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PASTOR CARCAMO

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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Kristin Sorianosos, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO-CENTRAL DIVISION

(UNLIMITED JURISDICTION)

PASTOR CARCAMO,

Plaintiff,

vs.

WEST STAR LANDSCAPE SERVICES,
INC., a California corporation; MARK
VASQUEZ, an individual; and DOES 1 to 25,
inclusive,

Defendant(s).

Case No.: 37-2023-00029182-CU-OE-CTL

COMPLAINT FOR DAMAGES FOR:

- 1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 6) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 7) Failure to Provide Personnel Records;
- 8) Failure to Provide Pay Records;
- 9) Civil Penalties (Lab. Code §§ 2698, *et seq.*);
- 10) Retaliation Under Labor Code Section 1102.5;
- 11) Discrimination on the Basis of Race, National Origin, and/or Ancestry In Violation of the Fair Employment Housing Act ("FEHA") (Gov. Code § 12940(a));
- 12) Failure to Prevent Discrimination in

violation of the FEHA (Gov. Code
§ 12940(k)); and
13) Unfair Competition (Bus. & Prof.
Code, § 17200 *et seq.*)

JURY TRIAL DEMANDED

COMES NOW Plaintiff, PASTOR CARCAMO (hereafter “Plaintiff”), and complains
and alleges as follows:

INTRODUCTION

1. Plaintiff brings this action based on alleged violations of the California Labor Code, Industrial Welfare Commission Order Nos. 4-2001/16-2001 (hereafter “the Wage Order”), the Business and Professions Code, and public policy against WEST STAR LANDSCAPE SERVICES, INC., MARK VASQUEZ, and DOES 1-25, inclusive (collectively “WEST STAR” or “Defendants”).

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper in this Court and this action is properly filed in the County of San Diego because Defendants WEST STAR LANDSCAPE SERVICES, INC., MARK VASQUEZ, and DOES 1-25, inclusive, do business in the County of San Diego and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of San Diego is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

THE PARTIES

3. Plaintiff PASTOR CARCAMO is a resident of San Diego, California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11040/11160 and an “Aggrieved Employee” within the meaning of Labor Code Section 2699(c).

4. Defendant WEST STAR LANDSCAPE SERVICES, INC. is and was a California corporation, doing business in San Diego County, and which employed Plaintiff. As such, it is a citizen of California based on Plaintiff’s information and belief.

1 5. Defendant MARK VASQUEZ (“VASQUEZ”) is a citizen of
2 California based on Plaintiff’s information and belief.

3 6. In relevant part, Labor Code section 558.1 states:

4 (a) Any employer or other person acting on behalf of an employer, who violates,
5 or causes to be violated, any provision regulating minimum wages or hours and
6 days of work in any order of the Industrial Welfare Commission, or violates, or
7 causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
8 held liable as the employer for such violation.

9 (b) For purposes of this section, the term “other person acting on behalf of an
10 employer” is limited to a natural person who is an owner, director, officer, or
11 managing agent of the employer, and the term “managing agent” has the same
12 meaning as in subdivision (b) of Section 3294 of the Civil Code.

13 7. Based on Plaintiff’s information and belief, Defendant MARK VASQUEZ is a
14 natural person, and an owner, director, officer, and/or managing agent of WEST STAR
15 LANDSCAPE SERVICES, INC., who directly or indirectly, or through his agent, employed or
16 exercised control over the wages, hours, or working conditions of Plaintiff and the Aggrieved
17 Employees (defined below). Therefore, he is liable to Plaintiff and the Aggrieved Employees
18 for his violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7,
19 1194, and 2802 pursuant to Labor Code section 558.1.

20 8. The “Aggrieved Employees” are all current and former non-exempt or hourly
21 paid employees who worked for Defendants in California during the relevant time period
22 pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys
23 General Act of 2004 (“PAGA”).

24 9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
25 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
26 is informed and believes and thereon alleges that said defendants are legally responsible for the
27 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
28 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
defendants when ascertained.

 10. Plaintiff is informed and believes and thereon alleges that, at all relevant times
herein, all Defendants were the agents, employees and/or servants, masters or employers of the

1 remaining Defendants, and in doing the things hereinafter alleged, were acting within the
2 course and scope of such agency or employment, and with the approval and ratification of each
3 of the other Defendants.

