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**ENDORSED
FILED
ALAMEDA COUNTY**

AUG 24 2020

CLERK OF THE SUPERIOR COURT
By CROGERS Deputy

Attorneys for Plaintiff and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

RIVELINO TAVIRA, an individual, on
behalf of himself and others similarly situated

PLAINTIFF,

v.

GENERAL FOUNDRY SERVICE
CORPORATION; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. **R620072299**

CLASS ACTION COMPLAINT

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Violation of Labor Code § 226(a)
3. Violation of Business & Professions Code § 17200

1 Plaintiff RIVELINO TAVIRA, an individual, on behalf of himself, all others similarly
2 situated, complains of Defendant GENERAL FOUNDRY SERVICE CORPORATION
3 (“Defendant”) and each of them, as follows:

4 **I.**

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of
7 Plaintiff and a Proposed Class defined as:

8 All persons who are employed or have been employed as an hourly
9 employee by GENERAL FOUNDRY SERVICE CORPORATION,
10 in the State of California since four (4) years prior to the filing of
11 this action to the present plus any additional time during which the
12 statutes of limitation for the causes of action herein were tolled
13 pursuant to Emergency Rule 9 of the California Rules of Court, the
14 ‘Emergency Rules Relates to COVID-19’. (“Proposed Class”)

15 2. From at least four (4) years prior to the filing of this action continuing to the
16 present,¹ Plaintiff and other Proposed Class members were not properly compensated for
17 overtime at the appropriate rate of pay. Defendant has had a consistent policy of failing to
18 provide proper overtime premium compensation to all Proposed Class members when they work
19 more than eight hours in a day and/or forty hours in a week.

20 3. For at least one (1) year prior to the filing of this action continuing to the present,
21 Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 1-
22 2001 and Labor Code § 226(a) by failing to issue Plaintiff and the Proposed Class accurate
23 itemized wage statements that show the address of the legal entity that is the employer and the
24 start and end date for each pay period.

25 4. Plaintiff, on behalf of himself and all Proposed Class members brings this action
26 pursuant to Labor Code §§ 226(a), 510, 1194, and 1199; Wage Order 1-2001; and California

27 ¹ Any limitations period referenced in this complaint is extended pursuant to Emergency Rule
28 9 of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of
Court, adopted effective April 6, 2020, which provides that the statutes of limitation for civil
actions are tolled from April 6, 2020 until 90 days after the Governor of California lifts the
state of emergency related to the COVID-19 pandemic. Any reference to the relevant time
period or statute of limitations is extended into the past by the number of days in which this
tolling was in effect.

1 Code of Regulations, Title 8, Section 11010, seeking unpaid wages/overtime, accurate itemized
2 wage statements, other penalties, injunctive and other equitable relief, and reasonable attorneys'
3 fees and costs.

4 5. Plaintiff, on behalf of himself and all Proposed Class members, pursuant to
5 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
6 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

7 **II.**

8 **JURISDICTION AND VENUE**

9 6. This Court has subject matter jurisdiction over all causes of action asserted herein
10 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil
11 Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in
12 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
13 arises under the laws of the State of California or is subject to adjudication in the courts of the
14 State of California.

15 7. This Court has personal jurisdiction over Defendant because Defendant has
16 caused injuries in the County of Alameda and the State of California through their acts, and by
17 their violation of the California Labor Code, California state common law, and California
18 Business & Professions Code § 17200, *et seq.*

19 8. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
20 Civil Procedure § 395. Defendant operates within California and does business within Alameda
21 County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class
22 members within the State of California and the county of Alameda.

23 9. This case should be classified as complex according to Rule 3.400 of the
24 California Rules of Court, and assigned to a complex litigation judge and department, as it will
25 involve substantial documentary evidence, a large number of witnesses, and is likely to involve
26 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
27 and would require substantial post judgment judicial supervision.

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III.
PARTIES

A. PLAINTIFF

10. Plaintiff RIVELINO TAVIRA is a resident of California.

11. Plaintiff and all Proposed Class members, were regularly required to:

a. Work without being properly compensated overtime premium pay for all hours worked at the appropriate rate; and

b. Work without being provided accurate itemized wage statements that reflect when the employee begins and ends each work period and the address of the legal entity that is the employer.

12. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

B. DEFENDANTS

13. Defendant GENERAL FOUNDRY SERVICE CORPORATION is believed to be a California corporation operating within the State of California. Defendant's corporate address is believed to be 1390 Business Center Pl San Leandro, CA 94577. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

14. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a

1 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
2 Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all
3 respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class
4 members.

5 16. Furthermore, Defendants acted in all respects as the employers or joint employers
6 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
7 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work,
8 or engaged, thereby creating a common law employment relationship, with the Proposed Class.
9 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

10 IV.

11 FACTUAL BACKGROUND

12 17. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
13 classified as non-exempt employees by Defendant. Defendant hires employees who work as
14 hourly employees who are paid on an hourly basis.

