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Attorneys for Plaintiff HECTOR ESTRADA and others similarly situated.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN JOAQUIN

UNLIMITED CIVIL JURISDICTION

HECTOR ESTRADA, individually and on behalf
of others similarly situated

Plaintiff,

vs.

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

Defendants.

Case No.: STK-CV-UOE-2021-8051

**FIRST AMENDED CLASS ACTION
COMPLAINT**

- 1) FAILURE TO PAY ALL WAGES FOR ALL HOURS AT OVERTIME
- 2) FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION
- 3) FAILURE TO AFFORD MANDATORY BREAKS
- 4) FAILURE TO REIMBURSE EXPENSES
- 5) Inaccurate Records (Cal. Labor Code §§ 1174 and 1174.5)
- 6) Failure To Provide Accurate, Itemized Wage Statements (Cal. Labor Code § 226)
- 7) FAILURE TO PAY MINIMUM WAGES
- 8) PAGA
- 9) VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200

COMPLAINT, ESTRADA V. GLASSFAB ET. AL.

FILED
SUPERIOR COURT

2023 JUN -7 PM 1:34

BRANDON E. RILEY CLERK

BY Donna Edwards
DEPUTY

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

3
4 **PRELIMINARY STATEMENT**

5 Plaintiff HECTOR ESTRADA, (“Plaintiff”) seeks statutory penalties, declaratory judgement,
6 injunctive relief, attorney’s fees and costs against Defendant GLASSFAB TEMPERING SERVICES
7 INC. (“Defendant” or “Glassfab) and DOES 1 through 100, under California Code of Civil
8 Procedure §§ 1060 et seq., §§ 525 et seq., California Labor Code §§ 226, and 1198.5, California
9 Code of Regulations, Title 8, § 11040 (7) resulting from Defendants’ unlawful and tortious conduct.
10

11 **VENUE**

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

17 2. Venue in this judicial district is proper under California Code of Civil Procedure
18 section 395(a) because Defendant has contracted to perform obligations and has incurred obligations
19 to Plaintiff in the County of San Joaquin.
20

21 **PARTIES**

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

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

COMPLAINT, ESTRADA V. GLASSFAB ET. AL.

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.
25

26 **FACTUAL ALLEGATIONS**
27
28

1 10. Estrada was employed by GLASSFAB as a glass fabricator during the relevant class
2 period. His employment ended during the relevant class period.

3 11. Defendants had an obligation to ensure within 72 hours of Class Members' and
4 Plaintiff's last day of work, that ESTRADA and Class Members were paid all wages owed.
5 ESTRADA and Class Members' hours were deducted and rounded down in favor of Defendants
6 for times they clocked in or out of work. ESTRADA and Class Members were therefore being
7 forced to work off the clock, were not paid all wages owed. Further, ESTRADA and Class
8 Members were not paid premium pay for all missed meal and rest breaks from Defendants.
9 Moreover, ESTRADA and Class Members were not paid for all overtime they earned including
10 but not limited to Defendant recording time Plaintiff and Class Members took as unpaid breaks as
11 regular hours instead of overtime hours and Defendants paying the wrong overtime rate.
12 ESTRADA and all Class Members who have stopped working for GLASSFAB are owed waiting
13 time penalties.
14

15 12. GLASSFAB maintained control, oversight, and direction over Plaintiff and Class
16 Members, during their scheduled shifts.
17

18 13. GLASSFAB in essence failed to compensate Plaintiff and Class Members for all
19 hours worked including regular wages, premium pay, overtime wages and double overtime wages.
20

21 14. Upon information and belief, GLASSFAB fail to provide Plaintiff and Class Members
22 with meal and rest periods. Defendants' policies and practices towards its employees violate
23 California Labor Code § 226.7, which provides:
24

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

27 (b) If an employer fails to provide an employee a meal period or rest period in accordance
28 with an applicable order of the Industrial Welfare Commission, the employer shall pay the

1 employee one additional hour of pay at the employee's regular rate of compensation for each
2 work day that the meal or rest period is not provided.

