

Larry W. Lee, Esq. (SBN 228175)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554
Email: lwlee@diversitylaw.com

Edward W. Choi, Esq. (SBN 211334)
LAW OFFICES OF CHOI & ASSOCIATES
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
Telephone: (213) 381-1515
Facsimile: (213) 465-4885
Email: edward.choi@choiandassociates.com

Attorneys for Plaintiff and the Class
[Additional Counsel on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

DEMOND COLE, on behalf himself and on
of all others similarly situated,

Plaintiff,

vs.

CORE-MARK INTERNATIONAL, INC., a
Texas Corporation, and DOES 1 through 100,
inclusive,

Defendants.

Case No. **BCV-20-101228**

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES FOR:**

- 1. VIOLATION OF LABOR CODE §§510,
1194, 1194.2 AND 1197;**
- 2. VIOLATION OF LABOR CODE § 226;**
- 3. VIOLATION OF LABOR CODE §2802;**
- 4. VIOLATION OF BUS. & PROF. CODE
§ 17200; AND**
- 5. VIOLATION OF LABOR CODE § 2698,
ET SEQ.**

DEMAND OVER \$25,000

ADDITIONAL COUNSEL

Dennis S. Hyun (SBN 224240)

HYUN LEGAL, APC

515 S. Figueroa St., Suite 1250

Los Angeles, CA 90071

Telephone: (213) 488-6555

Facsimile: (213) 488-6554

William L. Marder, Esq. (SBN 170131)

POLARIS LAW GROUP

501 San Benito Street, Suite 200

Hollister, CA 95023

Telephone: (831) 531-4214

Facsimile: (831) 634-0333

Attorneys for Plaintiff and the Class

1 Plaintiff DEMOND COLE (“Plaintiff”) hereby submits his First Amended Class Action
2 Complaint (“Complaint”) against Defendant CORE-MARK INTERNATIONAL, INC.
3 (“Defendant”), and DOES 1-100 (hereinafter collectively referred to as “Defendants”) on behalf
4 of himself and the class of all other similarly situated current and former employees of
5 Defendants for unpaid wages, business expenses and penalties, under California Labor Code as
6 follows:

7 **INTRODUCTION**

8 1. This class action is within the Court’s jurisdiction under California Labor Code §§
9 201-204, 226, 510, 1194, 1194.2, 1197, 1198, 1199, and 2802, the Industrial Welfare
10 Commission’s (the “IWC”) Wage Orders and California Unfair Competition Law (the “UCL”),
11 codified at California Business and Professions Code § 17200, *et seq.*

12 2. This complaint challenges systemic illegal employment practices resulting in
13 violations of the California Labor Code against employees of Defendants.

14 3. Plaintiff is informed and believes and based thereon alleges, that Defendants,
15 jointly and severally, have acted intentionally and with deliberate indifference and conscious
16 disregard to the rights of all employees in failing to pay all earned wages, issuing improper form
17 of wage payments, and failing to provide accurate wage statements to Plaintiff and Class
18 Members.

19 4. Plaintiff is informed and believes and based thereon alleges, that Defendants have
20 engaged in, among other things a system of willful violations of the California Labor Code by
21 creating and maintaining policies, practices and customs that knowingly deny employees the
22 above stated rights and benefits.

23 **JURISDICTION AND VENUE**

24 5. The Court has jurisdiction over the violations of the California Labor Code §§
25 201-204, 226, 510, 1194, 1194.2, 1197, 1198, 1199, 2698, *et seq.* and 2802.

26 6. Venue is proper in Kern County because Defendants do business in California and
27 Plaintiff worked for Defendants in the County of Kern.
28

PARTIES

7. Plaintiff was a non-exempt merchandiser employee of Defendants from in or around November 2018, to on or about April 7, 2020. Plaintiff was a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived Plaintiff of the rights guaranteed to him by California Labor Code §§ 201-204, 226, 510, 1194, 1194.2, 1197, 1198, 1199, 2698, *et seq.* and 2802, the Industrial Welfare Commission's (the "IWC") Wage Orders and UCL.

8. Plaintiff is informed and believes and based thereon alleges, that Defendant CORE-MARK INTERNATIONAL, INC. is a Texas corporation and is registered to do business throughout the State of California as CORE-MARK INTERNATIONAL, INC. ("Defendant" or "CORE-MARK") and operates merchandise and food distribution centers throughout the State of California.

9. Plaintiff is informed and believes and based thereon alleges, that at all times herein mentioned Defendant and DOES 1 through 100, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California.