4 11. Plaintiff is informed and believes and thereon alleges that each and every one of
5 the acts and omissions alleged herein were performed by, and/or are attributable to, all
6 Defendants, each acting as agents and/or employees, and/or under the direction and control of
7 each of the other Defendants, and that said acts and failures to act were within the course and
8 scope of said agency, employment, and/or direction and control.

9 12. At all relevant times, in perpetrating the acts and omissions alleged herein,
10 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a
11 lack of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved
12 Employees in accordance with applicable California labor laws as alleged herein.

13 **GENERAL ALLEGATIONS**

14 13. WEST STAR first began to employ Plaintiff as a foreman approximately twelve
15 twelve (12) years ago. Plaintiff's latest job title is "Laborer" and his rate of pay is \$17.00 per
16 hour. Plaintiff generally works Monday through Friday from approximately 6:30 a.m. to 3:00
17 p.m.

18 14. At all relevant times, WEST STAR issued wages to Plaintiff and the Aggrieved
19 Employees on a biweekly basis and paid them by the hour. At all relevant times, WEST STAR
20 classified Plaintiff and all of the other Aggrieved Employees as non-exempt employees
21 entitled to the protections of the Labor Code and the Wage Order.

22 15. WEST STAR failed to pay Plaintiff and the other Aggrieved Employees for all
23 time worked or subject to its control. There was no formal clock-in/clock-out and timekeeping
24 system at the workplace, and, as such, Plaintiff and all of the other Aggrieved Employees were
25 not paid for all hours worked. WEST STAR utilized a sign in sheet listing the employees'
26 names and the total number of hours worked that day (usually always 8), and did not keep
27 track of "time in", "time out", and meal period punches. Plaintiff and the other Aggrieved
28 Employees also consistently worked "off the clock" in that the company had a policy and

1 practice of rounding down work hours and “time shaving” which led to Plaintiff and others not
2 being paid for all hours worked, which would include the minimum wage. Plaintiff would
3 often stay an extra 10-15 minutes to finish up work and was not paid for this extra time. In
4 addition, to the extent employees such as Plaintiff and others worked through their meal
5 periods and those meal periods were interrupted, they were not compensated for that time,
6 which would be akin to a minimum wage violation. Furthermore, WEST STAR
7 ownership/management would often speak to or call Plaintiff and the other Aggrieved
8 Employees about work-related matters before the start of their shifts or after their shifts had
9 ended. Plaintiff would consistently receive calls from his supervisor, “Pedro”, to give him his
10 job assignments and check up on the progress of the work that was being done.

11 16. WEST STAR failed to pay Plaintiff and the Aggrieved Employees properly-
12 calculated overtime wages even though they worked more than 8 hours per day and/or 40
13 hours per week throughout their employment. Plaintiff’s and the Aggrieved Employees’ actual
14 work hours (including the “off the clock” hours mentioned above) entitled them to overtime
15 compensation. However, WEST STAR did not compensate Plaintiff and the Aggrieved
16 Employees with the correct amount of overtime. It was not company policy to keep accurate
17 track of all hours worked and to pay employees the accurate amount of overtime, especially
18 since the “off the clock” work was not factored into the equation. Furthermore, any incentive
19 payments and/or bonus payments were not factored into employees’ regular rate of pay for
20 purposes of deciphering the correct overtime rate of pay. In addition, any bonus and/or
21 incentive payments were not factored into the correct sick pay wages and meal and rest break
22 premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

23 17. WEST STAR failed to provide all compliant meal periods and authorize and
24 permit all compliant rest periods to which Plaintiff and the other Aggrieved Employees were
25 entitled. Plaintiff and the other Aggrieved Employees were entitled to take off-duty,
26 uninterrupted 30-minute meal periods before the fifth and tenth hours of work and to take
27 uninterrupted 10-minute rest periods for every four hours or major fraction thereof worked.
28 Due to the workload, Plaintiff and the Aggrieved Employees never took rest breaks and would

1 not be able to take timely, uninterrupted meal periods before the 5th or 10th hour worked. In
2 fact, WEST STAR scheduled Plaintiff's and the others' meal breaks at 12:00 p.m. As such,
3 Plaintiff's meal periods were always late since he would start his work shift at 6:30 a.m.
4 Similarly, Plaintiff and the other Aggrieved Employees were not able to take their 10-minute
5 rest breaks due to the work load. Moreover, they were told by WEST STAR that their rest
6 periods were factored into their meal periods which were scheduled to be one hour long.
7 Moreover, when Plaintiff and the other Aggrieved Employees took their meal periods, WEST
8 STAR management would interrupt them with questions about work related matters or their
9 meal periods were cut short due to their workload. On information and belief, WEST STAR
10 did not provide premium wages for these meal and rest break violations; if WEST STAR did
11 provide premium wages, they were not paid at the correct rate, as explained above.