3
4 15. Plaintiff and Class Members allege that GLASSFAB routinely and systematically
5 failed to compensate them for all hours worked. GLASSFAB implemented a policy of coercing its
6 workers of working off the clock. GLASSFAB, to implement its policy of wage theft, failed to
7 keep true and accurate time records for all hours worked by Plaintiff and Class Members. Plaintiff
8 and Class Members, in fact, would have timecards altered by management to reduce the number of
9 hours worked.
10

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

15 17. Without the Court's determination and declaration of the parties' respective rights and
16 obligations, Plaintiff is at risk of being unable to fully investigate and allege any potential workplace
17 violations committed by Defendant against him, under the California Labor Code, Industrial Welfare
18 Commission Orders, common law, and applicable federal statutes.
19

20 **CLASS ACTION ALLEGATIONS**

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

- 23 a. All non-exempt employees of Defendants as direct employees as well as
24 temporary employees employed through temp agencies in the State of
25 California who were not paid all owed wages (including minimum wages and
26 overtime) within four years preceding filing the initial complaint to the time
27 of final judgment.
28

1 b. All employees of Defendants employed by Defendants as direct employees
2 as well as temporary employees employed through temp agencies in the State
3 of California who were terminated or resigned from their employment within
4 three years preceding filing the initial complaint to the time of final
5 judgment.

6
7 c. All non-exempt employees employed by Defendant as direct employees as
8 well as temporary employees employed through temp agencies in the State of
9 California within four years preceding filing the initial complaint to the time
10 of final judgment.

11
12 d. All non-exempt employees of Defendants employed by Defendant as direct
13 employees as well as temporary employees employed through temp agencies
14 in the State of California who received wage statements or paystubs within
15 three years preceding filing the initial complaint to the time of final
16 judgment.

17
18 e. All current and former hourly non-exempt employees employed by
19 Defendants as direct employees as well as temporary employees through
20 temp agencies in California at any time from four years prior to the filing of
21 the initial Complaint to the time of final judgment.

22 19. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
23 modify the class descriptions with greater specificity or further division into subclasses or limitation
24 to particular issues.

25
26 20. The classes of persons within the State of California are so numerous that joinder of
27 all members is impracticable, and the disposition of their claims in a class action is a benefit to the
28

1 parties and to the Court. Plaintiff is informed and believes, and based thereon alleges, that
2 Defendants employ and employed in California no less than 200 persons who satisfy at least one of
3 the class definitions. Although the exact number and identity of these putative class members is not
4 known, they can be identified in Defendants' records through coordinated discovery under this class
5 action.
6

7 21. This action may be maintained as a class under Code of Civil Procedure section 382
8 because the questions of law and fact which are common to class members predominate over
9 questions affecting only individual members and because a class action is superior to other available
10 methods for adjudicating the controversy.
11

12 22. There are numerous common questions of law and fact arising out of Defendants'
13 conduct.
14

15 23. Common questions of law and fact predominate over questions affecting only
16 individual members of the class. The predominating common or class-wide questions of law and fact
17 include:
18

- 19 a. Whether Defendants violated California wage laws as to Plaintiff and Class Members.
- 20 b. Whether Defendants violated California overtime wage laws as to Plaintiff and Class Members.
- 21 c. Whether Defendants violated California minimum wage laws as to Plaintiff and Class Members.
- 22 d. Whether Defendants have unlawfully failed to maintain accurate pay records of Plaintiff and Class members, in violation of the California Labor Code.
- 23 e. Whether Defendants have violated California law, including California's Unfair Competition laws (Business & Professions Code §§ 17200, et seq.), California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197, and 2802 and the related IWC Wage Order No. 1-2001.
- 24 f. Whether Plaintiff and class members are owed waiting time penalties for Defendants' failure to pay all wages owed upon discharge or resignation.
- 25 g. Whether Defendants violated the California Labor Code by failing to provide Class members with meal and rest breaks;
- 26 h. Whether Defendants violated the California Labor Code and/or applicable wage order by Defendant deducting and rounding down the hours of Plaintiff and Class Members in favor of Defendants for times they clocked in or out of work.
- 27
- 28

- i. Whether Defendants violated the California Labor Code by failing to pay Class members premium pay for missed or untimely meal periods and/or missed rest periods;
- j. Whether Defendants violated the California Labor Code by failing to keep accurate records of the time worked by Class members;
- k. Whether Defendants engaged in unfair business practices in violation of California 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.

