

COPY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT

OCT 30 2024

BY *Dawn Molina*
DAWN MOLINA, DEPUTY

David P. Myers (SBN 206137)
dmyers@myerslawgroup.com
Jason Hatcher (SBN 285481)
jhatcher@myerslawgroup.com
Andriana N. Bravo (SBN 349191)
abravo@myerslawgroup.com
THE MYERS LAW GROUP, A.P.C.
9327 Fairway View Place, Suite 100
Rancho Cucamonga, CA 91730
Telephone: (909) 919-2027
Facsimile: (888) 375-2102

Attorneys for Plaintiff Jose Ramirez,
and all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JOSE RAMIREZ, on behalf of himself and
all others similarly situated

PLAINTIFF,

v.

THE SHERWIN-WILLIAMS
MANUFACTURING COMPANY, an Ohio
Corporation; and DOES 1 through 100,
inclusive

DEFENDANTS.

Case No.: CIVVS2400193

FIRST AMENDED CLASS ACTION
COMPLAINT

1. **Failure to Pay Overtime and Double Time Wages;**
2. **Violations of Labor Code §§226.7, 512 and IWC Wage Order No. 1-2001;**
3. **Failure to Provide Accurate Wage Statements;**
4. **Failure to Pay All Wages Due at Separation;**
5. **Unfair Competition;**
6. **Private Attorneys General Act**

DEMAND FOR JURY TRIAL

1
2
3
4
5
6
7
8

I. INTRODUCTION

This is an action brought by Plaintiff JOSE RAMIREZ (“Plaintiff”), on his behalf and all others similarly situated, against THE SHERWIN-WILLIAMS MANUFACTURING COMPANY, an Ohio Corporation, and other as of yet unnamed DOE Defendants 1-100 (hereinafter collectively “Defendants”) alleging, among other things violations of the California Labor Code and Unfair Competition Law. Plaintiff seeks damages, attorneys’ fees and costs of suit. Plaintiff is informed and believes, and on that basis alleges as follows:

9
10
11
12
13
14
15

II. GENERAL ALLEGATIONS

1. This class action arises from wage and hour violations for, among other things, Defendants’ failure to compensate hourly non-exempt employees in compliance with California law. As more fully described herein, Defendants failed and continue to fail compensate Plaintiff and class members the full amount of wages owed, including overtime premiums at the correct regular rate of pay, provide premium pay remedies at the regular rate of pay, provide accurate wage statements, and pay all wages due at separation. Additionally, Defendants violated and continue to violate the California Unfair Competition Law.

2. Plaintiff seeks, among other things, all wages, restitutionary disgorgement, and statutory penalties. Plaintiff seeks to represent the following Class:

All current and former California hourly non-exempt employees of Defendants who provide manufacturing and/or production services for Defendants at any time from four years prior to the filing of this action through the date of class certification. (The “Class”).

3. This Court is the proper court, and this action is properly filed in San Bernardino County and in this judicial district because Defendants do business in San Bernardino County, out of Victorville, California, and because Defendants’ obligations and liabilities arise therein.

4. Plaintiff is a former hourly non-exempt employee for Defendants in the state of California and a resident of California.

5. Plaintiff is informed and believes, and thereon alleges that Defendant THE SHERWIN-WILLIAMS MANUFACTURING COMPANY is an Ohio Corporation.

6. The true names and capacities, whether individual, corporate, associate, or

1 otherwise, of DOES 1 through 100 are unknown to Plaintiff, who therefore sues the DOE
2 Defendants by fictitious names. Plaintiff will amend this Complaint to show their true names and
3 capacities when they have been ascertained.

4 7. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
5 and omissions alleged herein were performed by, and/or are attributable to, all Defendants, each
6 acting as agents and/or employees, and/or under the direction and control of each of the other
7 Defendants, and that said acts and failures to act were within the course and scope of said agency,
8 employment and/or direction and control. Plaintiff is informed and believes, and thereon alleges,
9 that at all times material hereto Defendants were and are the agents of each other.

10 8. Plaintiff is informed and believes, and thereon alleges, that Defendants DOES 1
11 through 100 are the partners, owners, shareholders, managers, joint employers, or alter egos of
12 Defendants, and were acting on behalf of Defendants in the payment of wages to Plaintiff and the
13 Class.

