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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

RAFAEL ESQUIVEL, an individual,

Plaintiff,

vs.

TAPIA CONSTRUCTION, INC., a
California corporation; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 25STCV00838

COMPLAINT FOR:

- 1. FAILURE TO PAY PREMIUM OVERTIME/DOUBLE TIME WAGES (Cal. Labor Code §§ 510, 511, 1194, 1198; IWC Wage Order No. 16);**
- 2. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 16);**
- 3. FAILURE TO PROVIDE MEAL PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 16);**
- 4. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 16);**
- 5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code § 226);**
- 6. FAILURE TO PAY ALL WAGES DUE ON TERMINATION (Cal. Labor Code § 203);**
- 7. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. Labor Code § 1198.5); and**
- 8. UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§ 17200 et seq.)**

DEMAND FOR A JURY TRIAL

1 Rafael Esquivel ("Plaintiff") alleges the following:

2 **PARTIES**

3 1. Plaintiff was, at all times relevant to the matters alleged herein, over age 18 and
4 a resident of Arleta, California.

5 2. Plaintiff is informed and believes, and based on that information and belief,
6 alleges, Defendant Tapia Construction, Inc. ("TC" or "Defendant") is, and at all times
7 mentioned herein was, a California corporation, with a principal place of business at 7507
8 Forbes Avenue, Van Nuys, CA 91406. Defendant has been authorized to do business and has
9 been doing business in the County of Los Angeles.

10 3. Starting on or about November 1, 2019, and continuing until December 14,
11 2024, Defendant TC employed Plaintiff as a Laborer. Plaintiff fixed machines, worked with
12 cement and welded.

13 4. Plaintiff is ignorant of the true names and capacities of the defendants sued
14 herein as DOES 1 through 100, inclusive, and therefore Plaintiff sues these defendants by such
15 fictitious names and capacities. Plaintiff will amend his Complaint to show their true names
16 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon
17 alleges that at all times relevant, each of these fictitiously named DOE Defendants was an
18 individual person who owned, controlled, or managed the business for which Plaintiff worked
19 and/or who directly or indirectly exercised operational control over the wages, hours, and
20 working conditions of Plaintiff. These DOE Defendants held ownership, officer, director and/or
21 executive positions with the remaining Defendants, and acted on behalf of the remaining
22 Defendants, which included decision-making responsibility for, and establishment of, illegal
23 payroll practices and policies for Defendants which have damaged Plaintiff and others similarly
24 situated. Therefore, DOES 1 through 100, in addition to the remaining Defendants, are
25 "employers" as a matter of law and personally liable on the causes of action alleged herein
26 pursuant to Labor Code §558, as well as other California wage and hour laws and regulations
27 as alleged herein.
28

5. Plaintiff is informed and believes and thereon alleges that at least some of the Defendant DOES 1 through 100 are, and at all times relevant hereto were, persons, corporations or other business entities organized and existing under and by virtue of the laws of the State of California, and are/were qualified to transact and conduct business in the State of California, and did transact and conduct business in the State of California, and are thus subject to the jurisdiction of the State of California. Specifically, said DOES 1 through 100 maintain offices, operate businesses, employ persons, and conduct business in, and illegally pay employees by illegal payroll practices and policies in the County of Los Angeles.

6. Plaintiff is informed and believes and thereon alleges, that at all times relevant herein, the named defendants and at least some of DOES 1 through 100 were the agents, employees, and/or servants, masters, or employers of the remaining DOES 1 through 100, and in doing the things herein alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other defendants.

7. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, directly employed or exercised control over his wages, hours, or working conditions.

8. Plaintiff is further informed and believes, and thereon alleges, that each of the fictitiously named Defendants aided and assisted the named Defendants in committing the wrongful acts alleged herein, and that Plaintiff's damages were proximately caused by each defendant.

9. At all times relevant herein, each of the named defendants was the agent of the other named defendants and in doing the things alleged herein, was acting within the course and scope of said agency.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this Complaint under Code of Civil Procedure §410.10 and *Business & Professions Code* §§ 17200 *et seq.*

11. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified

1 herein, occurred in the County of Los Angeles and because Defendant TC owned and operated
2 their business in the County of Los Angeles.

3 **DEFENDANTS DID NOT PROPERLY COMPENSATE PLAINTIFF**

4 12. While employed by Defendant, Plaintiff was paid \$19.00 per hour. Plaintiff
5 worked 10 or more hours per day, 6 days per week. He worked about 55 hours per week.

