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SUPERIOR COURT

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SUPERIOR COURT STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

LUIS VAZQUEZ on behalf of himself
and similarly situated employees

Plaintiff(s),

vs.

JANCO INDUSTRIES, INC., a California
Corporation; TERRY ALEXANDER, an
individual; ANDREW ALEXANDER, an
individual; DOES 1-20, inclusive

Defendant(s).

STK-CV-~~102~~2022- 9998

CLASS ACTION COMPLAINT

**PLAINTIFF'S COMPLAINT FOR
DAMAGES**

1. **Failure to Pay Minimum Wage** (Lab. Code, §§ 1194, 1194.2, Wage Order 16)
2. **Failure to Pay Overtime** (Lab. Code, §§ 510, 1194; Wage Order 16)
3. **Failure to Provide Meal Breaks** (Labor Code § 512, Wage Order 16)
4. **Failure to Provide Rest Breaks** (Labor Code § 226.7, Wage Order 16)
5. **Inaccurate Wage Statement Penalties**
6. **Failure to Timely Pay Wages During Employment** (Lab. Code, §§ 204, 210)
7. **Unlawful Competition** (Bus. & Prof. Code, § 17200)
8. **Waiting-Time Penalties** (Lab. Code, §§ 201-203)
9. **Failure to Reimburse Expenses** (Lab. Code § 2802)

COMES NOW, Plaintiff Luis Vazquez (“Plaintiff”), on behalf of himself and similarly situated employees hereby file this Class Action Complaint against JANCO INDUSTRIES, INC., a California Corporation, TERRY ALEXANDER, an individual, ANDREW ALEXANDER, an individual; DOES 1-20, inclusive (“Defendants”). On information and belief, Plaintiff alleges:

NATURE OF THE ACTION

1. Plaintiff brings this class action based on alleged violations of the California Labor Code and Industrial Welfare Commission Order No. 16-100 against Defendants. As set forth in more detail below, Plaintiff alleges that Defendants are liable to him and other similarly situated current and former employees, who worked in California as non-exempt employees from four (4) years prior to the date this complaint was filed to the present for damages, penalties, and related relief. These claims are based on Defendants’ 1) failure pay minimum and overtime wages for all hours worked, including drive time and loading and unloading; 2) failure to provide code-compliant meal and rest periods; 3) failure to provide accurate and compliant wage statements; 4) failure to timely pay wages both during and upon termination or resignation of employment; 5) failure maintain accurate records; 6) failure to provide reimbursement for worked-related expenses; and 7) unfair competition. Plaintiff has also submitted a Private Attorneys General Act (“PAGA”) notice to the California Labor and Workforce Development Agency (“LWDA”) and will amend this complaint to include a claim under the PAGA once he has exhausted his administrative remedies.

VENUE & JURISDICTION

2. This case is subject to the jurisdiction of this Court pursuant to the California Labor Code, California Business and Professions Code, and the California Code of Civil Procedure. The amount in controversy exceeds the jurisdictional minimum of this Court. At all times alleged herein, one or more Defendants were residents of or were doing business in, the State of California, County of San Joaquin.

3. Venue in San Joaquin County is proper pursuant to sections 395 and 395.5 of the Code of Civil Procedure in that at all relevant times herein, at least some of the violations of law

1 alleged to have been committed herein occurred in San Joaquin County and/or because each
2 Defendant is found, maintains offices, or conducts substantial business in the County of Placer.

3 **PARTIES**

4 4. Plaintiff LUIS VAZQUEZ is an individual over the age of 18 and a resident of
5 the State of California. At all times relevant to this Complaint, Plaintiff was employed by
6 Defendants as a non-exempt electrician.

7 5. On Plaintiff's information and belief, Defendant JANCO INDUSTRIES, INC. is
8 a California Corporation organized and existing under the laws of California.

9 6. On Plaintiff's information and belief, Defendant TERRY ALEXANDER is an
10 individual and during all times relevant to this Complaint is and was the owner of Defendant
11 JANCO INDUSTRIES, INC. and, as such, Defendant TERRY ALEXANDER is believed to be
12 an "other person acting on behalf of an employer" within the meaning of Labor Code sections
13 558 and 558.1.

