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Attorneys for Plaintiff Angel Barrios

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANGEL BARRIOS,

Plaintiff,

vs.

C & M TOPSOIL INC; CAMERON
WILLIAM ORNELAS;
MILDRED MARIANA GOMEZ; and
DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: 23STCV28049

) COMPLAINT FOR DAMAGES FOR:

-) 1) FAILURE TO COMPENSATE FOR
) ALL HOURS WORKED;
) 2) FAILURE TO PAY MINIMUM
) WAGES;
) 3) FAILURE TO PAY OVERTIME;
) 4) FAILURE TO PROVIDE
) ACCURATE ITEMIZED WAGE
) STATEMENTS;
) 5) FAILURE TO PAY WAGES OWED
) EVERY PAY PERIOD;
) 6) FAILURE TO PAY WAGES WHEN
) EMPLOYMENT ENDS
) 7) FAILURE TO GIVE REST BREAKS
) 8) FAILURE TO GIVE MEAL BREAKS
) 9) PRIVATE ATTORNEYS GENERAL
) ACT ("PAGA");
) 10) FAILURE TO REIMBURSE FOR
) BUSINESS EXPENSES;
) 11) SEXUAL HARASSMENT IN
) VIOLATION OF FAIR
) EMPLOYMENT AND HOUSING
) ACT ("FEHA");
) 12) FAILURE TO PREVENT
) HARASSMENT IN VIOLATION OF
) FEHA;
) 13) VIOLATION OF CALIFORNIA
) BUSINESS AND PROFESSIONS
) CODE SECTION 17200

) DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, ANGEL BARRIOS (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants C & M TOPSOIL INC; CAMERON WILLIAM ORNELAS; MILDRED MARIANA GOMEZ.; and DOES 1 to 25, inclusive, do business in the County of Los Angeles. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant C & M TOPSOIL INC. ("C&M") is a California Corporation, doing business in Los Angeles County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendants CAMERON WILLIAM ORNELAS and MILDRED MARIANA GOMEZ are residents of the State of California and the owners, directors, and/or managing agents of C & M TOPSOIL INC. They are being included in this lawsuit pursuant to Labor Code section 558.1 in that they were each involved in the day-to-day operations of the business and each controlled Plaintiff's and other employees' wages, hours, and/or working conditions. Defendants C & M TOPSOIL INC, CAMERON WILLIAM ORNELAS, and MILDRED MARIANA GOMEZ are collectively referred to herein as "Defendant(s)" (unless otherwise noted) or "C&M".

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE

1 defendants, numbers 1 to 25, reside in the State of California and are in some manner
2 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
3 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
4 and capacities of these fictitiously named defendants.

5 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
6 that information and belief, alleges that at all times herein mentioned, each of the remaining
7 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
8 under the authority of their agency, employment, or representative capacity, with the consent
9 of his/her codefendants.
10

11 **GENERAL ALLEGATIONS**

12 7. Plaintiff started working at C&M on or around 2021. Plaintiff's employment ended on
13 or around May 2023. Plaintiff was classified as an exempt, salaried employee. It is Plaintiff's
14 position that Plaintiff was misclassified as an exempt, salaried employee.
15

16 8. Under California law, in order for Plaintiff to be an exempt employee, he would have to
17 fit in one of the following categories: Executive, Professional, or Administrative.

18 9. Plaintiff did not fit under the Executive exemption because he was NOT "primarily
19 engaged in" (more than 50%) duties which met the test of exemption. Plaintiff did not have
20 the ability to hire and fire other employees. Work tasks are either exempt or nonexempt as
21 determined by the objective purpose for which the tasks are undertaken. *See Heyen v. Safeway*
22 *Inc.* (2013) 216 CA4th 795, 826-827. In the *Heyen* case, *supra*, a grocery store assistant
23 manager who spent more than half of her time bagging groceries or checking out customers
24 was deemed to be engaged in nonexempt activities despite concurrently watching over her
25 subordinates' work. Plaintiff did not spend the majority of his time in a managerial or
26 supervisory position.
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1 10. Plaintiff did not fit under the Professional Exemption because his work did not fit
2 into one of the enumerated professions and is not considered a “learned or artistic profession.”
3 The Administrative Exemption also does not apply to Plaintiff either.