14 9. At all relevant times alleged herein Plaintiff was employed by Defendants, and
15 Plaintiff performed work for Defendants in the city of Victorville, in San Bernardino County in
16 the state of California.

17 **III. FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION**

18 10. Plaintiff and the Class worked as hourly non-exempt employees in the state of
19 California for Defendants.

20 11. Throughout the period of four (4) years prior to the filing of this action through the
21 date of class certification ("Class Period"), Plaintiff and all Class members were and are employees
22 of Defendants in the state of California, entitled to all of the protections afforded to employees
23 under the Labor Code and applicable IWC Wage Order.

24 12. Defendants' primary business is the manufacturing of paints. This work is
25 accomplished in part by Plaintiff and the Class members.

26 13. Defendants are liable to Plaintiff and the Class for failing to pay for all hours
27 worked, including overtime and double wages at the correct regular rate of compensation, failing
28 to provide premium pay remedies at the regular rate of pay, failing to provide accurate wage

1 statements, failing to pay all wages owed at separation, and unfair competition.

2 14. Plaintiff is a member of and seeks to be the representative for the Class of similarly
3 situated employees who all have been exposed to, have suffered, and/or were permitted to work
4 under, Defendant's unlawful employment practices as alleged herein.

5 15. Throughout the Class Period, Defendants knowingly and willfully engaged and
6 continue to engage in an unlawful scheme to avoid complying with California wage and hour laws
7 and other employee rights and benefits.

8 16. Throughout the Class Period, Defendants failed to pay Plaintiff and the Class
9 members for all hours worked. Defendants did not pay Plaintiff and Class members' overtime
10 wages in accordance with the law.

11 17. Throughout the Class Period, when Plaintiff and Class members worked in excess
12 of eight (8) hours per workday or forty (40) hours per work week, Defendants did not pay them
13 overtime wages inclusive of all remuneration by omitting non-discretionary yearly bonuses in the
14 regular rate of pay.

15 18. At all times during the liability period, Defendants failed to pay Plaintiff and Class
16 members overtime wages based on their regular rate of pay. Plaintiff and the Class members
17 received non-discretionary yearly bonuses that were not included in the regular rate of pay for
18 calculating overtime premium pay.

19 19. Plaintiff is informed, believes, and thereon alleges that throughout the relevant time
20 period, Defendants failed to pay meal and/or rest period premium pay remedies at the correct
21 regular rate of compensation as required by the California Labor Code and applicable Wage Order.
22 *See Ferra v. Loews Hollywood Hotel, LC*, 11 Cal. 5th 858 (2021).

23 20. The wage statements provided by Defendants failed to provide accurate
24 information reflecting the total hours worked and gross and net wages earned for all hours worked
25 in the pay period.

26 21. Defendants failed to pay Plaintiff and the Class all earned overtime wages timely
27 upon termination. This includes but is not limited to overtime wages at the regular rate of pay.
28

22. The underpayment of wages, Labor Code violations and Wage Order violations upon Plaintiff and the Class are a consequence of Defendants' unlawful policies and practices which were centrally devised, implemented, communicated, and applied to Plaintiff and the Class.

23. Because of Defendants' unlawful conduct, Plaintiff and the Class have been and continue to be systematically deprived of their benefits of the Labor Code and applicable IWC Wage Orders, to the detriment of Plaintiff, the Class, and the public at large.

CLASS DEFINITION AND CLASS ALLEGATIONS

24. Plaintiff brings this action on his own behalf and on behalf of all others similarly situated, pursuant to California Code of Civil Procedure §382, and as a member of the Class defined as follows:

All current and former California hourly non-exempt employees of Defendants who provide manufacturing and/or production services for Defendants at any time from four (4) years prior to the filing of this action through the date of class certification. (The "Class").

Sub-Class 1

All current and former California hourly non-exempt employees of Defendants who provide manufacturing and/or production services for Defendants at any time from four (4) years prior to the filing of this action through the date of class certification who worked at least one (1) day of more than eight (8) hours in a day or more than forty (40) hours in a week, and received bonus payments. ("Regular-Rate" Sub-Class).

