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By _____, Deputy
23CV005083

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10 and JUAN ESCOBAR CABRERA

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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

29 SALVADOR ESCOBAR CABRERA and
30 JUAN ESCOBAR CABRERA, individually
31 and on behalf of all other similarly situated
32 employees,

33 Plaintiffs,

34 vs.

35 MIKE MCCALL LANDSCAPE, INC., a
36 California Corporation; and DOES 1 to 100,
37 inclusive,

38 Defendants.

Case No. 23CV005083

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Expenses
8. Failure to Pay Prevailing Wages
9. Unfair Competition
10. Private Attorneys General Act

DEMAND FOR JURY TRIAL

Plaintiffs SALVADOR ESCOBAR CABRERA and JUAN ESCOBAR CABRERA
 (“Plaintiffs”), on behalf of themselves and all other similarly situated employees, hereby file this
 Complaint against Defendants MIKE MCCALL LANDSCAPE, INC., a California Corporation; and
 DOES 1 to 100, inclusive (hereinafter all collectively referred to as “Defendants”). On information
 and belief, Plaintiffs allege the following:

1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by Plaintiffs for failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest period violations, wage statement violations, failure to timely pay final wages, failure to reimburse expenses, failure to pay prevailing wages, and unfair competition.

2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to California Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code, California Business and Professions Code, and Wage Order No. 5.

4. Plaintiffs sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of themselves and other Aggrieved Employees. Pursuant to Labor Code section 2699.3, Plaintiffs gave written notice via online submission to the Labor and Workforce Development Agency ("LWDA") on approximately July 18, 2023. Plaintiffs provided facts and legal bases for his claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiffs submitted the \$75.00 filing fee. The July 18, 2023 notice was also sent via certified mail to Defendants on the same day. Plaintiffs are informed and believe, that to date, the LWDA has not provided any response to Plaintiffs' notice correspondence. Accordingly, Plaintiffs are informed and believe that they have exhausted all administrative remedies pursuant to the Private Attorneys General Act and may bring

1 this action on behalf of themselves and all Aggrieved Employees. See Cal. Labor Code §
2 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19
3 (2005). Aggrieved Employees includes all non-exempt employees who have, or continue to, work for
4 Defendants in California from July 18, 2022 to the present.

5 **PARTIES**

6 5. SALVADOR ESCOBAR CABRERA is an individual over the age of eighteen (18)
7 and is a resident of the State of California.

8 6. JUAN ESCOBAR CABRERA is an individual over the age of eighteen (18) and is a
9 resident of the State of California.

10 7. On information and belief, Plaintiffs allege, MIKE MCCALL LANDSCAPE, INC., is
11 now and/or at all times mentioned in this Complaint was a California Corporation and the owner and
12 operator of an industry, business and/or facility doing business in the State of California.

13 8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
14 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
15 are liable for the actions herein alleged. Plaintiffs will seek to amend this Complaint to allege the true
16 names and capacities of these DOE Defendants when they are ascertained.

17 9. At all times mentioned herein, each Defendant was the agent or employee of each of the
18 other Defendants and was acting within the course and scope of such agency or employment. The
19 Defendants are jointly and severally liable to Plaintiffs.

20 10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
21 were members of and/or engaged in a joint employment, joint venture, partnership and common
22 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
23 joint venture, partnership and common enterprise.

24 11. Defendants, and each of them, now and/or at all times mentioned in this Complaint
25 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

26 12. Defendants proximately caused Plaintiffs to be subjected to the unlawful practices,
27 wrongs, complaints, injuries and/or damages alleged in this Complaint.

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1 **CLASS ALLEGATIONS**

2 13. Plaintiffs bring the First through Ninth Causes of Action on behalf of themselves and
3 all others similarly situated as a class action pursuant to California Code of Civil Procedure section
4 382. The class which Plaintiffs seek to represent is composed of, and defined, as follows:

5 all individuals who have, or continue to, work for Defendants in California
6 as non-exempt employees from July 20, 2019 to the present.

7 14. This action has been brought and may be properly maintained as a class action,
8 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
9 defined community of interests in the litigation and the proposed class is easily ascertainable.

10 (a) **Numerosity:** The putative class is so numerous that the individual joinder of all members
11 is impracticable under the circumstances of this case. While the exact number of class
12 members is unknown to Plaintiffs at this time, Plaintiffs are informed and believe that
13 Defendants have employed as many as fifty (50) individuals falling within the above
14 stated class definition throughout the State of California during the applicable statute of
15 limitations, who were subjected to the policies and practices outlined in this Complaint.
16 As such, joinder of all members of the putative class is not practicable.

