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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

MICHAEL RODRIGUEZ, an individual,

Plaintiff,

vs.

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

Defendants.

Case No.: STK-CV-UOE-2022-0000382

FIRST AMENDED COMPLAINT

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
9. PRIVATE ATTORNEYS GENERAL ACT

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.

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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.

2. Landmark Capital, Inc. (“LCI”) is a California corporation formed under the laws of California and, at all times relevant herein, was an “employer” as defined by the California Labor Code.

3. Zach Downs (“Downs”) is an individual and a citizen of California and, at all times relevant herein, was an owner, director, officer, and/or managing agent of LCI, and Rodriguez’s employer within the meaning of Labor Code section 558.1. Downs established the policies, practices, and procedures which caused the Labor Code violations alleged herein.

4. LCI, Downs, and Does 1-100 are collectively referred to as Defendants.

5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff’s injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

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7. Venue is proper in this Court because the unlawful acts alleged herein took place in San Joaquin County and Rodriguez's place of employment with Defendants was, at all times relevant herein, located within San Joaquin County. Rodriguez hereby demands a jury trial.

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.

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.

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

1 to hire and fire employees (and suggestions regarding discipline, advancement, etc. of other employees
2 was not given particular weight). (See IWC Wage Order No. 4, § 1(A)(1) [“executive” exemption].)

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

6 14. Rodriguez also did not spend more than half of his working time away from Defendants’
7 place of business, so he could not be categorized as exempt as an outside salesperson. (*Id.*, § 1(C).)

8 15. LCI also failed to pay Rodriguez the minimum wage for all hours worked. Because he
9 was misclassified as exempt, Rodriguez was paid a flat monthly salary only (on a presumed 40-hour
10 workweek), regardless of how many hours he worked. As he frequently well in excess of 40 hours,
11 Rodriguez was not compensated at all for such excess time.

12 16. Furthermore, LCI failed to provide paid sick leave in accordance with the Labor Code.
13 Rodriguez accrued and used paid sick leave; however, when he took paid sick leave, such was paid out
14 only at Rodriguez’s base rate of pay, not accounting for the value of earned nondiscretionary bonuses
15 and other items of compensation. (See Lab. Code, § 246, subd. (l) [sick pay shall be paid at the regular
16 rate of pay].)

17 17. Rodriguez was also not provided with all rest and meal breaks to which he was entitled.
18 Under the misclassification of Rodriguez as an exempt employee, LCI did not relieve Rodriguez of all
19 duty and permit him to take (1) a paid, uninterrupted rest period of ten minutes for every work period of
20 four hours or more and (2) an unpaid, uninterrupted meal period of thirty minutes for every workshift
21 that was more than five hours. (See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.)
22 Furthermore, LCI did not pay Rodriguez an hour of pay at his regular rate of compensation (including
23 the value of nondiscretionary bonuses and other items of compensation) for every rest and meal period
24 which he was not permitted to take. (See *Ferra v. Loews Hollywood Hotel LLC* (2021) 11 Cal.5th 858
25 [rest and meal period premiums must account for value of all earned compensation].)

26 18. Because Rodriguez was not paid all minimum and overtime wages due, and was not
27 provided with premium pay for missed meal and rest breaks, the itemized wage statements issued to him

1 failed to accurately show gross wages earned, net wages earned, total hours worked, and all applicable
2 hourly rates in effect during the pay period and the corresponding number of hours worked at each rate.
3 Thus, Defendants violated Labor Code section 226(a).

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

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

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

16 22. On December 7, 2021, Rodriguez provided written notice to the Labor and Workforce
17 Development Agency ("LWDA") and Defendants regarding the specific provisions of the Labor Code
18 alleged to have been violated, including the facts and theories to support those alleged violations.