14 7. On Plaintiff's information and belief, Defendant ANDREW ALEXANDER is an
15 individual and during all times relevant to this Complaint is and was the vice-president of
16 Defendant JANCO INDUSTRIES, INC. and, as such, Defendant ANDREW ALEXANDER is
17 believed to be an "other person acting on behalf of an employer" within the meaning of Labor
18 Code sections 558 and 558.1.

19 8. Plaintiff does not know the true names and capacities of Defendants sued in this
20 Complaint as DOES 1 through 20, inclusive, and therefore sues these Defendants by fictitious
21 names. Plaintiff will amend this Complaint to allege the true names and capacities of DOES 1
22 through 10, inclusive when ascertained. Plaintiff is informed, believe, and thereupon alleges that
23 each of the Defendants named herein as DOES 1 through 10, inclusive, is responsive in some
24 manner for the occurrence, injury, and other damages alleged in this Complaint.

25 9. Plaintiff is informed, believe, and thereupon allege, that each Defendant was in
26 some manner responsible for the acts and damages alleged herein, and/or are indebted to
27 Plaintiff as alleged herein, and that each Defendant was the agent, employer, and co-conspirator
28 of each other Defendant, and was acting in the course and scope of such agency and conspiracy.

1 In this Complaint where Plaintiffs refer to Defendant singularly, such reference shall be
2 construed to be a reference to all Defendants named herein, including those named fictitiously.

3 **CLASS ALLEGATIONS**

4 10. Plaintiff brings the First through Ninth Causes of Action on behalf of himself and
5 all others similarly situated as a class action pursuant to California Code of Civil Procedure
6 section 382. The class Plaintiff seeks to represent is composed of, and defined as follows:

7 Plaintiff and all non-exempt employees who have or continue to work for Defendants
8 in California from four (4) years prior to filing this complaint to the present.

9 11. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend
10 or modify the class description with greater specificity to further divide into subclasses or to
11 limit to particular issues.

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

16 **A. Numerosity**

17 13. The punitive class is so numerous that the individual joinder of all members is
18 impracticable under the circumstances of this case. While the exact number of class members is
19 unknown to Plaintiff, he is informed and believes that Defendants have employed as many as
20 100 individuals failing within the above-stated class definition through the State of California
21 during the applicable statute of limitations, who were subjected to the policies and practices
22 outlined in this complaint. As such, the joinder of all members of the punitive class is not
23 practicable.

24 14. Upon information and belief, Plaintiff alleges that Defendants' employment
25 records would provide information as to the number and location of all class members.

26 **B. Commonality**

27 15. Common questions of law and fact exist as to all members of the putative class
28

1 and predominate over questions that affect only individual members of the class. These
2 common questions of law and fact include, without limitation, the following:

- 3 1. Whether Defendants violated the California Labor Code and wage orders,
4 by failing to pay all overtime wages due;
- 5 2. Whether Defendants violated the California Labor Code and wage orders
6 by failing to pay all minimum wages due;
- 7 3. Whether Defendants had a policy and/or practice of failing to pay Plaintiff
8 and members of the putative class all overtime wages due for hours
9 worked over eight (8) hours per day and forty (40) hours per week;
- 10 4. Whether Defendants had a policy and/or practice of failing to properly
11 calculate the regular rate of pay for the purpose of calculating overtime,
12 double time, and sick leave pay;
- 13 5. Whether Defendants had a policy and/or practice of failing to pay Plaintiff
14 and members of the putative class minimum wages for all hours worked;
- 15 6. Whether Defendants had a policy and/or practice of failing to allow for,
16 and provide, Plaintiff and members of the putative class meal periods, as
17 required by law;
- 18 7. Whether Defendants had a policy and/or practice of failing to allow for,
19 and provide, Plaintiff and members of the putative class rest periods, as
20 required by law;
- 21 8. Whether Defendants had a policy and/or practice of failing to provide
22 reimbursement for business expenses to Plaintiff and members of the
23 putative class;
- 24 9. Whether Defendants violated the California Labor Code and wage orders
25 by failing to maintain and provide Plaintiff and putative class members
26 accurate records of Plaintiff and putative class members earned wages and
27 hours worked; and
- 28 10. Whether as a result of Defendants' policies and practices, Plaintiff and

putative class members timely received all wages due and owing during their employment and at the time of their termination or separation.