Sub-Class 2

All current and former California hourly non-exempt employees of Defendants who provide manufacturing and/or production services for Defendants at any time from four (4) years prior to the filing of this action through the date of class certification who received bonus payments and/or shift differential payments and received premium pay remedies for meal and/or rest period violations. ("Premium Payment" Sub-Class).

Sub-Class 3

All current and former California hourly non-exempt employees of Defendants who provide manufacturing and/or production services for Defendants at any time from one (1) year prior to the filing of this action through the date of class certification who are members of Sub-Class 1 and/or Sub-Class 2. ("Wage Statement Class" Sub-Class).

Sub-Class 4

All former California hourly non-exempt employees of Defendants who provided manufacturing and/or production services for Defendants at any time from three (3)

1 years prior to the filing of this action through the date of class certification who are
2 members of Sub-Class 1 and/or Sub-Class 2. (“Waiting Time Penalties” Sub-
Class).

3 25. Plaintiff reserves the right to amend or otherwise alter the class definition presented
4 to the Court at the appropriate time, or to alter, propose or eliminate sub-classes, in response to
5 facts learned through discovery, legal arguments advanced by Defendants or otherwise.

6 26. Further, this action is brought for the benefit of the public, who are entitled to
7 restitution of those funds improperly withheld by Defendants.

8 27. This action has been brought and may be properly maintained as a class action
9 pursuant to the provisions of the Code of Civil Procedure §382 and other applicable law.

10 28. **Numerosity:** Members of the Class are so numerous that their individual joinder is
11 impracticable. It is possible to ascertain the number of former and current employees who are
12 members of the proposed class, but they are so numerous that joinder is impracticable. The
13 proposed Class includes future employees (persons who are hired by defendant within the class
14 period, but who are not now class members as current or former employees) whose joinder is
15 currently impossible. The precise number of Class members and their addresses can be determined
16 by Defendants’ business records and will become known to Plaintiff through discovery. Class
17 members may be notified of the pendency of this action by mail, e-mail, the internet, or published
18 and posted notice.

19 29. **Typicality:** Plaintiff’s claims are typical of the claims of members of the proposed
20 classes. Defendants employed Plaintiff during the statutory period, and Plaintiff has been subjected
21 to Defendants’ unlawful employment practices, as alleged in this Complaint.

22 30. **Adequacy of Class Representative:** Plaintiff will fairly and adequately protect the
23 interests of the classes. Plaintiff’s interests do not conflict with Class members’ interests, and
24 Plaintiff has retained competent and experienced counsel. The interests of Class members will be
25 fairly and adequately protected by Plaintiff and his counsel.

26 31. **Common Questions of Law and Fact:** Common questions of law and fact exist
27 as to all Class members and predominate over any questions affecting solely individual members
28 of the proposed Class:

- 1) Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff and the members of the Class the full amount of overtime and double time wages at correct regular rate of pay in violation of the applicable Labor Code provisions including §§510 and 1194;
- 2) Whether Defendants engaged in a practice of failing to provide Plaintiff and the members of the Class premium pay remedies for meal and/or rest period violations at the regular rate of compensation in violation of Labor Code §226.7, and the applicable wage order;
- 3) Whether Defendants improperly retained, appropriated or deprived Plaintiff and members of the proposed Plaintiff class of the use of monies or sums to which they were legally entitled;
- 4) Whether Defendants engaged in unlawful, unfair, and/or fraudulent business practices;
- 5) Whether Defendants, and each of them, was/were participants in the alleged unlawful conduct;
- 6) Whether Defendants violated Labor Code §203 by failing to pay all wages due upon separation;
- 7) Whether Defendants engaged in unfair practice and violated California Business and Professions Code §17200 *et seq.*;
- 8) Whether Defendants failed to provide accurate wage statements to Plaintiff and members of the Class; and
- 9) The nature and extent of class-wide injury and measure of damages for the injury.

32. **Superiority and Substantial Benefit:** A class action is the superior method for the fair and efficient adjudication of this controversy. Defendants implemented illegal schemes that are generally applicable to the members of the proposed plaintiff class and sub-classes. Damages suffered by each Class member may be relatively small given the burden and expense of individual prosecution of the complex and expensive litigation necessitated by Defendants' conduct. Further, it would be virtually impossible for the Class members to redress the wrongs done to them on an

1 individual basis. Even if Class members could afford such individual litigation, the court system
2 could not. By contrast, the class action device presents far fewer management difficulties, and
3 provides the benefits of a single adjudication, economies of scale, and comprehensive supervision
4 by a single court.

