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Superior Court of California,
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7 Attorney for Plaintiff, JORGE LUIS ESTRADA
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10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**
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15 JORGE LUIS ESTRADA,

16 Plaintiff,

17 vs.

18 ROYALTY CARPET MILLS, INC.

19 Defendant.
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) Case No.: 30-2013-00692890-CU-OE-CJC

) Assigned to : Judge Craig Griffin

) COMPLAINT FOR DAMAGES,
) PENALTIES AND RESTITUTION
)

-) 1. Failure to Provide Meal Periods
) 2. Failure to Provide Rest Periods
) 3. Waiting Time Penalties
) 4. Penalties for Failure to Provide Proper
) Wage Statements
) 5. Unlawful Business Practices
) 6. Penalties pursuant to Labor Code §§ 558
) and 2699
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)

1 Plaintiff, Jorge Luis Estrada, alleges:
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3 **PARTIES AND COMMON ALLEGATIONS**

4 1. Plaintiff, Jorge Luis Estrada, is an adult individual.
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6 2. Defendant, Royalty Carpet Mills Inc. is, and at all times relevant was, a
7 corporation duly organized and existing under the laws of the State of California and was
8 engaged in the carpet manufacturing business with its principal office located at 17111
9 Red Hill Avenue Irvine, CA 92614 and other warehouses and manufacturing facilities at
10 17352 Derian Avenue Irvine, CA 92614 and 515 E. Dyer Road, Santa Ana, CA 92707.
11

12 3. Defendant employed Plaintiff pursuant to an oral agreement from
13 approximately August 30, 2010 through September 3, 2013. Plaintiff worked at the
14 Carpet Mills Inc. warehouse and carpet dyeing department located at 17352 Derian
15 Avenue Irvine, CA 92614.
16

17 4. Plaintiff was a full-time, non-exempt employee. During the relevant period
18 from about August 30, 2010 through about September 3, 2013, Plaintiff regularly worked a
19 4 day or 5 day work shift, often working 10 to 12 hours per day and approximately 50
20 hours per week. Plaintiff's starting pay was \$9.00 per hours. This was increased to \$10.00
21 per hour on or about February 11, 2013. Plaintiff was paid weekly.
22

23 5. Plaintiff's employment with Defendant ended at the conclusion of his
24 workday on September 3, 2013 because Defendant was unable to accommodate Plaintiff's
25 disability and work restrictions resulting from a work-related injury.
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1 6. Industrial Welfare Commission Wage Order No. 1-2001, which regulates the
2 wages, hours and working conditions of employees working in the “Manufacturing
3 Industry” was applicable to and controlled Plaintiff’s employment with Defendant.
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6 **FIRST CAUSE OF ACTION**

7 FOR FAILURE TO PROVIDE PROPER MEAL PERIODS

8
9 7. Plaintiff realleges and incorporates by reference the allegations set forth in
10 paragraphs 1 through 6 of this complaint.

11 8. Labor Code Section 512(a) and Section 11(A) (B) of Wage Order No. 1-
12 2001, provide in part, that an employer may not employ an employee for a work period of
13 more than five hours without providing a meal period of not less than 30 minutes, and may
14 not employ an employee for a work period of more than ten hours per day without
15 providing a second meal period of less than 30 minutes.
16

17
18 9. Labor Code Section 226.7 (b) and Section 11(D) of Wage Order No. 1-2001
19 provide that if an employer fails to provide an employee a meal period in accordance with
20 an applicable order of Industrial Welfare Commission, the employer shall pay the
21 employee an additional hour of pay at the employee’s regular rate of compensation for
22 each work day that the meal period is not provided.
23

24 10. During Plaintiff’s employment for the three year period immediately
25 preceding the filing of this lawsuit, December 13, 2010 through September 3, 2013,
26 Defendant did not provide Plaintiff with either his first or second 30-minute “duty free”
27 meal period for approximately 583 days, and did not pay Plaintiff the additional hour of
28

1 pay for each work day that the meal period was not provided. Therefore, Plaintiff is entitled
2 to and requests wages for meal period violations in the amount of \$5,364.00 calculated as
3 follows: 466 days x \$9 + 117 days x \$10 = \$5,364.00.
4