12 18. WEST STAR failed to reimburse Plaintiff and the other Aggrieved Employees
13 for business expenses they incurred in direct consequence of the discharge of their duties.
14 WEST STAR required Plaintiff and the Aggrieved Employees to use their own personal cell
15 phones to communicate with ownership/management concerning work matters. Plaintiff's
16 supervisor, "Pedro", called Plaintiff on his personal cell phone on a regular basis to provide
17 him with new assignments and follow up on existing ones. However, WEST STAR did not
18 provide Plaintiff and the others with mobile phones and did not reimburse Plaintiff and the
19 other Aggrieved Employees for these mobile phone expenses. Accordingly, WEST STAR was
20 in violation of California Labor Code sections 2800 and 2802.

21 19. WEST STAR failed to pay its employees all wages due to them within any time
22 period specified by California Labor Code section 204, including the minimum wages and
23 overtime as described above as well as meal/rest break premiums.

24 20. WEST STAR did not provide Plaintiff and the other Aggrieved Employees
25 accurate, itemized wage statements in violation of Labor Code 226. Wage statements must
26 include all hours worked, overtime hours worked, all applicable hourly rates, the correct legal
27 name and correct address of employer entity, gross wages earned, all deductions, net wages
28 earned, reimbursement for business expenses, the correct start and end of the applicable pay

1 period, the employee ID numbers or social security numbers, among other items. Labor Code
2 § 226(a)(2). WEST STAR's failure to maintain accurate records as to the hours worked daily
3 by employees also constitutes a violation of Labor Code section 1174(d).

4 21. Finally, because WEST STAR did not properly pay all wages earned as
5 explained herein, WEST STAR also failed to pay final wages owed to the Aggrieved
6 Employees in violation of Labor Code section 203. These earned but unpaid wages include
7 minimum wages and compensation for all hours worked, overtime compensation, premium
8 pay for missed meal and rest breaks, and business expense reimbursement, among others.

9 22. Moreover, WEST STAR failed to provide paid sick leave and/or correctly
10 calculated sick leave wages to Plaintiff and the other Aggrieved Employees and failed to
11 provide Plaintiff and all of the other Aggrieved Employees with statements of sick leave
12 available, or paid time off in lieu of sick leave, in violation of Labor Code sections 233 and
13 246. WEST STAR also failed to provide Worker's Compensation coverage for Plaintiff and
14 the other Aggrieved Employees in violation of Labor Code Section 3700.5. WEST STAR has
15 also violated Labor Code section 558 and engaged in business practices which violate
16 Business and Professions Code Section 17200.

17 23. In addition, Plaintiff would also have individual claims against WEST STAR
18 for retaliation under Labor Code section 1102.5 in that Plaintiff was demoted from "Foreman"
19 to "Laborer" following his directions to his team to follow the rules. For nearly 11 years,
20 Plaintiff's job title was "Foreman." In or around mid-late 2022, Plaintiff and his team were
21 working on a site where they could not make noise before a certain time. As Foreman,
22 Plaintiff had an obligation and duty to ensure that WEST STAR was following the rules.
23 However, his team complained to the owner, VASQUEZ, about Plaintiff's implementation of
24 the rules. In response, WEST STAR retaliated against Plaintiff and demoted him.
25 Furthermore, Plaintiff has consistently asked VASQUEZ about his vacation hours and has
26 been denied vacation pay. On information and belief, other employees have taken paid
27 vacations. Plaintiff would also have claims under the Fair Employment and Housing Act
28 ("FEHA") in that VASQUEZ did not promote Plaintiff and did not give him a raise because

1 Plaintiff did not speak English, and instead, promoted a less experienced English-speaking
2 employee.

3 24. Pursuant to California Government Code section 12960, Plaintiff has exhausted
4 his administrative remedies. Plaintiff filed a complaint with the Department of Fair
5 Employment and Housing (“DFEH”), alleging claims in this complaint. The DFEH
6 immediately issued to Plaintiff a right to sue letter.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

9 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

10 **(By Plaintiff against all Defendants)**

11 25. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

12 26. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
13 entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198,
14 and the Wage Order.