6 13. The employment by Defendant of Plaintiff is governed by Industrial Welfare
7 Commission Wage Order No. 16, which covers those persons employed in the construction,
8 drilling, logging and mining industries.

9 14. Under California law, non-exempt employees as defined by Wage Order No. 16,
10 are entitled to premium wages for overtime/double time worked.

11 15. At all times relevant herein, Plaintiff routinely worked overtime/double time
12 hours such that he was due pay at overtime/double time rates. Monies for unpaid
13 overtime/double time remain due and owing.

14 16. As a result of Defendant's failure to pay Plaintiff at required overtime/double
15 time rates, the wage statements issued to him did not comply with *Labor Code* §226 and
16 California Industrial Welfare Commission ("IWC") Wage Order No. 16 in that they did not
17 accurately reflect all wages earned and due and owing.

18 17. Under California law, an employee is entitled to be paid a minimum wage.
19 Labor Code Section 1197 states the California requirement that employees must be paid at least
20 the minimum wage fixed by the Commission or by any applicable state or local law, and any
21 payment of less than the minimum wage is unlawful. Similarly, Labor Code Section 1194
22 entitles "any employee receiving less than the legal minimum wage...is entitled to recover in a
23 civil action the unpaid balance of the full amount of this minimum wage." The applicable IWC
24 Wage Order(s), including IWC Wage Order No. 16-2001, obligates employers to pay each
25 employee minimum wages for all hours worked.

26 18. These minimum wage standards apply to each hour employees worked or were
27 subject to control by the employer for which they were not paid. Therefore, an employer's
28 failure to pay for any particular hour of time worked by an employee or subject to the

1 employer's control is unlawful, even if averaging an employee's total pay over all hours
2 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v.*
3 *Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

4 19. Defendant paid Plaintiff less than minimum wage rates due to the failure to
5 afford any meal/rest breaks. Monies for these underpaid amounts remain due and owing.

6 20. As a result of Defendant's failure to pay Plaintiff a minimum wage, the wage
7 statements issued to Plaintiff did not comply with *Labor Code* §226 in that they did not
8 accurately reflect all wages earned and due and owing.

9 21. Defendant failed to afford Plaintiff uninterrupted meal breaks.

10 22. Defendant failed to afford Plaintiff any rest breaks.

11 23. Defendant failed to pay Plaintiff all wages on termination.

12 24. Defendant failed to provide Plaintiff with his requested employment records.

13 25. Pursuant to the California Labor Code, Plaintiff intends to file a notice with
14 Labor and Workforce Development Agency (LWDA) and pursue claims against Defendants
15 under the Private Attorney General Act (PAGA). As such, Plaintiff further reserves the right to
16 amend this Complaint once he completes and complies with the provisions under the law.

17
18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME/DOUBLE TIME WAGES**

20 **(Labor Code §§510, 558, 1194, 1194.3, 1198 and Wage Order No. 16 By Plaintiff Against**
21 **all Defendants and Does 1-100)**

22 26. Plaintiff realleges and incorporates by reference all of the allegations set forth in
23 this Complaint.

24 27. During Plaintiff's entire employment with Defendant, pursuant to Cal. Lab.
25 Code §§200, 510, 1194, and 1198, and IWC Wage Order No. 16, Defendant was required to
26 compensate Plaintiff with premium pay for all overtime work performed, for hours worked in
27 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
28 hours on the seventh (7th) consecutive day of any work week. Further, Defendant was required

1 to compensate Plaintiff with premium pay for all double-time performed, for hours worked in
2 excess of twelve (12) hours per workday and for work in excess of eight hours on any seventh
3 day of a workweek.

4 28. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
5 who had not been paid overtime compensation could recover the unpaid balance of the full
6 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
7 fees and costs of suit.

8 29. California Labor Code section 510, subdivision (a), states in relevant part:

9 Any work in excess of 12 hours in one day shall be compensated at the rate of
10 no less than twice the regular rate of pay for an employee. In addition, any work
11 in excess of eight hours on any seventh day of a workweek shall be compensated
12 at the rate of no less than twice the regular rate of pay of an employee.

13 30. California Labor Code section 1198 provides,

14 The maximum hours of work and the standard conditions of labor fixed by the
15 commission shall be the maximum hours of work and the standard conditions
16 of labor for employees. The employment of any employee for longer hours than
17 those fixed by the order or under conditions of labor prohibited by the order is
18 unlawful.