5 33. Plaintiff knows of no difficulty that will be encountered in the management of this
6 litigation that would preclude its maintenance as a class action. Plaintiff is informed and believes,
7 and on that basis alleges, that the amount of money due each Class member as economic damages
8 is ascertainable from Defendants' records or may readily be determined by other means.

9 34. The Classes should also be certified because:

- 10 1) The prosecution of separate actions by individual Class members would create a
11 risk of inconsistent or varying adjudications with respect to individual Class
12 members, which would establish incompatible standards of conduct for
13 Defendants;
- 14 2) The prosecution of separate actions by individual Class members creates the risk
15 of adjudication with respect to them, which would, as a practical matter, be
16 dispositive of the interests of the other Class members not parties to the
17 adjudications, or would substantially impair or impede their ability to protect their
18 interests; and
- 19 3) Defendants have acted or have refused to act on grounds generally applicable to
20 the class and/or the general public, thereby making final and injunctive relief, as
21 well as declaratory relief, with respect to the Class as a whole, appropriate.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PAY OVERTIME AND DOUBLE TIME WAGES**

24 **Violation of Labor Code §§510, 1194, and IWC Wage Order No. 1-2001**

25 (Against all Defendants)

26 35. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
27 paragraphs 1 through 34 of this Complaint.

28 36. Plaintiff and class members were and are employed and scheduled as a matter of

1 established company policy to work in excess of eight (8) hours per day and/or in excess of forty
2 (40) hours per workweek. Defendants employed and scheduled Plaintiff and the class members
3 without providing the full amount of overtime compensation for such excess hours worked in
4 violation of Labor Code §§510 and 1194 and the relevant California Industrial Welfare
5 Commission (IWC) orders, by failing to pay Plaintiff and the Class members overtime
6 compensation at the regular rate of pay.

7 37. Labor Code §510 mandates: “Eight hours of labor constitutes a day's work. Any
8 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
9 workweek and the first eight hours worked on the seventh day of work in any one workweek shall
10 be compensated at the rate of no less than one and one-half times the regular rate of pay for an
11 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less
12 than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours
13 on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular
14 rate of pay of an employee. Nothing in this section requires an employer to combine more than
15 one rate of overtime compensation in order to calculate the amount to be paid to an employee for
16 any hour of overtime work.” The California overtime requirement and wage requirement are non-
17 waivable rights pursuant to LC §219.

18 38. Section 3(a)(1) of Wage Order No. 1-2001 mandates that employers pay one and
19 one-half times the employees’ regular rate of pay for employees who work more than eight hours
20 in a day or forty hours in a week and two times their regular rate of pay for any work in excess of
21 twelve hours in one day.

22 39. Labor Code §1194(a) states: “Notwithstanding any agreement to work for a lesser
23 wage, any employee receiving less than the legal minimum wage or the legal overtime
24 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
25 of the full amount of this minimum wage or overtime compensation, including interest thereon,
26 reasonable attorney’s fees, and costs of suit.”

27 40. Pursuant to Labor Code §§218 and 1194(a), Plaintiff may bring a civil action for
28 overtime wages directly against the employer without first filing a claim with the Division of Labor

Standards Enforcement (“DLSE”) and may recover such wages, together with interest thereon, penalties, attorneys’ fees and costs. Further, pursuant to Labor Code §1198, it is unlawful to employ person for longer than the hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders. IWC Wage Order No. 1, as amended, applies to Plaintiff and the class.

41. Defendants, and each of them, consistently administered a corporate policy which required Plaintiff and the class members to work overtime without proper premium overtime pay based on the regular rate of pay. Accordingly, Plaintiff and class members were and are entitled to overtime compensation, under California law, based on the appropriate regular rate of pay. Defendants have failed to properly include items of remuneration when determining Plaintiff’s and the Class Members’ regular rate, this includes, but is not limited to non-discretionary yearly bonuses.