4 11. The overall important thing to note is that Plaintiff could not have possibly been a
5 salaried, exempt employee because he simply did not have the independent judgment and
6 discretion. All of his actions were micromanaged and there is a great deal of oversight.
7 Moreover, the majority of Plaintiff’ work duties as a “Fleet Manager” included being out in
8 the field to secure parts, calling to get roadside service for trucks that had broken down, and
9 just ensuring that all equipment was on site. Moreover, it was important to note that the owner
10 would deal with any larger money transactions.

12 12. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
13 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
14 Security Services USA, Inc., an onsite security provider. After about a year of employment,
15 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
16 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
17 termination of employment and weekly payment of wages to temporary employees. The trial
18 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
19 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
20 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
21 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
22 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
23 PAGA representative to sue for violations that the representative has personally suffered. The
24 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
25 and others. The statute also states that an “aggrieved employee” is “any person who was
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1 employed by the alleged violator and against whom one or more of the alleged violations was
2 committed.” Because at least one of the violations that Huff had alleged had affected him
3 personally, the Court of Appeal denied Securitas’ motion.

4 13. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
5 other employees, it allows for suits broader than the specific violations the named
6 employee experienced. Therefore, even if the employee did not personally experience the
7 Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is
8 Plaintiff’s position that Plaintiff can equivocally bring the following labor code violations on
9 behalf of all other employees, including ALL hourly, non-exempt employees and also those
10 employees who were misclassified as salaried, exempt employees but should have been
11 classified as hourly, non-exempt employees.

12 14. It is Plaintiff’s position that C&M has violated the following Labor Code Sections
13 against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt,
14 hourly employees and all misclassified salaried, exempt employees who worked for C&M at
15 their various locations in the State of California during the relevant PAGA period.

16 15. C&M violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay
17 Plaintiff and other similarly situated aggrieved employees for all hours worked, including the
18 statutory minimum wage for all hours worked and for “off the clock” work. This is so because
19 C&M had a company policy wherein they would disproportionately round down the number of
20 hours worked, resulting in “time shaving” and further resulting in aggrieved employees not being
21 paid for all hours worked. Furthermore, and to the extent that Plaintiff and others worked
22 through their meal periods while “off the clock”, they were not compensated for all hours
23 worked, which would be akin to a minimum wage violation. Moreover, due to being
24 misclassified, Plaintiff was not compensated for all hours worked, including working after
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1 hours up to 9pm, especially as it related to dealing with broken down trucks and getting road
2 side service secured at 2am or 3am.

3 16. Due to the above “off the clock” violations and due to the misclassification, C&M also
4 violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees
5 overtime compensation, even though they worked more than 8 hours per day, 12 hours per day,
6 and/or 40 hours per week throughout their employment. Plaintiff and other aggrieved
7 employees’ actual work hours entitled them to overtime compensation, however, C&M did not
8 compensate its misclassified exempt employees as well as hourly, non-exempt employees with
9 the correct amount of overtime due to the “off the clock” work and time shaving as described
10 above. In addition, and since Plaintiff was misclassified as an exempt employee, he was not
11 paid any overtime whatsoever, despite working over 8 hours per day and/or 40 hours per week
12 throughout his employment. Furthermore, C&M failed to include bonuses/incentive payments
13 in calculating employees’ regular rate of pay for use in deciphering the correct overtime rate of
14 pay. Additionally, the incentive and bonus payments were also not factored into employees’
15 regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