C. Typicality

16. Plaintiff's 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. Plaintiff and all members of the putative class were non-exempt employees who were not paid minimum and overtime wages for all hours worked, were not properly paid overtime and sick leave pay, were not provided meal and rest periods, and were not paid reimbursements for business expenses, as required by law. Additionally, Defendants issued Plaintiff and all members of the putative class wage statements that did not comply with labor code section 226. As a result, Plaintiff and each member of the putative class have suffered the same type of harm and seek the same type of recovery based on the same legal theories.

D. Adequacy

17. Plaintiff will fairly and adequately protect the interest of the members of the putative class. For all relevant times, Plaintiff resided in California and worked for Defendants in California. Moreover, Plaintiff will adequately represent the putative class as he has no interests that are adverse to those of the putative class members. Additionally, Plaintiff has retained counsel who has substantial experience in wage and hour matters.

E. Superiority

18. A class action is superior to other available means for the fair and efficient adjudication of the controversy since the individual joinder of all members of the putative class is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would have. Moreover, as damages suffered by each individual member of the class may be relatively small, the expense and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public

1 interest will be severed by addressing the matter as a class action. The cost to the court system of
2 adjudication of such individual litigation would be substantial. Individual litigation would also
3 present the potential for inconsistent or contradictory judgments.

4 19. Plaintiff is unaware of any difficulties that are likely to be encountered in the
5 management of this action that would preclude its maintenance as a class action.

6 **FACTUAL ALLEGATIONS**

7 20. Plaintiff worked as a non-exempt equipment operator, grader, and flat-bed driver
8 for Defendants from approximately July 2015 to 2016 and then returned to the company in 2017
9 until his separation in September 2022. At the time Plaintiff left his employment, he was making
10 \$31.00 dollars per hour.

11 21. Defendants specialize in concrete work, including preparing the site, setting up
12 wooden shells to pour the concrete, pouring the concrete and ensuring that the installation meets
13 the project specifications. Defendants are located in Tracy, California, but do projects all over
14 California, including the Bay Area.

15 22. Throughout Plaintiff's tenure with the company, he and other similarly situated
16 employees were not paid the applicable minimum and overtime wages for all hours worked.
17 Specifically, it was company practice and policy to not pay employees for their worktime prior
18 to and after arrival at the actual worksite, this included the time it took to load and unload
19 vehicles and time driving to and from the worksite. Given that many of the job sites were in the
20 Bay Area, travel time to and from the company headquarters in Tracy to the worksite and back
21 could take as long as three (3) or more hours per day. Despite this, Plaintiff and similarly
22 employees were specifically told to only record the hours that they were at the worksite. In fact,
23 in many instances, the superintendent or manager would themselves record Plaintiff and
24 similarly situated employees' hours worked, which again did not include drive time and loading
25 and unloading time.

26 23. Furthermore, in those pay periods where Plaintiff and similarly situated
27 employees were paid overtime, double time, or sick leave pay in the same pay period where they
28 earned non-discretionary remuneration in the form of performance bonuses, Defendants failed to

1 accurately include the non-discretionary bonus compensation as part of the employees' "regular
2 rate of pay." Additionally, when Plaintiff and similarly situated employees were paid different
3 rates of pay in a single pay period, Defendants improperly calculated the overtime rate at the
4 lower rate of pay. As a result, Plaintiff and similarly situated employees were systematically
5 undercompensated for overtime and sick leave pay.

6 24. Defendants' failure to pay for all regular and overtime hours worked also resulted
7 in Defendants' failure to pay Plaintiff and similarly situated employees all wages they were
8 owed during the applicable pay period.