5 11. Plaintiff requests pre-judgment interest at the legal rate of 10 percent per
6 annum on all unpaid wage from the date such wage were due pursuant to Civil Code §
7 3287(a).
8

9 SECOND CAUSE OF ACTION

10 FOR FAILURE TO PROVIDE PROPER REST PERIODS

11 12. Plaintiff realleges and incorporates by reference the allegations set forth in
12 paragraphs 1 through 6 of this complaint.
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14 13. Section 12(A) of Wage Order No. 1-2001 provides that every employer shall
15 authorize and permit all employees to take rest periods at the rate of ten (10) minutes net
16 rest time per four (4) hours.
17

18 14. Labor Code Section 226.7 (b) and Section 12(B) of Wage Order No. 1-2001
19 provide that if an employer fails to provide an employee a rest period in accordance with
20 an applicable order of Industrial Welfare Commission, the employer shall pay the
21 employee on additional hour of pay at the employee's regular rate of compensation for
22 each work day that the rest period is not provided.
23

24 15. During Plaintiff's employment for the three year period immediately
25 preceding the filing of this lawsuit, December 13, 2010 through September 3, 2013,
26 Defendant did not authorize or permit Plaintiff to take his required rest periods for
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1 approximately 583 workdays, and did not pay Plaintiff the additional hour of pay for each
2 work day that the rest period was not provided. Therefore, Plaintiff is entitled to and
3 requests wages for rest period violations in the amount of \$5,364, calculated as follows:
4 $466 \text{ days} \times \$9.00 + 117 \text{ days} \times \$10.00 = \$5,364$.
5

6 16. Plaintiff requests pre-judgment interest at the legal rate of 10 percent per
7 annum on all unpaid wage from the date such wage were due pursuant to Civil Code §
8 3287(a).
9

10 THIRD CAUSE OF ACTION

11 FOR WAITING TIME PENALTIES PURSUANT TO

12 LABOR CODE § 203

13 17. Plaintiff realleges and incorporates by reference the allegations set forth in
14 paragraphs 1 through 6, 8, 9, 10, 13, 14 and 15 of this complaint.
15

16 18. Plaintiff is informed and believes and thereon alleges that Defendant knew or
17 should have known that California law requires employers to promptly pay all wages
18 (including wages for missed meal and rest periods) due an employee at the termination of
19 their employment. Despite having such knowledge and financial ability to pay such wages,
20 Defendant intentionally and willfully refused and failed to pay Plaintiff such wages on,
21 September 3, 2013, the date his employment ended.
22

23 19. Defendant willfully failed to pay Plaintiff all wages due, without abatement
24 or reduction, on the date his employment terminated, as required by Labor Code Sections
25 201. Labor Code Section 203 states that an employee's wages shall continue as a penalty at
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1 the same rate until paid or for a period of up to 30 days from the time they were due,
2 whichever period is shorter. Pursuant to Labor Code Section 203, Plaintiff is entitled to and
3 requests a waiting time penalty in the amount of \$2,400, calculated as follows: (8 hrs. x
4 \$10.00 = \$80 x 30 days = \$2,400).

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7 **FOURTH CAUSE OF ACTION**

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9 FOR PENALTIES PURSUANT TO LABOR CODE § 226

10 FOR FAILURE TO PROVIDE PROPER WAGE

11 STATEMENTS

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13 20. Plaintiff realleges and incorporates by reference the allegations set forth in
14 paragraphs 1 through 6, 8, 9, 10, 13, 14 and 15 of this complaint.

15 21 Labor Code Section 226(a) and Wage Order No. 1-2001 require that every
16 employer furnish its employees an accurate itemized wage statement showing the
17 following: gross and net wages earned; total hours worked; all applicable hourly rates in
18 effect during the pay period and the corresponding number of hours worked at each rate;
19 the inclusive dates of the period for which the employee is paid; and all deductions. These
20 itemized wage statements are required to be given each pay period and are required to be
21 kept on file by the employer for at least three years at the place of employment.

22
23 22. For a one year period immediately preceding the filing of this lawsuit, and in
24 violation of Labor Code Section 226(a) and Section 7 of Wage Order No. 1-2001, and for
25 approximately 35 pay periods, Defendant failed to provide Plaintiff with proper written
26 itemized statements showing the following: gross and net wages earned as a result of not
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1 paying Plaintiff the additional hour of pay for each work day that the meal period and rest
2 period was not provided.

