

Adam Rose (210880)
adam@frontierlawcenter.com
FRONTIER LAW CENTER
23901 Calabasas Road, #2074
Calabasas, CA 91302
Telephone: (818) 914-3433
Facsimile: (818) 914-3433

Attorney for Plaintiff
Natividad Chapa, Jr.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

22CV398313

NATIVADAD CHAPA, JR., on behalf of himself and all similarly situated individuals,	) NO.
	)
Plaintiff,	) CLASS ACTION COMPLAINT
	)
v.	) 1. Wage and Hour Violations
	) 2. Meal Period Violations
LONG'S CUSTOM DISCING, INC., and DOES	) 3. Rest Period Violations
1 to 100,	) 4. Wage Statement Penalty
	) 5. Waiting Time Penalties
Defendants.	) 6. Unfair Competition
	) 7. PAGA Penalties

PRELIMINARY ALLEGATIONS

1. Plaintiff Natividad Chapa, Jr. is a resident of San Benito County.
2. Defendant Long's Custom Discing, Inc. ("Discing") is a corporation based in Santa Clara County.
3. Discing provides disking services, which means using a disc to turn soil; Discing also provides soil grading services.
4. Therefore Wage Order 14 applies.
5. Plaintiff does not know the names and capacities of Does 1 to 100 and therefore use fictitious names. Plaintiff will amend pursuant to Code of Civil Procedure section 474 when the names and capacities are known.

6. Plaintiff and the class members worked at for Defendants performing the diskings and landscaping services described above, however they did not receive compliant breaks, did not receive overtime at the correct regular rate, and did not receive accurate wage statements.

7. Plaintiff sent a PAGA letter to Discing on April 14, 2022 and uploaded the letter to the PAGA website. Plaintiff will amend the complaint to include PAGA allegations after 65 days.

CLASS ACTION ALLEGATIONS

8. The class is defined as the following: “All non-exempt employees who worked for Defendants from four years prior to the filing of the complaint to certification.”

9. The “Waiting Time Subclass” consists of all non-exempt employees within the past three years from the date of filing who no longer work for Defendants.

10. There is a well-defined community of interest in the litigation and the proposed class is ascertainable from Defendants’ employment records.

- a. Numerosity: The members of the class as defined are so numerous that joinder of all class members is impracticable.
- b. Commonality: This action involves common questions of law and fact to the class because the action focuses on Defendants’ course of conduct with respect to violating the Labor Code and IWC Wage Orders.
- c. Typicality: Plaintiff’s claims are typical of the claims of the class. Plaintiff was subjected to the same violations and seeks the same types of damages, restitution, and other relief on the same as those of the members of the class.
- d. Adequacy of Representation: Plaintiff will fairly and adequately represent and protect the interests of the class. Plaintiff understands the obligations as a class representative and is willing and able to fulfill them. Plaintiff’s counsel is competent and experienced in litigating employment class actions and complex litigation matters like this.
- e. Superiority of Class Action: A class action is superior to other available means for the efficient adjudication of this controversy. Class action treatment will allow similarly situated persons to pursue the claims in a manner that is most efficient and economical.

1 f. Public Policy Considerations: Employees are often afraid to assert their rights out of fear
2 of retaliation; thus, class actions provide the class members with anonymity that allows
3 for vindication of rights while protecting privacy.

4 11. There are common questions of law and fact including but not limited to:

- 5 a. Whether Defendants did not pay overtime and sick pay at the correct regular rate
6 in violation of Labor code sections 510 and 1194;
- 7 b. Whether Defendant violated Labor Code section 512 and Wage Order 14 by not
8 providing meal and rest breaks;
- 9 c. Whether Defendants violated Labor Code section 226 by providing inaccurate
10 wage statements;
- 11 d. Whether Defendant violated Labor Code section 226.7 by not paying premium
12 pay for missed meal and rest breaks;
- 13 e. Whether Defendants violated Labor Code section 203 for waiting time penalties;
- 14 f. Whether Defendants engaged in unfair competition; and
- 15 g. The amount of damages, wages, and penalties owed to Plaintiffs and the class.
- 16

17 FIRST CAUSE OF ACTION

18 WAGE AND HOUR VIOLATIONS

19 Against All Defendants

20 12. Plaintiff incorporates by reference paragraphs 1 to 11 of the complaint.