19 31. Pursuant to IWC Wage Order No. 16-2001, § 3, "Employment beyond eight (8)
20 hours in any workday is permissible provided the employee is compensated for such overtime
21 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
22 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
23 workday..."

24 32. Plaintiff worked 10 or more hours per day, 6 days per week. Throughout
25 Plaintiff's employment, Defendant failed and refused to pay and properly pay overtime/double
26 time compensation to Plaintiff as required by law. When Plaintiff worked overtime/double
27 time, he was not paid time and one half and/or double time.

28

33. Further, Defendant expected Plaintiff to engage in off the clock work every day. Plaintiff was not paid for his off the clock work. Defendant did not have any clock in/out system. Plaintiff was only paid for his scheduled shift, which was 7:00 am until 5:00 pm.

34. Plaintiff worked approximately 15 hours per week of overtime/double time. At times, Plaintiff was required to work in excess of 12 hours per day. However, Plaintiff was never paid for the hours he worked double time. Plaintiff was not paid overtime/double time that was due to him.

35. The foregoing overtime/double time compensation is owed and unpaid. As a direct and proximate result of Defendant's failure and refusal to pay overtime/double time, Plaintiff suffered damages in the amount of at least \$167,760.00, according to be proof at trial.

36. *Labor Code* § 558(a) mandates a civil penalty for failure to pay overtime/double time wages against employers and those individuals acting in their behalf. Plaintiff requests that this Court assess said penalty against Defendant in an amount to be proven at trial.

37. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal counsel in order to enforce Plaintiff's rights to overtime/double time pay, is entitled to recover his attorneys' fees, costs and interest.

SECOND CAUSE OF ACTION

FOR FAILURE TO PAY MINIMUM WAGES

**(Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order No. 16 By Plaintiff
Against Defendant and Does 1 through 100)**

38. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

39. *Labor Code* § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 16-2001 also obligates

1 employers to pay each employee minimum wages for all hours worked. These minimum wage
2 standards apply to each hour employees worked for which they were not paid. Therefore, an
3 employer's failure to pay for any particular hour of time worked by an employee is unlawful,
4 even if averaging an employee's total pay over all hours worked, paid or not, results in an
5 average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314,
6 324 (2005).

7 40. Here, Plaintiff's meal breaks were interrupted and he was never afforded any
8 rest breaks. As a result, he was paid less than minimum wage.

9 41. *Labor Code* § 1194 provides, in part, that any employee receiving less than the
10 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
11 wage, including interest thereon, reasonable attorneys' fees, and costs of suit.

12 42. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
13 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
14 *Code* § 1194. Where an employee, such as Plaintiff is not paid for all hours worked under
15 *Labor Code* § 1194, the employee may recover minimum wages for the time associated with
16 the overtime for which they received no compensation. *See Sillah v. Command Int'l Sec. Servs.*,
17 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime
18 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
19 minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
20 (N.D. Cal. 2016).

21 43. Plaintiff suffered and continues to suffer losses related to the use and enjoyment
22 of compensation due and owing to him as a direct result of Defendants' unlawful acts and
23 Labor Code violations in the amount of at least \$167,760.00, to be shown according to proof at
24 trial.

25 44. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum
26 wages against employers and those individuals acting in their behalf. Plaintiff requests that this
27 Court assess said penalty against Defendants, in an amount to be proven at trial.

28

1 45. Therefore, pursuant to Labor Code §§200, 218.5, 226, 558,1194 and 1194.2,
2 Plaintiff is entitled to recover the unpaid balances of the minimum wages Defendant owes him,
3 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to
4 proof.

5 46. Under *Labor Code* § 1194.2, Plaintiff is entitled to recover as liquidated
6 damages, amounts equal to the wages unlawfully unpaid and interest thereon.
7

8
9 **THIRD CAUSE OF ACTION**
10 **FOR FAILURE TO PAY FOR MEAL PERIODS NOT PROVIDED**
11 **(Labor Code §§ 226.7, 512, IWC Wage Order No. 16 By Plaintiff Against Defendant and**
12 **Does 1 through 100)**

13 47. Plaintiff realleges and incorporates by reference all of the allegations set forth in
14 this Complaint.

15 48. California Labor Code §226.7(a) prohibits an employer from requiring an
16 employee to work during any meal period mandated by an applicable Industrial Wage Order.
17 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
18 employee to work during a meal or rest break or recovery period mandated pursuant to an
19 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
20 Commission..."