15 27. Wage Order 4-2001, section 2(K) and Wage Order 16-2001, Section 2(J) define
16 “hours worked” as “the time during which an employee is subject to the control of an employer,
17 and includes all the time the employee is suffered or permitted to work, whether or not required
18 to do so.”

19 28. Section 3 of the Wage Order states:

20 **(A) Daily Overtime - General Provisions**

21 (1) The following overtime provisions are applicable to
22 employees 18 years of age or over and to employees 16 or
23 17 years of age who are not required by law to attend
24 school and are not otherwise prohibited by law from
25 engaging in the subject work. Such employees shall not
26 be employed more than eight (8) hours in any workday or
27 more than 40 hours in any workweek unless the employee
28 receives one and one-half (1 ½) times such employee’s
regular rate of pay for all hours worked over 40 hours in
the workweek. Eight (8) hours of labor constitutes a day’s
work. Employment beyond eight (8) hours in any
workday or more than six (6) days in any workweek is
permissible provided the employee is compensated for

such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

29. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

30. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. 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. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

31. California Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

1 32. California Labor Code § 1197 makes it unlawful for an employer to pay an
2 employee less than the minimum wage required under the applicable Wage Order for all hours
3 worked during a payroll period.

4 33. California Labor Code § 1198 makes it unlawful for an employer to employ an
5 employee under conditions that violate the Wage Order.

6 34. In conjunction, these provisions of the California Labor Code require employers
7 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates
8 for all hours worked, including unrecorded hours when the employer knew or reasonably should
9 have known that employees were working during those hours. (*See Morillion v. Royal Packing*
10 *Co.* (2000) 22 Cal.4th 575, 585.)

11 35. Defendants required Plaintiff to work in excess of eight (8) hours in one workday
12 and forty (40) hours in one workweek without compensating her for such time worked at the
13 premium rates required by California law.

14 36. As described more fully above, Defendants failed to pay all minimum, regular,
15 and overtime wages to Plaintiff because Defendants paid wages based on rounded times, did not
16 pay for off-the-clock work, and failed to pay overtime wages based on correct regular rates of
17 pay.

18 37. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
19 amount, subject to proof, to the extent that he was not paid the full amount of wages earned
20 during each pay period during the applicable limitations period, including minimum and
21 overtime wages.

22 38. As a result of Defendants' conduct, Plaintiff seeks damages and/or restitution for
23 unpaid wages which Defendants failed to pay him at the rates set forth herein, interest thereon,
24 and costs of suit and reasonable attorney's fees pursuant to California Labor Code §§ 1194.

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1 (c) If an employer fails to provide an employee a meal or rest or
2 recovery period in accordance with a state law, including, but not
3 limited to, an applicable statute or applicable regulation, standard, or
4 order of the Industrial Welfare Commission, the Occupational Safety
5 and Health Standards Board, or the Division of Occupational Safety and
6 Health, the employer shall pay the employee one additional hour of pay
at the employee's regular rate of compensation for each workday that
the meal or rest or recovery period is not provided.

7 44. Pursuant to the Wage Order, Plaintiff was entitled to be provided with net rest
8 breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

9 45. Defendants failed to authorize and permit Plaintiff to take compliant rest
10 periods and failed to pay one hour of correctly-calculated premium pay for each day such a
11 rest period was not provided.

12 46. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
13 an amount subject to proof to the extent he was not paid additional wages owed for all rest
14 breaks not provided to him.

15 47. By reason of the above, Plaintiff is entitled to premium wages for workdays in
16 which one or more rest breaks were not provided to him pursuant to California Labor Code §
17 226.7, plus interest and costs.

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PROVIDE MEAL PERIODS**

20 **(Lab. Code §§ 226.7, 512, and 1198)**

21 **(By Plaintiff against all Defendants)**

22 48. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23 49. At all relevant times during the applicable limitations period, Plaintiff was a
24 non-exempt employee of Defendants and entitled to the benefits and protections of California
25 Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

26 50. Labor Code § 1198 states,

27 "The maximum hours of work and the standard conditions of labor
28 fixed by the commission shall be the maximum hours of work and the
standard conditions of labor for employees. The employment of any

employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

51. In relevant part, Labor Code Section 512 states

“An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

52. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee...

