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11 SUPERIOR COURT OF CALIFORNIA

12 COUNTY OF SAN JOAQUIN

13 UNLIMITED CIVIL JURISDICTION

14 HECTOR ESTRADA, individually and on behalf
15 of others similarly situated

16 Plaintiff,

17 vs.

18 GLASSFAB TEMPERING SERVICES INC.; and
19 DOES 1 through 100, inclusive,

20 Defendants.

21 STK-CV-~~405~~-2021- 8051

22 CLASS ACTION COMPLAINT

- 23 1) FAILURE TO PAY ALL WAGES
- 24 2) FAILURE TO TIMELY PAY ALL
25 WAGES UPON TERMINATION
- 26 3) FAILURE TO AFFORD MANDATORY
27 BREAKS OR MEAL PERIODS
- 28 4) FAILURE TO PRODUCE DAILY TIME
RECORDS IN VIOLATION OF 8 CCR §
1140(7)
- 5) FAILURE TO PRODUCE EMPLOYEE
DOCUMENTS IN VIOLATION OF
LABOR CODE § 1198.5
- 6) DECLARATORY RELIEF RE
VIOLATION OF LABOR CODE § 1198.5
- 7) DECLARATORY RELIEF RE
VIOLATION OF LABOR CODE §
226(B-C)
- 8) DECLARATORY RELIEF RE
VIOLATION OF 8 CCR § 11040(7)
- 9) VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS CODE §§
17200

COMPLAINT, ESTRADA V. GLASSFAB ET. AL.

1 Plaintiff HECTOR ESTRADA (hereinafter “Plaintiff”) respectfully alleges as follows:
2

3 **PRELIMINARY STATEMENT**

4 Plaintiff HECTOR ESTRADA, (“Plaintiff”) seeks statutory penalties, declaratory judgement,
5 injunctive relief, attorney’s fees and costs against Defendant GLASSFAB TEMPERING SERVICES
6 INC. (“Defendant” or “Glassfab) and DOES 1 through 100, under California Code of Civil
7 Procedure §§ 1060 et seq., §§ 525 et seq., California Labor Code §§ 226, and 1198.5, California
8 Code of Regulations, Title 8, § 11040 (7) resulting from Defendants’ unlawful and tortious conduct.
9

10 **VENUE**

11 1. Under Article VI, Section 10 of the California Constitution and Section 395 and
12 410.10 of the California Code of Civil Procedure, this Court has subject matter jurisdiction over this
13 action and over Defendant, which principal place of business in the State of California is the County
14 of San Joaquin.
15

16 2. Venue in this judicial district is proper under California Code of Civil Procedure
17 section 395(a) because Defendant has contracted to perform obligations and has incurred obligations
18 to Plaintiff in the County of San Joaquin.
19

20 **PARTIES**

21 3. Plaintiff is, and at all times mentioned herein was, a competent adult residing in the
22 State of California.

23 4. Defendant GLASSFAB TEMPERING SERVICES INC. is a corporation
24 headquartered in the state of California. GLASSFAB is a glass fabrication and a glass tempering
25 service Company. GLASSFAB is an employer as defined by the California Labor Code and the
26 applicable IWC Wage Order(s). Plaintiff is informed and believes, and based thereon alleges, that
27
28

1 Defendant was and is authorized to do business within the State of California with its principal place
2 of business in Tracy, California.

3 5. Plaintiff is informed, believes, and based thereon alleges that at all times herein
4 mentioned that DOES 1 through 100, are and were individuals, sole proprietorships, corporations,
5 business entities, persons, and partnerships, licensed to do business and/or doing business in the State
6 of California.
7

8 6. Plaintiff is unaware of the true names and capacities, whether informed or believes
9 and thereon alleges that Defendants and DOES 1 through 100, are and were individual, corporate,
10 associate, or otherwise, of the defendants sued as DOES 1 through 100, inclusive. They are unknown
11 to Plaintiff and therefore sues them by such fictitious names.
12

13 7. Plaintiff will amend this complaint to allege their true names and capacities when they
14 become known to Plaintiff. Plaintiff is informed and believes, and thereon alleges, that DOES 1
15 through 100, inclusive, are indebted to Plaintiff as alleged, and that Plaintiff's rights against such
16 fictitiously named Defendants arise from such indebtedness.
17

18 8. Plaintiff is informed and believes and on that basis alleges that each Defendant sued,
19 including each Defendant sued by the fictitious names DOES 1 through 100, inclusive, is responsible
20 and liable in some manner for the occurrences, controversies and damages alleged below.