21 49. California Labor Code §1198 makes unlawful the employment of an employee
22 under conditions the IWC prohibits.

23 50. IWC Wage Order No. 16 provides, in relevant part: "No employer shall employ
24 any person for a work period of more than five (5) hours without a meal period of not less than
25 30-minutes, except that when a work period of not more than six (6) hours will complete the
26 day's work the meal period may be waived by mutual consent of the employer and the
27 employee."

28 //

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1 51. IWC Wage Order No. 16 further provides, in relevant part: "Unless the
2 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
3 considered an 'on duty' meal period and counted as time worked."

4 52. Section 512(a) of the California Labor Code provides, in relevant part, that:
5 An employer may not employ an employee for a work period of more than five
6 hours per day without providing the employee with a meal period of not less
7 than 30-minutes, except that if the total work period per day of the employee is
8 no more than six hours, the meal period may be waived by mutual consent of
9 both the employer and employee. An employer may not employ an employee for
10 a work period of more than 10 hours per day without providing the employee
11 with a second meal period of not less than 30-minutes, except that if the total
12 hours worked is no more than 12 hours, the second meal period may be waived
13 by mutual consent of the employer and the employee only if the first meal
14 period was not waived.

15 53. The Labor Code and Wage Order provisions cited above require California
16 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
17 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
18 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
19 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
20 the fifth hour of their shifts.

21 54. Defendant violated Labor Code § 512 and IWC Wage Order No. 16 by failing to
22 provide Plaintiff the requisite 30-minute meal periods, required by law. Plaintiff's meal breaks
23 were at times interrupted.

24 55. Defendant further violated IWC Wage Order No. 16 and Labor Code
25 § 226.7 by failing to pay one hour of compensation to Plaintiff at his individual and regular rate
26 of pay for each work day that the meal period was not provided, in the amount of at least
27 \$128,217.60, according to proof. This amount remains owed and unpaid.

28

1 56. Cal. Labor Code § 218 authorizes Plaintiff to bring a private right of action to
2 recover wages due based on the deprivation of timely meal periods under Cal. Labor Code
3 § 226.7(b).

4 57. As a direct and proximate result of Defendant's unlawful conduct as alleged
5 herein, Plaintiff has sustained economic damages, including but not limited to unpaid wages
6 and lost interest, in an amount to be established at trial, and is entitled to recover economic and
7 statutory damages, attorneys' fees and penalties and other appropriate relief due to Defendant's
8 violations of the California Labor Code and IWC Wage Order No. 16.

9
10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REST BREAKS**

12 **(Labor Code §226.7 and IWC Wage Order No. 16 – By Plaintiff Against Defendant Does**
13 **1 through 100)**

14 58. Plaintiff realleges and incorporates by reference all of the allegations set forth in
15 this Complaint.

16 59. Labor Code § 226.7 and IWC Wage Order No. 16 provide that employers shall
17 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
18 per four hours of work, or major fraction thereof.

19 60. Labor Code § 226.7 and IWC Wage Order No. 16 provide that if an employer
20 fails to provide an employee with rest periods in accordance with those provisions, the
21 employer shall pay the employee one hour of pay at the employee's regular rate of
22 compensation for each workday that the rest periods were not so provided.

23 61. Defendant has intentionally and improperly denied any rest periods to Plaintiff
24 in violation of Labor Code § 226.7 and IWC Wage Order No. 16.

25 62. At all times relevant hereto, Plaintiff has worked 10 or more hours daily.

26 63. At all times relevant hereto, Defendant failed to provide rest periods as required
27 by Labor Code § 226.7 and IWC Wage Order No. 16.

28

64. By virtue of Defendant's unlawful failure to provide rest periods to the Plaintiff, Plaintiff has suffered, and will continue to suffer, damages the amount of at least \$167,760.00, according to proof at trial.

FIFTH CAUSE OF ACTION

(Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab. Code §226 – By Plaintiff Against Defendant and Does 1 through 100)

65. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

66. At all times relevant hereto, Defendant failed to issue payrolls statements to Plaintiff which complied with *Labor Code* § 226 in that the statements issued to Plaintiff did not properly and accurately itemize the number of hours Plaintiff worked at the effective regular rates of pay and the effective overtime/double time rates of pay, minimum wages and for meal/rest breaks not compliant.