9 25. Defendants further did not have a policy or practice to authorize Plaintiff and
10 similarly situated employees to take all meal periods and paid rest periods owed to them,
11 particular when they were working on the concrete crew. Furthermore, when Plaintiff and
12 similarly situated employees were able to take a meal break, the break was often after the first
13 five (5) hours of work and would frequently be cut short or interrupted. Defendants further did
14 not pay Plaintiff and similarly situated employees any meal or rest period premiums for missed
15 meal and rest periods.

16 26. Plaintiff and similarly situated employees were further required to use their
17 personal cellphones for work purposes, including communicating with staff and management,
18 and were not reimbursed for this use.

19 27. The policies and practices described above resulted in Plaintiff and similarly
20 situated employees being owed wages at the time of their separation or termination that went
21 unpaid by Defendants. Defendants failed to issue Plaintiff and similarly situated employees
22 wage statements that accurately stated their total hours worked, and the number of regular and
23 overtime hours they worked and corresponding applicable hourly rates, the correct amount of
24 gross and net wages, and amounts for meal and rest period premiums.

25 28. At all times relevant herein, Defendants TERRY ALEXANDER and ANDREW
26 ALEXANDER were owners and/or managing agents of Defendant JANCO INDUSTRIES, INC.
27 and were acting on behalf of JANCO INDUSTRIES, INC. when they violated and caused to be
28 violated the below provisions of the California Labor Code.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Failure to Pay Minimum Wage**

4 **(Lab. Code, §§ 1194, 1194.2, Wage Order 16)**

5 **(As to All Defendants)**

6 29. Plaintiff incorporates in this cause of action each and every allegation of the
7 preceding paragraphs, as though fully set forth herein.

8 30. Labor Code §§ 1194, 1197, 1197.1 and Industrial Welfare Commission ("IWC")
9 Wage Order 16 require employers to pay an amount equal to or greater than the minimum wage
10 for each hour worked.

11 31. Defendants failed to pay Plaintiff and similarly situated employees at least the
12 minimum wage for each hour worked, including their time driving to work locations, loading
13 and unloading, and other tasks necessary to do their jobs, as required by Defendants.

14 32. As a direct and proximate result of Defendants' unlawful conduct, as set forth
15 herein, Plaintiff and similarly situated employees have suffered damages, including loss of
16 earnings for time worked on behalf of Defendants.

17 33. Plaintiff and similarly situated employees request relief as described below.

18 **SECOND CAUSE OF ACTION**

19 **Failure to Pay Overtime**

20 **(Lab. Code, §§ 510, 1194; Wage Order 16)**

21 **(As to all Defendants)**

22 34. Plaintiff incorporates in this cause of action each and every allegation of the
23 preceding paragraphs, as though fully set forth herein.

24 35. Labor Code § 510 requires employers to pay overtime compensation to all
25 employees, unless they are exempt from the overtime pay requirements. During all periods of
26 employment, Plaintiff was a non-exempt employee.

27 36. Plaintiff and similarly situated employees worked in excess of eight (8) hours in a
28 workday and forty (40) hours in a workweek.

37. Defendants failed or otherwise refused to pay Plaintiff and similarly situated
employees overtime compensation for all overtime hours worked in the manner required by

1 California law.

2 38. As a direct and proximate result of Defendants' unlawful conduct, as set forth
3 herein, Plaintiff and similarly situated employees have suffered damages, including loss of
4 earnings for hours of overtime worked on behalf of Defendants.

5 39. Plaintiff and similarly situated employees request relief as described below.

6 **THIRD CAUSE OF ACTION**
7 **Failure to Provide Meal Breaks**
8 **(Lab. Code, § 512, Wage Order 16)**
9 **(As to All Defendants)**

10 40. Plaintiff incorporates in this cause of action each and every allegation of the
11 preceding paragraphs, as though fully set forth herein.

12 41. Wage Order 16 and Labor Code section 512 provide that all non-exempt
13 employees are entitled to a 30-minute, uninterrupted meal break for every 5-hour shift worked
14 by the employee and a second meal period for shifts lasting over ten (10) hours.

