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Superior Court of CA,  
County of Santa Clara  
23CV409762  
Reviewed By: R. Walker

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**SUPERIOR COURT OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF SANTA CLARA**

JUAN MANUEL NINO RICO, individually,  
and on behalf of all others similarly situated  
and aggrieved,

Plaintiff,

vs. F M A LANDSCAPE SERVICES, INC.,  
a California corporation, MIGUEL A.  
MEDINA, an individual, and DOES 1  
through 20, inclusive,

Defendants.

CASE NO. **23CV409762**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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2. On information and belief, defendant F M A LANDSCAPE SERVICES, INC. is a California corporation duly licensed to conduct business in the State of California.

4. Plaintiff is unaware of the names and capacities of those defendants sued as DOES 1 through 20 but will amend this complaint when that information becomes known. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each of the defendants, including the DOE defendants, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged herein, was acting in the course and scope of, and in furtherance of, such relationship. Unless otherwise specified, Plaintiff will refer to all defendants as “Defendant,” and each allegation pertains to each defendant.

5. This court possesses original subject matter jurisdiction over this matter. Venue is proper in this judicial district because Defendant transacts business in this district, and some of the complained of conduct occurred in this judicial district, as Plaintiff performed job duties in the County of Santa Clara, for which she was not properly compensated by Defendant.

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6. Plaintiff worked for Defendant as a non-exempt employee in its landscaping

1 business. Plaintiff seeks to bring this action as a class action under Code of Civil Procedure  
2 section 382. The class Plaintiff seeks to represent is defined as follows: “All individuals  
3 employed by Defendant as a non-exempt employee, however titled, in the State of California  
4 during the period commencing on the date that is four years preceding the filing of this complaint,  
5 plus applicable tolling under Emergency Order 9.”

6 7. All applicable statutes of limitations were tolled from April 6 to October 1, 2020  
7 under Emergency Order No. 9.

8 8. Ascertainable Class. The proposed class is ascertainable as its members can be  
9 identified and located using information in Defendant’s payroll and personnel records.

10 9. Common Questions of Law and Fact. This lawsuit is suitable for class treatment  
11 because common questions of law and fact predominate over individual issues. Common  
12 questions include, but are not limited to, the following: (1) whether Defendant properly calculated  
13 and paid all amounts due to the class members for wages earned, including minimum and  
14 overtime wages, under California law, (2) whether Defendant violated the California Labor Code  
15 and/or IWC Wage Orders by withholding wages, including minimum and overtime wages, from  
16 the class members, (3) whether Defendant provided the class members with all required meal  
17 periods on a fully-compliant basis, or compensation in lieu thereof; (4) whether Defendant  
18 provided the class members with all required rest periods on a fully-compliant basis, or  
19 compensation in lieu thereof; (5) whether Defendant provided the class members with accurate  
20 itemized wage statements; (6) whether Defendant timely paid the class members all wages due  
21 upon separation of employment, (7) whether Defendant’s failure to timely pay all wages due upon  
22 termination of employment was willful; and (8) whether Defendant violated California Business  
23 and Professions Code sections 17200, et seq.

24 10. Numerosity. The plaintiff class is so numerous that the individual joinder of all  
25 members is impractical under the circumstances of this case. While the exact number of class  
26 members is unknown to Plaintiff, Plaintiff is informed and believes the class consists of at least  
27 100 individuals.

28 11. Typicality. Plaintiff’s claims are typical of the claims of the class members.

1 Plaintiff suffered a similar injury as the other class members as a result of Defendant's common  
2 practices regarding the calculation and payment of wages, including minimum and overtime  
3 wages, provision of meal and rest periods, provision of wage statements, and payment of wages  
4 due upon termination. In addition, Plaintiff will fairly and adequately protect the interests of the  
5 class members. Plaintiff has no interests adverse to the interests of the other class members.