67. Defendant knowingly and intentionally failed to comply with *Labor Code* §226(a), causing damage to Plaintiff. These damages, including but not limited to, costs expended calculating the actual hours worked and the amount of employment taxes which were not properly paid to state and federal tax authorities, are difficult to estimate. Therefore, Plaintiff elects to recover liquidated damages of \$50.00 for the initial pay period in which the violations occurred, and \$100.00 for each violation in subsequent pay periods, pursuant to *Labor Code* § 226(e), in the amount of \$4,000.00 plus reasonable attorneys' fees and costs.

68. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus attorneys' fees and costs in obtaining the injunction, pursuant to *Labor Code* § 226(g).

SIXTH CAUSE OF ACTION

**(Failure to Pay All Wages Due on Termination in violation of Cal. Lab. Code
§203– By Plaintiff Against Defendant and Does 1 through 100)**

69. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

70. Labor Code § 201(a) provides that a discharged employee's unpaid wages are due and payable immediately. Labor Code § 202(a) provides that when an employee resigns from employment, unpaid wages are due and payable within 72 hours of resignation.

71. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until paid, not to exceed thirty days.

72. Plaintiff was wrongfully discharged from Defendant's employ and Defendant willfully failed to pay Plaintiff wages due to him.

73. Under Labor Code § 203(a), Plaintiff is entitled to one day's wages for each day he was not timely paid, not to exceed 30 days' wages.

74. By willfully failing to pay Plaintiff for overtime/double time, minimum wages and separate amounts owed for meal/rest periods not provided, as set forth above, in a timely manner as required by Cal. Lab. Code §§ 201 & 202, Defendant liable to him for penalties pursuant to Cal. Lab. Code § 203, in an amount equal to 30 days of his per diem wage rate in an amount according to proof.

SEVENTH CAUSE OF ACTION

FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS

(Cal. Labor Code §1198.5 By Plaintiff Against Defendant and Does 1 through 100)

75. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

76. California Labor Code Section 1198.5 provides:

(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

1 (b) The employer shall make the contents of those personnel records available
2 for inspection to the current or former employee, or his or her representative, at
3 reasonable intervals and at reasonable times, but not later than 30 calendar days
4 from the date the employer receives a written request, unless the current or
5 former employee, or his or her representative, and the employer agree in writing
6 to a date beyond 30 calendar days to inspect the records, and the agreed-upon
7 date does not exceed 35 calendar days from the employer's receipt of the written
8 request to inspect the records. Upon a written request from a current or former
9 employee, or his or her representative, the employer shall also provide a copy of
10 the personnel records,... later than 30 calendar days from the date the employer
11 receives the request...

12 (k) If an employer fails to permit a current or former employee, or his or her
13 representative, to inspect or copy personnel records within the times specified I
14 this section... the current or former employee may recover a penalty of seven
15 hundred fifty dollars (\$750) from the employer.

16 (l) A current or former employee may also bring an action for injunctive relief
17 to obtain compliance with this section, and may recover costs and reasonable
18 attorney's fees in such an action.

19 77. Additionally, pursuant to Wage Order No. 16, at section 7 re: Records,
20 employers are required to keep accurate payroll records on each employee, and such records
21 must be made readily available for inspection by the employee upon reasonable request. The
22 employer must also maintain accurate production records.

23 78. On or about January 10, 2025, Plaintiff's counsel issued a written request to TC
24 for copies of his personnel records.

25 79. Under California Labor Code Sections 226, 432 and 1198.5, such records were
26 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
27 Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for
28

1 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of his
2 records.

3 80. As a direct result and consequence of Defendant's failure and refusal to permit
4 Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or
5 decree mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a
6 result of Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
7 penalty of \$750 based upon Defendant's violation of §1198.5.

8
9 **EIGHTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 **(Business & Professions Code §§ 17200 et seq. By Plaintiff Against Defendant and Does 1**
12 **through 100)**

13 81. Plaintiff realleges and incorporates by reference all of the allegations set forth in
14 this Complaint.

15 82. *Business & Professions Code* §§ 17200 et seq. prohibit acts of unfair
16 competition, which mean and include "unlawful and unfair business practices."

17 83. Defendant's conduct as alleged herein has been and continues to be unfair,
18 unlawful, and deleterious to Plaintiff. Plaintiff hereby seeks to enforce important rights
19 affecting the public interest within the meaning of *Code of Civil Procedure* § 1021.5. Plaintiff
20 is a "person" within the meaning of *Business and Professions Code* § 17204 and therefore has
21 standing to bring this suit for restitution.