19 **(Exhibit 2.)**

20 23. As of the filing of this Complaint, more than 65 calendar days after Rodriguez's initial
21 written notice, the LWDA has not provided written notice that it intends to investigate any of
22 Rodriguez's allegations as set forth above. Accordingly, Rodriguez has satisfied the administrative
23 prerequisites under Labor Code section 2699.3 to bring a civil action to recover civil penalties against
24 Defendants, in addition to other remedies, for violations of the California Labor Code.

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

24. 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.

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

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

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

28. Labor Code section 1194 provides that, notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

29. Labor Code section 1194.2 provides that in any action under Labor Code section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

30. 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.

31. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME
(Lab. Code, § 510)
Against Defendants

32. 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.

33. Pursuant to California Labor Code section 510, any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

34. Pursuant to Labor Code section 1198 and the applicable IWC Wage Order(s), it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending upon the number of hours worked by the person on a daily or weekly basis.

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

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

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

38. 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.

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

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

40. Plaintiff hereby reallege and incorporate 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.

41. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt employees at that employee’s “regular rate of pay.”

42. The “regular rate of pay” includes all remuneration for employment paid to the employee and includes, but is not limited to, hourly earnings, salary, piece work earnings, commissions, non-discretionary bonuses, and the value of meals and lodging. DLSE Enforcement Policies and Interpretations Manual Section 49.

43. During the relevant time period, Defendants failed to include commissions, non-discretionary bonuses and/or other items of compensation when determining the “regular rate of pay” for Plaintiff and their other non-exempt employees for purposes of sick time pay.

44. According to the California Supreme Court, sick pay is a form of wages. *Murphy v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.

45. Labor Code section 233 provides that “any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months

1 at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section
2 246.5.”

3 46. During the relevant time period, Defendants intentionally and willfully failed to pay
4 Plaintiff sick pay at the rate of pay required by law. Accordingly, Plaintiff did not receive the full
5 amount of paid sick time that he was entitled to receive by law, and was therefore denied the right to use
6 sick leave within the meaning of Labor Code sections 233(a) and (c).

7 47. Any employer who violates Labor Code section 233 is liable to employees for the greater
8 of one days’ pay or actual damages, reasonable equitable relief, and reasonable attorneys’ fees and costs.
9 Labor Code §233(d), (e).

10 48. Further, Labor Code section 218 authorizes a private right of action to recover unpaid
11 wages.

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

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

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

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

- 22 a. No employer shall require any employee to work during any meal or rest period
23 mandated by an applicable order of the Industrial Welfare Commission.
- 24 b. If an employer fails to provide an employee a meal period or rest period in
25 accordance with an applicable order of the Industrial Welfare Commission, the
26 employer shall pay the employee one additional hour of pay at the employee’s
27

regular rate of compensation for each work day that the meal or rest period is not provided.

52. 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.”

53. 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.

54. 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.

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

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS
(Lab. Code, §§ 226.7, 512)
Against Defendants

56. 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.

57. Labor Code § 226.7 requires employers to provide employees meal breaks 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.

1 b. If an employer fails to provide an employee a meal period or rest period in accordance
2 with an applicable order of the Industrial Welfare Commission, the employer shall
3 pay the employee one additional hour of pay at the employee's regular rate of
4 compensation for each work day that the meal or rest period is not provided.

5 58. Labor Code § 512(a) and the applicable Wage Order(s) provide that an employer may not
6 employ a person for a work period of more than 5 hours per day without providing that employee a meal
7 period of not less than 30 minutes, except that if the total work period per day is not more than six hours,
8 the meal period may be waived by mutual consent of both the employer and employee. An employer
9 may not employ a person for a work period of more than 10 hours per day without providing an
10 employee with a second meal period of not less than 30 minutes, except that if the total work period per
11 day of the employee is no more than twelve (12) hours, the meal period may be waived by mutual
12 consent of both the employer and employee, and if the first meal period was not waived.

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

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

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

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

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

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

13 64. An employee suffering injury as a result of the knowing and intentional failure by an
14 employer to comply with Labor Code section 226, subdivision (a) is entitled to recover the greater of all
15 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
16 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the
17 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
18 attorney’s fees. (Lab. Code, § 226, subd. (e)(1).)