16 17. C&M also violated Labor Code § 226.7 and the appropriate Industrial Welfare
17 Commission Wage Order no. 4/16 because it failed to provide Plaintiff and other similarly
18 situated aggrieved employees with 10-minute rest periods for every four hours of work, or
19 majority portion thereof, throughout their employment. C&M did not completely relieve
20 Plaintiff and others of all duty during said rest periods. C&M did not pay to Plaintiff and others
21 one additional hour of pay at Plaintiff’s regular rate of compensation for each workday that one
22 or more statutory rest periods was not provided. It was not part of the company policy for
23 employees such as Plaintiff to take at least two rest breaks per shift, especially since Plaintiff
24 was misclassified as a salaried employee. The concept of rest breaks was not
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1 implemented as it was not company policy. Moreover, it would not have been possible for
2 employees like Plaintiff to take such rest breaks due to being understaffed and due to a heavy
3 workload. As such, the culture as well as the policies and procedures of C&M did not lend itself
4 to the employees receiving consistent statutory rest breaks wherein they were relieved of all work
5 duties. The environment at C&M was not conducive to receiving multiple statutory rest breaks
6 under California law and timely, statutory rest breaks were not authorized or enforced.

7
8 18. C&M violated Labor Code §§ 512 and 226.7 along with Industrial Welfare Commission
9 Wage Order no. 4/16 because it failed to provide hourly, non-exempt employees, including
10 Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours
11 of work throughout their employment. C&M did not completely relieve Plaintiff and other
12 employees of all duty during said meal periods. C&M did not pay to Plaintiff and its hourly,
13 non-exempt employees one additional hour of pay at their regular rate of compensation for each
14 workday that one or more statutory meal periods was not provided. The hourly, non-exempt
15 employees would often not be able to receive their meal periods before the 5th hour worked due
16 to the workload and due to being in a fast-paced work environment. Like the rest breaks,
17 receiving a thirty-minute uninterrupted and timely meal break was not part of the company
18 culture and was not enforced by C&M. Consequently, it was the normal practice and custom of
19 C&M not to authorize, permit, and enforce timely statutory meal periods, especially for those
20 employees who were misclassified as salaried, exempt employees and who the company
21 believed were not allowed to take timely, uninterrupted meal breaks. If C&M had Plaintiff and
22 others sign a meal period waiver, it would not be valid and enforceable since Plaintiff and others
23 generally worked more than a 6-hour shift. If C&M had Plaintiff and others sign an on-duty
24 meal period agreement wherein Plaintiff agreed to work through the meal periods, it would be
25 invalid and unenforceable because the nature of Plaintiff's job does not prevent him from taking
26 a meal period and the company could have hired "breakers" to relieve Plaintiff of his job
27 duties so that he can actually take a timely, uninterrupted meal period. Moreover, any such "on
28 duty" meal period agreement did not allow for Plaintiff to revoke such an agreement even if it
was signed. As such, Plaintiff and others did not always receive statutory, timely meal periods
during their employment. To the extent that C&M argues that employees receive meal break

1 premium pay for missed meal periods, that argument is inconsequential for PAGA penalty
2 purposes since the PAGA penalties are for the violations themselves, irrespective of whether an
3 employee received the premium payment for a missed, short, or interrupted meal period.
4 In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, “section 226.7 does not give
5 employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour
6 of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in
7 original). Thus, the extra hour of pay does not excuse the violation; the employer has still
8 committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S.*
9 *Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment
10 and culture at C&M was not conducive to receiving consistent, timely, statutory meal breaks
11 under California law. Moreover, any meal or rest break premiums paid were not compensated at
12 the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as
13 overtime compensation.

14 19. Furthermore, during the relevant time period, and due to the above labor code violations,
15 C&M failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to
16 them within any time period specified by California Labor Code section 204. C&M was also in
17 violation of California Labor Code section 226(a) by failing to include pertinent information on
18 the wage statements, including but not limited to, the correct hourly rate, all hours worked,
19 overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium
20 pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period,
21 all employee identifying information, the correct and complete name and address of the legal
22 employer, and reimbursement for business expenses, among others. As such, C&M did not
23 provide Plaintiff and other similarly situated aggrieved employees with complete, accurate
24 itemized wage statements.