21 9. All references to "Defendant," "Defendants," "DEFENDANT," "DEFENDANTS,"
22 "company," "employer" or any similar language, whether singular or plural, will mean "Defendant
23 Glassfab; and Does 1 through 100, inclusive, and each of them" when used throughout this
24 complaint.
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FACTUAL ALLEGATIONS

10. Estrada was employed by GLASSFAB as a glass fabricator from approximately April 13, 2015 to May 2020.

11. Defendants had an obligation to ensure within 72 hours of Class Members' and Plaintiff's last day of work, that ESTRADA and Class Members were paid all wages owed. ESTRADA and Class Members' hours were deducted and rounded down in favor of Defendants for times they clocked in or out of work. ESTRADA and Class Members were therefore being forced to work off the clock, were not paid all wages owed. Further, ESTRADA and Class Members were not paid premium pay for all missed meal and rest breaks from Defendants. Moreover, ESTRADA and Class Members were not paid for all overtime they earned including but not limited to Defendant recording time Plaintiff and Class Members took as unpaid breaks as regular hours instead of overtime hours and Defendants paying the wrong overtime rate. ESTRADA and all Class Members who have stopped working for GLASSFAB are owed waiting time penalties.

12. GLASSFAB maintained control, oversight, and direction over Plaintiff and Class Members, during their scheduled shifts.

13. GLASSFAB in essence failed to compensate Plaintiff and Class Members for all hours worked including regular wages, premium pay, overtime wages and double overtime wages.

14. Upon information and belief, GLASSFAB fail to provide Plaintiff and Class Members with meal and rest periods. Defendants' policies and practices towards its employees violate California Labor Code § 226.7, which provides:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

1 (b) If an employer fails to provide an employee a meal period or rest period in accordance
2 with an applicable order of the Industrial Welfare Commission, the employer shall pay the
3 employee one additional hour of pay at the employee's regular rate of compensation for each
4 work day that the meal or rest period is not provided.

5 15. Plaintiff and Class Members allege that GLASSFAB routinely and systematically
6 failed to compensate them for all hours worked. GLASSFAB implemented a policy of coercing its
7 workers of working off the clock. GLASSFAB, to implement its policy of wage theft, failed to
8 keep true and accurate time records for all hours worked by Plaintiff and Class Members. Plaintiff
9 and Class Members, in fact, would have timecards altered by management to reduce the number of
10 hours worked.
11

12 16. As a result of GLASSFAB's intentional and deliberate violations of California wage
13 and hour laws, Plaintiff and Class Members were damaged by having wages, including overtime
14 compensation, withheld from them.
15

16 17. **Section 1198.5 Request.** California Labor Code § 1198.5 provides that employers
17 must permit current and former employees to inspect and receive a copy of the personnel files and
18 records that relate to the employee's performance, or to any grievance concerning the employee.
19 Employers must comply with this requirement no more than 30 days after a written request is made.
20 If an employer fails to comply, the employer is liable for a penalty of \$750.
21

22 18. On or about April 8, 2021, Plaintiff timely requested that Defendant produce
23 personnel files and employment records under California Labor Code § 1198.5. However, Defendant
24 failed to produce or allow inspection of the required records within the 30-day statutory period.
25

26 19. Defendant continues to refuse inspection or production of the requested records
27 pursuant to § 1198.5. Plaintiff cannot fully assess potential Labor Code and/or common law
28 workplace-based violations by Defendant against Plaintiff while applicable statutes of limitations

1 continue to run, resulting in irreparable injury to Plaintiff without adequate remedy at law. Plaintiff
2 bears the risk of being irreparably injured should the documents and records responsive to § 1198.5
3 be lost and/or destroyed.

4 20. Regarding the instant controversy, therefore, a declaratory judgment is appropriate and
5 necessary to definitively determine the parties' respective rights and obligations because of the
6 foregoing.

7 21. Without the Court's determination and declaration of the parties' respective rights and
8 obligations, Plaintiff is at risk of being unable to fully investigate and allege any potential workplace
9 violations committed by Defendants again, under the California Labor Code, Industrial Welfare
10 Commission Orders, common law, and applicable federal statutes.

11 22. **Section 226(b) and 8 CCR §11040 (7) Request.** California Labor Code § 226(b) and
12 8 CCR §11040 (7) provide that employers must permit current and former employees to inspect
13 and/or copy wage & hour records, daily time records and payroll records pertaining to the current or
14 former employee. Under these authorities – which is entirely separate and distinct from § 1198.5 --
15 an employer has 21 calendar days from the request (again, our Request Letter) and within a
16 reasonable time from the request, respectively, to comply. There is a \$750 penalty for non-
17 compliance, a penalty that is, again, separate from § 1198.5.

