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Superior Court of California
County of Los Angeles

JUL 14 2021

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

RECEIVED
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FILING WINDOW

DAVID LIZARRAGA, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

vs.

LANDCARE USA LLC, a Delaware limited
liability company; LANDCARE HOLDINGS,
INC., a Delaware corporation, doing business
as LANDCARE USA; and DOES 1 through
100, inclusive,

Defendants.

Case No. 21STCV14473

[Assigned for all purposes to the Honorable
Daniel J. Buckley, Dept. 1]

CLASS ACTION

FIRST AMENDED COMPLAINT &
ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.

- (1) Violation of California Labor Code
§§ 510, 1194, and 1198 (Failure to Pay
Regular and Overtime Wages);
- (2) Violation of California Labor Code
§§ 226.7 and 512(a) (Failure to Provide
Compliant Meal Periods or Pay Premium
Compensation in Lieu Thereof);
- (3) Violation of California Labor Code
§ 226.7 (Failure to Provide Compliant
Rest Periods or Pay Premium
Compensation in Lieu Thereof);
- (4) Violation of California Labor Code
§§ 201 – 203 (Failure to Pay Wages
Timely Upon Termination);

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- (5) Violation of California Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business-Related Expenses);
- (6) Violation of California Labor Code § 226(a) (Failure to Provide Accurate Itemized Wage Statements);
- (7) Violation of California Business & Professions Code §§ 17200, *et seq.*; and
- (8) Penalties pursuant to California Labor Code §§ 2698, *et seq.* (Private Attorneys General Act).

JURY TRIAL DEMANDED

Plaintiff DAVID LIZARRAGA, individually and on behalf of all other members of the public similarly situated, alleges as follows:

THE PARTIES

1. Plaintiff DAVID LIZARRAGA ("Plaintiff") is at least 18 years of age and is a resident of the County of Los Angeles in the State of California.

2. Defendant LANDCARE USA, LLC, was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and in the State of California.

3. Defendant LANDCARE HOLDINGS, INC., doing business in California as LANDCARE USA, was and is, upon information and belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and in the State of California.

4. Plaintiff is unaware of the true names or capacities of defendants sued herein under the fictitious names DOES 1 through 100, but prays for leave to amend and serve such fictitiously named defendants pursuant to California Code of Civil Procedure § 474 once their names and capacities become known.

8. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

JURISDICTION AND VENUE

9. This class action is brought pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The amount in controversy for each class representative, including claims for compensatory damages and pro rata share of attorneys' fees, is less than \$75,000.

10. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other courts.” The statutes under which this action is brought do not specify any other basis for jurisdiction.

11. This Court has jurisdiction over all Defendants because, upon information and

1 belief, each party is either a citizen of California, has sufficient minimum contacts in California, or
2 otherwise intentionally avails itself of the California market so as to render the exercise of
3 jurisdiction over it by the California courts consistent with traditional notions of fair play and
4 substantial justice.

5 12. Venue is proper in this Court because, upon information and belief, one or more of
6 the named Defendants reside, transact business, or have offices in this county and the acts and
7 omissions alleged herein took place in this county.

8
9 **CLASS ACTION ALLEGATIONS**

10 13. Plaintiff brings this action on his own behalf, as well as on behalf of each and all
11 other persons similarly situated, and thus, seeks class certification under California Code of Civil
12 Procedure § 382.

13 14. All claims alleged herein arise under California law for which Plaintiff seeks relief
14 authorized by California law.

15 15. Plaintiff's proposed class consists of and are defined as:

16 All non-exempt employees who have worked for Defendants in
17 the State of California at any time between four years prior to the
18 filing of this complaint and the date of final judgment in this
19 action.

20 16. Plaintiff reserves the right to establish additional subclasses as appropriate.

21 17. There is a well-defined community of interest in the litigation and the class is
22 readily ascertainable:

23 (a) Numerosity: The members of the class (and each subclass, if any) are so
24 numerous that joinder of all members would be unfeasible and
25 impractical. The membership of the entire class is unknown to Plaintiff at
26 this time, however, the class is estimated to be greater than fifty (50)
27 individuals and the identity of such membership is readily ascertainable by
28 inspection of Defendants' employment records.