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

53. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff was entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day he worked five or more hours. Pursuant to California Labor Code § 512, Plaintiff was also entitled to a second 30-minute meal period when he worked more than ten (10) hours in a workday.

54. During the relevant time period, Defendants failed to provide Plaintiff with compliant meal periods before the fifth hour of work and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

55. As a result of Defendants’ unlawful conduct, Plaintiff has suffered damages in

1 an amount subject to proof to the extent he was not paid additional wages owed for all meal
2 periods not provided to him.

3 56. By reason of the above, Plaintiff is entitled to premium wages for workdays in
4 which one or more meal periods were not provided to him pursuant to California Labor Code
5 § 226.7, plus interest and costs.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO INDEMNIFY**

8 **(Lab. Code §§ 1198 & 2802)**

9 **(By Plaintiff against all Defendants)**

10 57. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

11 58. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
12 entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the
13 Wage Order.

14 59. In pertinent part, California Labor Code § 2802(a) states:

15 An employer shall indemnify his or her employee[s] for all necessary
16 expenditures incurred by the employee in direct consequence of the
discharge of his or her duties.

17 60. California Labor Code § 1198 prohibits employers from employing their
18 employees under conditions prohibited by the Wage Order.

19 61. At all relevant times during the applicable limitations period, Defendants
20 required Plaintiff to use his own personal cell phone to communicate with management
21 concerning work matters. However, Defendants did not provide these items and did not
22 reimburse Plaintiff for these expenses.

23 62. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
24 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
25 Defendants' failure to indemnify Plaintiff for the reasonable expenses he incurred in the course
26 of performing his duties.

27 63. By reason of the above, Plaintiff is entitled to reimbursement for all necessary
28 expenditures and losses and interest due and owing to within three years (3) of the date of the

1 filing of the Complaint until the date of entry of judgment pursuant to California Labor Code §
2 2802(b). Further, Plaintiff seeks reasonable attorney's fees pursuant to Labor Code § 2802(c).

3 **FIFTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

5 **(California Labor Code Section 226)**

6 **(By Plaintiff against all Defendants)**

7 64. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

8 65. Pursuant to California Labor Code Section 226, every employer must furnish
9 each employee an itemized statement of wages and deductions at the time of payment of wages.

10 66. Defendants knowingly and intentionally did not furnish Plaintiff with pay stubs
11 that accurately reflected all information required by Labor Code Section 226, including but not
12 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
13 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
14 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed
15 to maintain and provide accurate itemized wage statements to Plaintiff in accordance with
16 California Labor Code Section 226(a).

17 67. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover
18 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
19 violation occurs and one hundred dollars (\$100) per employee for each violation in a
20 subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000),
21 plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of
22 action pursuant to the 1-year period immediately preceding the date this lawsuit was filed.

23 68. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
24 sustained damages, including loss of earnings, in an amount to be established at trial. As a
25 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
26 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
27 and attorney's fees pursuant to statute.

28 69. Under this cause of action, Plaintiff prays for penalties due under the statutes

1 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
2 proof at trial.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

5 **(California Labor Code Section 204)**

6 **(By Plaintiff against all Defendants)**

7 70. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

8 71. California Labor Code Section 204 establishes the fundamental right of all
9 employees in the State of California to be paid wages in a timely fashion for their work.

10 72. At all times relevant during the liability period, Defendants failed to pay
11 Plaintiff the full amount of all owed wages when due as required by California Labor Code
12 Section 204.

13 73. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
14 informed, believes, and thereon alleges, that all times relevant during the applicable limitations
15 period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours
16 worked, including the minimum wage, overtime hours, and premium pay for missed meal and
17 rest breaks.

18 74. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
19 an amount, subject to proof, to the extent he was not paid all wages each pay period. The
20 precise amount of unpaid wages is not presently known to Plaintiff but can be determined
21 directly from Defendants' records or indirectly based on information from Defendants' records.

22 75. Under this cause of action, Plaintiff prays for penalties due under the statutes
23 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
24 proof at trial.

25 **SEVENTH CAUSE OF ACTION**

26 **FAILURE TO PROVIDE PERSONNEL RECORDS**

27 **(Plaintiff against Defendants)**

28 76. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

77. Labor Code section 1198.5 dictates “every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.”

78. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times...” On information and belief, Defendants intentionally failed to provide Plaintiff with personnel records when requested by Plaintiff via letter on March 20, 2023, as required by law. Plaintiff requested his personnel records in accordance with California Labor Code section 1198.5(k) on March 20, 2023 via certified U.S. mail.

79. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants' failure to provide personnel records.

80. Plaintiff seeks all available remedies for Defendants' violations including, but not limited to penalties, and costs to the extent permitted by law and according to proof at trial. Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the amount of \$750.00, along with costs and attorney's fees.

EIGHTH CAUSE OF ACTION

FAILURE TO PROVIDE PAY RECORDS

(Plaintiff against all Defendants)

81. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

82. Labor Code section 226 sub-section (b) dictates “an employer...shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer...”

83. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b)

1 pertaining to a current or former employee shall comply with the request as soon as practicable,
2 but no later than 21 calendar days from the date of the request.” On information and belief,
3 Defendants intentionally failed to provide Plaintiff with pay records when requested by
4 Plaintiff via letter, on March 20, 2023, and as required by law. Plaintiff requested his pay
5 records in accordance with California Labor Code section 226 on March 20, 2023, via U.S.
6 certified mail. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his
7 pay records within 21 days.

8 84. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered
9 and continues to suffer substantial losses related to Defendants’ failure to provide pay records.
10 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
11 amount of \$750.00, along with costs and attorney’s fees.

12 85. Plaintiff seeks all available remedies for Defendants’ violations including, but
13 not limited to, penalties and costs to the extent permitted by law and according to proof at trial.

14 **NINTH CAUSE OF ACTION**

15 **CIVIL PENALTIES**

16 **(Lab. Code §§ 2698, *et seq.*)**

17 **(By Plaintiff against all Defendants)**

18 86. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

19 87. Plaintiff is an Aggrieved Employee under the Private Attorneys General Act of
20 2004 (“PAGA”) because he was employed by Defendants during the applicable statutory
21 period and suffered one or more of the violations of the Labor Code set forth in this Complaint.
22 Plaintiff seeks to recover on his own behalf, on behalf of the State of California, and on behalf
23 of all current and former Aggrieved Employees of Defendants, the civil penalties provided by
24 PAGA, plus reasonable attorney’s fees and costs.

25 88. During the applicable time period, Defendants violated California Labor Code
26 §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198,
27 2350, 2802, and 3700.5.

28 89. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on

1 behalf of themselves and other current or former employees, to bring a civil action to recover
2 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

3 90. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the
4 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants'
5 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512,
6 558.1, 1174, 1194, 1197, 1198, 2350, 2802, and 3700.5 during the applicable limitations period
7 in the following amounts:

8 A. For violations of California Labor Code § 204, one hundred dollars
9 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
10 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
11 established by California Labor Code § 210).

12 B. For violations of California Labor Code § 226(a), two hundred fifty
13 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
14 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
15 established by California Labor Code § 226.3).

16 C. For violations of California Labor Code §§ 510, 512, and 558.1, fifty
17 dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars
18 (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
19 established by California Labor Code § 558).

20 D. For violations of California Labor Code § 1174, five hundred dollars
21 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
22 California Labor Code § 1174.5).

23 E. For violations of California Labor Code § 1197, one hundred dollars
24 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
25 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,
26 per pay period (regardless of whether the initial violations were intentionally committed)
27 (penalty amounts established by California Labor Code § 1197.1).

28 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,

1 1198, 2350, 2802, and 3700.5, one hundred dollars (\$100.00) for each Aggrieved Employee per
2 pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved
3 Employee per pay period for each subsequent violation (penalty amounts established by
4 California Labor Code § 2699(f)(2)).

5 G. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff individually
6 is entitled to recover civil penalties for each of the Defendants' violations of California Labor
7 Code §1102.5 during the applicable limitations period in the following amounts: an amount not
8 to exceed \$10,000 for each violation by Defendants of California Labor Code § 1102.5(b), as
9 well as attorney's fees and costs under Labor Code § 2699(g) (penalty amounts established by
10 California Labor Code § 1102.5(f)).

11 91. Plaintiff has complied with the procedures for bringing suit specified in
12 California Labor Code § 2699.3. By letter dated March 20, 2023, Plaintiff filed written notices
13 online with the Labor and Workforce Development Agency ("LWDA") and gave written notice
14 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
15 to have been violated, including the facts and theories to support the alleged violations. Plaintiff
16 accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to
17 take action in response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff
18 anticipates that the LWDA will provide written notice to Plaintiff informing him that it does
19 not intend to investigate these allegations.