42. Plaintiff and the class members have been deprived of rightfully earned overtime and/or double compensation as a direct and proximate result of Defendants’ common policies, practices, and refusal to pay the full amount of compensation earned for all overtime and/or double time hours worked at the correct regular rate of pay.

43. Plaintiff and the class are entitled to and seek the full amount of all earned unpaid overtime pay, attorneys’ fees and costs, and interest pursuant to LC §1194 in an amount to be determined at trial.

44. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class Members seek recover of pre-judgment interest on all amounts recovered herein.

45. Plaintiff and the class are entitled to and seek attorneys’ fees and costs, and interest pursuant to Labor Code §1194 in the amount to be determined at trial.

SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE §§226.7, 512, and IWC Wage Order No. 1-2001

(Against all Defendants)

46. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, paragraphs 1 through 34 of this Complaint.

1 47. Labor Code §226.7(c) provides in relevant part that “If an employer fails to provide
2 an employee a meal or rest or recovery period in accordance with a state law, including, but not
3 limited to, an applicable statute or applicable regulation, standard, or order of the Industrial
4 Welfare Commission . . . the employer shall pay the employee one additional hour of pay at the
5 **employee’s regular rate of compensation** for each workday that the meal or rest or recovery period
6 is not provided.” (Emphasis added).

7 48. The “regular rate of compensation” as set forth in Labor Code §226.7 has the same
8 meaning as “regular rate of pay” as used in Labor Code §510 for overtime and “encompasses all
9 non-discretionary payments, not just hourly wages”. *Ferra v. Loews Hollywood Hotel, LLC*, 11
10 Cal.5th 858, 863.

11 49. Labor Code §516 provides that the Industrial Welfare Commission “may adopt or
12 amend working condition orders with respect to break periods, meal periods, and days of rest for
13 any workers in California consistent with the health and welfare of those workers.”

14 50. Section §11(B) of the IWC Wage Order No. 1-2001 states: “If an employer fails to
15 provide an employee a meal period in accordance with the applicable provisions of this order, the
16 employer shall pay the employee one (1) hour of pay at the **employee’s regular rate of**
17 **compensation** for each workday that the meal period is not provided.” (Emphasis added).

18 51. Defendants’ uniform policy and practice failed to provide Plaintiff and the Class
19 members, who incurred meal and/or rest period violations, the full amount of paid meal and/or rest
20 period premium payments, at the regular rate of compensation, for noncompliant meal and/or rest
21 periods. Defendants’ uniform policy and practice was to underpay meal and/or rest period
22 premiums with payment at a rate significantly less than the employee’s regular rate of
23 compensation.

24 52. Plaintiff incurred meal and/or rest period violations and received premium
25 payments that were paid at a rate less than the regular rate of compensation, this includes but is
26 not limited to the exclusion of non-discretionary bonuses and shift differential pay from the regular
27 rate of pay.

28 53. As such, as a matter of Defendants’ established company policy, Defendants failed

1 to provide meal and/or rest periods and then failed to provide meal and/or rest period premium
2 payments at the regular rate of compensation in violation of Labor Code §§226.7(b), 516, and
3 Section 11(B) of Wage Order No. 1-2001.

4 54. As a result of the unlawful acts of Defendants, Plaintiff and the Class members have
5 been deprived of legally compliant meal and/or rest breaks and the full amount of meal and/or
6 period premium payments at the regular rate of compensation and are entitled to recover damages
7 under Labor Code §226.7(b) and §12 of IWC Wage Order No. 1-2001 in the full amount of one
8 additional hour of compensation at their regular rate of pay for each day a compliant meal and/or
9 rest break was not provided.

10 55. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class
11 members seek recovery of pre-judgment interest on all amounts recovered herein.

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

14 **Violation of Labor Code §226**

15 (Against all Defendants)

16 56. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
17 paragraphs 1 through 34 of this Complaint.