18 23. On or about April 8, 2021, Plaintiff timely requested that Defendant produce wage &
19 hour records, daily time records and payroll records under California Labor Code § 226(b) and 8
20 CCR §11040 (7) as well as records documenting her hours worked and paid sick days accrued and
21 used, copies of any instrument signed by her and relating to the obtaining or holding of employment,
22 and a copy of her personnel file. Defendants failed to provide Plaintiff with the requested copies of
23 her employment records in violation of California Labor Code Sections 226, 247.5, 432, and 1198.5.

Defendant failed to produce or allow inspection of the required records within the 21-day statutory period or reasonable period as specified under 8 CCR §11040 (7).

24. Defendant continues to refuse inspection or production of the requested records under § 226(b) and 8 CCR §11040 (7). Plaintiff cannot fully assess potential Labor Code, 8 CCR §11040 and/or common law workplace-based violations by Defendant against Plaintiff while applicable statutes of limitations continue to run, resulting in irreparable injury to Plaintiff without adequate remedy at law. Plaintiff bears the risk of being irreparably injured should the documents and records responsive to § 226(b) and 8 CCR §11040 (7) be lost and/or destroyed.

25. Regarding the instant controversy, therefore, a declaratory judgment is appropriate and necessary to definitively determine the parties' respective rights and obligations because of the foregoing.

26. Without the Court's determination and declaration of the parties' respective rights and obligations, Plaintiff is at risk of being unable to fully investigate and allege any potential workplace violations committed by Defendant against him, under the California Labor Code, Industrial Welfare Commission Orders, common law, and applicable federal statutes.

CLASS ACTION ALLEGATIONS

27. Plaintiff sues, on behalf of himself and all others similarly situated, as a class action under section 382 of the Code of Civil Procedure. The classes which Plaintiff seeks to represent are:

a. All non-exempt employees of Defendants, in the State of California who were not paid all owed wages within four years preceding filing the complaint to the time of final judgment.

1 b. All employees of Defendants in the State of California who were terminated
2 or resigned from their employment within three years preceding filing the
3 complaint to the time of final judgment.

4 c. All non-exempt employees of Defendants in the State of California within
5 four years preceding filing the complaint to the time of final judgment.

6 d. All employees of Defendants, in the State of California who were not
7 provided copies of their payroll and personnel records upon request within
8 four years preceding filing the complaint to the time of final judgment.

9
10 28. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
11 modify the class descriptions with greater specificity or further division into subclasses or limitation
12 to particular issues.

13
14 29. The classes of persons within the State of California are so numerous that joinder of
15 all members is impracticable, and the disposition of their claims in a class action is a benefit to the
16 parties and to the Court. Plaintiff is informed and believes, and based thereon alleges, that
17 Defendants employ and employed in California no less than 200 persons who satisfy at least one of
18 the class definitions. Although the exact number and identity of these putative class members is not
19 known, they can be identified in Defendants' records through coordinated discovery under this class
20 action.

21
22 30. This action may be maintained as a class under Code of Civil Procedure section 382
23 because the questions of law and fact which are common to class members predominate over
24 questions affecting only individual members and because a class action is superior to other available
25 methods for adjudicating the controversy.
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1 31. There are numerous common questions of law and fact arising out of Defendants'
2 conduct.

3 32. Common questions of law and fact predominate over questions affecting only
4 individual members of the class. The predominating common or class-wide questions of law and fact
5 include:
6

- 7 a. Whether Defendants violated California wage laws as to Plaintiff and Class Members.
- 8 b. Whether Defendants violated California overtime wage laws as to Plaintiff and Class
9 Members.
- 10 c. Whether Defendants have unlawfully failed to maintain pay records of Plaintiff and Class
11 members, in violation of the California Labor Code.
- 12 d. Whether Defendants have violated California law, including California's Unfair
13 Competition laws (Business & Professions Code §§ 17200, et seq.), California Labor
14 Code § 226.7, California Labor Code §§ 201-203, California Labor Code § 558,
15 California Labor Code § 1194(a), and California Labor Code § 510.
- 16 e. Whether Plaintiff and class members are owed waiting time penalties for Defendants'
17 failure to pay all wages owed upon discharge or resignation.
- 18 f. Whether Defendants violated the California Labor Code by failing to provide Class
19 members with meal and rest breaks;
- 20 g. Whether Defendants violated the California Labor Code and/or applicable wage order by
21 Defendant deducting and rounding down the hours of Plaintiff and Class Members in
22 favor of Defendants for times they clocked in or out of work.
- 23 h. Whether Defendants violated the California Labor Code by failing to pay Class members
24 premium pay for missed or untimely meal periods and/or missed rest periods;
- 25 i. Whether Defendants violated the California Labor Code by failing to keep accurate
26 records of the time worked by Class members;
- 27 j. Whether Defendants engaged in unfair business practices in violation of California
28 Business & Professions Code Sections 17200 *et seq* for failure to pay all wages including
overtime and premium pay as well as failing to pay all waiting time penalties to Plaintiff
and Class Members.