20 92. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
21 Employees are entitled to an award of civil penalties and reasonable attorney's fees and costs in
22 connection with their claims for civil penalties.

23 **TENTH CAUSE OF ACTION**

24 **RETALIATION**

25 **(Lab. Code § 1102.5)**

26 **(By Plaintiff against all Defendants)**

27 93. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

28 94. According to Labor Code section 1102.5, subdivision (b),

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An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, ... to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance,... if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

95. Defendants were employers for purposes of California law.

96. Plaintiff was an employee of Defendants, performing work on behalf of Defendants.

97. During his employment tenure, Plaintiff instructed his team to follow all rules and regulations. Defendants retaliated against Plaintiff for enforcing rules/regulations by demoting his position in violation of Labor Code § 1102.5.

98. As a direct and proximate result of the aforementioned acts and omissions of Defendants, Plaintiff suffered general and compensatory damages, including but not limited to, loss of income (past and future), loss of employment benefits (past and future), general and compensatory damages (past and future), mental pain and anguish and emotional distress (past and future), and will continue to suffer in the future, in an amount to be proved at trial.

99. Plaintiff requests all available relief under Labor Code § 1102.5 including damages and the imposition of civil penalties of \$10,000 for each violation as well as attorney's fees.

100. The foregoing conduct engaged in by Defendants and each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified, and carried on with a conscious and willful disregard of their workers' right to work in an environment free of retaliation and labor code violations, so as to justify the imposition of punitive damages to punish and set an example of said Defendants.

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1 wrongful conduct for which an award of punitive damages is sought, and/or was personally
2 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
3 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on
4 part of an officer, director, or managing agent of each of the Defendants, thereby entitling
5 Plaintiff to punitive and exemplary damages against each of the Defendants in accordance with
6 California Civil Code section 3294 in a sum appropriate to punish and make an example of
7 each Defendant.

8 108. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
9 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
10 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
11 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
12 award of attorneys' fees and costs.

13 **TWELFTH CAUSE OF ACTION**

14 **FAILURE TO PREVENT, INVESTIGATE, AND REMEDY DISCRIMINATION**
15 **IN VIOLATION OF THE FEHA**

16 **(Gov. Code, §§ 12940(k))**

17 **(By Plaintiff against all Defendants except VASQUEZ)**

18 109. Plaintiff incorporates by reference each and every paragraph of this Complaint
19 as if fully alleged herein.

20 110. Plaintiff was and is at all times relevant hereto an employee covered by
21 Government Code § 12926(c).

22 111. Defendants were at all times relevant hereto employers who employed five or
23 more persons within the meaning of Government Code § 12926(d), and California
24 Government Code §§ 12940, et seq., was in full force and effect and was binding on
25 Defendants.

26 112. It is unlawful for an employer to not take all reasonable steps necessary to
27 prevent discrimination and harassment from occurring. Cal. Gov. Code § 12940(k).

28 113. As described above, Defendants subjected Plaintiff to unlawful discrimination

1 in violation of Cal. Gov. Code § 12940(a).

2 114. Plaintiff is informed and believes and thereupon alleges that Defendants knew or
3 reasonably should have known of VASQUEZ's discrimination against Plaintiff. To Plaintiff's
4 knowledge, Defendants took no meaningful or adequate disciplinary action to address the
5 discrimination.

6 115. Plaintiff is informed and believes and thereupon alleges that Defendants failed
7 to provide adequate training to its executives, supervisors, and managers. Defendants should
8 have provided training and instruction to VASQUEZ on the laws pertaining to discrimination.
9 Defendants failed to do so. As a result, Defendants failed to take all reasonable steps necessary
10 to prevent or stop the discrimination from occurring.

11 116. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
12 harmed in that Plaintiff has suffered actual, consequential and incidental financial losses,
13 including without limitation, loss of salary and benefits, and the intangible loss of
14 employment-related opportunities and damage to his professional reputation, all in an amount
15 subject to proof at the time of trial. Plaintiff claims such amounts as damages together with
16 prejudgment interest pursuant to Civil Code Sections 3287 and/or § 3288 and/or any other
17 provision of law providing for prejudgment interest.

