

MAYALL HURLEY P.C.
JOHN P. BRISCOE (SBN: 273690)
jbriscoe@mayallaw.com
2453 Grand Canal Boulevard
Stockton, California 95207-8253
Telephone: (209) 477-3833
Facsimile: (209) 473-4818

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STK-CV-UOE-2022-0000382

Attorneys for Plaintiff Michael Rodriguez

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

MICHAEL RODRIGUEZ, an individual,

Case No.:

Plaintiff,

COMPLAINT

vs.

LANDMARK CAPITAL, INC., a
corporation; ZACH DOWNS, an individual;
and DOES 1-100, inclusive,

Defendants.

1. FAILURE TO PAY MINIMUM WAGE
2. FAILURE TO PAY OVERTIME
3. FAILURE TO PAY SICK LEAVE AT
CORRECT RATE
4. FAILURE TO PROVIDE PAID REST
PERIODS OR PAY PREMIUMS
5. FAILURE TO PROVIDE MEAL PERIODS
OR PAY PREMIUMS
6. FAILURE TO FURNISH COMPLETE AND
ACCURATE ITEMIZED WAGE
STATEMENTS
7. FAILURE TO REIMBURSE FOR
BUSINESS EXPENSES
8. FAILURE TO PAY ALL WAGES DUE
UPON CESSATION OF EMPLOYMENT

Plaintiff Michael Rodriguez brings this action against Landmark Capital, Inc., a corporation;
Zach Downs, an individual; and Does 1 through 100, for violations of the Labor Code.

PARTIES

1. Michael Rodriguez ("Rodriguez" or "Plaintiff") at all times relevant herein was employed
in San Joaquin County, California and was an "employee" as defined by the California Labor Code.

GENERAL ALLEGATIONS

8. Rodriguez was hired by LCI dba Solar Energy Collective in Stockton, California on or around January 28, 2019 as Inside Sales Level II. Solar Energy Collective is a company that sells and installs solar energy systems for homes and businesses. In or around January 2021, Rodriguez was promoted to Regional Manager.

9. Downs is the chief executive officer, secretary, and chief financial officer of LCI, as well as its sole director.

10. Throughout his employment, Rodriguez was a full-time employee and worked overtime on a regular basis (and doubletime, though less regularly). However, LCI impermissibly failed to pay Rodriguez earned overtime and doubletime wages, in violation of the Labor Code.

11. Rodriguez never fell into any recognized exemption from California's overtime pay requirements. In 2019, Rodriguez's wage statements indicated that he received "regular earnings" (a flat salary), bonuses, and commissions. (**Exhibit 1.**) However, none of the remuneration paid to Rodriguez were in fact commissions, as they were not based on a percentage of the cost or sale price of the products sold. (See Lab. Code, § 204.1; *Keyes Motors v. DLSE* (1987) 197 Cal.App.3d 557.) Rather, all of these payments were nondiscretionary bonuses and/or other items of compensation, and were paid at a flat rate, regardless of the value of any particular sale. Accordingly, Rodriguez did not fall into the "commissioned salesperson" exemption from California's overtime pay requirements. (See IWC Wage Order No. 4, § 3(D).)

12. Nor did Rodriguez fall under any other recognized exemption from overtime; for example, even as Regional Manager, Rodriguez was not primarily engaged in managerial duties, did not customarily and regularly direct the work of two or more other employees, and did not have the authority to hire and fire employees (and suggestions regarding discipline, advancement, etc. of other employees was not given particular weight). (See IWC Wage Order No. 4, § 1(A)(1) ["executive" exemption].)

13. Rodriguez also did not earn a monthly salary equivalent to twice the minimum wage, was not a "professional" as defined under the professional exemption, and was not primarily engaged in general administrative work. (*Id.*, § 1(A)(2), (3).)

1 not adequately compensate Rodriguez for these expenditures. LCI paid Rodriguez a monthly gasoline
2 stipend (typically \$250), but this was insufficient. For example, in 2020 Rodriguez drove an average of
3 approximately 1,346 miles, per month, for business purposes; were he compensated at the appropriate
4 IRS mileage rate (then \$0.56), he would have been paid approximately \$754.09 for vehicle mileage.
5 Also, Rodriguez was required to use his cell phone in the course of his job duties. He was paid only \$30
6 per month as a cell phone stipend, but this was insufficient to compensate Rodriguez for the proportion
7 of his cell phone bill (which was approximately \$180 per month) that represented work-related calls.

8 20. Rodriguez's employment with LCI ended in September 2021. However, at no point since
9 the cessation of employment has Rodriguez been paid the full balance of wages due and owing, *supra*.

10 21. The foregoing list of misconduct is a partial list only, and set forth by way of example.

11 **FIRST CAUSE OF ACTION**
12 **FAILURE TO PAY MINIMUM WAGE**
13 **(Lab. Code, § 1182.12, *et seq.*)**
14 **Against Defendants**

15 22. Plaintiff hereby realleges and incorporates by reference each and every allegation set
16 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
17 allegations of this cause of action.

18 23. Labor Code section 1182.12 sets forth the minimum wage for employees in California.

19 24. Labor Code section 1197 provides that the minimum wage for employees fixed by the
20 commission is the minimum wage to be paid to employees, and the payment of a lesser wage is
21 unlawful.

22 25. Nevertheless, as set forth above, Defendants failed to pay Plaintiff the minimum wage for
23 every hour worked.

24 26. Labor Code section 1194 provides that, notwithstanding any agreement to work for a
25 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime

26 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the
27 full amount of this minimum wage or overtime compensation, including interest thereon, reasonable
28 attorney's fees, and costs of suit.