24. 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.

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

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

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

- a. Joinder of individual class members is not practical;
- b. Litigating the claims of individual class members is unnecessarily costly and burdensome and deters individual claims;

- 1 c. Litigating the claims of individual class member creates a risk of inconsistent or
2 varying adjudications that will establish incompatible standards of conduct for
3 Defendants;
4
5 d. Class members still working for Defendants may fear retaliation if they bring
6 individual claims;
7
8 e. Class members are discouraged from pursuing individual claims because the
9 damages available to them are relatively small; and
10
11 f. California public policy encourages the use of class actions to enforce California
12 employment laws and protect individuals who, by their subordinate position, are
13 vulnerable.

14 28. Judicial economy will be served by maintenance of this lawsuit as a class action. To
15 process numerous, virtually identical, individual cases will significantly increase the expense on the
16 Court, the class members and Defendants, all while unnecessarily delaying the resolution of this
17 matter. There are no obstacles to effective and efficient management by this Court of this lawsuit as
18 a class action, and doing so will provide multiple benefits to the litigating parties including, but not
19 limited to, efficiency, economy, and uniform adjudication with consistent results.

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

23 **ADMINISTRATIVE EXHAUSTION**

24
25 30. The Labor Code Private Attorneys General Act of 2004 (“PAGA”), as set forth at
26 Labor Code section 2698 et seq., is and at all times relevant, was applicable to Plaintiff’s employment
27 with Defendants.
28

1 31. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which
2 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
3 Agency (“LWDA”) for violations of the Labor Code may, as an alternative, be recovered through a
4 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
5 former employees pursuant to the procedures outlined in Labor Code section 2699.3.
6

7 32. Plaintiff was employed by Defendants, and the alleged violations were committed
8 against them in relation to their employment with Defendants,. Plaintiff is, therefore, an aggrieved
9 employee as defined by Labor Code section 2699(c). Other employees, current and former, are also
10 aggrieved employees in that one or more of the alleged violations were also committed against them
11 in relation to their employment with Defendants.
12

13 33. Pursuant to Labor Code section 2699(g), an aggrieved employee may recover the civil
14 penalty on behalf of himself or herself and other current or former employees against whom one or
15 more of the alleged violations was committed. Furthermore, any employee who prevails in any such
16 action shall be entitled to an award of reasonable attorney’s fees and costs.
17

18 34. Pursuant to Labor Code section 2699.3, an aggrieved employee may pursue a civil
19 action under the PAGA after the following requirements have been met:

20 35. Plaintiff provided written notice by online filing to the LWDA and by providing a
21 copy to Defendants of specific provisions of the Labor Code alleged to have been violated by
22 Defendants, including the facts and theories to support the alleged violations.
23

24 36. To date, the LWDA has not provided Plaintiff with written notice that it intends to
25 investigate the alleged violations of the Labor Code. Accordingly, Plaintiff has satisfied the
26 administrative prerequisites under Labor Code section 2699.3 to bring a civil action to recover civil
27 penalties under the PAGA, in addition to other remedies.
28

FIRST CAUSE OF ACTION

**For Willful Violations of California Labor Code §§ 1194 (a), 510–
Failure to Pay All Wages, Overtime and Double Overtime Under California Law
(Against All Defendants)**

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

38. Under California law, the Defendants were required to pay wages for each hour worked, and overtime wages when non-exempt employees work over 8 hours in a day or 40 hours in a week by calculating the hourly rate and then computing the overtime premium amount owed. Plaintiff and Class Members have worked for Defendants without being paid for all hours worked, regular and overtime including hours that exceeded eight in a workday, 12 in a workday, and more than 40 hours in a workweek.

39. As a result of the Defendants' violation of statutory duties to comply with statutory wage requirements, as more fully set forth above, Plaintiff and Class Members were damaged in an amount above the jurisdictional limits of this Court.

40. Defendants had a policy and practice of not including all wages, earnings, commissions and bonuses in the calculation of overtime. This resulted in Plaintiff being underpaid for all hours worked.