33. Plaintiff's claims are typical of the claims of the members of the class all of whom
have sustained and/or will sustain damage and injury as a proximate and/or legal result of
Defendants' violations of Labor Code section 2802. Plaintiff's claims are typical of those of the class
because Defendants subjected Plaintiff and each member of the class to the same Labor Code and
Business and Profession Code violations alleged.

1 34. The defenses of Defendants, if such defenses apply, are applicable to the whole class
2 and are not distinguishable as to the proposed class members.

3 35. Plaintiff will fairly and adequately protect the interests of all members of the classes,
4 and has retained attorneys with extensive experience in employment litigation, including class and
5 other representative actions. Plaintiff has no interests that conflict with those of the classes. Plaintiff
6 can fairly and adequately protect the interests of all members of the class because it is in her best
7 interest to prosecute the claims alleged to obtain the full compensation due to them.
8

9 36. A class action is superior to any other method available for fairly and efficiently
10 adjudicating the controversy because:
11

- 12 a. Joinder of individual class members is not practical;
- 13 b. Litigating the claims of individual class members is unnecessarily costly and
14 burdensome and deters individual claims;
- 15 c. Litigating the claims of individual class member creates a risk of inconsistent or
16 varying adjudications that will establish incompatible standards of conduct for
17 Defendants;
- 18 d. Class members still working for Defendants may fear retaliation if they bring
19 individual claims;
- 20 e. Class members are discouraged from pursuing individual claims because the
21 damages available to them are relatively small; and
22 f. California public policy encourages the use of class actions to enforce California
23 employment laws and protect individuals who, by their subordinate position, are
24 vulnerable.
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1 37. Judicial economy will be served by maintenance of this lawsuit as a class action. To
2 process numerous, virtually identical, individual cases will significantly increase the expense on the
3 Court, the class members and Defendants, all while unnecessarily delaying the resolution of this
4 matter. There are no obstacles to effective and efficient management by this Court of this lawsuit as
5 a class action, and doing so will provide multiple benefits to the litigating parties including, but not
6 limited to, efficiency, economy, and uniform adjudication with consistent results.

8 38. Notice of a certified class action and any result or resolution of the litigation can be
9 provided to class members by mail, e-mail, publication, or such other methods of notice as deemed
10 appropriate by the Court.

11
12 **FIRST CAUSE OF ACTION**
13 **For Willful Violations of California Labor Code §§ 1194 (a), 510–**
14 **Failure to Pay All Wages, Overtime and Double Overtime Under California Law**
 (Against All Defendants)

15 39. Plaintiff and Class Members repeat and reallege the preceding and subsequent
16 paragraphs as though set forth herein.

17 40. Under California law, the Defendants were required to pay wages for each hour
18 worked, and overtime wages when non-exempt employees work over 8 hours in a day or 40 hours in
19 a week by calculating the hourly rate and then computing the overtime premium amount owed.
20 Plaintiff and Class Members have worked for Defendants without being paid for all hours worked,
21 regular and overtime.

22 41. As a result of the Defendants' violation of statutory duties to comply with statutory
23 wage requirements, as more fully set forth above, Plaintiff and Class Members were damaged in an
24 amount above the jurisdictional limits of this Court.
25
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1 42. Defendants had a policy and practice of not including all wages, earnings,
2 commissions and bonuses in the calculation of overtime. This resulted in Plaintiff being underpaid for
3 all hours worked.

4 43. Plaintiff and Class Members seeks as damages all wages owed to Plaintiff and Class
5 Members by the Defendants.
6

7 44. Plaintiff and Class Members are entitled to, and therefore request, an award of pre-
8 judgment interest on the unpaid wages set forth herein.