15 18. Upon information and belief, Plaintiff and the Proposed Class are covered by
16 California Industrial Welfare Commission Occupational Wage Order No. 1-2001 (Title 8 Cal.
17 Code of Regs. § 11010).

18 19. On a regular and consistent basis, Plaintiff and the Proposed Class members were
19 not paid at the proper rate of compensation for all hours worked. Defendant failed to properly
20 compensate overtime premium pay when Plaintiff and the Proposed Class members worked over
21 eight (8) hours in one day and/or forty (40) hours in one week.

22 20. Defendant has failed to comply with Industrial Welfare Commission (“IWC”)
23 Wage Order 1-2001(7) and Labor Code § 226(a) by failing to provide accurate itemized wage
24 statements that reflect when the employee begins and ends each work period and the address of
25 the legal entity that is the employer.

26 V.

27 CLASS ACTION ALLEGATIONS

28 21. Plaintiff brings this action on behalf of himself and all others similarly situated as

1 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a
2 proposed class composed of and defined as follows:

3 All persons who are employed or have been employed as an hourly
4 employee by GENERAL FOUNDRY SERVICE CORPORATION,
5 in the State of California since four (4) years prior to the filing of
6 this action to the present plus any additional time during which the
7 statutes of limitation for the causes of action herein were tolled
8 pursuant to Emergency Rule 9 of the California Rules of Court, the
9 ‘Emergency Rules Relates to COVID-19’. (“Proposed Class”)

10 22. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
11 amend or modify the class description with greater specificity, by division into subclasses, or by
12 limitation to particular issues.

13 23. This action has been brought and may properly be maintained as a class action
14 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
15 community of interest in the litigation and the Proposed Classes are easily ascertainable.

16 **A. NUMEROSITY**

17 24. The potential members of the Proposed Class as defined are so numerous that
18 joinder of all the members of the Proposed Class is impracticable. While the precise number of
19 Proposed Class members has not been determined at this time, Plaintiff is informed and believes
20 that Defendant currently employ, and during the relevant time periods employed over 50
21 members of the Proposed Class.

22 25. Plaintiff alleges that Defendant’s employment records would provide information
23 as to the number and location of all Proposed Class members. Joinder of all members of the
24 Proposed Class is not practicable.

25 **B. COMMONALITY**

26 26. There are questions of law and fact common to the Proposed Class that
27 predominate over any questions affecting only individual Proposed Class members. These
28 common questions of law and fact include, without limitation:

a. Whether Defendant failed to pay wages and/or overtime compensation as
required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;

1 b. Whether Defendant violated Labor Code § 226(a) and Wage Order 1-2001
2 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11010 by failing to
3 provide accurate itemized wage statements that reflect when the employee begins and ends each
4 work period and the address of the legal entity that is the employer;

5 c. Whether Defendant violated § 17200, *et seq.* of the Business &
6 Professions Code by engaging in the acts previously alleged; and

7 d. Whether Plaintiff and the members of the Proposed Class are entitled to
8 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

9 **C. TYPICALITY**

10 27. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff
11 and all members of the Proposed Class sustained injuries and damages arising out of and caused
12 by Defendant's common course of conduct in violation of laws, regulations that have the force
13 and effect of law, and statutes as alleged herein.

14 **D. ADEQUACY OF REPRESENTATION**

15 28. Plaintiff will fairly and adequately represent and protect the interests of the
16 members of the proposed Class.

17 29. Counsel who represent Plaintiff and the Proposed Class are competent and
18 experienced in litigating large employment class actions.

19 **E. SUPERIORITY OF CLASS ACTION**

20 30. A class action is superior to other available means for the fair and efficient
21 adjudication of this controversy. Individual joinder of all Proposed Class members is not
22 practicable, and questions of law and fact common to the Proposed Class predominate over any
23 questions affecting only individual members of the Proposed Class. Each member of the
24 Proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal
25 policy and/or practice of failing to pay all wages due and failing to provide accurate itemized
26 wage statements.

27 31. Class action treatment will allow those similarly situated persons to litigate their
28 claims in the manner that is most efficient and economical for the parties and the judicial system.

1 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
2 action that would preclude its maintenance as a class action.

3 **V.**

4 **FIRST CAUSE OF ACTION**

5 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

6 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

7 **LABOR CODE §§ 510, 1194, AND 1199**

8 32. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
9 by reference all previous paragraphs.

10 33. Labor Code §§ 510, 1194 and 1199 require an employer to compensate its
11 employees at the rate of no less than one and one-half times the regular rate of pay for any work
12 in excess of eight hours in one workday and any work in excess of 40 hours in any one
13 workweek.