6 12. Superiority. A class action is superior to other available means for the fair and  
7 efficient adjudication of this controversy since individual joinder of all members of the class is  
8 impractical. Class action treatment will permit a large number of similarly situated persons to  
9 prosecute their common claims in a single forum simultaneously, efficiently, and without the  
10 unnecessary duplication of effort and expense that numerous individual actions would engender.  
11 Furthermore, as the damages suffered by each individual member of the class may be relatively  
12 small, the expenses and burden of individual litigation would make it difficult or impossible for  
13 individual members of the class to redress the wrongs done to them, while an important public  
14 interest will be served by addressing the matter as a class action. The cost to the court system of  
15 adjudication of such individualized litigation would be substantial. Individualized litigation  
16 would also present the potential for inconsistent or contradictory judgments. Finally, the  
17 alternative of filing a claim with the California Labor Commissioner is not superior, given the  
18 lack of discovery in such proceedings, the fact that there are fewer available remedies, and the  
19 losing party has the right to a trial de novo in the Superior Court.

#### 20 FIRST CAUSE OF ACTION

21 (Recovery of Unpaid Minimum Wages and Liquidated Damages – Labor Code §§ 1194  
22 and 1194.2)

23 13. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
24 through 12.

25 14. California law provides employees in California must be paid for all hours worked,  
26 up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.  
27 Plaintiff and the class members regularly worked hours for which they were not compensated by  
28 Defendant as required by California law, including hours worked "off the clock" as Plaintiff and

1 other similarly situated worked hours after the scheduled end of a shift that were not paid for, and  
2 further Defendant rounded off time punches such that Plaintiff and other similarly situated  
3 employees lost hours worked.

4 15. Pursuant to Labor Code Sections 1194 and 1194.2, Plaintiff and the class members  
5 are entitled to recover all unpaid minimum wages and liquidated damages, plus attorneys' fees  
6 and costs, in an amount to be proved at trial.

## 7 SECOND CAUSE OF ACTION

### 8 (Recovery of Unpaid Overtime – Labor Code § 1194)

9 16. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
10 through 15.

11 17. California law provides employees in California must be paid overtime, equal to  
12 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8  
13 per day, unless they are exempt. Plaintiff and the class members, all of whom were non-exempt,  
14 regularly worked more than 40 hours per week and/or 8 per day, but were not paid all overtime  
15 wages due and owing under California law, including overtime hours worked "off the clock" as  
16 Plaintiff and other similarly situated employees worked hours after the scheduled end of a shift  
17 that were not paid for, and further Defendant rounded off time punches such that Plaintiff and  
18 other similarly situated employees lost hours worked

19 18. Pursuant to Labor Code Section 1194, Plaintiff and the class members are entitled  
20 to recover all unpaid overtime wages, plus attorneys' fees and costs, in an amount to be proved at  
21 trial.

## 22 THIRD CAUSE OF ACTION

### 23 (Failure to Provide Meal Periods or Compensation in Lieu thereof – Labor Code § 226.7)

24 19. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
25 through 18.

26 20. Under the Labor Code and IWC Wage Orders, Defendant was required to provide  
27 Plaintiff and similarly situated and aggrieved employees with one 30-minute meal period free  
28 from all duties for all shifts longer than 5 hours, and a second 30-minute meal period free from all

1 duties for all shifts longer than 10 hours. Meal periods can be waived, but only under the  
2 following circumstances: (1) if an employee's total work period in a day is over five (5) hours but  
3 no more than six (6) hours, the required meal period may be waived by mutual consent of the  
4 employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours  
5 but no more than twelve (12) hours, the required second meal period may be waived by mutual  
6 consent of the employer and employee, but only if the first meal period was not waived.  
7 Employers covered by the Wage Orders have an obligation to both (1) relieve their employees for  
8 at least one meal period for shifts over five hours (see above), and (2) to record having done so. If  
9 the employer fails to properly record a valid meal period, it is presumed no meal period was  
10 provided.

11 21. Plaintiff and similarly situated employees regularly worked periods of more than  
12 five hours in a workday without being provided mandatory thirty-minute, duty-free meal periods.  
13 Upon information and belief, Defendant did not advise Plaintiff and other similarly situated  
14 employees of their right to, timing, or number of meal periods. For example, Plaintiff and  
15 similarly situated and aggrieved employees did not receive all required first meal periods, or  
16 received them on a non-compliant basis as meal periods regularly were less than 30 minutes or  
17 did not start until after the fifth hour of work. Per Defendant's illegal meal period policy/practice,  
18 Defendant further failed to record the start and stop times for meal periods, and failed to pay  
19 Plaintiff and similarly situated employees an additional hour of wages at their regular rates of pay  
20 for each workday a meal period was not provided or was not compliant with all requirements of  
21 the Labor Code and/or Wage Orders.