17 (b) **Common Questions Predominate:** Common questions of law and fact exist as to all
18 members of the putative class and predominate over questions that affect only individual
19 members of the class. These common questions of law and fact include, without
20 limitation, the following:

- 21 (1) Whether Defendants paid putative class members for all regular hours worked;
22 (2) Whether Defendants paid putative class members for all overtime hours worked;
23 (3) Whether Defendants accurately recorded putative class members' hour worked;
24 (4) Whether Defendants authorized and permitted putative class members to take all
25 meal periods they were entitled to;
26 (5) Whether Defendants authorized and permitted putative class members to take all
27 rest periods they were entitled to;
28

- (6) Whether Defendants had a policy or practice to provide a second meal period when putative class members worked shifts longer than ten (10) hours;
- (7) Whether Defendants had a policy or practice to pay meal period premiums;
- (8) Whether Defendants had a policy or practice to provide a second rest period when putative class members worked shifts longer than six (6) hours;
- (9) Whether Defendants had a policy or practice to provide a third rest period when putative class members worked shifts longer than ten (10) hours;
- (10) Whether Defendants had a policy or practice to pay rest period premiums;
- (11) Whether Defendants had a policy or practice to pay prevailing wages for work putative class members did on public works jobs;
- (12) Whether Defendants correctly calculated putative class members' regular rates of pay;
- (13) Whether Defendants required putative class members to use their personal cellphones for work;
- (14) Whether Defendants required putative class members to incur bridge tolls for work;
- (15) Whether Defendants had a policy or practice to reimburse putative class members for business expenses;
- (16) Whether as a result of Defendants' policies and practices putative class members received all wages, due and owing, at the time of their termination or separation; and
- (17) Whether Defendants provided putative class members with wage statements that complied with Labor Code section 226.

(c) Typicality: Plaintiffs' claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiffs and all members of the putative class were non-exempt employees who were not paid for all regular and overtime hours worked, were not paid all prevailing wages owed, were not

1 paid the correct regular rates of pay, did not receive all meal and rest periods they were
2 entitled to, and incurred expenses from the use of their personal cellphones and bridge
3 tolls without being reimbursed. Additionally, Defendants issued Plaintiffs and all
4 members of the putative class wage statements that did not comply with Labor Code
5 section 226. As a result, Plaintiffs and each member of the putative class will have
6 suffered the same type of harm and seek the same type of recovery based on the same
7 legal theories.

8 (d) Adequacy: Plaintiffs will fairly and adequately protect the interests of the members of the
9 putative class. For all relevant times, Plaintiffs resided in California and worked for
10 Defendants in California. Moreover, Plaintiffs are adequate representatives of the
11 putative class as Plaintiffs have no interests that are adverse to those of putative class
12 members. Additionally, Plaintiffs have retained counsel who has substantial experience
13 in complex civil litigation and wage and hour matters.

14 (e) Superiority: A class action is superior to other available means for the fair and efficient
15 adjudication of the controversy since individual joinder of all members of the putative
16 class is impracticable. Class action treatment will permit a larger number of similarly
17 situated persons to prosecute their common claims in a single forum simultaneously,
18 efficiently, and without the unnecessary duplication of effort and expense that numerous
19 individual actions would engender. Further, as damages suffered by each individual
20 member of the class may be relatively small, the expenses and burden of the individual
21 litigation would make it difficult or impossible for individual members of the class to
22 redress the wrongs done to them, and an important public interest will be served by
23 addressing the matter as a class action. The cost to the court system of adjudication of
24 such individualized litigation would be substantial. Individualized litigation would also
25 present the potential for inconsistent or contradictory judgments.

26 15. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
27 management of this action that would preclude its maintenance as a class action.

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GENERAL ALLEGATIONS

16. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 15 as though fully set forth herein.

17. Plaintiffs Salvador Escobar Cabrera and Juan Escobar Cabrera worked for Defendants in California during the claim period as non-exempt employees. Similarly situated employees also worked for Defendants in California during the claim period as non-exempt employees.

18. Defendants failed to accurately record Plaintiffs' and similarly situated employees' hours worked. Defendants did not accurately record employees' actual start and end times or the actual start and end times of meal periods, to the extent any were taken. In addition, Defendants shaved time off of Plaintiffs' and similarly situated employees' hours worked and automatically deducted forty-five minutes for lunch each day even when meal periods were not taken or, if taken, they were less than forty-five minutes. These practices resulted in unpaid minimum and overtime wages.