10. As such, and based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to California Labor Code §§ 201-204, 226, 510, 1194, 1194.2, 1197, 1198, 1199, 2698, *et seq.* and 2802, the Industrial Welfare Commission's (the "IWC") Wage Orders and UCL.

11. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the Defendant sued herein as DOES 1 through 100, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious Defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

1 12. At all times herein mentioned, each of said Defendants participated in the doing
2 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
3 Defendants, and each of them, were the agents, servants and employees of each of the other
4 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
5 acting within the course and scope of said agency and employment.

6 13. Plaintiff is informed and believes and based thereon alleges, that at all times
7 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
8 joint venturer of, or working in concert with each of the other co-Defendants and was acting
9 within the course and scope of such agency, employment, joint venture, or concerted activity.
10 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
11 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
12 Defendants.

13 14. At all times herein mentioned, Defendants, and each of them, were members of,
14 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
15 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

16 15. At all times herein mentioned, the acts and omissions of various Defendants, and
17 each of them, concurred and contributed to the various acts and omissions of each and all of the
18 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
19 herein mentioned, Defendants, and each of them, ratified each and every act or omission
20 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
21 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
22 damages as herein alleged.

23 **CLASS ACTION ALLEGATIONS**

24 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
25 California Code of Civil Procedure § 382. Plaintiff proposes the following Class Definitions:
26 “All current and former non-exempt employees who worked for Defendants in California at any
27 time between April 6, 2016 through the present (the “Class”)” and “All current and former non-
28 exempt merchandiser and/or driver employees who worked for Defendants in California at any

time between April 6, 2016 through the present (the “Subclass”).

17. **Numerosity:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed and believes and based thereon alleges, that Defendants failed to pay wages in a proper manner.

18. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the class and individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California courts.

19. Plaintiff is informed and believes and based thereon alleges, that Defendants had a consistent and uniform policy, practice and procedure of willfully failing to comply with Labor Code §§ 201-204, 226, 510, 1194, 1194.2, 1197, 1198, 1199, and 2802, the Industrial Welfare Commission’s (the “IWC”) Wage Orders and UCL.

20. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning Defendants’ policy and practice of (1) failing to pay minimum, regular and/or overtime wages for all hours worked by employees to travel between stores that were 20 minutes or less away; (2) failing to pay minimum, regular and/or overtime wages for all hours worked by employees to check and respond to email and/or text messages during their off-hours; (3) failing to provide accurate itemized wage statements that included the accurate gross wages earned, net wages earned and total hours worked; and (4) failing to reimburse for the business expenses such as mileage expenses to travel between stores and cell phone costs.

21. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical manner as the Class members. Specifically, Plaintiff was not paid minimum, regular and/or

1 overtime wages for all hours worked to travel between stores that were 20 minutes or less away
2 or to check and respond to email and/or text messages during her off-hours. As a result of the
3 foregoing, Defendant failed to provide Plaintiff with accurate itemized wage statements that
4 included the accurate gross wages earned, net wages earned and total hours worked. Finally,
5 Defendant failed to reimburse for the business expenses such as mileage expenses to travel
6 between stores and cell phone costs. Thus, Plaintiff is a member of the Class and has suffered
7 the alleged violations of California Labor Code §§ 201-204, 226, 510, 1194, 1194.2, 1197, 1198,
8 1199, and 2802 and the Industrial Welfare Commission's (the "IWC") Wage Orders.

9 22. The California Labor Code and upon which Plaintiff bases these claims are
10 broadly remedial in nature. These laws and labor standards serve an important public interest in
11 establishing minimum working conditions and standards in California. These laws and labor
12 standards protect the average working employee from exploitation by employers who may seek
13 to take advantage of superior economic and bargaining power in setting onerous terms and
14 conditions of employment.

15 23. The nature of this action and the format of laws available to Plaintiff and
16 members of the Class identified herein make the class action format a particularly efficient and
17 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
18 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
19 advantage since it would be able to exploit and overwhelm the limited resources of each
20 individual Plaintiff with their vastly superior financial and legal resources. Requiring each Class
21 member to pursue an individual remedy would also discourage the assertion of lawful claims by
22 employees who would be disinclined to file an action against their former and/or current
23 employer for real and justifiable fear of retaliation and permanent damage to their careers at
24 subsequent employment.