- 1 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
2 the interests of each class member with whom he has a well-defined
3 community of interest, and Plaintiff's claims (or defenses, if any) are
4 typical of all class members' as demonstrated herein.
- 5 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately, protect
6 the interests of each class member with whom he has a well-defined
7 community of interest and typicality of claims, as demonstrated herein.
8 Plaintiff acknowledges that he has an obligation to make known to the
9 Court any relationship, conflicts or differences with any class member.
10 Plaintiff's attorneys, the proposed class counsel, are well-versed in the
11 rules governing class action discovery, certification, and settlement.
12 Plaintiff and his counsel have incurred, and throughout the duration of this
13 action, will continue to incur costs and attorneys' fees that have been, are,
14 and will be necessarily expended for the prosecution of this action for the
15 substantial benefit of each class member.
- 16 (d) Superiority: The nature of this action makes the use of class action
17 adjudication superior to other methods. A class action will achieve
18 economies of time, effort and expense as compared with separate lawsuits,
19 and will avoid inconsistent outcomes because the same issues can be
20 adjudicated in the same manner and at the same time for the entire class.
- 21 (e) Public Policy Considerations: Employers in the State of California violate
22 employment and labor laws every day. Current employees are often afraid
23 to assert their rights out of fear of direct or indirect retaliation. Former
24 employees are fearful of bringing actions because they believe their
25 former employers might damage their future endeavors through negative
26 references and/or other means. Class actions provide the class members
27 who are not named in the complaint with a type of anonymity that allows
28 for the vindication of their rights at the same time as their privacy is

protected.

18. There are common questions of law and fact as to the class (and each subclass, if any) that predominate over questions affecting only individual members, including but not limited to:

- (a) Whether Defendants paid Plaintiff and similarly situated employees no less than the applicable minimum wage for all hours worked, as required by California law;
- (b) Whether Defendants paid Plaintiff and similarly situated employees for all of their overtime hours at the correct hourly rate, as required by California law;
- (c) Whether Defendants have provided Plaintiff and class members with 30-minute, duty-free meal periods within the first five hours of work, and/or provided a second 30-minute, duty-free meal period on shifts longer than 10 hours, and whether Defendants have paid the required premiums when such meal periods were not provided, as required by California law;
- (d) Whether Defendants have provided Plaintiff and class members with 10-minute rest periods for every four hours worked or major fraction thereof, and whether Defendants have paid the required premiums when such rest periods were not provided, as required by California law;
- (e) Whether Defendants paid Plaintiff and class members all wages owed upon the separation of their employment within the time periods required by California law;
- (f) Whether Defendants reimbursed Plaintiff and class members for all necessary business-related expenses;
- (g) Whether Defendants provided accurate, itemized wage statements to Plaintiff and class members, as required by California law;
- (h) Whether Defendants' conduct, as described above, was willful or reckless;
- (i) Whether Defendants engaged in unfair business practices in violation of

California Business & Professions Code §§ 17200, *et seq.*; and

- (j) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

GENERAL ALLEGATIONS

19. At all relevant times set forth herein, Defendants employed Plaintiff and other persons as non-exempt employees who belong to the class as set forth above.

20. Defendants employed Plaintiff DAVID LIZARRAGA as a non-exempt, hourly-paid employee from approximately May 22, 2020 to approximately August 14, 2020. Plaintiff worked as an Irrigator Driver at landscaping jobsites in Culver City, California and Los Angeles, California. Plaintiff's job duties primarily consisted of performing sprinkler repair and landscaping duties. These tasks included installing and repairing sprinklers, and drenching by hand.

21. At all relevant times set forth herein, Defendants systematically failed to pay overtime wages to Plaintiff and other similarly situated non-exempt employees (sometimes collectively "employees" or "class members").

22. Plaintiff and class members regularly worked more than 8 hours per day and/or more than 40 hours per week and were not paid for their overtime hours. Defendants' policy and practice was to pay employees for 8 hours per day and/or 40 hours per week, even if employees worked longer. The time records typically showed a shift start time of 6:00 a.m. and a shift end time of 2:30 p.m. every day of the workweek. These start and end times were typed on the timesheet. Employees signed and dated their timesheets, but did not fill the timesheets out themselves. At times, the timesheets did not show any shift start or end time at all, only a total number of hours for the day. Meal break times were not recorded.

23. At all relevant times set forth herein, Defendants have failed to provide compliant meal periods to Plaintiff and other similarly situated employees, as required by California law. Plaintiff and class members were deprived of the opportunity to take a timely, duty-free meal break of at least 30 minutes for every 5 hours of work due to the working conditions imposed by

1 Defendants. In addition, Defendants did not maintain records of when employees started and
2 stopped their meal breaks, or if meal breaks were taken at all. Defendants' policy and practice
3 was to automatically deduct 30 minutes from every shift for meal breaks, regardless of whether
4 employees actually received an uninterrupted 30-minute meal break.