19 65. An employee is deemed to suffer injury if the employer fails to provide a wage statement
20 or if the employer fails to provide accurate and complete information as required by any one or more of
21 the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine
22 from the wage statement alone, i) the amount of gross/net wages paid to the employee during the pay
23 period or any of the other information required to be provided pursuant to Labor Code section 226,
24 subdivision (a)(2)-(4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name and
25 address of the employer and iv) the name of the employee and the last four digits of his or her social
26 security number or employee identification number. (Lab. Code, § 226, subds. (e)(2)(A) and (B)(i)-
27

1 (iv).) “Promptly and easily determine” means a reasonable person would be able to readily ascertain the
2 information without reference to other documents or information. (Lab. Code, § 226, subd. (e)(2)(C).)

3 66. Additionally, Labor Code section 226.2, subdivision (a)(2) provides that, for piece-rate
4 employees, their itemized wage statement must show (1) the total hours of compensable rest and
5 recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay
6 period; and (2) the total hours of nonproductive time, the rate of compensation, and the gross wages paid
7 for that time during the pay period.

8 67. During the relevant time period, Defendants intentionally and willfully failed to furnish
9 accurate itemized wage statements in violation of Labor Code sections 226, subdivision (a) and 226.2,
10 subdivision (a)(2).

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

15 69. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereinafter
16 provided.

17 **SEVENTH CAUSE OF ACTION**
18 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**
19 **(Lab. Code, § 2802.)**
20 **Against Defendants**

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

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

1 72. Nonetheless, as set forth above, Defendants failed to reimburse Plaintiff for all incurred
2 business expenses.

3 73. Labor Code section 2802 further provides that, in an action for reimbursement of business
4 expenses, a prevailing plaintiff is entitled to an award of attorney's fees.

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

7 **EIGHTH CAUSE OF ACTION**
8 **FAILURE TO PAY ALL WAGES DUE UPON CESSATION OF EMPLOYMENT**
9 **(Lab. Code, § 201)**
 Against Defendants

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

13 76. Labor Code section 201 requires an employer to pay an employee all wages earned and
14 unpaid at the time the employer discharges the employee. Labor Code section 202 requires an employer
15 to pay the employee all wages due no later than 72 hours after the employee quits his employment.

16 77. Labor Code section 203 provides: "If an employer willfully fails to pay, without
17 abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
18 employee who is discharged or who quits, the wages of the employee shall continue as a penalty from
19 the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages
20 shall not continue for more than 30 days".

21 78. During the relevant time period, Defendants failed to pay Plaintiff all earned but unpaid
22 wages upon cessation of employment.

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

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

3 **NINTH CAUSE OF ACTION**
4 **PRIVATE ATTORNEYS GENERAL ACT**
5 **(Lab. Code, § 2698 *et seq.*)**
6 **Against Defendants**

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

10 82. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor Code
11 which provides for a civil penalty to be assessed and collected by the LWDA for violations of the Labor
12 Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
13 behalf of himself or herself and other current or former employees pursuant to the procedures outlined in
14 Labor Code section 2699.3.

15 83. Plaintiff was employed by Defendants and the alleged violations were committed against
16 her during her time of employment. Plaintiff is therefore an aggrieved employee as defined by Labor
17 Code section 2699, subdivision (c). Other current and former employees are also aggrieved employees
18 in that one or more of the alleged violations were also committed against them during their time of
19 employment with Defendants.

20 84. Pursuant to Labor Code section 2699, subdivision (f), the civil penalty recoverable in a
21 PAGA action is that which is provided for by the Labor Code or, where no civil penalty is specifically
22 provided, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
23 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
24 violation.