18 117. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
19 and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and
20 emotional distress. Plaintiff is informed and believes and thereon alleges that he will continue
21 to experience said emotional suffering for a period in the future he cannot presently ascertain,
22 all in an amount subject to proof at the time of trial.

23 118. The acts taken toward Plaintiff were carried out by and/or ratified by
24 Defendants and/or managing agent employees of Defendants acting in a despicable,
25 oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to
26 injure and damage Plaintiff, thereby justifying an award to him of punitive damages in a sum
27 appropriate to punish and make an example of Defendants.

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1 **THIRTEENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

4 **(By Plaintiff against all Defendants except VASQUEZ)**

5 119. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 120. At all relevant times during the applicable limitations period, Plaintiff has been
7 an employee of Defendants and entitled to the benefits and protections of the Business and
8 Professions Code §§ 17200, *et seq.*

9 121. Defendants engaged in unfair competition by failing to 1) pay employees for all
10 hours worked at the correct rates of pay; 2) pay their employees premium wages for workdays
11 during which one or more meal or rest periods were not provided, and 3) reimburse employees
12 for necessary business expenses incurred in the course of performing their duties, among
13 others.

14 122. The unlawful conduct of Defendants alleged herein amounts to and constitutes
15 unfair competition within the meaning of California Business & Professions Code §§ 17200,
16 *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
17 unfairly gained a competitive advantage over other comparable companies doing business in
18 California that comply with their legal obligations to, among other things, refrain from
19 discriminatory practices and prevent discrimination, pay their employees premium wages for
20 workdays in which they did not provide employees with one or more meal and rest periods,
21 indemnify them for all business expenses incurred during the course of performing their
22 duties, including, but not limited to, mobile phone expenses, and pay them all wages earned.

23 123. As a result of Defendants' unfair competition as alleged herein, Plaintiff has
24 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all
25 hours worked, failed to provide him with premium wages for missed meal and rest periods,
26 and failed to reimburse Plaintiff for all expenses he incurred in the course of performing his
27 duties.

28 124. Pursuant to California Business & Professions Code § 17203, Plaintiff is

1 entitled to restitution of all monies rightfully belonging to him that Defendants did not pay him
2 or otherwise retained by means of their unlawful and unfair business practices.

3 125. Plaintiff is entitled to reasonable attorneys' fees in connection with his unfair
4 competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial
5 benefit doctrine and/or the common fund doctrine.

6 126. Accordingly, with respect to this cause of action, Plaintiff prays for the herein
7 stated relief, and an award of all reasonable costs and attorneys' fees, including interest
8 thereon, as permitted by law, all in amounts subject to proof.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- 11 1. For compensatory damages including lost past and future wages, commissions, and all
12 other sums of money, including employment benefits, together with interest on said
13 amounts, and any other economic injury to Plaintiff, according to proof;
- 14 2. For general damages according to proof;
- 15 3. For special and consequential damages to the extent allowed by law;
- 16 4. For punitive and exemplary damages against Defendant WEST STAR LANDSCAPE
17 SERVICES, INC. in an amount subject to proof;
- 18 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
19 subject to proof at trial;
- 20 6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
21 7. proof at trial;
- 22 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
23 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 24 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
25 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 26 10. For maximum civil penalties available under the Labor Code and applicable Wage
27 Order against Defendants as described more particularly in the Complaint;
- 28 11. For restitution and disgorgement for all unfair business practices by Defendant WEST

1 STAR LANDSCAPE SERVICES, INC. against Plaintiff in an amount according to
2 proof;

3 12. For an order enjoining Defendant WEST STAR LANDSCAPE SERVICES, INC. from
4 further unfair and unlawful business practices in violation of Business and Professions
5 Code Sections 17200, et seq.;

6 13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor
7 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated
8 damages, damages, penalties, and waiting time penalties according to proof to the
9 extent permitted by law;

10 14. For the imposition of civil penalties and/or statutory penalties;

11 15. For all interest as allowed by law;

12 16. For all costs and disbursements incurred in this suit;

13 17. Reasonable attorney's fees where available by law, including but not limited to,
14 pursuant to, Code of Civil Procedure section 1021.5, Labor Code section 1102.5(j),
15 and/or other applicable laws; and

16 18. For such other and further relief as this Court may deem proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

19
20 Dated: July 12, 2023

MM LAW, APC

21 By Maralle Messrelia
22 Maralle Messrelia, Esq.
23 Attorney for Plaintiff,
24 PASTOR CARCAMO
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