15 42. An employer's failure to provide an opportunity to take a meal break entitles the
16 employee to an hour of pay for each day an employer fails to provide an opportunity to take a
17 meal break.

18 43. At all times herein relevant, Plaintiff and similarly situated employees were non-
19 exempt and entitled to meal breaks.

20 44. At all times herein relevant, Defendants employed Plaintiff and similarly situated
21 employees for periods of five (5) hours or more without providing meal breaks of at least thirty
22 (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly
23 situated employees worked more than ten (10) hours in a day. Plaintiff and similarly situated
24 employees did not waive their right to meal periods throughout their employment.

25 45. Defendants further failed to compensate Plaintiff and similarly situated
26 employees for the premium wage(s) owed resulting from their failure to provide the opportunity
27 to take a meal break.

28 46. As a direct and proximate result of Defendants' unlawful conduct, as set forth

1 herein, Plaintiff and similarly situated employees have suffered damages, including a loss of
2 wages.

3 47. Plaintiff and similarly situated employees request relief as described below.

4 **FOURTH CAUSE OF ACTION**
5 **Failure to Provide Rest Breaks**
6 **(Labor Code § 226.7, Wage Order 16)**
7 **(As to All Defendants)**

8 48. Plaintiff incorporates in this cause of action each and every allegation of the
9 preceding paragraphs, as though fully set forth herein.

10 49. Wage Order 16 and Labor Code section 226.7 provides that all non-exempt
11 employees are entitled to at least a 10-minute rest break for each work period of more than four
12 (4) hours, or major fraction thereof.

13 50. An employer's failure to provide an opportunity to take a rest break entitles the
14 employee an hour of pay for each day an employer fails to provide an opportunity to take a rest
15 break.

16 51. At all times relevant, Plaintiff and similarly situated employees were non-exempt
17 and entitled to rest breaks.

18 52. At all times relevant, Defendants failed to authorize and permit Plaintiff and
19 similarly situated employees to take rest periods of at least 10 minutes for each work period of
20 more than four (4) hours, or major fraction thereof.

21 53. Defendants further failed to compensate Plaintiff and similarly situated
22 employees for the premium wage(s) owed resulting from their failure to provide the opportunity
23 to take rest breaks.

24 54. As a direct and proximate result of Defendants' unlawful conduct, as set forth
25 herein, Plaintiff and similarly situated employees have suffered damages, including loss a loss of
26 wages.

27 55. Plaintiff and similarly situated employees request relief as described below.

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FIFTH CAUSE OF ACTION
Inaccurate Wage Statement Penalties
(Lab. Code, § 226)
(As to All Defendants)

56. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, as though fully set forth herein.

57. Labor Code § 226(a) requires employers to provide employees with regular itemized written statements showing, among other things, total hours worked, all applicable hourly rates during the pay period, and the corresponding number of hours worked at each rate by the employee. Defendants knowingly and intentionally failed to provide timely, accurate itemized wage statements including this required information.

58. Labor Code § 226(e) provides that an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with section 226(a) 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) for each violation in a subsequent pay period, up to a maximum amount of \$4,000.

59. Labor Code § 226(e)(2) provides that an employee is deemed to suffer injury for the purposes of Labor Code § 226 if the employer fails to provide the employee his or her wage statement.

60. Defendants knowingly and intentionally failed to provide Plaintiffs and similarly situated employees with their accurate itemized wage statements.

61. Plaintiff and similarly situated employees request relief as described below.

SIXTH CAUSE OF ACTION
Failure to Timely Pay Wages During Employment
(Lab. Code, §§ 204, 210)
(As to All Defendants)

62. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, as though fully set forth herein.

63. Labor Code section 204 requires employees to be paid wages at least twice per month. If an employer fails to pay wages during the proper pay period, the employee is entitled

1 to a penalty of \$100 for an initial violation and \$200 for each subsequent or willful, or
2 intentional violation. Additionally, the employee is entitled to 25% of the amount unlawfully
3 withheld.