25 85. Pursuant to California Labor Code section 2699, subdivision (g), an aggrieved employee
26 may recover the civil penalty on behalf of himself or herself and other current or former employees
27 against whom one or more of the alleged violations was committed. Furthermore, any employee who
28 prevails in any such action shall be entitled to an award of reasonable attorney's fees and costs.

86. Pursuant to the PAGA, Rodriguez seeks to recover civil penalties against Defendants for violations of the Labor Code.

87. Wherefore, Plaintiff and other employees (current and former) have been aggrieved and Plaintiff, on behalf of the Labor and Workforce Development Agency, requests relief as hereafter provided.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

As to the First through Eighth Causes of Action:

1. For unpaid wages, including rest and meal premiums;
2. For restitution of business expenses;
3. For liquidated damages, including those available under Labor Code section 1194.2;
4. That this Court award injunctive relief, including that available under Labor Code section 226(h);
5. That this Court award statutory penalties including, but not limited to, those available under Labor Code sections 203 and 226(e);
6. That this Court award statutory attorneys' fees and costs, including those available under Labor Code sections 218.5, 226, subdivision (e)(1), and 1194, as well as Code of Civil Procedure section 1021.5;
7. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code sections 3287(a) and 3289(b); and
8. That this Court award such other and further relief as the court deems just and proper.

As to the Ninth Cause of Action:

1. For civil penalties, including but not limited to those available under Labor Code sections 226.3, 558, and 2699(f);
2. For injunctive relief;

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

Exhibit 2

LAW OFFICES
MAYALL HURLEY

A PROFESSIONAL CORPORATION

SOUTHERN CALIFORNIA OFFICE
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91203
(818) 646-6440

MAILING ADDRESS:
2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207

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J. ANTHONY ABBOTT

December 7, 2021

SUBMITTED ELECTRONICALLY

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

SENT VIA CERTIFIED MAIL

Landmark Capital Inc.
dba Solar Energy Collective
2309 W. Alpine Ave.
Stockton, CA 95204

Zach Downs
2309 W. Alpine Ave.
Stockton, CA 95204

Re: Michael Rodriguez

To whom it may concern:

This firm represents Michael Rodriguez ("Rodriguez") in relation to his former employment with Landmark Capital Inc. dba Solar Energy Collective and Zach Downs ("Respondents"). In accordance with Labor Code section 2699.3, this letter shall serve as Rodriguez's written notice to the Labor and Workforce Development Agency ("LWDA") and Respondents regarding the following violations, and facts and theories supporting those violations, on Rodriguez's behalf and, as a proxy for the LWDA, on behalf of current and other former California employees of Respondents.

Rodriguez was hired by Respondents 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. Throughout his employment, Rodriguez was a full-time employee and worked overtime on a regular basis (and doubletime, though less regularly).

However, Respondents impermissibly failed to pay Rodriguez earned overtime and doubletime wages, in violation of the Labor Code. 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 A.**) 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).) 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].) 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).) Rodriguez also did not spend more than half of his working time away from Respondents’ place of business, so he could not be categorized as exempt as an outside salesperson. (*Id.*, § 1(C).) These facts (which relate to affirmative defenses, the burden of which will be Respondents’) are not exhaustive, but alone demonstrate that Rodriguez never fell under any recognized exemption to California’s overtime requirements. As Rodriguez earned overtime but was never paid it, Respondents violated Labor Code section 510.

Respondents also failed to pay Rodriguez the minimum wage for all hours worked. Because he was misclassified as exempt, Rodriguez was paid a flat monthly salary only (on a presumed 40-hour workweek), regardless of how many hours he worked. As he frequently well in excess of 40 hours, Rodriguez was not compensated at all for such excess time. Accordingly, Respondents violated Labor Code sections 1182.12 and 1197.

Furthermore, Respondents failed to provide paid sick leave in accordance with the Labor Code. Rodriguez accrued and used paid sick leave; however, when he took paid sick leave, such was paid out only at Rodriguez’s base rate of pay, not accounting for the value of earned nondiscretionary bonuses and other items of compensation. (See Lab. Code, § 246, subd. (l) [sick pay shall be paid at the regular rate of pay].) Accordingly, Respondents violated Labor Code section 246.