21 13. Plaintiff and the class members were not paid overtime or sick pay at the correct regular
22 rate of pay.

23 14. Plaintiff and the class members received prevailing wages for certain projects, but the
24 higher prevailing wages were not factored into the overtime rate of pay or sick pay.

25 15. As a result, Plaintiff and the class members are still owed overtime and sick pay.

26 16. Pursuant to Labor Code section 1194, Plaintiffs and the class members are entitled to all
27 unpaid overtime plus interest, costs, and attorney fees.

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1 SECOND CAUSE OF ACTION

2 MEAL PERIOD VIOLATIONS

3 Against All Defendants

4 17. Plaintiff incorporates by reference paragraphs 1 to 11 of the complaint.

5 18. Pursuant to Labor Code section 512 and Wage Order 14, Plaintiff and the class members
6 should have received thirty-minute meal periods for every five hours of work.

7 19. Plaintiff and the class members did not receive these meal periods, thus pursuant to Labor
8 Code section 226.7, Plaintiff and the class members are entitled to an additional hour of
9 compensation for each missed meal period.

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11 THIRD CAUSE OF ACTION

12 REST PERIOD VIOLATIONS

13 Against All Defendants

14 20. Plaintiff incorporates by reference paragraphs 1 to 11 of the complaint.

15 21. Pursuant to Wage Order 14, Plaintiff and the class members should have received ten-
16 minute meal periods for every four hours of work.

17 22. Plaintiff and the class members did not receive these rest periods, thus pursuant to Labor
18 Code section 226.7, they are entitled to additional hours of compensation for each time they missed
19 a rest period.

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21 FOURTH CAUSE OF ACTION

22 WAGE STATEMENT PENALTIES

23 Against All Defendants

24 23. Plaintiff incorporates by reference paragraphs 1 to 11 of the complaint.

25 24. Plaintiff's and the class members' wage statements did not comply with Labor Code section
26 226 since they did not list the total hours worked.

27 25. As a result, Plaintiff and the class members are entitled to the wage statement penalties,
28 injunctive relief, and attorney fees.

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FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES

By Plaintiff and the Waiting Time Subclass Against All Defendants

26. Plaintiff incorporates by reference paragraphs 1 to 11 of the complaint.
27. Plaintiff and members of the waiting time penalty subclass are still owed wages for the unpaid overtime.
28. Thus, waiting time penalties under Labor Code section 203 apply.

SIXTH CAUSE OF ACTION
UNFAIR COMPETITION
Against All Defendants

29. Plaintiff incorporates by reference paragraphs 1 to 11 of the complaint.
30. Defendants engaged in the unlawful prong of the Unfair Competition Law, which included not paying all wages and not paying premium pay for missed breaks.
31. Pursuant to Business and Professions Code section 17203, restitution applies.

PRAYER
Class Action

1. Certification
2. Plaintiff is appointed as the class representative
3. Plaintiff’s attorneys are appointed as class counsel

First Cause of Action

1. Payment of all unpaid wages plus interest
2. Attorney fees and costs
3. Other relief the court deems proper

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1 Second Cause of Action

2 1. Premium pay for each missed break

3 2. Other relief the court deems proper

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5 Third Cause of Action

6 1. Premium pay for each missed break

7 2. Other relief the court deems proper

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9 Fourth Cause of Action

10 1. Wage statement penalties

11 2. Attorney fees and costs

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13 Fifth Cause of Action

14 1. Waiting time penalties

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16 Sixth Cause of Action

17 1. Restitution

18 2. Attorney fees under CCP 1021.5

19 3. Other relief the court deems proper

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21 Date: May 19, 2022

FRONTIER LAW CENTER

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/s/ Adam Rose

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Attorney for Plaintiff
Natividad Chapa, Jr.

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