22 22. Defendant failed to provide Plaintiff and the class members with all required meal  
23 periods, or with compensation in lieu thereof. As a result, under Labor Code section 226.7,  
24 Plaintiff and the class members are entitled to one additional hour's pay at the regular rate of  
25 compensation for each day a meal period was missed, late or interrupted, all in an amount to be  
26 proved at trial.

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1 FOURTH CAUSE OF ACTION

2 (Failure to Provide Rest Periods or Compensation in Lieu thereof – Labor Code § 226.7)

3 23. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
4 through 22.

5 24. California law requires an employer to authorize or permit an employee to  
6 take a rest period of ten net minutes for every four hours worked, or major fraction  
7 thereof, and such rest periods must be in the middle of the four-hour period insofar as  
8 practicable. If the employer fails to provide any required rest periods, or fails to provide a  
9 fully compliant rest break for a net 10 minutes wherein the employee is fully relieved of  
10 all duties and all employer control, the employer must pay the employee one hour of pay  
11 at the employee's regular rate of compensation for each workday the employer did not  
12 provide a legally required and/or fully compliant rest period.

13 25. Defendant failed to provide Plaintiff and similarly situated employees all required  
14 and/or fully compliant rest periods, or compensation in lieu thereof. Defendant employed policies  
15 and procedures that ensured Plaintiff and other similarly situated employees would not receive all  
16 legally required rest periods, maintained a non-compliant written rest period policy, and  
17 Defendant did not authorize and permit all required rest periods in strict accordance to, and in  
18 compliance with, the timing requirements of all applicable Wage Orders. Defendant never  
19 properly advised Plaintiff and other similarly situated and aggrieved employees of their right to,  
20 timing, or amount of rest breaks, and frequently combined rest periods with meal periods in  
21 violation of California law. Defendant further employed policies and procedures ensuring that  
22 Plaintiff and similarly situated and aggrieved employees did not receive premium wages to  
23 compensate them for workdays they did not receive all legally required and fully compliant rest  
24 periods.

25 26. Defendant failed to provide Plaintiff and the class members with all required rest  
26 periods, or with compensation in lieu thereof. As a result, under Labor Code section 226.7,  
27 Plaintiff and the class members are entitled to one additional hour's pay at the regular rate of  
28 compensation for each day a rest break was missed, late or interrupted, all in an amount to be

1 proved at trial.

2 FIFTH CAUSE OF ACTION

3 (Failure to Provide Accurate Itemized Wage Statements – Labor Code § 226)

4 27. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
5 through 26.

6 28. The California Labor Code provides that, at the time of each payment of wages,  
7 the employer must provide each employee with an itemized statement showing, inter alia, gross  
8 wages earned, total hours worked, all deductions taken, net wages earned, the inclusive dates for  
9 which the employee is being paid, the employee's name and last four digits of their social security  
10 number, the name and address of the legal entity that it is the employer, and all applicable hourly  
11 rates in effect during the pay period and all hours worked at each rate.

12 29. For the reasons set forth above, Defendant knowingly and intentionally failed to  
13 provide Plaintiff and the class members with proper, itemized wage statements. Further, the wage  
14 statements issued by Defendant do not include the employee ID number/last four digits of the  
15 social security number and therefore violate Labor Code section 226 on their face.

16 30. Accordingly, under Labor Code Section 226, Plaintiff and the class members each  
17 are entitled to statutory penalties in the amount of \$50.00 for the initial pay period in which a  
18 violation occurred, and \$100.00 for each subsequent pay period in which a violation occurred, up  
19 to an aggregate penalty of \$4,000.00 per employee, plus attorney's fees and costs, all in an  
20 amount to be proved at trial.

21 SIXTH CAUSE OF ACTION

22 (Waiting Time Penalties – Labor Code §§ 201, et seq.)

23 31. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
24 through 30.

25 32. The California Labor Code provides that, at the time of termination of  
26 employment, the employer must pay an employee all wages due and owing within the time  
27 frames set forth in Labor Code Sections 201, et seq. Defendant willfully failed to pay Plaintiff  
28 and the class members who no longer are employed with Defendant all wages due and owing

1 within the deadlines set forth in Labor Code Sections 201, et seq.