Rodriguez was also not provided with all rest and meal breaks to which he was entitled. Under the misclassification of Rodriguez as an exempt employee, Respondents did not relieve Rodriguez of all duty and permit him to take (1) a paid, uninterrupted rest period of ten minutes for every work period of four hours or more and (2) an unpaid, uninterrupted meal period of thirty minutes for every workshift that was more than five hours. (See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.) Furthermore, Respondents did not pay Rodriguez an hour of pay at his regular rate of compensation (including the value of nondiscretionary bonuses and other items of compensation) for every rest and meal period which he was not permitted to take. (See *Ferra v. Loews Hollywood Hotel LLC* (2021) 11 Cal.5th 858 [rest and meal period

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premiums must account for value of all earned compensation].) Accordingly, Respondents violated Labor Code sections 226.7 and 512.

Because Rodriguez was not paid all minimum and overtime wages due, and was not provided with premium pay for missed meal and rest breaks, the itemized wage statements issued to him failed to accurately show gross wages earned, net wages earned, total hours worked, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate. Thus, Respondents violated Labor Code section 226(a).

Rodriguez was also not reimbursed for all work-related expenditures. Rodriguez was required to use both his personal vehicle and cell phone in the course of his job duties. However, Respondents did not adequately compensate Rodriguez for these expenditures. Respondents paid Rodriguez a monthly gasoline stipend (typically \$250), but this was insufficient. For example, in 2020 Rodriguez drove an average of approximately 1,346 miles, per month, for business purposes; were he compensated at the appropriate IRS mileage rate (then \$0.56), he would have been paid approximately \$754.09 for vehicle mileage. Also, Rodriguez was required to use his cell phone in the course of his job duties. He was paid only \$30 per month as a cell phone stipend, but this was insufficient to compensate Rodriguez for the proportion of his cell phone bill (which was approximately \$180 per month) that represented work-related calls. By failing to compensate Rodriguez for all work-related expenditures, Respondents violated Labor Code section 2802.

Rodriguez's employment with Respondents ended in September 2021. However, at no point since the cessation of employment has Rodriguez been paid the full balance of wages due and owing, *supra*. Thus, Respondents violated Labor Code sections 201 and 202.

Mr. Downs is liable for the foregoing violations because (a) he was the chief executive officer, owner, and also a managing agent of Landmark Capital Inc., and (b) he established the policies, practices, and procedures which caused the aforementioned violations of the Labor Code. (See Lab. Code, § 558.1.) Per Labor Code section 558.1(a), Mr. Downs may be held liable as the employer for each of the foregoing violations.

The foregoing violations, and each of them, were committed as against current and other former employees of Respondents, and within the last year.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Rodriguez intends to file a civil complaint against Respondents pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code, § 2698 *et seq.*), on his behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Labor and Workforce Development Agency
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Sincerely,

MAYALL HURLEY P.C.

By  _____
JOHN P. BRISCOE

Exhibit A

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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Landmark Capital Inc.
dba Solar Energy Collective
2309 W. Alpine Ave.
Stockton, CA 95204

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is 2453 Grand Canal Boulevard, Stockton, California 95207 that is located in the county where the mailing and/or delivery below took place.

On March 16, 2022, I served the following document:

FIRST AMENDED COMPLAINT

addressed to:

Zachary Downs
9254 N Valley Dr
Stockton, CA 95212

☒ **BUSINESS PRACTICE TO ENTRUST DEPOSIT TO OTHERS:** I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On the date specified below, at my place of business at Stockton, California a copy of the document described above was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid addressed to the individuals and/or entities mentioned above; and that envelope was placed for collection and mailing on that date following ordinary business practice.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 16, 2022, at Stockton, California.


JULIE ZEYEN