9 45. Plaintiff and Class Members have incurred, and will continue to incur attorneys' fees
10 and costs in the prosecution of this action. Plaintiff and Class Members seek attorneys' fees under all
11 applicable provisions of law. Wherefore, Plaintiff prays judgment as set forth herein below.
12

13 **SECOND CAUSE OF ACTION**

14 **For Willful Violations of California Labor Code §§ 201, 202, 203, and 203.1 –**
15 **Failure to Pay all Owed Overtime wages, Wages Upon Discharge or Quitting;**
16 **Waiting Time Penalties**
17 **(Against All Defendants)**

18 46. Plaintiff and Class Members repeat and reallege the preceding and subsequent
19 paragraphs as though set forth herein.

20 47. At all relevant times set forth, California Labor Code §§ 201 and 202 provide that if an
21 employer discharges an employee, the wages earned and unpaid at the time of discharge are due
22 immediately, and if an employee voluntarily leaves his or her employment, his or her wages, will
23 become due by seventy-two (72) hours thereafter, unless the employee has given seventy-two (72)
24 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or
25 her wages at the time of quitting.
26
27
28

1 48. During the relevant time period, Defendants willfully failed to pay Plaintiff and Class
2 Members their wages, earned and unpaid, either at the time of discharge or within seventy-two (72)
3 hours of their leaving Defendants' employ.

4 49. California Labor Code § 203 provides that if an employer willfully fails to pay wages
5 owed, under §§ 201 and 202, then the wages of the employee will continue as a penalty from the due
6 date, at the same rate until paid or until an action is commenced, but wages will not continue for over
7 thirty (30) days.

8 50. Under Labor Code Section 218.5, in any action brought for the nonpayment of wages,
9 fringe benefits, or health and welfare pension fund contributions, a prevailing plaintiff will be entitled
10 to an award of attorney's fees and costs if requested upon the initiation of the action.

11 51. Plaintiff and Class members' wages should never have been deducted and they should
12 never have been forced to work off the clock. Defendants failed to return Plaintiff and Class
13 members' improperly deducted wages on or before the date of Class Members resignation or
14 termination. Defendants failed to return to Plaintiff and Class members' improperly deducted wages
15 on the date of the termination in the case of a discharge or a voluntary quit with more than 72 hours
16 prior notice, or within 24 hours of the termination of the employment relationship in the case of a
17 voluntary quit without such prior notice. Further, Defendant willfully failed to pay Plaintiff and
18 Class Members with all overtime wages and premium pay. As a consequence of Defendants' willful
19 conduct in not paying compensation for all hours worked, Plaintiff and Class members are entitled to
20 30 days wages as penalty under Labor Code § 203 & applicable Industrial Welfare Commission
21 Order together with interest thereon and attorneys' fees and costs. Wherefore, Plaintiff prays
22 judgment as set forth herein below.
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THIRD CAUSE OF ACTION
(On Behalf of Plaintiff and the Entire Class)
Against All Defendants
For Willful Violations of California Labor Code § 226.7 –
Failure to Afford Mandatory Breaks or Meal Periods as Required by
IWC Orders and Labor Code
(Against All Defendants)

52. Plaintiff repeat and realleges the preceding and subsequent paragraphs as though set forth herein.

53. At all times relevant, Plaintiff and the Class members were covered by the provisions of Industrial Wage Commission (“IWC”) Orders, including IWC Orders 1-2001.

54. The IWC Orders provide, in applicable part:

11. (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and employee. In the case of employees covered by a valid collective bargaining agreement, the parties to the collective bargaining agreement may agree to a meal period that commences after no more than six (6) hours of work.

11. (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

11. (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

11. (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

1
2 12. (A) Every employer shall authorize and permit all employees to take rest periods, which
3 insofar as practicable shall be in the middle of each work period. The authorized rest period time
4 shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four
5 (4) hours or major fraction thereof. However, a rest period need not be authorized for employees
6 whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period
7 time shall be counted as hours worked for which there shall be no deduction from wages.

8 12. (B) If an employer fails to provide an employee a rest period in accordance with the
9 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
10 employee's regular rate of compensation for each workday that the rest period is not provided.

11 55. California Labor Code § 226.7 states:

12 (a) No employer shall require any employee to work during any meal or rest period
13 mandated by an applicable order of the Industrial Welfare Commission.

14 (b) If an employer fails to provide an employee a meal period or rest period in accordance
15 with an applicable order of the Industrial Welfare Commission, the employer shall pay the
16 employee one additional hour of pay at the employee's regular rate of compensation for
17 each work day that the meal or rest period is not provided.