41. Plaintiff and Class Members seeks as damages all wages owed to Plaintiff and Class Members by the Defendants.

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

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

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

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

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

49. Plaintiff and Class members' wages should never have been deducted and they should never have been forced to work off the clock. Defendants failed to return Plaintiff and Class

1 members' improperly deducted wages on or before the date of Class Members resignation or
2 termination. Defendants failed to return to Plaintiff and Class members' improperly deducted wages
3 on the date of the termination in the case of a discharge or a voluntary quit with more than 72 hours
4 prior notice, or within 24 hours of the termination of the employment relationship in the case of a
5 voluntary quit without such prior notice. Further, Defendant willfully failed to pay Plaintiff and
6 Class Members with all overtime wages, minimum wages, and premium pay for missed meal and rest
7 breaks. As a consequence of Defendants' willful conduct in not paying compensation for all hours
8 worked, Plaintiff and Class members are entitled to 30 days wages as penalty under Labor Code §
9 203 & applicable Industrial Welfare Commission Order together with interest thereon and attorneys'
10 fees and costs. Wherefore, Plaintiff prays judgment as set forth herein below.
11

12
13 **THIRD CAUSE OF ACTION**

14 **(On Behalf of Plaintiff and the Entire Class)**

15 **Against All Defendants**

16 **For Willful Violations of California Labor Code § 226.7 –**

17 **Failure to Afford Mandatory Breaks as Required by**

18 **IWC Orders and Labor Code**

19 **(Against All Defendants)**

20 50. Plaintiff repeat and realleges the preceding and subsequent paragraphs as though set
21 forth herein.

22 51. At all times relevant, Plaintiff and the Class members were covered by the provisions
23 of Industrial Wage Commission ("IWC") Orders, including IWC Orders 1-2001.

24 52. The IWC Orders provide, in applicable part:

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

1 agreement, the parties to the collective bargaining agreement may agree to a meal period that
2 commences after no more than six (6) hours of work.

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

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

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

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

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

26 53. California Labor Code § 226.7 states:

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

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

1 54. Defendants routinely failed to provide Plaintiff and the Class members with a 30-
2 minute unpaid meal period within the first five (5) hours of work in compliance with IWC Orders and
3 Labor Code § 226.7. Defendants routinely failed to provide Plaintiff and the Class members with a
4 second 30-minute meal period within the second five (5) hours of work in compliance with IWC
5 Orders and Labor Code § 226.7. As a result of Defendants' failure, Plaintiff and the Class members
6 are entitled to recover an amount to be proved at trial, of not less than one additional hour of pay at
7 the regular rate of compensation for each workday that the meal period was not provided. Even when
8 Plaintiff and class members were able to take meal breaks, they were often required to take meal
9 breaks after they worked more than 5 hours.
10

11 55. Defendants routinely failed to provide Plaintiff and the Class members with a 10-
12 minute paid rest period for each four (4) hour period of work or major fraction thereof, in compliance
13 with IWC Orders and Labor Code § 226.7. As a result of Defendants' failure, Plaintiff and the Class
14 members are entitled to recover an amount to be proved at trial, of not less than one additional hour
15 of pay at the regular rate of compensation for each workday that the rest period was not provided.
16

17 56. Defendants' policy and practice of denying Plaintiff and the entire Class meal and rest
18 periods constitutes a willful violation of California Labor Code § 226.7. Plaintiff and the entire Class
19 have sustained damages as a direct and proximate consequence of the Defendants' willful and illegal
20 conduct, to wit, they have been forced to work continuously throughout the day, every day, without
21 being allowed to take meal and rest periods.
22

23 57. Plaintiff has incurred, and will continue to incur attorney fees and costs in the
24 prosecution of this action. Plaintiff seeks attorneys' fees under all applicable provisions of law.
25 Wherefore, Plaintiff prays judgment as set forth herein below.
26

27 **FOURTH CAUSE OF ACTION**
28 **VIOLATION OF LABOR CODE §§ 2802**

1 **(Failure to Reimburse for Business Expenses)**
2 **(Individual and Class Claim Against Defendants & Does 1-100)**

3 58. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set
4 forth herein.

5 59. California Labor Code § 2802 provides that “[a]n employer shall indemnify his or her
6 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
7 the discharge of his or her duties.”