5 24. Defendants did not pay meal break premiums to Plaintiff and other similarly
6 situated employees when compliant meal periods were not provided.

7 25. Defendants systematically failed to provide Plaintiff and other similarly situated
8 employees with rest periods of at least 10 minutes for each 4 hours worked or major fraction
9 thereof. Plaintiff and class members were not made aware of Defendants' rest break policy (if
10 any) and were not told that they could take rest breaks. As a result, they did not take rest breaks.
11 Defendants did not pay rest break premiums to Plaintiff and other similarly situated employees
12 when compliant rest periods were not provided.

13 26. At all relevant times set forth herein, Defendants failed to reimburse Plaintiff and
14 other similarly situated employees for necessary business-related expenses, including, but not
15 limited to, tools and drinking water. Defendants' pattern and practice was to unlawfully shift the
16 costs of doing business onto Plaintiff and other similarly situated employees by requiring them to
17 pay these necessary work-related expenses out of their own pockets.

18 27. At all relevant times set forth herein, Defendants failed to pay Plaintiff and other
19 similarly situated employees all wages owed upon the separation of their employment, including
20 the unpaid overtime wages described herein.

21 28. At all relevant times set forth herein, Defendants have failed to provide Plaintiff
22 and other similarly situated employees with accurate itemized wage statements, as required by
23 California Labor Code § 226(a). The number of hours worked and the corresponding hourly rates
24 are inaccurate as a consequence of Defendants' failure to pay overtime wages, as set forth herein.

25 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
26 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
27 advisors knowledgeable about California labor and wage law, employment and personnel
28 practices, and about the requirements of California law.

1 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and similarly situated employees were entitled to receive
3 minimum wage for all hours worked as well as overtime pay at one-and-a-half times the regular
4 rate of pay, but that Plaintiff and similarly situated employees were not paid all their hours worked
5 and/or were not paid at the correct hourly rate.

6 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other similarly situated employees were entitled to receive all
8 meal periods as required by California law, or payment of one additional hour of pay at the regular
9 rate of pay when a compliant meal period was not provided.

10 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other similarly situated employees were entitled to receive all
12 rest periods as required by California law, or payment of one additional hour of pay at the regular
13 rate of pay when a compliant rest period was not provided.

14 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other similarly situated employees were entitled to timely
16 payment of all wages—including, without limitation, regular and overtime wages—due upon
17 termination or discharge in accordance with California law, and that they were not timely paid
18 such wages.

19 34. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
20 should have known that Plaintiff and similarly situated employees were entitled to receive
21 reimbursement for all necessary business-related expenses incurred by them, and that Plaintiff and
22 other similarly situated employees did incur such expenses and were not reimbursed.

23 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other similarly situated employees were entitled to receive
25 complete and accurate wage statements in accordance with California law, and that such wage
26 statements were not provided.

27 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff

1 and other similarly situated employees, and that Defendants had the financial ability to pay such
2 compensation, but willfully, knowingly and intentionally failed to do so, and falsely represented to
3 Plaintiff and other similarly situated employees that they were properly denied wages, all in order
4 to increase Defendants' profits.

5 37. California Labor Code § 218 states that nothing in Article 1 of the Labor Code shall
6 limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or
7 her] under this article.

8 38. At all times herein set forth, California Private Attorneys General Act, Labor Code
9 §§ 2698, *et seq.* ("PAGA") was applicable to Plaintiff's employment by Defendants.

10 39. At all times herein set forth, PAGA provides that any provision of law under the
11 California Labor Code that provides for a civil penalty to be assessed and collected by the Labor
12 and Workforce Development Agency for violations of the California Labor Code may, as an
13 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
14 himself or herself and other current or former employees pursuant to procedures outlined in
15 California Labor Code § 2699.3.

16 40. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved
17 employee," who is any person that was employed by the alleged violator and against whom one or
18 more of the alleged violations was committed.

19 41. Plaintiff was employed by Defendants and the alleged violations were committed
20 against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff
21 and other employees are "aggrieved employees" as defined by California Labor Code § 2699(c) in
22 that they are all current or former employees of Defendants, and one or more of the alleged
23 violations were committed against them.

24 42. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved employee,
25 including Plaintiff, may pursue a civil action arising under PAGA after the following requirements
26 have been met:

- 27 (a) The aggrieved employee or representative shall give written notice by
28 online filing with the Labor and Workforce Development Agency and by

1 certified mail to the employer of the specific provisions of this code alleged
2 to have been violated, including the facts and theories to support the alleged
3 violation.