25 20. During the relevant time period, C&M also failed to keep accurate and complete payroll
26 records showing the actual hours worked per day and the wages paid to Plaintiff and others
27 pursuant to California Labor Code sections 1174(d).
28

1 21. C&M also violated Labor Code § 203 because it willfully failed to pay Plaintiff and
2 other similarly situated aggrieved employees earned and due wages upon separation of
3 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
4 These earned but unpaid wages include compensation for all hours worked, including minimum
5 wages, overtime compensation, and premium pay for missed meal and rest breaks. Furthermore,
6 Plaintiff accrued vacation time was paid late and not immediately upon termination.

7
8 22. During the relevant time period, Plaintiff and other aggrieved employees incurred
9 necessary, business-related expenses and costs that were not reimbursed by C&M. These costs
10 include, but are not limited to, use of personal phones and laptop for business-related purposes
11 and use of personal vehicles/truck to effectuate job duties, including his main job duties of
12 picking up parts from the parts department at various different locations and then driving the
13 parts back to the office. Accordingly, C&M was in violation of California Labor Code sections
14 2800 and 2802.

15 23. In addition, Plaintiff would have individual claims against C&M for violations of
16 the Fair Employment and Housing Act (FEHA) in that Plaintiff was consistently sexually
17 harassed on the job by another employee who would consistently touch/grab Plaintiff butt
18 and would blow "kissy faces" at Plaintiff. The company unequivocally knew this was going
19 on but did nothing to stop it and create a less hostile work environment.

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21 24. Moreover, it is telling that Plaintiff was provided a copy of an employee handbook 5
22 minutes before being terminated from his employment.

23 25. Prior to filing this action, Plaintiff timely exhausted administrative remedies by timely
24 filing an administrative complaint with the Department of Fair Employment and Housing
25 ("DFEH") and receiving a DFEH right to sue letter.

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FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

(California Industrial Welfare Commission Order 4-2001/16-2001, California Code of Regulations Title 8 Section 11040/11160, and California Labor Code Section 1198)

(Plaintiff against all named defendants and all DOE defendants)

26. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 25, inclusive, of this Complaint as though fully set forth herein.

27. At all times relevant herein, Defendants were required to compensate its employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 4-2001/16-2001, California Code of Regulations, Title 8, Section 11040/11160.

28. For the three (3) years preceding filing of this action, Defendants failed to compensate Plaintiff for all hours worked.

29. Under the aforementioned wage order and regulations, Plaintiff is to recover compensation for all hours worked but not paid by Defendants for the three (3) years preceding the filing of this Complaint.

30. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

31. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable attorney's fees and costs of suit.

32. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

1 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
2 amount known to Plaintiff once he has obtained all of his payroll records from
3 Defendants.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGES**

6 **(California Labor Code Sections 1771,1774, 1194, 1194.2, 1197)**

7 **(Plaintiff against all named defendants and all DOE defendants)**

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9 33. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 32, inclusive, of this Complaint as though fully set forth herein.

11 34. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
12 to suffer or permit a California employee to work without paying wages at the minimum wage
13 rate for all hours worked as required by the applicable Industrial Welfare Commission
14 (hereinafter "IWC") Wage Order No. 4-2001/16-2001, codified at California Code of
15 Regulations, Title 8, Section 11040/11160, subdivision 4.

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17 35. Pursuant to IWC Wage Order no. 4-2001 and/or 16-2001, subdivision 2, at all
18 relevant times, "hours worked" included "the time during which an employee is subject to the
19 control of an employer, and includes all the time the employee is suffered or permitted to work,
20 whether or not required to do so..."

21 36. During his employment, Plaintiff was regularly required as a matter of uniform
22 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
23 was paid less than the minimum wage rate by Defendants for hours worked in violation of
24 California Labor Code Section 1197 and the applicable California Industrial Wage
25 Commission wage order(s).

26
27 37. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
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1 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
2 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
3 to believe that their acts or omissions were not contrary to California law.