18 57. California Labor Code §226 provides:

19 (a) Every employer shall, semimonthly or at the time of each payment of wages,
20 furnish each of his or her employees, either as a detachable part of the check, draft,
21 or voucher paying the employee's wages, or separately when wages are paid by
22 personal check or cash, an accurate itemized statement in writing showing (1) gross
23 wages earned, (2) total hours worked by the employee, except for any employee
24 whose compensation is solely based on a salary and who is exempt from payment
25 of overtime under subdivision (a) of Section 515 or any applicable order of the
26 Industrial Welfare Commission, (3) the number of piece-rate units earned and any
27 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
28 provided that all deductions made on written orders of the employee may be
aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of
the period for which the employee is paid, (7) the name of the employee and only
the last four digits of his or her social security number or an employee identification
number other than a social security number, (8) the name and address of the legal
entity that is the employer..., and (9) all applicable hourly rates in effect during the
pay period and the corresponding number of hours worked at each hourly rate by

1 the employee...

2 58. Section 7(A) of the Wage Order requires accurate information pertaining to total
3 wages paid each payroll period, total hours worked in the payroll period and applicable rates of
4 pay, and incentive plan formula provided to the employees.

5 59. Labor Code §226(e) provides that an employee is entitled to recover the greater of
6 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation of §226
7 occurs and one hundred dollars (\$100) for each subsequent pay period not to exceed an aggregate
8 penalty of four thousand dollars (\$4,000), as well as an award of costs and reasonable attorneys'
9 fees, for all pay periods in which the employer knowingly and intentionally failed to provide timely
10 and accurate itemized statements to the employees.

11 60. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
12 and intentional failure to provide accurate itemized wage statements as Plaintiff and the Class
13 members were owed but not paid overtime compensation for all hours worked at the regular rate
14 of pay, as the same was not reflected on the wage statements, and meal and/or rest period premiums
15 at the correct regular rate of pay.

16 61. At all material times, Defendants knowingly and intentionally failed to provide
17 Plaintiff and Class Members with accurate wage statements reflecting accurate number of hours
18 worked, gross and net wages earned, and/or the applicable hourly rates at the corresponding hours
19 worked.

20 62. Plaintiff and the Class members are entitled to the greater of actual damages or
21 statutory penalties pursuant to Labor Code §226(e) for these violations, in an amount to be
22 determined at trial.

23 63. Plaintiff and the Class members are entitled to and seek costs and reasonable
24 attorneys' fees pursuant to Labor Code §226(e).

25 64. Plaintiff further seeks injunctive relief and reasonable attorneys' fees and costs
26 pursuant to Labor Code §226(h).

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES DUE AT SEPARATION**

3 **Violation of Labor Code §§201, 203**

4 (Against all Defendants)

5 65. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
6 paragraphs 1 through 34 of this Complaint.

7 66. Plaintiff and the Class members whose employment ended with Defendants during
8 the relevant time period were entitled to be promptly paid all earned and unpaid wages at the time
9 of termination, as required pursuant to Labor Code §§201 and 202, *et seq.* Defendants refused
10 and/or intentionally failed to promptly compensate Plaintiff and the other Class members all earned
11 wages, including but not limited to overtime and/or double wages at regular rate of pay, and rest
12 and/or meal period premium payments at the regular rate of pay. Based on this Plaintiff and the
13 Class members seek and are entitled to damages in the form of statutory waiting time penalties
14 pursuant to LC §203.

15 67. Plaintiff and the Class members whose employment terminated during the relevant
16 time period were employees of Defendants covered by Labor Code §203.

17 68. Accordingly, pursuant to Labor Code §203, Plaintiff and the Class members are
18 entitled to waiting time penalties at an amount to be proven at trial.

19 **FIFTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION**

21 **Violation of Business and Professions Code §§17200, *et seq.***

22 (Against all Defendants)

23 69. Plaintiff and the class re-allege and incorporate by reference and re-allege each and
24 every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint
25 as if fully set forth herein.

26 70. Beginning on an exact date unknown to Plaintiff but believed to have occurred at
27 least since four (4) years before the filing of this action, Defendants have engaged in a pattern and
28 practice of acts of unfair competition in violation of B&PC §17200, including the practices alleged

1 herein.

2 71. Defendants, and each of them, are “persons” as defined by Business and
3 Professions Code §17201.

4 72. Plaintiff seeks to enforce important rights affecting the public interest. Plaintiff sues
5 on his own behalf and on behalf of the current, former, and future employees of the Defendants
6 that were required to work overtime hours without receiving the full amount of overtime
7 compensation at a rate not equal to the regular rate of compensation, due to Defendants’ unfair
8 business practices.