4 (b) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
5 employer and the aggrieved employee by certified mail that it does not
6 intend to investigate the alleged violation within sixty (60) calendar days of
7 the postmark date of the Employee's Notice. Upon receipt of the LWDA
8 Notice, or if the LWDA Notice is not provided within sixty-five (65)
9 calendar days of the postmark date of the Employee's Notice, the aggrieved
10 employee may commence a civil action pursuant to California Labor Code
11 § 2699 to recover civil penalties in addition to any other penalties to which
12 the employee may be entitled.

13 (c) On April 21, 2021, Plaintiff provided the requisite written notice by online
14 filing to the LWDA and by certified mail to Defendant, informing them of
15 the specific provisions of the California Labor Code alleged to have been
16 violated, including the facts and theories to support the alleged violations.
17 As of the filing date of this complaint, Plaintiff and his counsel were not
18 provided with the LWDA Notice.

19 43. Plaintiff has satisfied the administrative prerequisites under California Labor Code
20 § 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for
21 violations of California Labor Code §§ 201, 202, 226, 226.7, 227.3, 510, 512, 1194, 1198, 2800
22 and 2802.

23
24 **FIRST CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 510, 1194, and 1198**

26 **(Against All Defendants)**

27 44. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
28 material allegations set out in paragraphs 1 through 43.

1 45. California Labor Code § 510 codifies the right to overtime compensation at one-
2 and-one-half times the regular hourly rate for hours worked in excess of 8 hours in a day or 40
3 hours in a week or for the first 8 hours worked on the seventh day of work, and to overtime
4 compensation at twice the regular hourly rate for hours worked in excess of 12 hours in a day or in
5 excess of 8 hours in a day on the seventh day of work.

6 46. During the relevant time period, Plaintiff and class members consistently worked in
7 excess of 8 hours in a day, in excess of 12 hours in a day, and/or in excess of 40 hours in a week.

8 47. California Labor Code § 1198 and the applicable Industrial Welfare Commission
9 (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at
10 a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on
11 the number of hours worked by the person on a daily or weekly basis.

12 48. Specifically, the applicable IWC Wage Order provides that Defendants are and
13 were required to pay Plaintiff and class members employed by Defendants, and working more
14 than 8 hours in a day or more than 40 hours in a workweek, at the rate of time-and-one-half for all
15 hours worked in excess of 8 hours in a day or more than 40 hours in a workweek.

16 49. The applicable IWC Wage Order further provides that Defendants are and were
17 required to pay Plaintiff and class members employed by Defendants, and working more than 12
18 hours in a day, overtime compensation at a rate of two times their regular rate of pay.

19 50. During the relevant time period, Defendants willfully failed to pay all wages,
20 including overtime wages, owed to Plaintiff and class members.

21 51. Plaintiff and class members regularly worked more than 8 hours per day and/or
22 more than 40 hours per week and were not paid for their overtime hours. Defendants’ policy and
23 practice was to pay employees for 8 hours per day and/or 40 hours per week, even if employees
24 worked longer. The time records typically showed a shift start time of 6:00 a.m. and a shift end
25 time of 2:30 p.m. every day of the workweek. These start and end times were typed on the
26 timesheet. Employees signed and dated their timesheets, but did not fill the timesheets out
27 themselves. At times, the timesheets did not show any shift start or end time at all, only a total
28 number of hours for the day. Meal break times were not recorded.

52. Defendants' failure to pay Plaintiff's and class members' overtime wages violates the provisions of California Labor Code §§ 510, 1194 and 1198, and is therefore unlawful.

53. Plaintiff and class members are entitled to recover unpaid wages and such general and special damages as may be appropriate and interest thereon.

54. Pursuant to California Labor Code § 1194, Plaintiff and class members are entitled to recover their unpaid overtime wages, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

Violation of California Labor Code §§ 226.7 and 512(a)

(Against All Defendants)

55. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 54.

56. At all relevant times, the applicable IWC Wage Order and California Labor Code §§ 226.7 and 512(a) were applicable to Plaintiff's and class members' employment by Defendants.

57. At all relevant times, California Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by an applicable order of the California IWC.

58. At all relevant times, the applicable IWC Wage Order and California Labor Code § 512(a) provide that an employer may not require, cause or permit an employee to work for a period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes, except that if the total work period per day of the employee is not more than 6 hours, the meal period may be waived by mutual consent of both the employer and the employee.

59. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause or permit an employee to work for a period of more than 10 hours per day without providing the employee with a second uninterrupted meal period of not less than 30 minutes, except that if the total hours worked is not more than 12 hours, the second meal period may be waived by mutual consent of the employer

1 and the employee only if the first meal period was not waived.

2 60. During the relevant time period, Plaintiff and class members who were scheduled
3 to work for a period of time no longer than 6 hours, and who did not waive their legally-mandated
4 meal periods by mutual consent, were required to work for periods longer than 5 hours without an
5 uninterrupted meal period of not less than 30 minutes.

6 61. During the relevant time period, Plaintiff and class members who were scheduled
7 to work for a period of time in excess of 6 hours were required to work for periods longer than 5
8 hours without an uninterrupted meal period of not less than 30 minutes.

9 62. During the relevant time period, Defendants willfully required Plaintiff and class
10 members to work during meal periods and failed to compensate Plaintiff and class members for
11 work performed during meal periods.

12 63. At all relevant times set forth herein, Defendants have failed to provide compliant
13 meal periods to Plaintiff and other similarly situated employees, as required by California law.
14 Plaintiff and class members were deprived of the opportunity to take a timely, duty-free meal
15 break of at least 30 minutes for every 5 hours of work due to the working conditions imposed by
16 Defendants. In addition, Defendants did not maintain records of when employees started and
17 stopped their meal breaks, or if meal breaks were taken at all. Defendants' policy and practice
18 was to automatically deduct 30 minutes from every shift for meal breaks, regardless of whether
19 employees actually received an uninterrupted 30-minute meal break.

20 64. During the relevant time period, Defendants failed to pay Plaintiff and class
21 members the full meal period premium due for non-compliant meal periods pursuant to California
22 Labor Code § 226.7.

23 65. Defendants' conduct violates the applicable IWC Wage Orders and California
24 Labor Code §§ 226.7 and 512(a).

25 66. Pursuant to the applicable IWC Wage Order and California Labor Code § 226.7(b),
26 Plaintiff and class members are entitled to recover from Defendants one additional hour of pay at
27 the employees' regular hourly rate of compensation for each work day that a compliant meal
28 period was not provided.

THIRD CAUSE OF ACTION

Violation of California Labor Code § 226.7

(Against All Defendants)

67. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 66.

68. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code § 226.7 were applicable to Plaintiff's and class members' employment by Defendants.

69. At all relevant times, California Labor Code § 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

70. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

71. During the relevant time period, Defendants required Plaintiff and class members to work 4 or more hours without authorizing or permitting a 10-minute rest period per each 4 hour period worked or major fraction thereof.

72. Defendants systematically failed to provide Plaintiff and other similarly situated employees with rest periods of at least 10 minutes for each 4 hours worked or major fraction thereof. Plaintiff and class members were not made aware of Defendants' rest break policy (if any) and were not told that they could take rest breaks. As a result, they did not take rest breaks. Defendants did not pay rest break premiums to Plaintiff and other similarly situated employees when compliant rest periods were not provided.

73. During the relevant time period, Defendants failed to pay Plaintiff and class members the full rest period premium due for non-compliant rest periods pursuant to California

1 Labor Code § 226.7.

2 74. Defendants' conduct violates the applicable IWC Wage Orders and California
3 Labor Code § 226.7.

4 75. Pursuant to the applicable IWC Wage Order and California Labor Code § 226.7(b),
5 Plaintiff and class members are entitled to recover from Defendants one additional hour of pay at
6 the employee's regular hourly rate of compensation for each work day that the rest period was not
7 provided.

8
9 **FOURTH CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 201, 202 and 203**

11 **(Against All Defendants)**

12 76. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
13 material allegations set out in paragraphs 1 through 75.

14 77. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if
15 an employer discharges an employee, the wages earned and unpaid at the time of discharge are
16 due and payable immediately, and that if an employee voluntarily leaves his or her employment,
17 his or her wages shall become due and payable not later than 72 hours thereafter, unless the
18 employee has given 72 hours previous notice of his or her intention to quit, in which case the
19 employee is entitled to his or her wages at the time of quitting.

20 78. At all relevant times set forth herein, Defendants failed to pay Plaintiff and other
21 similarly situated employees all wages owed upon the separation of their employment, including
22 the unpaid overtime wages described herein.

23 79. Defendants' failure to pay Plaintiff and those class members who are no longer
24 employed by Defendants their wages earned and unpaid at the time of discharge, or within 72
25 hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201, 202
26 and 203.