18 56. Defendants routinely failed to provide Plaintiff and the Class members with a 30-
19 minute unpaid meal period within the first five (5) hours of work in compliance with IWC Orders and
20 Labor Code § 226.7. Defendants routinely failed to provide Plaintiff and the Class members with a
21 second 30-minute meal period within the second five (5) hours of work in compliance with IWC
22 Orders and Labor Code § 226.7. As a result of Defendants' failure, Plaintiff and the Class members
23 are entitled to recover an amount to be proved at trial, of not less than one additional hour of pay at
24 the regular rate of compensation for each workday that the meal period was not provided.

25 57. Defendants routinely failed to provide Plaintiff and the Class members with a 10-
26 minute paid rest period for each four (4) hour period of work, in compliance with IWC Orders and
27 Labor Code § 226.7. As a result of Defendants' failure, Plaintiff and the Class members are entitled
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1 to recover an amount to be proved at trial, of not less than one additional hour of pay at the regular
2 rate of compensation for each workday that the rest period was not provided.

3 58. Defendants' policy and practice of denying Plaintiff and the entire Class meal and rest
4 periods constitutes a willful violation of California Labor Code § 226.7. Plaintiff and the entire Class
5 have sustained damages as a direct and proximate consequence of the Defendants' willful and illegal
6 conduct, to wit, they have been forced to work continuously throughout the day, every day, without
7 being allowed to take meal and rest periods.
8

9 59. Plaintiff has incurred, and will continue to incur attorney fees and costs in the
10 prosecution of this action. Plaintiff seeks attorneys' fees under all applicable provisions of law.
11 Wherefore, Plaintiff prays judgment as set forth herein below.
12

13 **FOURTH CAUSE OF ACTION**
14 **FOR FAILURE TO PRODUCE DOCUMENTS AND RECORDS – DAILY TIME RECORDS**
15 **(Individual and Class Claim Against Defendants & Does 1-100)**

16 60. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set
17 forth herein.

18 61. At all times relevant, Plaintiff and the Class members were covered by the provisions
19 under 8 CCR §11040 (7).
20

21 62. Upon request by Plaintiff, Defendants failed to timely produce to Plaintiff daily time
22 records within a reasonable time of Plaintiff's request under 8 CCR §11040 (7).

23 63. On or about April 8, 2021, by way of written correspondence, Plaintiff requested
24 production of daily time records from Defendants. Class Member have also requested their time
25 records from Defendants within the applicable statute of limitations.
26

27 64. Under 8 CCR §11040 (7), the Defendants were to have produced Plaintiff's and Class
28 Members' daily time records within a reasonable period of time.

1 65. Defendants failed to produce Plaintiff's and Class Members' daily time records to them
2 within a reasonable time of written requests. To date, Defendants have not produced said records.

3 66. Plaintiff alleges that Defendants, and each of them, violated their production
4 obligations to Plaintiff under 8 CCR §11040 (7) and, Defendants, and each of them, violate 8 CCR
5 §11040.
6

7 67. Wherefore, Plaintiff and Class Members have been injured and request relief as
8 provided.
9

10 **FIFTH CAUSE OF ACTION FOR DECLARATORY JUDGMENT REGARDING**
11 **DEFENDANTS' FAILURE TO PRODUCE DOCUMENTS AND RECORDS**
12 **(Cal. Lab. Code § 1198.5)**
13 **(Individual and Class Claim Against Defendants & Does 1-100)**

14 68. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set
15 forth herein.

16 69. At all times relevant, Plaintiff and the Class members were covered by the provisions
17 under Labor Code §1198.5.
18

19 70. Upon request by Plaintiff, Defendants, and each of them, failed to timely produce to
20 Plaintiff's employment file and personnel records pursuant to Labor Code §1198.5.

21 71. On or about April 8, 2021, by way of written correspondence, Plaintiff requested
22 Plaintiff's own employment file and personnel records from Defendants. Class Members also
23 requested their employment and personnel records from Defendants within the statute of limitations.
24

25 72. Under California Labor Code § 1198.5, the Defendants were to have produced
26 Plaintiff's and Class Members' employment file and personnel records to them within 30 days of
27 receipt of the request.
28

1 73. Defendants failed to produce Class Members and Plaintiff's employment files and
2 personnel records to them upon their requests.