4 38. For all hours worked by Plaintiff for which he was paid less than the minimum wage
5 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
6 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
7 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
8 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.
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10 39. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
11 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
12 trial.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PAY OVERTIME**

15 **(California Industrial Welfare Commission Order 4-2001/16-2001, California Code of**
16 **Regulations Title 8 Section 11040/11160)**

17 **(Plaintiff against all named defendants and all DOE defendants)**

18 40. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 39, inclusive, of this Complaint as though fully set forth herein. This
20 cause of action is brought by Plaintiff against all Defendants jointly and individually.
21

22 41. Pursuant to Industrial Welfare Commission Orders No. 4-2001/16-2001, California
23 Code of Regulations, Title 8, Section 11040/11160, for the period of Plaintiff's employment,
24 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
25 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
26 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
27 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
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1 consecutive work day in a week.

2 42. Plaintiff was a non-exempt employee entitled to the protections of the California
3 Industrial Welfare Commission Order No. 4-2001/16-2001, California Code of Regulations,
4 Title 8, Section 11040/11160.
5

6 43. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in a
7 single workweek on numerous occasions.

8 44. Plaintiff worked more than twelve (12) hours in a single workday.

9 45. Plaintiff was entitled to the above overtime premiums.

10 46. Defendants did not pay Plaintiff premium wages of at least one and one-half times
11 Plaintiff's correct regular rate of pay for hours worked past eight (8) in a day.
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13 47. Defendants did not pay Plaintiff premium wages of at least one and one-half times
14 Plaintiff's correct regular rate of pay for hours worked past forty (40) in a week.

15 48. Defendants did not pay Plaintiff premium wages of at least two times Plaintiff's correct
16 regular rate of pay for hours worked past twelve (12) in a day.

17 49. Plaintiff worked at least one pay period in which he was not properly paid the correct
18 amount of overtime within the three (3) years prior to the initiation of this lawsuit.
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20 50. Defendants know or should know the actual dates of overtime worked, the amount of
21 overtime worked, and the amount of unpaid overtime due.

22 51. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
23 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
24 Court.

25 52. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
26 Regulations, Title 8, Section 11040/11160, Plaintiff is entitled to recover damages for the
27 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
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1 reasonable attorney's fees and costs of suit.

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3 **FOURTH CAUSE OF ACTION**

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

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

6 **(Plaintiff against all named defendants and all DOE defendants)**

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8 53. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 52, inclusive, of this Complaint as though fully set forth herein. This
10 cause of action is brought by Plaintiff against all Defendants jointly and individually.

11 54. Labor Code section 226(a) requires employers provide employees with itemized wage
12 statements.

13 55. Labor Code section 226(a)(2) requires pay stubs accurately account for hours worked
14 and the applicable hourly rates.

15 56. Labor Code section 226(a)(9) requires pay stubs to accurately reflect all applicable
16 hourly rates in effect during the pay period and the corresponding number of hours worked at
17 each hourly rate.

18
19 57. Pursuant to California Labor Code Section 226, every employer must furnish each
20 employee an itemized statement of wages and deductions at the time of payment of wages.

21 58. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs
22 that accurately reflected all information required by Labor Code Section 226, including but not
23 limited to, gross wages earned, net wages earned, total hours worked by the employee, all
24 deductions, overtime hours and pay, premium pay for rest break and meal break violations, and
25 business expense reimbursement, among others. Therefore, Defendants failed to maintain and
26 provide accurate itemized wage statements to Plaintiff in accordance with California Labor
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Code Section 226(a).

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES OWED EVERY PAY PERIOD

(California Labor Code Section 204)

(Plaintiff against all named defendants and all DOE defendants)

61. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 60, inclusive, of this Complaint as though fully set forth herein. This cause of action is brought by Plaintiff against all Defendants jointly and individually.

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

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

64. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is

1 informed, believes, and thereon alleges, that all times relevant during the liability period,
2 Defendants maintained a policy or practice of not paying Plaintiff the minimum wage for all
3 hours worked, not paying Plaintiff for all overtime hours worked, and not compensating
4 Plaintiff with premium pay for missed rest and meal breaks.