8 60. At set forth above and during the relevant time period, Defendants failed to indemnify
9 and reimburse Plaintiff and class members for all necessary expenditures or losses incurred in direct
10 consequence of discharge of his duties, or of obedience to the directions of Defendants including but
11 not limited to phone expenses and travel expenses such as gas and mileage.
12

13 61. Wherefore, Plaintiff and Class Members have been injured and request relief as
14 provided.
15

16 **FIFTH CAUSE OF ACTION**
17 **Failure to Maintain Accurate and Complete Employment Records**
18 **(Cal. Labor Code §§ 1174 & 1174.5)**
19 **(Individual and Class Claim Against Defendants & Does 1-100)**

20 62. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set
21 forth herein.

22 63. Cal. Labor Code § 1174 (d) requires an employer to keep at a central location in
23 California, or at the plant or establishment at which employees are employed, payroll records showing
24 the hours worked daily by, and the wages paid to, each employee, and the number of piece-rate units
25 earned by and any applicable piece rate paid to each employee. Plaintiff is informed and believes that
26 Defendant willfully failed to make and keep such records for Plaintiff.
27
28

1 64. IWC Wage Order No. 1-2001, paragraph (7)(A), requires that every employer keep
2 accurate employee information, including time records showing when each employee begins and ends
3 each work period and applicable rates of pay. Plaintiff is informed and believes that Defendant failed
4 to make and keep such records for Plaintiff.

5
6 65. Plaintiff is informed and believe that Defendants' failure to keep payroll records and
7 accurate employee information, as described above, violated Cal. Lab. Code § 1174 (d) and IWC
8 Wage Order No. 1-2001 (7)(A). Plaintiff is entitled to penalties of \$100 for the initial violation and
9 \$200 for each subsequent violation for every pay period during which these records and information
10 were not kept by Defendant.

11
12 66. Defendant's failure to keep and maintain records and information, as described above,
13 was willful, and Plaintiff is entitled to a civil penalty of \$500, pursuant to Cal. Lab. Code § 1174.

14 67. Wherefore, Plaintiff and Class Members have been injured and request relief as
15 provided.

16
17 **SIXTH CAUSE OF ACTION**
18 **Failure to Provide Accurate, Itemized Wage Statements**
19 **(Cal. Labor Code § 226)**
20 **(Individual and Class Claim Against Defendants & Does 1-100)**

21 68. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set
22 forth herein.

23 69. Labor Code section 226(a) provides "every employer shall, semimonthly or at the time
24 of each payment of wages, furnish each of his or her employees, either as a detachable part of the
25 check, draft, or voucher paying the employee's wages, or separately when the wages are paid by
26 personal check or cash, an accurate itemized statement in writing showing [. . .] (1) gross wages
27 earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number
28

1 of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
2 (4) all deductions, provided that all deductions make on written orders of the employee may be
3 aggregated and shown on one item, (5) net wages earned, (6) the inclusive dates of the period for
4 which the employee is paid, (7) the name of the employee and only the last four digits of his or her
5 social security number or an employee identification number other than a social security number, (8)
6 the name and address of the legal entity that is the employer [. . .] and (9) all applicable hourly rates
7 in effect during the pay period and the corresponding number of hours worked at each hourly rate by
8 the employee[.]” Cal. Lab. Code 226(a).

10 70. An employee suffering injury as the result of a knowing and intentional failure by an
11 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
12 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
13 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the
14 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
15 reasonable attorney’s fees. Labor Code § 226(e)(1).

17 71. An employee is deemed to suffer injury if the employer fails to provide a wage
18 statement or if the employer fails to provide accurate and complete information as required by any
19 one or more of the items (1) through (9), inclusive, of subdivision (a) of Labor Code section 226 and
20 the employee cannot promptly and easily determine from the wage statement alone: (i) the amount of
21 the gross wages or net wages paid to the employee during the pay period or any of the other
22 information required to be provided on the itemized wage statement pursuant to items (2) to (4),
23 inclusive, (6), and (9) of subdivision (a); (ii) which deductions the employer made from gross wages
24 to determine the net wages paid to the employee during the pay period; (iii) the name and address of
25 the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section
26
27
28

1 1682, the name and address of the legal entity that secured the services of the employee during the
2 pay period; and (iv) the name of the employee and only the last four digits of his or her social
3 security number or an employee identification number other than a social security number. Labor
4 Code § 226(e)(2)(A), (e)(2)(B)(i)-(iv). “Promptly and easily determine” means a reasonable person
5 would be able to readily ascertain the information without reference to other documents or
6 information. Labor Code § 226(e)(2)(C).