4 64. Defendants failed to properly and timely compensate Plaintiff and similarly
5 situated employees all wages earned during Plaintiff's and similarly situated employees' pay
6 period(s).

7 65. Defendants' acts were willful and/or intentional.

8 66. As a result of Defendants' conduct, Plaintiff and similarly situated employees are
9 entitled to the penalty set forth in section 210 of the Labor Code.

10 67. Plaintiff and similarly situated employees request relief as described below.

11 **SEVENTH CAUSE OF ACTION**

12 **Unlawful Competition**
13 **(Bus. & Prof. Code, § 17200)**
14 **(As to All Defendants)**

15 68. Plaintiff incorporates in this cause of action each and every allegation of the
16 preceding paragraphs, as though fully set forth herein.

17 69. Defendants' conduct, as alleged herein, constitutes an unlawful, unfair, and/or
18 fraudulent business practices, as set forth in Business & Professions Code § 17200. Defendants
19 conducted business activities while failing to comply with the legal mandates cited herein.
20 Plaintiffs and others similarly situated suffered injury in fact and lost money as a result of
21 Defendants' unfair competition.

22 70. As a result of Defendants' unlawful and unfair business practices, Plaintiff and
23 similarly situated employees are entitled to and do seek restitution, and other appropriate relief
24 available under Business & Professions Code § 17203, on their own behalf, and on behalf of
25 others similarly situated, according to proof, for four (4) years from the filing of this Action.

26 71. Plaintiff and similarly situated employees request relief as described below.

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1 **EIGHTH CAUSE OF ACTION**

2 **Waiting-Time Penalties**

3 **(Lab. Code, §§ 201-203)**

4 **(As to All Defendants)**

5 72. Plaintiff incorporates in this cause of action each and every allegation of the
6 preceding paragraphs, as though fully set forth herein.

7 73. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
8 due immediately upon discharge, or within seventy-two (72) hours of quitting without notice.
9 Labor Code § 203 provides that where an employer willfully fails to make such timely payment,
10 the employer must, as a penalty, continue to pay the subject employees' wages until the back
11 wages are paid in full or an action is commenced, up to a maximum of thirty (30) days' wages.

12 74. Plaintiff and similarly situated employees resigned or were discharged from their
13 employment without being paid all wages that were due to them within the time required by
14 Labor Code §§ 201 and 202. Defendants' failure to pay these wages has been and continues to
15 be willful.

16 75. As a result of Defendants' conduct, Plaintiff and similarly situated employees are
17 entitled to waiting time penalties in the amount of up to thirty (30) days' wages under Labor
18 Code § 203.

19 76. Plaintiff and similarly situated employees request relief as described below.

20 **NINTH CAUSE OF ACTION**

21 **Failure to Reimburse Expenses**

22 **(Lab. Code, § 2802)**

23 **(As to All Defendants)**

24 77. Plaintiff incorporates in this cause of action each and every allegation of the
25 preceding paragraphs, as though fully set forth herein.

26 78. California Labor Code section 2802(a) states that "An employer shall indemnify
27 his or her employee for all necessary expenditures or losses incurred by the employee in direct
28 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
the employer, even though unlawful, unless the employee, at the time of obeying the directions,
believed them to be unlawful."

79. Defendants required Plaintiff and similarly situated employees to use their personal cell phones for work-related purposes, but failed to reimburse them for such use.

80. Plaintiff and similarly situated employees request relief as described below.

PRAYER

1. For pre-judgment, post-judgment, and statutory interest and all amounts subject herein;

2. For equitable relief;

3. For special damages according to proof;

4. For costs of suit incurred in this action;

5. For attorneys' fees according to statute including, but not limited to, under Labor Code section 218.5 Code of Civil section 1021.5;

6. For penalties according to statute;

7. For injunctive relief; and

8. For all other relief that this Court deems just and proper.

DREW LEWIS, PC

Dated: October 28, 2022

By: 
Drew Lewis
Attorney for Plaintiff