3
4 23. As a result of Defendant's willful failure to provide Plaintiff with proper
5 written itemized wage statements as required by Labor Code Section 226(a) and Section
6 7 of Wage Order No. 1-2001, Plaintiff suffered injury. Thus, pursuant to Labor Code
7 Section 226(e), Plaintiff is entitled to, and requests penalties of \$50.00 for the initial
8 violation and \$100.00 for each subsequent violation, or an aggregate penalty of
9 \$3,450.00.
10

11
12 24. Plaintiff has incurred and will continue to incur expenses for attorney's fees
13 and costs in prosecuting Defendant for violation of Labor Code Section 226(a). Pursuant
14 to Labor Code Section 226(e), Plaintiff is entitled to and requests an award of reasonable
15 attorney's fees and costs.
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17 **FIFTH CAUSE OF ACTION**

18 FOR UNLAWFUL BUSINESS PRACTICES IN

19 VIOLATION OF BUS. & PROF. CODE §17200
20

21 25. Plaintiff realleges and incorporates by reference the allegations set forth in
22 paragraphs 1 through 6, 8, 9, 13, and 14 of this complaint.
23

24 26. Section 17200 of the California Business and Professions Code, California's
25 Unfair Competition Law, prohibits unfair competition by prohibiting any unlawful or
26 unfair business acts or practices.
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1 27. During Plaintiff's employment for the four year period immediately
2 preceding the filing of this lawsuit, August 24, 2010 through September 3, 2013, Defendant
3 did not provide Plaintiff with either his first or second 30-minute "duty free" meal period
4 for approximately 656 days, and did not pay Plaintiff the additional hour of pay for each
5 work day that the meal period was not provided. Therefore, Plaintiff is entitled to and
6 requests restitution of unlawfully withheld wages for meal period violations in the amount
7 of \$6,021.00 calculated as follows: 539 days x \$9 + 117 days x \$10 = \$6,021.00
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9
10 28. During Plaintiff's employment for the four year period immediately
11 preceding the filing of this action, December 13, 2010 through September 3, 2013,
12 Defendant did not authorize or permit Plaintiff to take his required rest periods for
13 approximately 583 workdays, and did not pay Plaintiff the additional hour of pay for each
14 work day that the rest period was not provided.. Therefore, Plaintiff is entitled to and
15 requests restitution of unlawfully withheld wages for rest period violations in the amount of
16 \$5,364.00, calculated as follows: 466 days x \$9.00 + 117 days x \$10.00 = \$5,364.00.
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18 29. Pursuant to Civil Code Sections 3287(a), Plaintiff requests pre-judgment
19 interest at the legal rate of 10 percent per annum on all unlawfully withheld wages from
20 the date such wages were due.
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30. Plaintiff realleges and incorporates by references the allegations set forth in paragraphs 1 through 6, 8, 9, 13,14 and 21 of this complaint.

32. In compliance with Labor Code § 2699.3, Plaintiff provided written notice by certified mail postmarked October 23, 2013 to the Labor and Workforce Development Agency and to defendant, Royalty Carpet Mills, Inc. of the specific provisions of the Labor Code that Defendant violated, including the facts and theories supporting the alleged violations.

34. Pursuant to the Labor Code §§ 558 and 2699 et seq., Plaintiff, on behalf of himself and other current or former aggrieved employees, seeks recovery of civil

1 penalties against Defendant for violation of the following labor code statutes which fall
2 under the provisions of The Labor Code Private Attorneys General Act of 2004 (Labor
3 Code 2699 et seq. "PAGA") and are listed in Labor Code § 2699.5: Labor Code §§ 226
4 (a), 226.7, and 512.
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6 35. During the one year period immediately preceding the filing of this lawsuit,
7 Defendant did not provide Plaintiff and other current or former employees with either their
8 first or second 30-minute "duty free" meal period for a substantial number of work days,
9 and did not pay such employees the additional hour of pay for each work day that the meal
10 period was not provided.
11