1 33. During the relevant time period, Plaintiff regularly and/or consistently worked in excess
2 of eight hours per day, in excess of forty hours per workweek, in excess of six days per workweek, and
3 in excess of twelve hours per day.

4 34. During the relevant time period, Defendants intentionally and willfully failed to pay
5 overtime wages owed to Plaintiff.

6 35. Pursuant to California Labor Code section 1194(a), notwithstanding any agreement to
7 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
8 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the
9 full amount of this minimum wage or overtime compensation, including interest thereon, reasonable
10 attorney's fees, and costs of suit.

11 36. Pursuant to Labor Code section 558.1, any employer or other person acting on behalf of
12 an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours
13 and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be
14 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such
15 violation.

16 37. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
17 provided.

18 **THIRD CAUSE OF ACTION**
19 **FAILURE TO PAY SICK LEAVE AT CORRECT RATE**
20 **(Labor Code, §§ 218, 233, 246 *et seq.*)**
 Against LCI and Does 1-100

21 38. Plaintiff hereby reallege and incorporate by reference each and every allegation set forth
22 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of
23 this cause of action.

24 39. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt
25 employees at that employee's "regular rate of pay."

26 40. The "regular rate of pay" includes all remuneration for employment paid to the employee
27 and includes, but is not limited to, hourly earnings, salary, piece work earnings, commissions, non-

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE PAID REST PERIODS OR PAY PREMIUMS
(Lab. Code, § 226.7)
Against Defendants

48. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

49. Labor Code section 226.7 requires employers to provide employees rest periods as mandated by Order of the Industrial Welfare Commission. It states:

- a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

50. Section 12 of the applicable IWC Wage Order provides:

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

51. During the relevant time period, Plaintiff was not provided with rest breaks as required by law and did not receive an additional hour of premium pay for each missed rest break.

52. Pursuant to Labor Code section 558.1, any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be

57. During the relevant time period, Plaintiff was not provided with compliant meal breaks, nor did he receive an additional hour of premium pay for each non-compliant meal break.

58. Pursuant to Labor Code section 558.1, any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

59. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

SIXTH CAUSE OF ACTION
FAILURE TO FURNISH COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS
(Lab. Code, §§ 226, subd. (a))
Against Defendants

60. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

61. Pursuant to Labor Code section 226, subdivision (a), “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee . . . , (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer . . . , (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer . . . , the rate of pay and the total hours worked for each temporary services assignment.”

1 days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated,
2 Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

3 67. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereinafter
4 provided.

5 **SEVENTH CAUSE OF ACTION**
6 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**
7 **(Lab. Code, § 2802.)**
8 **Against Defendants**

9 68. Plaintiff hereby realleges and incorporates by reference each and every paragraph set
10 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
11 allegations of this cause of action.

12 69. Labor Code section 202, subdivision (a) provides that “[a]n employer shall indemnify his
13 or her employee for all necessary expenditures or losses incurred by the employee in direct consequence
14 of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
15 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
16 unlawful.

17 70. Nonetheless, as set forth above, Defendants failed to reimburse Plaintiff for all incurred
18 business expenses.

19 71. Labor Code section 2802 further provides that, in an action for reimbursement of business
20 expenses, a prevailing plaintiff is entitled to an award of attorney’s fees.

21 72. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
22 provided.

23 **EIGHTH CAUSE OF ACTION**
24 **FAILURE TO PAY ALL WAGES DUE UPON CESSATION OF EMPLOYMENT**
25 **(Lab. Code, § 201)**
26 **Against Defendants**

27 73. Plaintiff hereby realleges and incorporates by reference each and every allegation set
28 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
allegations of this cause of action.

- 1 6. That this Court award statutory attorneys' fees and costs, including those available under
2 Labor Code sections 218.5, 226, subdivision (e)(1), and 1194, as well as Code of Civil
3 Procedure section 1021.5;
4 7. That this Court award prejudgment and post-judgment interest according to any
5 applicable provision of law or as otherwise permitted by law, including those available
6 under Civil Code sections 3287(a) and 3289(b); and
7 8. That this Court award such other and further relief as the court deems just and proper.

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9 **DATED:** January 20, 2022

MAYALL HURLEY P.C.

10 By _____



JOHN P. BRISCOE

Attorneys for Plaintiff

MICHAEL RODRIGUEZ

Exhibit 1



Earnings Statement

Solar Energy Collective
2309 W Alpine Ave
Stockton, CA 95204
Phone: 2098173723
FEIN: 383973979

Michael Rodriguez
SSN: ***-**-****

Compensation Type: Salary
Worker Type: Part Time

Period Beginning: Feb 24, 2019
Period Ending: Mar 10, 2019
Pay Day: Mar 21, 2019
Net Pay: \$627.50

Earnings	HOURS	RATE	CURRENT	YTD
Commission	-	14.42	1,000.00	1,000.00
Bonus	-	-	-	700.00
Regular Earnings	-	-	-	3,949.43
Gasoline Stipend	-	-	-	460.00
Total			1,000.00	6,109.43

Employer Contributions

There are no deductions.

Notes

Sick Leave Balance 24.00

Michael April Bonus

Reimbursements

There are no reimbursements.

Deductions

There are no deductions.

Taxes

CA - State Disability Insurance	10.00	61.09
CA - State Income Tax	66.00	74.99
FED - Federal Income Tax	220.00	393.99
FED - Medicare	14.50	88.59
FED - Social Security Tax	62.00	378.78
Total	372.50	997.44

Net Pay	627.50	5,111.99
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