19. Plaintiffs and similarly situated employees worked on prevailing wage jobs and non-prevailing wage jobs. Plaintiff and similarly situated employees also performed worked over eight (8) hours in a day and/or forty (40) hours in a week, earning overtime. When employees worked on prevailing wage and non-prevailing wage jobs within the same workday and/or workweek, Defendants did not correctly incorporate the value of the prevailing wage rates into Plaintiffs' and similarly situated employees' regular rates of pay for the purpose of calculating overtime wages for non-prevailing wage overtime hours. Defendants also paid Plaintiffs and similarly situated employees paid sick time when they worked on prevailing wage and non-prevailing wage jobs within the same day or workweeks without correctly incorporating the value of prevailing wage rates into Plaintiffs' and similarly situated employees' regular rates of pay.

20. Defendants did not authorize and permit Plaintiffs and similarly situated employees to take all meal and rest periods owed to them. Defendants employed Plaintiffs and similarly situated employees for work for periods of more than five hours without providing them an off-duty meal period of at least 30 minutes. Defendants did not have a policy or practice to provide Plaintiffs and similarly situated employees with second meal periods when they worked shifts longer than ten (10) hours. Defendants employed Plaintiffs and similarly situated employees for periods of more than six (6) hours

1 without providing a second ten (10) minute rest period. Defendants also did not have a policy or
2 practice to provide Plaintiffs and similarly situated employees with a third rest period when they worked
3 shifts longer than ten (10) hours. Defendants did not pay Plaintiffs and similarly situated employees all
4 missed meal and rest period premiums they were owed.

5 21. Plaintiffs and similarly situated employees worked on public works jobs during their
6 employment for which they should have been paid prevailing wages. Plaintiffs and similarly situated
7 employees also worked over eight (8) hours in a day and/or forty (40) hours in a week on these jobs
8 incurring overtime. However, Defendants failed to pay Plaintiffs and similarly situated employees all
9 prevailing wages and prevailing wage overtime wages they were entitled to.

10 22. Defendants required Plaintiffs and similarly situated employees to use their personal
11 cellphones for work to communicate with Defendants' management. Defendants also required Plaintiffs
12 and similarly situated employees to travel to different job sites that required them to drive routes that
13 incurred bridge tolls. Defendants did not have any policy or practice to reimburse Plaintiffs and
14 similarly situated employees for these expenses.

15 23. Due to the practices and policies outline above, Defendants did not provide Plaintiffs and
16 similarly situated employees with accurate wage statements. For example, the wage statements did not
17 include accurate gross and net wages earned, total hours worked by the employee, the inclusive dates of
18 the period for which the employee is paid, and all applicable hourly rates in effect during the pay period
19 and the corresponding number of hours worked at each hourly rate by the employee, including but not
20 limited to rates and corresponding hours for prevailing wages, minimum and overtime wages, paid sick
21 time, and meal and rest period premiums.

22 24. At the time of Plaintiffs' and similarly situated employees' termination or separation they
23 had wages owed to them, including minimum wages, overtime wages, prevailing wages, used but not
24 fully paid sick leave wages, and meal and rest period premiums. To date, these wages remain unpaid.

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CAUSES OF ACTION
FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(As to all Defendants)

25. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 24 as though fully set forth herein.

26. During the period Plaintiffs were employed by Defendants, Defendants were required to compensate Plaintiffs at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 5, section (3)(A); Cal. Lab. Code §§ 510, 1194.*

27. Plaintiffs and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiffs and similarly situated employees for all overtime hours worked at their regular rate of pay.

28. Plaintiffs and similarly situated employees were not exempt from overtime protections employees under the California Wage Orders and Labor Code.

29. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

30. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 29 as though fully set forth herein.

31. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiffs and similarly situated employees with at least California's applicable minimum for every hour worked. *See MW-Order 2019; IWC Wage Order, No. 5, section 4(A); Cal. Lab. Code § 1194.*

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32. Plaintiffs were not exempt to the State's Minimum Wage Order. Defendants aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

33. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

34. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 33 as though fully set forth herein.

35. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

36. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 5, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

37. California Labor Code section 512 and Wage Order No. 5 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

38. Defendants employed Plaintiffs and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiffs and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiffs and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiffs and similarly situated employees to take their second meal period before the completion of their tenth hour of work. Plaintiffs and similarly situated employees did not waive their rights to all meal periods throughout their employment.

39. Defendants further failed to pay Plaintiffs and similarly situated employees the applicable meal period premiums for any such missed meal breaks.

40. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(As to all Defendants)

41. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 40 as though fully set forth herein.

42. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

43. California Labor Code section 226.7 and Wage Order No. 5, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

44. Plaintiffs allege that Defendants failed to authorize and permit Plaintiffs and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

45. Defendants further failed to pay Plaintiffs and similarly situated employees the applicable rest period premiums for any such missed rest periods.

46. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

47. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 46 as though fully set forth herein.

48. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

1 (1) gross wages earned, (2) total hours worked by the employee, except for
2 any employee whose compensation is solely based on a salary and who is
3 exempt from payment of overtime under subdivision (a) of Section 515 or
4 any applicable order of the Industrial Welfare Commission, (3) the
5 number of piece-rate units earned and any applicable piece rate if the
6 employee is paid on a piece-rate basis, (4) all deductions, provided that
7 all deductions made on written orders of the employee may be aggregated
8 and shown as one item, (5) net wages earned, (6) the inclusive dates of the
9 period for which the employee is paid, (7) the name of the employee and
10 the last four digits of his or her social security number or an employee
11 identification number other than a social security number, (8) the name
12 and address of the legal entity that is the employer and, if the employer is
13 a farm labor contractor, as defined in subdivision (b) of Section 1682, the
14 name and address of the legal entity that secured the services of the
15 employer, and (9) all applicable hourly rates in effect during the pay
16 period and the corresponding number of hours worked at each hourly rate
17 by the employee. The deductions made from payment of wages shall be
18 recorded in ink or other indelible form, properly dated, showing the
19 month, day, and year, and a copy of the statement and the record of the
20 deductions shall be kept on file by the employer for at least three years at
21 the place of employment or at a central location within the State of
22 California.

23 49. Plaintiffs allege that Defendants intentionally and knowingly failed to provide an
24 itemized statement or failed to provide an accurate and complete itemized statement showing the
25 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
26 accurately itemize all applicable hourly rates in effect during the pay period, all regular and overtime
27 hours worked and corresponding rates of pay, including prevailing wage rates, and gross and net
28 wages earned. The paystubs also did not accurately itemize Plaintiff's and similarly situated
employees' total hours worked. Plaintiffs and similarly situated employees were not able to
promptly and easily determine their total hours worked from their paystubs alone. Additionally,
Plaintiffs and similarly situated employees suffered confusion over whether they received all wages
owed and were prevented from effectively challenging information on their wage statements.

50. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated
employees have been damaged as stated in the section below entitled "DAMAGES," which is
incorporated here to the extent pertinent as if set forth here in full.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

51. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 50 as though fully
set forth herein.

1 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
2 unlawful.”

3 60. Defendants required Plaintiffs and similarly situated employees to use their personal
4 cellphones and incur bridge tolls but failed to reimburse them.

5 61. As a proximate result of Defendants’ conduct, Plaintiffs and similarly situated employees
6 have been damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to
7 the extent pertinent as if set forth here in full.

8
9 **EIGHTH CAUSE OF ACTION**
FAILURE TO PAY PREVAILING WAGES
(As to All Defendants)

10 62. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 61 as though
11 fully set forth herein.

12 63. California Labor Code section 1771 states, “[e]xcept for public works projects of one
13 thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for
14 work of a similar character in the locality in which the public work is performed, and not less than
15 the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this
16 chapter, shall be paid to all workers employed on public works.” California Labor Code section
17 1774 states, “[t]he contractor to whom the contract is awarded, and any subcontractor under him,
18 shall pay not less than the specified prevailing rates of wages to all workmen employed in the
19 execution of the contract.”

20 64. Plaintiffs worked on public works jobs but were not paid the specified prevailing
21 wage and the corresponding overtime rates.

22 65. Plaintiffs and similarly situated employees were not exempt to the State’s prevailing
23 wage orders and applicable law. Defendants were aware of their obligation to pay the prevailing wages
24 but failed to do so.

25 66. As a proximate result of Defendants’ conduct, Plaintiffs and similarly situated employees
26 have been damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to
27 the extent pertinent as if set forth here in full.
28

NINTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to Defendants MIKE MCCALL LANDSCAPE, INC. and DOES 1 to 100)

67. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 66 as though fully set forth herein.

68. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See California Business and Professions ("B&P") Code § 17200.

69. Plaintiffs and similarly situated employees were not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, prevailing wages, paid sick leave, or reimbursed for business expenses, during their employment or any time thereafter. Moreover, through Defendants conduct Plaintiff and similarly situated employees were denied statutory protections regarding meal and rest periods.