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

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11 **SIXTH CAUSE OF ACTION**

12 **FAILURE TO GIVE REST BREAKS**

13 **(Plaintiff against all named defendants and all DOE defendants)**

14 66. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 65, inclusive, of this Complaint as though fully set forth herein. This
16 cause of action is brought by Plaintiff against all Defendants jointly and individually.

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18 67. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 19 a. Title 8 of the California Code of Regulations Section 11040(12)(A)/11160(11)(A),
20 which provides that every employer shall authorize and permit all employees to
21 take rest periods, which insofar as practicable shall be in the middle of each work
22 period. The authorized rest period time shall be based on the total hours worked
23 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
24 thereof;
25
26 b. Title 8 of the California Code of Regulations Section 11040(12)(B)/11160(11)(B),
27 which provides that if an employer fails to provide an employee a rest period in
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1 accordance with the applicable provisions of this order, the employer shall pay the
2 employee one (1) hour of pay at employee's regular rate of compensation for each
3 workday that the rest period is not provided;

4 c. Title 8 of the California Code of Regulations section 11040(20)(A)/11160(18)(A),
5 which penalizes the employer \$50.00 for each initial violation, per employee, of any
6 provision of the Wage Order, and \$100.00 for each additional violation thereafter
7 per employee; and

8
9 d. California Labor Code section 226.7, which states that (a) no employer shall require
10 any employee to work during any rest period mandated by an applicable order of
11 the Industrial Welfare Commission, and (b) if an employer fails to provide an
12 employee a rest period in accordance with an applicable order of the Industrial
13 Welfare Commission, the employer shall pay the employee one (1) additional hour
14 of pay at employee's regular rate of compensation for each work day that the rest
15 period is not provided.

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17 68. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest
18 break after every four (4) hours of work or major fraction thereof, as required by California
19 law.

20 69. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
21 regulations, and wage orders alleged in this cause of action along with any allowable interest,
22 penalties, attorney's fees and costs, in an amount to be proven at trial. Specifically, Plaintiff
23 prays for the foregoing moneys calculated from 3 years immediately preceding the filing of
24 this lawsuit.

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26 70. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees
27 as well as interest under Labor Code section 218.6.

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1 Section 11040 and/or 11160, which require an employer to maintain records
2 documenting its employees' meal periods;

3 e. California Industrial Welfare Commission wage order No. 4 and/or 16 Section
4 20(A)/18(A), as codified under California Code of Regulations Section 11040
5 and/or 11160, which penalizes the employer \$50.00 for each initial violation, per
6 employee, of any provision of the Wage Order, and \$100.00 for each additional
7 violation thereafter per employee; and

8 f. California Labor Code section 1171 and 1173, which have given the California
9 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4
10 and/or 16) as enforceable law.
11

12 73. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
13 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
14 take a second relieved meal break after ten (10) hours of work, as required by California law.
15 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
16 4 and/or 16, as codified under California Code of Regulations Sections 11040 and/or 11160 et.
17 seq., require that employees receive uninterrupted meal periods every five (5) hours of
18 consecutive work, and that the meal period be at least 30 minutes in length, wherein employee
19 is relieved of all work duty. California Labor Code section 226.7 provides that employers may
20 not require their employees to work through their meal periods. California Labor Code section
21 226.7 and California Code of Regulations section 11040 and/or 11160 require that if the
22 employer fails to provide the employee with an uninterrupted meal period, the employer must
23 pay the employee one (1) hour of pay for each work day that the meal period is not given.
24
25

26 74. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
27 regulations, and wage orders alleged in this cause of action along with any allowable interest,
28

1 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
2 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

3 75. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
4 fees as well as interest under Labor Code section 218.6.

5 76. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
6 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
7 trial.
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9 **EIGHTH CAUSE OF ACTION**

10 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

11 **(Plaintiff against all Defendants and DOE Defendants, and each of them)**

12 77. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 76, inclusive, of this Complaint as thought fully set forth herein.