27 80. All California employers know or should know that employees must be paid for all
28 hours worked, and must be paid overtime at a rate of one-and-a-half times the regular rate of pay

1 for overtime hours as defined by California law. Defendant's failure to abide by this well-
2 established law is willful and not in good faith.

3 81. California Labor Code § 203 provides that if an employer willfully fails to pay
4 wages owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue as
5 a penalty from the due date, and at the same rate until paid or until an action is commenced; but
6 the wages shall not continue for more than thirty (30) days.

7 82. Plaintiff and class members are entitled to recover from Defendants the statutory
8 penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to
9 California Labor Code § 203.

10
11 **FIFTH CAUSE OF ACTION**

12 **Violation of California Labor Code §§ 2800 and 2802**

13 **(Against All Defendants)**

14 83. Plaintiff incorporates by references and re-alleges as if fully stated herein the
15 material allegations set out in paragraphs 1 through 82.

16 84. At all material times set forth herein, California Labor Code § 2802 provides that
17 an employer must reimburse employees for all necessary expenditures or losses incurred in direct
18 consequence of the discharge of their duties.

19 85. During the relevant time period, Defendants required Plaintiff and other class
20 members to absorb those necessary expenditures and losses, wrongfully shifting Defendants' cost
21 of doing business onto Plaintiff and other class members.

22 86. At all relevant times set forth herein, Defendants failed to reimburse Plaintiff and
23 other similarly situated employees for necessary business-related expenses, including, but not
24 limited to, tools and drinking water. Defendants' pattern and practice was to unlawfully shift the
25 costs of doing business onto Plaintiff and other similarly situated employees by requiring them to
26 pay these necessary work-related expenses out of their own pockets.

27 87. Defendants' pattern and practice was to unlawfully shift the costs of doing business
28 onto Plaintiff and other similarly situated employees by requiring them to pay these necessary

1 work-related expenses out of their own pockets.

2 88. Defendants unlawfully shifted its costs of doing business onto Plaintiff and other
3 similarly situated employees by requiring them to pay for these items out of their own pockets.

4 89. Plaintiff and other class members are entitled to recover from Defendants their
5 business-related expenses and the losses charged to them and incurred during the course and scope
6 of their employment, plus interest and an award of costs and reasonable attorneys' fees pursuant to
7 California Labor Code § 2802.

8
9 **SIXTH CAUSE OF ACTION**

10 **Violation of California Labor Code § 226(a)**

11 **(Against All Defendants)**

12 90. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
13 material allegations set out in paragraphs 1 through 89.

14 91. At all material times set forth herein, California Labor Code § 226(a) provides that
15 every employer shall furnish each of his or her employees an accurate itemized wage statement in
16 writing showing the following information: (1) gross wages earned; (2) total hours worked by the
17 employee, except for any employee whose compensation is solely based on a salary and who is
18 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
19 the Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable
20 piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all
21 deductions made on written orders of the employee may be aggregated and shown as one item; (5)
22 net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the
23 name of the employee and his or her social security number, except that by January 1, 2008, only
24 the last four digits of his or her social security number or an employee identification number other
25 than a social security number may be shown on the itemized statement; (8) the name and address
26 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
27 period and the corresponding number of hours worked at each hourly rate by the employee

28 92. Defendants have intentionally and willfully failed to provide employees with

1 complete and accurate wage statements. The number of hours worked and the corresponding
2 hourly rates are inaccurate as a consequence of Defendants' failure to pay overtime wages, as set
3 forth herein.

4 93. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
5 and class members have suffered injury and damage to their statutorily-protected rights.

6 94. Specifically, Plaintiff and other class members have been injured by Defendants'
7 intentional violation of California Labor Code § 226(a) because they were denied both their legal
8 right to receive, and their protected interest in receiving, accurate, itemized wage statements under
9 California Labor Code § 226(a). Plaintiff and other class members have been injured by
10 Defendants' intentional violation of California Labor Code § 226(a) in that it has caused confusion
11 over whether they had received all of the wages owed them, in addition to their difficulty and
12 expense in reconstructing pay records and making mathematical computations to analyze whether
13 the wages paid them did in fact compensate them for all hours worked

14 95. Furthermore, Labor Code § 226(e)(2)(B) provides that an employee is deemed to
15 suffer injury if the wage statement fails to accurately and completely provide certain pieces of
16 information and the employee cannot promptly and easily determine such information from the
17 wage statement alone. In relevant part, Labor Code § 226(e)(2)(B) provides that an employee is
18 deemed to suffer injury if the wage statement does not accurately and completely state the total
19 number of hours worked by the employee, and all applicable hourly rates in effect during the pay
20 period and the corresponding number of hours worked at each hourly rate.