70. Plaintiffs further allege that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

71. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiffs and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

TENTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

72. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 71 as though fully set forth herein.

73. Plaintiffs have alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with him and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194, 1815; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 5, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 1771, 1774, 1775 (Failure to Pay Prevailing Wages)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code § 226.3, 1174, 1812, 1198; IWC Wage Order 5, § 7(A) (Failure to Maintain Accurate Records)
- Violation of Labor Code § 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

74. Plaintiffs seek civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

75. Plaintiffs seek these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiffs request relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;

- 1 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
2 Code section 1194;

3 3. As to the Second Cause of Action:

- 4 a. Wages in an amount to be proven at trial;
5 b. Interest for the wages due pursuant to California Labor Code section 1194;
6 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
7 Code section 1194;
8 d. Liquidated damages pursuant to California Labor Code section 1194.2;

9 4. As to the Third Cause of Action:

- 10 a. Wages in an amount to be proven at trial;
11 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
12 section 1021.5;

13 5. As to the Fourth Cause of Action:

- 14 a. Wages in an amount to be proven at trial;
15 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
16 section 1021.5;

17 6. As to the Fifth Cause of Action:

- 18 a. Penalties as provided for in Labor Code section 226, including the greater of all
19 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
20 violation occurred and one hundred dollars (\$100.00) per employee for each
21 violation in the subsequent pay periods, but not to exceed four thousand dollars
22 (\$4,000.00);
23 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
24 226(e);

25 7. As to the Seventh Cause of Action:

- 26 a. An amount to be proven at trial;
27 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);
28 //

1 8. As to the Eighth Cause of Action:

- 2 a. Wages in an amount to be proven at trial;
- 3 b. Interest for the wages due pursuant to Labor Code section 1194;
- 4 c. For reasonable attorney's fees and costs incurred pursuant to Labor Code sections
- 5 1194, 1021.5, and 218.5;

6 9. As to the Tenth Cause of Action:

- 7 a. For civil penalties as provided for in the Labor Code for each enumerated
- 8 violation in an amount to be proven at trial;
- 9 b. For those Labor Code sections, the violation of which there is no civil penalty
- 10 provided, the default penalty provided in Labor Code section 2699(f): for any
- 11 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
- 12 period; For any subsequent violation, two hundred dollars (\$200) for each
- 13 aggrieved employee per pay period;
- 14 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 15 d. For any other remedies as allowed by law and/or deemed appropriate by the
- 16 Court;

17 10. For such other and further relief as this Court may deem just and proper,

18 including, but not limited to:

- 19 a. Wages as proved at trial;
- 20 b. Injunctive and Declaratory relief;
- 21 c. Attorney's fees and costs as provided for by law; and
- 22 d. Interest.

23

24 Dated: November 15, 2023

Shimoda & Rodriguez Law, PC

25

26 By: *Brittany Berzin*

27 Galen T. Shimoda

28 Justin P. Rodriguez

 Brittany V. Berzin

 Attorneys for Plaintiffs

1 *Escobar Cabrera, et al. v. Mike McCall Landscape, Inc., et al.*
2 *Sacramento County Superior Court of California 23CV005083*

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Shaniya Baird, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On November 20, 2023, I served the following documents on the party below:

9 • **FIRST AMENDED COMPLAINT FOR DAMAGES**

10 Jason J. Granskog (SBN: 180930) 11 Bowles & Verna LLP 12 2121 North California Boulevard, Suite 875 13 Walnut Creek, California 94596 14 Phone: (925) 935-3300 15 Facsimile: (925) 935-0371 16 Email: jgranskog@bowlesverna.com 17 tohl@bowlesverna.com	
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18 [] [By Certified Mail] I am familiar with my employer's practice for the collection
19 and processing of correspondence for mailing with the United States Postal
20 Service and that each day's mail is deposited with the United States Postal
21 Service that same day in the ordinary course of business. On the date set forth
22 above, I served the aforementioned document(s) on the parties in said action by
23 placing a true copy thereof enclosed in a sealed envelope with postage thereon
24 fully prepaid, for collection and mailing on this date, following ordinary business
25 practices, at Salt Lake City, Utah addressed as set forth above.

26 [] [By Personal Service] By personally delivering a true copy thereof to the office
27 of the addressee above.

28 [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service: _____.

I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct, and that this declaration was executed on November 20, 2023, at Salt Lake City,
Utah.

Shaniya Baird
Shaniya Baird