3 74. Plaintiff alleges that Defendants, and each of them, violated their production
4 obligations to Plaintiff and Class Members under Labor Code § 1198.5 and, they violate Labor Code
5 section 1198.5 regarding Plaintiff entitling Plaintiff to a \$750 penalty from Defendant for the
6 violation.
7

8 75. Wherefore, Plaintiff and Class Members have been injured and request relief as
9 provided.
10

11 **SIXTH CAUSE OF ACTION**
12 **FOR DECLARATORY JUDGMENT REGARDING DEFENDANTS' FAILURE TO**
13 **PRODUCE DOCUMENTS AND RECORDS**
14 **(Cal. Lab. Code § 1198.5)**
15 **(Individual and Class Claim Against Defendants & Does 1-100)**

16 76. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set
17 forth herein.

18 77. At all times relevant, Plaintiff and the Class members were covered by the provisions
19 under Labor Code §1198.5.

20 78. An actual controversy now exists between Plaintiff, Class Members, and Defendants
21 regarding Defendants' failure to produce records pertaining to Plaintiff's and Class Members'
22 employment with Defendants and to which Plaintiff is entitled under express statutory authority,
23 specifically California Labor Code § 1198.5.

24 79. Plaintiff seeks a judicial determination of rights and duties as set forth in the Prayer for
25 Relief.

26 80. Wherefore, Plaintiff and Class Members have been injured and request relief as
27 provided.
28

1
2 **SEVENTH CAUSE OF ACTION**
3 **FOR DECLARATORY JUDGMENT REGARDING DEFENDANTS' FAILURE TO**
4 **PRODUCE DOCUMENTS**

5 (Cal. Lab. Code § 226(b))
6 (Individual and Class Claim Against Defendants & Does 1-100)

7 81. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set
8 forth herein.

9 82. At all times relevant, Plaintiff and the Class members were covered by the provisions
10 under Labor Code § 226(b).

11 83. An actual controversy now exists between Plaintiff, Class Members, and Defendants
12 regarding Defendant's failure to produce documents and records pertaining to Plaintiff's employment
13 with Defendant and to which Plaintiff is entitled under express statutory authority, specifically
14 California Labor Code § 226(b).

15 84. Plaintiff seeks a judicial determination of rights and duties as set forth in the Prayer for
16 Relief.

17 85. Wherefore, Plaintiff and Class Members have been injured and request relief as
18 provided.
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21 **EIGHTH CAUSE OF ACTION FOR DECLARATORY JUDGMENT REGARDING**
22 **DEFENDANTS' FAILURE TO PRODUCE DOCUMENTS AND RECORDS**

23 (8 CCR §11040 (7))
24 (Individual and Class Claim Against Defendants & Does 1-100)

25 86. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set
26 forth herein.

27 87. At all times relevant, Plaintiff and the Class members were covered by the provisions
28 under 8 CCR §11040(7).

1 88. An actual controversy now exists between Plaintiff, Class Members, and Defendant
2 regarding Defendant's failure to produce records pertaining to Plaintiff's and Class Members'
3 employment with Defendant and to which Plaintiff and Class Members are entitled under express
4 statutory authority, specifically 8 CCR §11040(7).

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6 89. Plaintiff seeks a judicial determination of rights and duties as set forth in the Prayer for
7 Relief.

8 90. Wherefore, Plaintiff and Class Members have been injured and request relief as
9 provided.

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11 **NINTH CAUSE OF ACTION**
12 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, *et seq.***
13 **(Individual and Class Claim Against Defendants & Does 1-100)**

14 91. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set
15 forth herein.

16 92. At all times relevant, Plaintiff and the Class members were covered by the provisions
17 under Code of Civil Procedure §1021.5 and California Business & Professions Code §§ 17200, *et*
18 *seq.*

19 93. Defendants' conduct, as alleged, has been, and continues to be, unfair, unlawful, and
20 harmful to Plaintiff and to the general public, Plaintiff seeks to enforce important rights affecting the
21 public interest within the meaning of Code of Civil Procedure §1021.5.