22 84. The prompt payment of overtime/double time, minimum wages and affording of
23 meal/rest breaks, are fundamental public policies of California. It also is the public policy of
24 California to enforce minimum labor standards to ensure that employees are not required to or
25 permitted to work under substandard and unlawful conditions and to protect those employers
26 who comply with the law from losing competitive advantage to other employers who fail to
27 comply with labor standards and requirements.

85. Through the conduct alleged herein, Defendant acted contrary to these public policies and have thus engaged in unlawful and/or unfair business practices in violation of *Business & Professions Code* §§ 17200 *et seq.*, depriving Plaintiff of the rights, benefits and privileges guaranteed to employees under California law.

86. Defendant regularly and routinely violated the following statutes and regulations with respect to Plaintiff:

- (a) *Labor Code* §§ 510, 511, 558, 1194 and 1198 and IWC Wage Order No. 16 as amended (failure to pay overtime/double time);
- (b) *Labor Code* §§ 1194, 1197, 1197.1, 1198, 119 and IWC Wage Order No. 16 (failure to pay minimum wages);
- (c) *Labor Code* §226 (failure to afford meal breaks);
- (d) *Labor Code* §226 (failure to afford rest breaks);
- (e) *Labor Code* § 226 (failure to provide accurate wage statements to employees at the time of payment of wages);
- (f) *Labor Code* §§ 201-203 (failure to pay wages on termination); and
- (g) *Labor Code* §1198.5 (failure to allow inspection of employment records).

87. By engaging in these business practices, which are unfair business practices within the meaning of *Business & Professions Code* §§17200 *et seq.*, Defendant harmed Plaintiff and gained an unfair competitive edge. Under the *Business & Professions Code* § 17203, Plaintiff is entitled to obtain restitution of these funds.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor and against Defendant as follows:

1. For compensatory damages in the amount of unpaid overtime/double time due to Plaintiff, in the amount of at least \$167,760.00, according to proof;
2. For compensatory damages in the amount of unpaid minimum wages due to Plaintiff, in the amount of at least \$167,760.00, according to proof;

- 1 3. For one (1) hour of pay at the regular rate of compensation for Plaintiff for each
2 workday that a meal and/or rest period was not provided;
- 3 4. For payment of unpaid wages in accordance with California labor and
4 employment law;
- 5 5. For an award of consequential damages in Plaintiff's favor and against
6 Defendants, in an amount to be proven at trial;
- 7 6. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
- 8 7. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code*
9 § 203, in an amount equal to her daily pay rate at the time of termination, multiplied by the
10 total amount of days elapsed between the date of involuntary termination, and/or 72 hours after
11 notice of the voluntary termination, up to a maximum of 30 days' pay, according to proof;
- 12 8. For specific relief enforcing waiting time penalties of 30 days of per diem wages
13 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Labor Code* § 203, according to proof;
- 14 9. For prejudgment interest accrued on all due and unpaid overtime/double time
15 and minimum wages from the date that wages were due and payable, pursuant to *Cal. Lab.*
16 *Code* §§218.6 and 1194(a), according to proof;
- 17 10. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, according to
18 proof;
- 19 11. For reasonable costs, including attorneys' fees, in an amount according to proof
20 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 218.5, 218.6, 1198.5(1), and/or *Cal. Code of*
21 *Civ. Proc.* §1021.5;
- 22 12. For an award of restitution of wages to Plaintiff in an amount equal to the
23 amount of wages owed and unpaid, according to proof;
- 24 13. For injunctive relief ordering Defendant to notify Plaintiff that he has not been
25 paid the proper amounts in accordance with California law;
- 26 14. For injunctive relief requiring Defendant to comply with *Labor Code*
27 1198.5(b)(1);
- 28 15. For punitive and exemplary damages in a sum to be determined at trial; and

1 16. For such other and further relief as the Court deems just and proper.
2

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff Rafael Esquivel hereby respectfully requests a trial by jury for all claims and
5 issues raised in his Complaint that may be entitled to a jury trial.
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7 LIPELES LAW GROUP, APC

8 Date: January 10, 2025

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10 By: Jasmine Badawi
11 Jasmine J. Badawi
12 Attorneys for Plaintiff,
13 Rafael Esquivel
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