21 96. Plaintiff and class members are deemed to have suffered injury because their wage
22 statements did not provide complete and accurate information regarding the total number of hours
23 they worked in a given pay period, the applicable hourly rates in effect during the pay period, and
24 the corresponding number of hours worked at each hourly rate.

25 97. Plaintiff and class members are entitled to recover from Defendants the greater of
26 their actual damages caused by Defendants' failure to comply with California Labor Code §
27 226(a), or an aggregate penalty not exceeding \$4,000 per employee.

28 ///

SEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.*

(Against All Defendants)

98. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 97.

99. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other class members, and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

100. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code §§ 17200, *et seq.*

101. A violation of California Business & Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law. In this case, Defendants' policy and practice of failing to pay Plaintiff and class members the proper hourly rates for all overtime hours worked violates California Labor Code §§ 510, 1194, and 1198; Defendants' policy and practice of requiring Plaintiff and class members to work through their meal and rest periods without paying them proper compensation violates California Labor Code §§ 226.7 and 512(a); Defendants' policy and practice of not timely paying all wages owed to Plaintiff and other similarly situated employees upon resignation or termination violates California Labor Code §§ 201, 202, and 203; Defendants' policy and practice of not reimbursing Plaintiff and class members for necessary business-related expenses violates California Labor Code §§ 2800 and 2802; and Defendants' policy and practice of failing to provide accurate itemized wage statements violate California Labor Code § 226.

102. Plaintiff and putative class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

103. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff and

putative class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

EIGHTH CAUSE OF ACTION

Penalties pursuant to California Labor Code §§ 2698, *et seq.*

(Private Attorneys General Act)

(Against all Defendants)

104. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 103.

105. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

106. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to procedures outlined in California Labor Code § 2699.3.

107. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

108. Plaintiff was employed by Defendants and the alleged violations were committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and other employees are "aggrieved employees" as defined by California Labor Code § 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

109. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved employee,

1 including Plaintiff, may pursue a civil action arising under PAGA after the following requirements
2 have been met:

- 3 (a) The aggrieved employee or representative shall give written notice by
4 online filing with the Labor and Workforce Development Agency
5 (“LWDA”) and by certified mail to the employer of the specific provisions
6 of this code alleged to have been violated, including the facts and theories
7 to support the alleged violation.
- 8 (b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
9 employer and the aggrieved employee by certified mail that it does not
10 intend to investigate the alleged violation within sixty (60) calendar days of
11 the postmark date of the Employee’s Notice. Upon receipt of the LWDA
12 Notice, or if the LWDA Notice is not provided within sixty-five (65)
13 calendar days of the postmark date of the Employee’s Notice, the aggrieved
14 employee may commence a civil action pursuant to California Labor Code
15 § 2699 to recover civil penalties in addition to any other penalties to which
16 the employee may be entitled.
- 17 (c) On April 21, 2021, Plaintiff provided the requisite written notice by online
18 filing to the LWDA and by certified mail to Defendant, informing them of
19 the specific provisions of the California Labor Code alleged to have been
20 violated, including the facts and theories to support the alleged violations.
21 As of the filing date of this complaint, Plaintiff and his counsel were not
22 provided with the LWDA Notice.

23 110. Plaintiff has satisfied the administrative prerequisites under California Labor Code
24 § 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for
25 violations of California Labor Code §§ 201, 202, 226, 226.7, 227.3, 510, 512, 1194, 1198, 2800
26 and 2802.

27 ///

28 ///

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

As to the First Cause of Action

1. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 510, 1194 and 1198 and applicable IWC Wage Orders by willfully failing to pay all wages, including overtime wages, due to Plaintiff and class members;

2. For general unpaid wages at the applicable wage rates and such general and special damages as may be appropriate;

3. For pre-judgment interest on any unpaid wages commencing from the date such amounts were due;

4. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and

5. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

6. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods to Plaintiff and class members;

7. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a compliant meal period was not provided;

8. For all actual, consequential, and incidental losses and damages, according to proof;

9. For premiums pursuant to California Labor Code § 226.7(b);

10. For pre-judgment interest on any unpaid wages from the date such amounts were

1 due; and

2 11. For such other and further relief as the Court may deem equitable and appropriate.