25 24. The prosecution of separate actions by the individual class members, even if
26 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
27 to individual Class members against the Defendants and which would establish potentially
28 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to

individual Class members which would, as a practical matter, be dispositive of the interest of the other Class members not parties to the adjudications or which would substantially impair or impede the ability of the Class members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

25. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action, for applicable penalties, reasonable attorney's fees, and costs of suit according to the mandate of California Labor Code §§ 201-203, 218.5, 226, 1194, 2802 and Code of Civil Procedure § 1021.5.

26. Proof of a common business practice or factual pattern, which the named Plaintiff experienced and are representative of, will establish the right of each of the members of the Plaintiff Class to recovery on the causes of action alleged herein.

27. The Plaintiff Class is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Plaintiff Class is commonly entitled to restitution of those funds being improperly withheld by Defendants. This action is brought for the benefit of the entire class and will result in the creation of a common fund.

FIRST CAUSE OF ACTION

FOR VIOLATION OF LABOR CODE §§ 510, 1194, 1194.2 and 1197

**(AGAINST ALL DEFENDANTS BY PLAINTIFF AND ON BEHALF OF THE CLASS
AND ONBOARDING SUB-CLASS)**

28. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 27 as though fully set for herein.

29. This cause of action is brought pursuant to Labor Code §§510, 1194, 1194.2 and 1197, which require an employer to pay employees regular, minimum and/or overtime wages for all hours worked.

30. As a pattern and practice, Defendants suffered and permitted employees to work without payment of minimum, regular and/or overtime wages for all hours worked in a workday

1 and workweek. Specifically, Defendant required its non-exempt employees to travel between
2 stores during their work day. However, Defendant did not pay for travel time if the travel time
3 between stores was 20 minutes or less. Further, Defendant required its non-exempt employees to
4 check their emails and text messages for communications from their supervisors during off-
5 hours. However, Defendant did not compensate employees for the time spent check their emails
6 and text messages. Defendants had a uniform corporate pattern and practice and procedure
7 regarding the above practices in violation of Labor Code §§ 510, 1194, 1194.2 and 1197.

8 31. Such a pattern, practice and uniform administration of corporate policy regarding
9 illegal employee compensation as described herein is unlawful and creates an entitlement to
10 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
11 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
12 to the mandate of California Labor Code §§ 218.5, 510, 1194, 1194.2 and 1197.

13 32. Plaintiff and Class Members whose employment ended are also entitled waiting-time
14 penalties pursuant to Labor Code §§ 201-203.

15 **SECOND CAUSE OF ACTION**

16 **FOR VIOLATION OF LABOR CODE § 226**

17 **(AGAINST ALL DEFENDANTS BY PLAINTIFF AND ON BEHALF OF THE CLASS,**
18 **WAGE STATEMENT SUB-CLASS AND SUB-CLASS)**

19 33. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 32 as
20 though fully set for herein.

21 34. Defendants failed in their affirmative obligation to provide accurate itemized
22 wage statements when Plaintiff and the Class were not paid all of their wages. Specifically, as a
23 result of Defendants' failure to pay all wages earned, Defendants violated Labor Code § 226 by
24 failing to accurately list the correct number of hours worked and the accurate amount of
25 gross/net wages earned.

26 35. Such a pattern, practice and uniform administration of corporate policy as described
27 herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class identified
28 herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226, including

1 interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor
2 Code § 226.

3 **THIRD CAUSE OF ACTION**

4 **FOR VIOLATION OF LABOR CODE §§201-203**

5 **(AGAINST ALL DEFENDANTS BY PLAINTIFF AND ON BEHALF OF THE CLASS)**

6 36. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 35 as
7 though fully set for herein.

8 37. This cause of action is brought pursuant to Labor Code § 2802, which provides
9 that employees are entitled to be indemnified for expenses and losses in discharging the duties of
10 their employers.

11 38. At all relevant times, Defendant regularly failed to reimburse and indemnify
12 Plaintiff and the Class members for business expenses incurred in the discharge of their duties.
13 Specifically, Defendant failed to reimburse Plaintiff and Class Members for the costs of mileage
14 to travel from store to store. Further, Defendant failed to reimburse Plaintiff and Class Members
15 for the costs to download various apps onto their personal cell phones and the costs to use such
16 apps in order to perform their job duties, including to keep track of their hours worked.

17 39. Defendant had a uniform corporate pattern and practice and procedure regarding
18 the above practices in violation of Labor Code § 2802.

19 40. Such a pattern, practice and uniform administration of corporate policy regarding
20 illegal employee compensation as described herein is unlawful and creates an entitlement to
21 recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of damages
22 owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to the
23 mandate of California Labor Code § 2802.