14 78. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
15 employee for all necessary expenditures or losses incurred by the employee in direct
16 consequence of the discharge of his or her duties."
17

18 79. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
19 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
20 of completing his job duties, which were not reimbursed by Defendants. These expenses
21 include, but are not limited to, use of personal phones and laptop for business-related purposes
22 and use of personal vehicles/truck to effectuate job duties, including his main job duties of
23 picking up parts from the parts department at various different locations and then driving the
24 parts back to the office.
25

26 80. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
27 and attorney's fees and costs, under Labor Code section 2802.
28

1 properly suited to represent the interests of other current and former hourly, non-exempt
2 employees who worked for C&M in the State of California during the relevant
3 time period.

4 87. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks
5 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
6 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

7 88. Plaintiff therefore has exhausted all administrative remedies required of him under
8 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
9 cause of action and pursue penalties in a representative action for Defendants' violations of the
10 Labor Code.
11

12 89. California Labor Code section 2699 et seq. imposes penalties upon culpable
13 Defendants for violating the Labor Code.

14 90. California Labor Code section 558 establishes a civil penalty as follows: Any
15 employer or other person action on behalf of an employer who violates, or causes to be violated,
16 a section of this chapter or any provision regulating hours and days of work in any order of the
17 Industrial Welfare Commission (including the "Hours and Days of Work" section of the Wage
18 Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for
19 each underpaid employee for each pay period for which the employee was underpaid ...; (2) for
20 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
21 period for which the employee was underpaid ...;

22 91. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
23 by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
24 seeking individual/victim specific relief or underpaid wages under this particular cause of action.

25 92. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
26 by law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
27 the following:
28

Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, via 2698 and 2699, and any other Labor Codes and Industrial Welfare Commission Wage Order (Order Nos. 4/16) violated based on the facts alleged in this Complaint.

93. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees, costs, and civil penalties on behalf of Plaintiff and other current and former Aggrieved Employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of this Court.

ELEVENTH CAUSE OF ACTION

SEXUAL HARASSMENT IN VIOLATION OF FEHA

(Plaintiff against C &M TOPSOIL INC and all DOE Defendants)

94. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 93, inclusive, of this Complaint as though fully set forth herein.

95. At all times herein mentioned, FEHA, Government Code section 12900, et seq., was in full force and effect and were binding on Defendant C & M TOPSOIL INC. Specifically, Government Code section 12940(j) prohibits an employer from sexually harassing an employee on the basis of his sex.

96. While in the scope of his employment at C&M plaintiff was consistently sexually harassed on the job by another employee as described herein, creating a hostile sexual environment which materially altered Plaintiff's working conditions and which constitutes sexual harassment in violation of California Government Code section 12940(j)(1). C & M TOPSOIL INC aided and abetted the sexual harassment due to failing to prevent the sexual harassment and the hostile work environment despite being on notice of the harasser's behavior and propensities.

97. In engaging in the aforementioned conduct, Defendant C & M TOPSOIL INC and DOES 1 to 25, inclusive, and each of them, aided, abetted, incited, compelled, and/or coerced unlawful employment practices in violation of the announced policy of this State against such practices.

1 Furthermore, they failed to take immediate and appropriate corrective action to prevent this
2 harassment.

3 98. As a proximate result of the conduct of the Defendants, Plaintiff has suffered and will
4 continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other pecuniary
5 loss according to proof. Plaintiff has also suffered and will continue to suffer physical and
6 emotional injuries, including nervousness, humiliation, depression, anguish, embarrassment,
7 fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff's damages will be
8 ascertained at trial.

9 99. In committing the foregoing acts, Defendants have been guilty of oppression, fraud,
10 and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to punitive
11 damages in a sum appropriate to punish and make an example out of the foregoing Defendants.

12 100. The acts of oppression, fraud, and/or malice, were engaged in by employees of
13 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
14 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
15 wrongful conduct for which an award of punitive damages is sought, and/or was personally
16 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
17 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
18 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff
19 to punitive and exemplary damages against each of the Defendants in accordance with California
20 Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant.

21 101. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a
22 prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
23 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
24 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
25 award of attorneys' fees and costs.