8 72. During the relevant time period(s) and as set forth above, Defendants failed to provide
9 accurate and complete itemized wage statements to Plaintiff and Class Members in violation of Labor
10 Code section 226(a) and 226(e), because the wage statements 1) failed to accurately list both total
11 hours worked and all applicable hourly rates, including a tabulation of overtime hours worked and all
12 applicable hourly rates and 2) failed to accurately list all gross wages and net wages as Defendant
13 failed to pay all overtime, minimum wages, and premium pay for missed meal and rest breaks.
14 Defendants had a policies, procedures, and practices to fail to provide the above information on wage
15 statements.
16

18 73. Defendant has knowingly and intentionally failed to comply with Cal. Labor Code §
19 226(a) on each and every wage statement that should have been provided to Plaintiff.
20

21 74. By failing to keep adequate records, as required by Cal. Labor Code § 226,
22 Defendant has injured Plaintiffs and made it confusing and difficult to calculate the unpaid wages
23 earned and expenditures not indemnified by Defendant (including wages, interest, and penalties
24 thereon) due to Plaintiff.

25 75. Plaintiff seeks to recover the statutory penalties provided by Cal. Labor Code § 226
26 for the wage statement violations committed by Defendant.
27
28

1 76. Wherefore, Plaintiff and Class Members have been injured and request relief as
2 provided.

3 **SEVENTH CAUSE OF ACTION**
4 **VIOLATION OF LABOR CODE SECTION § 1194, 1194.2, 1182.12**
5 **(Failure to Pay Minimum Wage)**
6 **(Individual and Class Claim Against Defendants & Does 1-100)**

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

9 78. By requiring Plaintiff and class members to work off the clock, Defendant
10 intentionally failed to pay Plaintiff the California minimum wage.

11 79. California Labor Code § 1194(a) provides:

12 (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving
13 less than the legal minimum wage or the legal overtime compensation applicable to
14 the employee is entitled to recover in a civil action the unpaid balance of the full
15 amount of this minimum wage or overtime compensation, including interest thereon,
16 reasonable attorney's fees, and costs of suit.

17 80. California Labor Code § 1194.2(a) provides that in any action under 1194 "to recover
18 wages because of the payment of a wage less than the minimum wage fixed by an order of the
19 commission or by statute, an employee shall be entitled to recover liquidated damages in an amount
20 equal to the wages unlawfully unpaid and interest thereon."

21 81. Plaintiff has been injured and requests relief.

22 82. Wherefore, Plaintiff and Class Members have been injured and request relief as
23 provided.
24

25 **EIGHTH CAUSE OF ACTION**
26 **For Violation of the Private Attorneys General Act**
27 **[Cal. Lab. Code §§ 2698, et seq.]**
28 **(Individual and Class Claim Against Defendants & Does 1-100)**

1 83. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set
2 forth herein.

3 84. PAGA is a mechanism by which the State of California itself can enforce state labor
4 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
5 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
6 a law enforcement action designed to protect the public and not to benefit private parties. The
7 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
8 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
9 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
10 private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch.
11 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.
12

13 85. PLAINTIFF, and such persons that may be added from time to time who satisfy the
14 requirements and exhaust the administrative procedures under the Private Attorney General Act,
15 brings this Representative Action on behalf of the State of California with respect to himself and all
16 individuals who worked for Defendants in California and were employees (the "AGGRIEVED
17 EMPLOYEES") were subjected to Defendant's 1) failure to pay minimum wages, 2) failure to pay
18 overtime, 3) failure to pay premium pay for missed meal breaks, 4) failure to pay premium pay for
19 missed rest breaks, 4) failure to reimburse for expenses, 5) willful failure to timely pay all wages at
20 discharge, 6) inaccurate pay records, pay stubs and statements.
21

22 86. These violations were committed against current and other former employees of
23 Defendants in California, and within the last year. Plaintiff on behalf of himself and other aggrieved
24 parties seek penalties pursuant to the California Labor Code.
25
26
27
28

1 87. Under the Private Attorneys General Act (PAGA), the penalty for a violation of
2 Labor Code § 432.5 "is one hundred dollars (\$100) for each aggrieved employee per period for the
3 initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
4 each subsequent violation."