12 36. During the one year period immediately preceding the filing of this lawsuit,
13 Defendant did not authorize or permit Plaintiff and other current or former employees to
14 take their required rest periods for a substantial number of work days, and did not pay such
15 employees the additional hour of pay for each work day that the rest period was not
16 provided.
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18 37. During the one year period immediately preceding the filing of this lawsuit,
19 For a one year period immediately preceding the filing of this lawsuit, and in violation of
20 Labor Code Section 226(a) Defendant failed to provide Plaintiff and other current and
21 former employees with proper written itemized statements showing the following: gross
22 and net wages earned as a result of not paying such employees the additional hour of pay
23 for each work day that the meal period and rest period was not provided to them.
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25 38. Under Labor Code § 2699(f), the penalties available under PAGA are those
26 provided in the Labor Code provision that is violated or, if no penalty is listed, the penalty
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1 are those provided by PAGA. Where the Labor Code does not provide a penalty, PAGA
2 establishes a civil penalty of \$100 for each aggrieved employee per pay period for the
3 initial violation and \$200 for each aggrieved employee per pay period for each subsequent
4 violation.
5

6 39. Labor Code § 558 provides in part that any employer or other person acting
7 on behalf of an employer who violates, or causes to be violated a section of this chapter
8 (Labor Code §§ 550 – 558) or any provision regulating hours and days of work in any
9 order of the Industrial Welfare Commission shall be subject to a civil penalty. The statute
10 then provides a per-pay-period penalty as follows: For any initial violation, \$50 for each
11 underpaid employee for each pay period for which the employee was underpaid in
12 addition to an amount sufficient to recover underpaid wages. For each subsequent
13 violation, \$100 for each underpaid employee for each pay period for which the employee
14 was underpaid in addition to an amount sufficient to recover underpaid wages.
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18 40. Plaintiff, on behalf of himself and other aggrieved employees seeks all
19 underpayment of wages and civil penalties available under PAGA and Labor Code § 558
20 for the above-mentioned labor code violations. Plaintiff is informed and believes and
21 thereon alleges that such damages are in excess of \$25,000.
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23 41. Plaintiff has incurred and will continue to incur expenses for attorney's fees
24 and costs in prosecuting this claim. Plaintiff, on behalf of himself and other current and
25 former aggrieved employees requests an award of reasonable attorney's fees and costs
26 pursuant to Labor Code § 2699 (g)(1).
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Defendant, Royalty Carpet Mills, Inc., as follows:

1. For unpaid premium wages in the amount of \$5,364.00 for failure to provide proper meal periods;
2. For prejudgment interest from the date such wages were due pursuant Civil Code §§ 3287(a);

3. For unpaid premium wages in the amount of \$5,364.00 for failure to provide proper rest periods;
4. For prejudgment interest from the date such wages were due pursuant Civil Code §§ 3287(a)

5. For damages in the amount of \$2,400 for waiting time penalties pursuant to Labor Code § 203;

6. For penalties in the amount of \$3,450.00 for failure to provide accurate itemized wages statements pursuant to Labor Code § 226;
7. For reasonable attorney's fees and costs pursuant to *Labor Code* § 226(e);

1 **UNDER THE FIFTH CAUSE OF ACTION**

2 8. For restitution of wages in the total amount of \$11,385.00 resulting from
3
4 unlawful business practices in violation of Business and Profession Code Section 17200;

5 9. For prejudgment interest from the date such wages were due pursuant Civil
6 Code §§ 3287(a);

7 **UNDER THE SIXTH CAUSE OF ACTION**

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9 10. That pursuant to the Private Attorneys General Act of 2004 (Labor Code §
10 2699 et seq. "PAGA") and Labor Code § 558, the Court assess appropriate civil penalties
11 per each violation of Labor Code §§ 226 (a), 226.7, and 512.

12
13 11. For reasonable attorney's fees and costs pursuant to Labor Code §
14 2699(g)(1);

15 **UNDER ALL CAUSES OF ACTION OF ACTION**

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17 12. For costs of suit incurred by Plaintiff; and,

18 13. For such other and further relief as the Court deems just and proper.
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22 **GINEZ, STEINMETZ & ASSOCIATES**

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25 Dated: 12.13.13

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27 Rudy Ginez, Jr.
28 Attorney for Plaintiff, JORGE LUIS ESTRADA