26 **TWELFTH CAUSE OF ACTION**

27 **FAILURE TO PREVENT HARASSMENT IN VIOLATION OF FEHA**

28 **(Plaintiff against C & M TOPSOIL INC and all DOE Defendants)**

102. Plaintiff re-alleges and incorporates by reference each and every allegation in

1 paragraphs 1 through 101, inclusive, of this Complaint as though fully set forth herein.

2 103. At all times herein mentioned, FEHA, California Government Code section
3 12940(k), was in full force and effect and was binding on Defendants. This statute states that it
4 is an unlawful employment practice in California for an employer to “fail to take all reasonable
5 steps necessary to prevent discrimination and harassment from occurring.”

6 104. As alleged above, Plaintiff was subjected to harassment.

7 105. Defendants failed to take all reasonable steps necessary to prevent harassment. In
8 addition, C & M TOPSOIL INC failed to remedy such harassment when it realized and was
9 informed that it was occurring. C & M TOPSOIL INC further failed to train, supervise, and
10 monitor its employees and agents.

11 106. The failure of Defendants to prevent harassment created and encouraged an
12 environment where such harassment was condoned, encouraged, tolerated, sanctioned, and/or
13 ratified.

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

19 108. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and
20 each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression
21 and was authorized, ratified, and carried on with a conscious and willful disregard of their
22 workers’ right to work in an environment free of sexual harassment so as to justify the imposition
23 of punitive damages to punish and set an example of said Defendants.

24 109. As a proximate result of the foregoing conduct, which violated the provisions of
25 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney’s
26 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

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VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(Plaintiff against C & M TOPSOIL INC and all DOE defendants)

111. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants constitute unfair and unlawful business practices under California Business and Professions Code Section 17200, et seq.

113. For the four years preceding the filing of this action, Plaintiff has suffered damages and request damages and/or restitution of all monies and profits to be disgorged from Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of this Court.

WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as follows:

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- 1 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
2 subject to proof at trial;
- 3 6. For special, consequential, and liquidated damages to the extent allowed by law;
- 4 7. For the imposition of civil penalties and/or statutory penalties;
- 5 8. For PAGA penalties to the extent permitted pursuant to the Labor Code and Wage
6 Order including, but not limited to, Labor Code §§ 201,202, 203, 204, 210, 226, 226.3,
7 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2699, and 2802;
- 8 9. For an award of liquidated damages to the extent permissible by Labor Code § 1194.2;
- 9 10. For restitution and disgorgement for all unfair business practices by corporate
10 Defendants against Plaintiff in an amount subject to proof at trial;
- 11 11. For an order enjoining corporate Defendants from further unfair and unlawful business
12 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 13 12. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
14 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 15 13. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
16 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 17 14. For maximum civil penalties available under the Labor Code and applicable Wage
18 Order against Defendants as described more particularly in the Complaint and
19 representative PAGA claims;
- 20 15. For all remedies available to Plaintiff under the applicable Wage Order and the
21 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
22 liquidated damages, damages, penalties, and waiting time penalties according to proof
23 to the extent permitted by law;
- 24 16. For all interest as allowed by law;
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1 17. For all costs and disbursements incurred in this suit;

2 18. Reasonable attorney's fees where available by law, including but not limited to,

3 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,

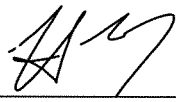
4 the Labor Code generally, FEHA, including Government Code section 12940 et. seq.

5 and/or other applicable laws; and

6 19. For such other and further relief as this Court may deem proper.

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9 DATED: November 15, 2023

MESSRELIAN LAW INC.

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11 By  _____

Harout Messrelian, Esq.

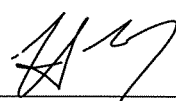
12 Attorneys for Plaintiff Angel Barrios

13 **DEMAND FOR JURY TRIAL**

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

15
16
17 DATED: November 15, 2023

MESSRELIAN LAW INC.

18
19 By  _____

Harout Messrelian, Esq.

20 Attorneys for Plaintiff Angel Barrios