24 **FOURTH CAUSE OF ACTION**

25 **VIOLATION OF BUS. & PROF. CODE § 17200**

26 **(AGAINST ALL DEFENDANTS BY PLAINTIFF AND THE CLASS AND SUB-CLASS)**

27 41. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 40 as
28 though fully set for herein.

42. Defendants, and each of them, have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing and utilizing the employment practices outlined above, include, to wit, by failing to pay regular, minimum and overtime wages for all hours worked for hours spent during the on-boarding process and failing to reimburse business expenses in violation of Labor Code §§ 510, 1194, 1194.2, 1197, 1198, 1199, and 2802.

43. Defendants' utilization of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

44. Plaintiff seeks, individually and on behalf of other members of the Class similarly situated, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of herein. Specifically, Plaintiff seeks restitution for unpaid minimum, regular and overtime wages for the time Plaintiff and Class Members spent travelling from store to store and the time spent checking emails and text messages off-hours. Further, Plaintiff seeks restitution for unreimbursed business expenses. Specifically, Plaintiff seeks mileage reimbursement for travelling in their personal vehicles from store to stores. Plaintiff also seeks reimbursement for cell phone costs including the costs to download apps to perform their duties and the use of their personal cell phones to discharge their duties for Defendants.

45. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiff and other members of the Class the minimum working condition standards and conditions due to them under the California laws and the applicable IWC Wage Orders as specifically described therein.

FIFTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698, ET SEQ.

(BY PLAINTIFF AS PROXY FOR STATE OF CALIFORNIA AGAINST ALL
DEFENDANTS)

46. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 45 as though

1 fully set for herein.

2 47. Plaintiff brings this cause of action pursuant to the Private Attorneys General Act (the
3 “PAGA”), Labor Code § 2698, *et seq.*, and in this capacity seeks all applicable penalties on
4 behalf of the State of California and all similarly aggrieved employees for Defendant’s violations
5 of §§ 201-204, 226, 510, 1194, 1194.2, 1197, 1198, 1199, and 2802, for the time period of May
6 19, 2019, through the present.

7 48. On or about May 19, 2020, Plaintiff submitted his written notice to the Labor
8 Workforce Development Agency (the “LWDA”) of the violations of Labor Code §§ 201-204,
9 226, 510, 1194, 1194.2, 1197, 1198, 1199, and 2802, and to Defendant via certified mail. As of
10 the date of the filing of this Complaint, the LWDA has not informed Plaintiff whether it intends
11 to investigate the violations asserted by Plaintiff. Therefore, Plaintiff has exhausted his
12 administrative remedies and may seek all applicable penalties pursuant to the PAGA for
13 Defendant’s violations of the aforementioned statutes, including under Labor Code §§ 226.3 and
14 2699, as well as for costs and attorneys’ fees.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf
17 this suit is brought against Defendants, jointly and severally, as follows:

- 18 1. For an order certifying the proposed classes;
- 19 2. For an order appointing Plaintiff as the representative of the classes as described
20 herein;
- 21 3. For an order appointing Counsel for Plaintiff as class counsel;
- 22 4. Upon the First Cause of Action, for wages and penalties pursuant to Labor Code
23 §§ 201-204, 510, 1194, 1194.2 and 1197
- 24 5. Upon the Second Cause of Action, for penalties pursuant to Labor Code § 226;
- 25 6. Upon the Third Cause of Action, for damages pursuant to Labor Code §2802;
- 26 7. Upon the Fourth Cause of Action, for restitution pursuant to Business and
27 Professions Code §17200, *et seq.*;
- 28 8. Upon the Fifth Cause of Action, for all applicable civil penalties under Labor

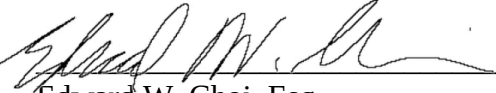
1 Code §§ 226.3 and 2699, as well as attorney's fees and costs;

2 9. On all causes of action for attorneys' fees and costs as provided by California
3 Labor Code §§218.5, 226, 1194, 2802 and 2699 and Code of Civil Procedure § 1021.5, and

4 10. For such other and further relief the Court may deem just and proper.
5

6 Dated: August 3, 2020

LAW OFFICES OF CHOI & ASSOCIATES

7
8 By: 
9 Edward W. Choi, Esq.
10 Attorney for Plaintiff and the Class
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28