2 33. Under Labor Code Section 203, Plaintiff and the class members who no longer are  
3 employed with Defendant are entitled to recover waiting time penalties of up to 30 days' pay,  
4 plus attorney's fees and costs, in an amount to be proved at trial.

#### 5 SEVENTH CAUSE OF ACTION

6 (Violation of Unfair Competition Law – Bus. & Prof. Code §§ 17200, et seq.)

7 34. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
8 through 33.

9 35 Defendant's failure, inter alia, to pay all wages earned and failure to pay premium  
10 wages for meal and rest period violations, all in violation of the Labor Code and Wage Orders,  
11 constitutes an unlawful, unfair or fraudulent business act or practice, in violation of Business &  
12 Professions Code Sections 17200, et seq.

13 36. Pursuant to Business & Professions Code Section 17203, Plaintiff and the class  
14 members are entitled to restitution of all unpaid wages and other sums owed, plus attorney's fees  
15 and costs, in an amount to be proved at trial.

#### 16 EIGHTH CAUSE OF ACTION

17 (Violation of Private Attorneys General Act – Labor Code §§ 2698, et seq.)

18 37. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
19 through 36.

20 38. During the period beginning one-year period preceding the submission of  
21 Plaintiff's notice letter, Defendant violated Labor Code Sections 201-203, 204, 216, 221-224,  
22 226, 226.7, 450, 510, 512, 514, 1174, 1194, 1197, 1198, 1199, 2441, 2810.5, and all applicable  
23 Wage Orders. These violations subject Defendant to civil penalties as set forth in the  
24 foregoing statutes, as well as Labor Code Sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1,  
25 and 2699, and (3) IWC Wage Order 16-2001, section 18.

26 39. Plaintiff complied with the procedures for bringing suit specified in Labor Code  
27 Sections 2699.3 and 2699.5. By letter dated and postmarked November 4, 2022, Plaintiff  
28 gave written notice to the California Labor & Workforce Development Agency ("LWDA") via

1 electronic submission, and via certified mail to Defendant, of the specific provisions of the  
2 Labor Code and Wage Orders allegedly violated, including the facts and theories to support the  
3 alleged violations.

4 40. Under Labor Code Section 2699.3, the LWDA must give written notice by  
5 certified mail to the parties it intends to investigate the alleged violations within 65 days of the  
6 date of the complainant's written notice. As of the filing of this complaint, the LWDA had not  
7 provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of  
8 himself and other aggrieved employees. As of the filing of this complaint, Defendant has not  
9 responded to Plaintiff's PAGA notice in an attempt to cure.

10 43. The violations alleged herein subject Defendant to civil penalties as set forth in  
11 the foregoing statutes, which Plaintiff seeks on his behalf and on behalf of other aggrieved  
12 employees. Plaintiff seeks civil penalties in the amounts set forth in each statute allegedly  
13 violated or, for all statutes that lack a specified penalty, Plaintiff seeks default penalties as  
14 provided by Labor Code Section 2699.

15 44. Under Labor Code Section 2699(g), Plaintiff is entitled to an award of  
16 reasonable attorney's fees and costs in connection with his claims for civil penalties.

17 PRAYER

18 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,  
19 as follows:

- 20 1. For compensatory damages, liquidated damages, and statutory penalties according  
21 to proof;
- 22 2. For an order requiring Defendant to make restitution of all amounts wrongfully  
23 withheld from Plaintiff and the class;
- 24 3. For civil penalties according to proof;
- 25 4. For pre-judgment interest as permitted by law;
- 26 5. For reasonable attorney's fees and costs of suit; and

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1           6.       For such other and further relief as the Court deems just and proper.

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3       Dated: January 10, 2023

LAW OFFICES OF J. KIRK DONNELLY, APC

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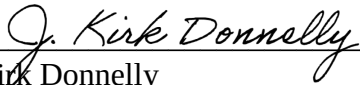
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J. Kirk Donnelly  
Attorneys for Plaintiff JUAN MANUEL NINO  
RICO

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims so triable.

Dated: January 10, 2023

LAW OFFICES OF J. KIRK DONNELLY, APC

  
\_\_\_\_\_  
J. Kirk Donnelly  
Attorneys for Plaintiff JUAN MANUEL NINO  
RICO