5
6 88. Wherefore, Plaintiff and Class Members have been injured and request relief as
7 provided including but not limited to civil penalties, costs, and attorneys' fees.

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

11 89. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set
12 forth herein.

13 90. At all times relevant, Plaintiff and the Class members were covered by the provisions
14 under Code of Civil Procedure §1021.5 and California Business & Professions Code §§ 17200, *et*
15 *seq.*

16
17 91. Defendants' conduct, as alleged, has been, and continues to be, unfair, unlawful, and
18 harmful to Plaintiff and to the general public, Plaintiff seeks to enforce important rights affecting the
19 public interest within the meaning of Code of Civil Procedure §1021.5.

20
21 92. Defendants' activities, as alleged here, are violations of California law, and constitute
22 unlawful business acts and practices in violation of California Business & Professions Code §§
23 17200, *et seq.*

24 93. A violation of California Business & Professions Code §§ 17200 *et seq.* may be
25 predicated on the violation of a state or federal law. Defendants' policies and practices of requiring
26 Plaintiff and Class Members, to work without being compensated for premium pay for missed meal
27 and rest breaks violate the applicable Wage Order and California Labor Code and constitute unfair
28

1 business practices in violation of California Business & Professions Code §§ 17200 *et seq.*

2 Defendants' policies and practices of requiring Plaintiff and Class Members, to work without being
3 compensated for expenses constitute unfair business practices in violation of California Business &
4 Professions Code §§ 17200 *et seq.* Defendants' policies of and practicing of failing to pay all
5 overtime and minimum wages and failing to timely pay all wages owed upon termination violate the
6 applicable Wage Order and California Labor Code and constitute unfair business practices in
7 violation of California Business & Professions Code §§ 17200 *et seq.*

9 94. 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

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

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

25 96. Plaintiff and Class Members are entitled to immediate possession of all amounts owed
26 to Plaintiff and Class Members by Defendants, with interest.
27
28

1 97. Defendants' unfair business practices entitle Plaintiff to seek preliminary and
2 permanent injunctive relief, including but not limited to orders that Defendant account for, disgorge,
3 and restore to Plaintiff and Class Members, the reimbursement of expenses unlawfully withheld from
4 Plaintiff and Class Members.

5
6 **JURY DEMAND**

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

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

10 1. That the Court determine that Defendants, and each of them, violated Labor Code §
11 1198.5, regarding Plaintiff and/or Class Members;

12 2. For damages for unpaid wages, including regular, minimum wages and overtime
13 wages, premium pay for missed real and meal breaks, and such general and special damages as may
14 be appropriate, according to proof at trial;

15 3. For damages under Labor Code § 226(e);

16 4. For Civil and Statutory penalties under Labor Code §§ 226.3, 1197.1, 2699(a),
17 2699(f);

18 5. For liquidated damages;

19 6. Reimbursement of expenses under Labor Code § 2802;

20 7. Waiting time penalties for failure to pay all wages upon discharge and/or at the end of
21 each pay period;

22 8. Declaring that the concerted violations alleged herein constitute unfair competition in
23 violation of California's Unfair Competition Law, and violations of California's Labor Code;

9. Permanently enjoining Defendants from continuing to engage in the unlawful concerted conduct described herein;

10. Certifying this action to proceed as a class action pursuant to California Code of Civil Procedure section 382 and designating Plaintiff as the representative of the Class and his counsel as counsel for the Class;

11. Equitable remedies, including but not limited to, an equitable accounting, as the court deems just and proper under the circumstances;

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

13. For all economic and non-economic damages;

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

Ladva Law Firm

[Handwritten signature]

Dated: April 14, 2023

By: _____

SCOTT S. NAKAMA
Attorney for Plaintiff
HECTOR ESTRADA