22 94. Defendants' activities, as alleged here, are violations of California law, and constitute
23 unlawful business acts and practices in violation of California Business & Professions Code §§
24 17200, *et seq.*

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26 95. A violation of California Business & Professions Code §§ 17200 *et seq.* may be
27 predicated on the violation of a state or federal law. Defendants' policies and practices of requiring
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1 Plaintiff and Class Members, to work without being compensated for premium pay for missed meal
2 and rest breaks violate the applicable Wage Order and California Labor Code and constitute unfair
3 business practices in violation of California Business & Professions Code §§ 17200 *et seq.*

4 Defendants' policies of and practicing of failing to pay all overtime wages and failing to pay all
5 wages owed upon termination violate the applicable Wage Order and California Labor Code and
6 constitute unfair business practices in violation of California Business & Professions Code §§ 17200
7 *et seq.*

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9 96. California Labor Code section 1198 makes it illegal to employ an employee under
10 conditions of labor that are prohibited by applicable wage order. Defendants violations of the labor
11 code and wage orders include:

- 12 a. failure to pay all wages, in violation of the California Labor Code and all other
13 applicable laws;
- 14 b. failure to provide payroll and personnel records upon request;
- 15 c. Deducting or rounding down employee hours in favor of Defendants
- 16 d. failure to provide meal and rest breaks;
- 17 e. failure to pay all wages upon termination or resignation;
- 18 f. unjust enrichment due to the failure to pay all wages.

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20 97. Plaintiff and Class Members have been injured by Defendants' unlawful business acts
21 and practices as alleged, including but not limited to the loss of money or property. Defendants have
22 reaped unfair benefits and illegal profits at Plaintiff's expense.

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24 98. Plaintiff and Class Members are entitled to immediate possession of all amounts owed
25 to Plaintiff and Class Members by Defendants, with interest.
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99. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent injunctive relief, including but not limited to orders that Defendant account for, disgorge, and restore to Plaintiff and Class Members, the reimbursement of expenses unlawfully withheld from Plaintiff and Class Members.

JURY DEMAND

Plaintiff demands trial by jury of all claims and causes of action so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. That the Court determine that Defendants, and each of them, violated Labor Code § 1198.5, regarding Plaintiff and/or Class Members;

2. That the Court Order Defendants, and each of them, to pay within seven (7) days of this Court's Order, a \$750 penalty to Plaintiff and/or Class Members for Defendants' violation of Labor Code § 1198.5;

3. That the Court determine that Defendants, and each of them, must produce documents and records to Plaintiff and Class Members under Labor Code § 1198.5 and Plaintiff's request pursuant thereto;

4. That the Court determine that Defendants, and each of them, violated Labor Code § 226(b), regarding Plaintiff and/or Class Members;

5. That the Court Order Defendants, and each of them, to pay within seven (7) days of this Court's Order, a \$750 penalty to Plaintiff and Class Members for the Defendants' violation of Labor Code § 226(b);

6. That the Court determine that Defendants, and each of them, violated 8 CCR §11040 (7) regarding Plaintiff and Class Members;

1 7. That the Court determine that Defendants, and each of them, must produce records to
2 Plaintiff and Class Members under Labor Code § 1198.5, and/or § 226(b), 8 CCR §11040(7) and
3 Plaintiff's request pursuant thereto;

4 8. That the Court Order Defendants, and each of them, to produce within seven (7) days
5 all records, to which Plaintiff and Class Members are entitled, to Plaintiff and Class Members under
6 Labor Code § 1198.5 and/or § 226(b) and/or 8 CCR §11040(7);

7 9. That the Court Order Defendants, and each of them, to pay, within seven (7) days of
8 this Court's Order, Plaintiff's attorney's fees and costs under Labor Code § 226(h) by cashier's check
9 made payable to Plaintiff's attorney of record "Ladva Law Firm"; and
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11 10. For damages for unpaid wages, including regular and overtime wages, premium pay,
12 and such general and special damages as may be appropriate, according to proof at trial;

13 11. For statutory penalties;

14 12. For liquidated damages;

15 13. Waiting time penalties for failure to pay all wages upon discharge and/or at the end of
16 each pay period;
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18 14. Declaring that the concerted violations alleged herein constitute unfair competition in
19 violation of California's Unfair Competition Law, and violations of California's Labor Code;
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21 15. Permanently enjoining Defendants from continuing to engage in the unlawful
22 concerted conduct described herein;

23 16. Certifying this action to proceed as a class action pursuant to California Code of Civil
24 Procedure section 382 and designating Plaintiff as the representative of the Class and his counsel as
25 counsel for the Class;
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17. Equitable remedies, including but not limited to, an equitable accounting, as the court deems just and proper under the circumstances;

18. Granting Plaintiff the costs of prosecuting this action, together with interest and reasonable attorneys' fees, costs, and experts' fees;

19. For all economic and non-economic damages;

20. For such other and further relief as the court deems just and proper.

Ladva Law Firm

Jeff M.

Dated: August 27, 2021

By: _____

SCOTT S. NAKAMA
Attorney for Plaintiff
HECTOR ESTRADA