14 34. Plaintiff and the Proposed Class were forced to work on a regular and consistent
15 basis without receiving compensation for all hours worked at the proper rate. Specifically,
16 Plaintiff and the Proposed Class were not properly compensated for overtime premium pay when
17 they were working more than eight (8) hours in one day or forty (40) hours in one week. Instead,
18 Defendant paid any hours over eight (8) hours in one day or forty (40) hours in one week at the
19 regular rate of pay.

20 35. By their policy of requiring Plaintiff and members of the Proposed Class to work
21 in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
22 compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully
23 violated the provisions of Labor Code §§ 510, 1194 and 1199.

24 36. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
25 members have been deprived of wages and/or overtime in amounts to be determined at trial, and
26 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
27 costs.

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1 **VI.**

2 **SECOND CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF**

4 **VIOLATION OF LABOR CODE §§ 226(a)**

5 37. Plaintiff, on behalf of himself only, realleges and incorporates by reference all
6 previous paragraphs.

7 38. California Labor Code § 226(a) requires employers to issue wage statements that
8 accurately contain when the employee begins and ends each work period and the address of the
9 legal entity that is the employer. (Labor Code §§ 226(a)(6) and (8).)

10 39. Defendant has failed to show the start date for each pay period and include the
11 address of the legal entity that is the on all itemized wage statements issued to Plaintiff and the
12 Proposed Class in violation of Labor Code §§ 226(a)(6) and (8) respectively.

13 40. Defendant's failure to provide accurate itemized wages statements according to
14 Labor Code § 226(a) was all done on a regular and consistent basis.

15 41. An employee suffering injury as a result of a knowing and intentional failure by
16 an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
17 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
18 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
19 exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
20 costs and reasonable attorneys' fees.

21 **VII.**

22 **THIRD CAUSE OF ACTION**

23 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

24 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

25 42. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
26 by reference all previous paragraphs.

27 43. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of
28 himself, on behalf of the general public, and on behalf of the Proposed Class, bring this claim

1 pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged
2 in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the
3 general public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the
4 public interest within the meaning of Code of Civil Procedure § 1021.5.

5 44. Plaintiff is a “person” within the meaning of Business & Professions Code
6 § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution,
7 and other appropriate equitable relief.

8 45. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair
9 business practices.

10 46. California’s wage and hour laws express fundamental public policies. Providing
11 employees with proper wages and compensation are fundamental public policies of this State and
12 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
13 vigorously minimum labor standards, to ensure that employees are not required or permitted to
14 work under substandard and unlawful conditions, and to protect law-abiding employers and their
15 employees from competitors who lower their costs by failing to comply with minimum labor
16 standards.

17 47. Defendant has violated statutes and public policies as alleged herein. Through the
18 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
19 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
20 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving
21 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
22 privileges guaranteed to all employees under law.

23 48. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
24 violation of § 17200, *et seq.* of the Business & Professions Code.

25 49. Defendant, by engaging in the conduct herein alleged, either knew or in the
26 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
27 violation of § 17200, *et seq.* of the Business & Professions Code.

28 50. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and

1 others similarly situated have been damaged in a sum as may be proven.

2 Unless restrained, Defendant will continue to engage in the unlawful conduct as alleged
3 above. Pursuant to the Business & Professions Code, this court should make such orders or
4 judgments, including the appointment of a receiver, as may be necessary to prevent the use or
5 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
6 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
7 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
8 proposed Class the money Defendant has unlawfully failed to pay.

9 **RELIEF REQUESTED**

10 **WHEREFORE**, Plaintiff prays for the following relief:

11 1. For compensatory damages in the amount of unpaid wages and/or overtime not
12 paid to Plaintiff and each Proposed Class member from at least four (4) years prior to the filing
13 of this action to the present as may be proven;

14 2. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
15 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
16 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
17 exceeding an aggregate penalty of four thousand dollars (\$4,000);

18 3. An award of prejudgment and post judgment interest;

19 4. An order enjoining Defendant and its agents, servants, and employees, and all
20 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
21 overtime and accurate itemized wage statements pursuant to Labor Code §§ 226(a), 510, 1194,
22 and 1199, and IWC 1-2001;

23 5. For restitution for unfair competition pursuant to Business & Professions Code
24 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

25 6. An award providing for payment of costs of suit;

26 7. An award of attorneys' fees; and

27 8. Such other and further relief as this Court may deem proper and just.

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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

3
4 DATED: August 24, 2020

KINGSLEY & KINGSLEY, APC

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6 By: 

7 Kelsey M. Szamet
8 Attorneys for Plaintiff RIVELINO TAVIRA and the
9 Proposed Class
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