3 As to the Third Cause of Action

4 12. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code § 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest
6 periods to Plaintiff and class members;

7 13. That the Court make an award to the Plaintiff and class members of one (1) hour of
8 pay at each employee's regular rate of compensation for each workday that a compliant rest period
9 was not provided;

10 14. For all actual, consequential, and incidental losses and damages, according to
11 proof;

12 15. For premiums pursuant to California Labor Code § 226.7(b);

13 16. For pre-judgment interest on any unpaid wages from the date such amounts were
14 due; and

15 17. For such other and further relief as the Court may deem equitable and appropriate.

16 As to the Fourth Cause of Action

17 18. That the Court declare, adjudge and decree that Defendants violated California
18 Labor Code §§ 201, 202, and 203 by willfully failing to pay Plaintiff and class members all
19 compensation owed to them at the time of their termination of the employment;

20 19. For all actual, consequential and incidental losses and damages, according to
21 proof;

22 20. For statutory penalties pursuant to California Labor Code § 203; and

23 21. For such other and further relief as the Court may deem equitable and appropriate.

24 As to the Fifth Cause of Action

25 22. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code § 2802 by unlawfully failing to indemnify Plaintiff and other class members for losses
27 caused by Defendants' want of ordinary care and for the necessary expenditures or losses incurred
28 in direct consequence of the discharge of their duties, or of their obedience to the directions of

Defendants

23. For all actual damages, according to proof;

24. For pre-judgment interest on any necessary expenditures or losses paid by Plaintiff and other class members, from the date such amounts were paid; and

25. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 2802(c).

As to the Sixth Cause of Action

26. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders as to Plaintiff and class members, and willfully failed to provide accurate itemized wage statements thereto;

27. For all actual, consequential and incidental losses and damages, according to proof;

28. For statutory penalties pursuant to California Labor Code § 226(e); and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code §§ 17200, *et seq.* by failing to pay Plaintiff and class members all wages due to them, including overtime wages; failing to provide compliant meal and rest periods to Plaintiff and class members and failing to pay premium wages when compliant meal and rest periods were not provided; failing to timely pay all wages due upon employees' resignation or termination under California Labor Code § 201 – 203; failing to reimburse Plaintiff and class members for necessary business-related expenses under California Labor Code §§ 2800 and 2802; and failing to provide Plaintiff and class members with compliant wage statements under California Labor Code § 226.

31. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

32. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants

1 as a result of violations of California Business & Professions Code §§ 17200 *et seq.*;

2 33. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
3 California Code of Civil Procedure § 1021.5; and

4 34. For such other and further relief as the Court may deem equitable and appropriate.

5 As to the Eighth Cause of Action

6 35. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the
7 amount of \$100 dollars for each violation per pay period for the initial violation and \$200 for each
8 aggrieved employee per pay period for each subsequent violation, plus attorneys' fees and costs;
9 and,

10 36. For such other and further relief as the Court may deem equitable and appropriate.

11
12 Dated: July 14, 2021

AEQUITAS LEGAL GROUP

13
14 By: 

15 RONALD H. BAE
16 OLIVIA D. SCHARRER

17 Attorneys for Plaintiff DAVID LIZARRAGA
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18, and my business address is 1156 E. Green Street, Suite 200, Pasadena, California 91106.

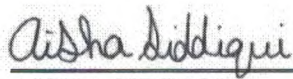
On July 14, 2021, I served the document described as **CLASS ACTION - FIRST AMENDED COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the following interested parties and/or their counsel in this action by the method(s) noted below:

Meryl C. Maneker
Kirsten F. Gallacher
Michaela P. Delacruz
WILSON TURNER KOSMO LLP
402 West Broadway, Suite 1600
San Diego, California 92101
Telephone: (619) 236-9600
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Attorneys for Defendants LANDCARE USA LLC and LANDCARE HOLDINGS, INC.

- ☐ **(BY FIRST CLASS MAIL):** I caused an envelope containing the above-described document to be deposited in the United States mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.
- ☐ **(BY EXPRESS MAIL):** I placed the above-described document in an envelope for collection and delivery on this date in accordance with the standard express mail procedures of the United States Postal Service.
- ☐ **(BY EMAIL):** The above-described document was emailed to the above addressee(s)' email address(es) as a courtesy.
- ☒ **(BY ELECTRONIC SERVICE):** I caused the above-described document to be served electronically via Case Anywhere (authorized and court-approved Electronic Filing Service Provider).
- ☐ **(BY PERSONAL SERVICE):** I personally served the above-described document to the above addressee(s) on this day.
- ☒ **(STATE):** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 14, 2021 at Pasadena, California.


AISHA SIDDIQUI



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