9 73. Plaintiff and the Class have suffered injuries-in-fact and have lost money as a result
10 of the Defendants’ unfair competition alleged herein.

11 74. Defendants have previously or continue to engage in unlawful, unfair, and/or
12 fraudulent business practices, as alleged in this Complaint, in violation of California’s B&PC
13 §17200 *et seq.* by:

- 14 a. Failing and refusing to pay the class, including Plaintiff, earned overtime wages at
15 the proper regular rate of pay in violation of Labor Code §§510, 1194 and IWC
16 Wage Order No. 1-2001; and
17 b. Failing and refusing to provide Plaintiff and the class members meal and/or rest
18 period premium payments, at the proper regular rate of pay, in lieu thereof in
19 violation of Labor Code §§226.7, 512 and IWC Wage Order No. 1-2001.

20 75. These allegations constitute unfair business practices and/or unlawful business
21 practices in violation of California B&PC §17200, *et seq.*

22 76. Defendants have avoided payment of wages and other benefits as required by the
23 California Labor Code, the California Code of Regulations, and applicable IWC Wage Orders. As
24 a result of Defendants’ unfair business practices, Defendants have reaped unfair benefits and
25 illegal profits at the expense of Plaintiff, the Class members, and others similarly situated, and the
26 members of the public. Defendants should be made to disgorge their ill-gotten gains and to restore
27 them to the Class, including Plaintiff.

28 77. Plaintiff and the Class members seek full restitution of said monies, as necessary

1 and according to proof, to restore any and all monies withheld and/or acquired by Defendants by
2 means of the unfair, unlawful, and fraudulent business practices complained of herein. Plaintiff
3 seeks, on behalf of all current and former employees of Defendants, restitution of monies retained
4 by Defendants. Plaintiff further seeks on behalf of himself and the Class members, the appointment
5 of a receiver, as necessary, to establish the total restitutionary relief from Defendants. The
6 restitution includes all wages withheld by Defendants as a result of the unfair, unlawful, and/or
7 fraudulent business practices; including interest thereon. Absent a statutory provision specifically
8 governing the type of claim at issue, the prejudgment interest rate is 10 percent. The acts
9 complained of herein occurred, at least in part, within the last four (4) years preceding the filing
10 of the Complaint.

11 78. Plaintiff is informed and believes and thereon alleges that at all times herein
12 mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices
13 prohibited by California B&PC §17200, thereby depriving their employees and the Class
14 members, the minimum working condition, standards and conditions due to them under the
15 California labor laws and Industrial Welfare commission wage orders as specifically described
16 herein. Plaintiff further seeks an order requiring Defendants to identify by full name, telephone
17 number, and last known address employees who worked or still work for Defendants for the Class
18 members from four (4) years preceding the filing of the original Complaint through the date of
19 class certification. Plaintiff further seeks an order requiring Defendants to timely pay restitution
20 to all current and former employees, including back wages, and interest.

21 79. By and through its unfair, unlawful, and/or fraudulent business practices and acts
22 described herein, Defendants have obtained valuable services from Plaintiff and all persons
23 similarly situated and has deprived Plaintiff and all persons similarly situated of valuable rights
24 and benefits guaranteed by law, all to their detriment.

25 80. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled
26 to and do seek such relief as may be necessary to restore to them the money and property which
27 Defendants have acquired, or of which Plaintiff and class members have been deprived by mean
28 of the herein described unfair, unlawful, and/or fraudulent business practices.

81. Plaintiff, and all persons similarly situated, and all persons in interest, are further entitled to and do seek a declaration that the above-described business practices are unfair, unlawful, and/or fraudulent, and declaratory relief of Defendants engaging in any of the herein described unfair, unlawful, and/or fraudulent business practices.

82. Plaintiff and the Class members request attorney's fees and costs pursuant to Code of Civil Procedure §1021.5 since this action is brought to vindicate important rights of a large class and the public.

SEVENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698, *et seq.*

(Against all Defendants)

83. Plaintiff on behalf of himself and on behalf of all other aggrieved employees herein re-alleges and incorporates each and every one of the allegations in the preceding paragraphs as if fully set forth herein.

84. Labor Code §§2698-2699, the Labor Code Private Attorney General Act of 2004, provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code, may be recovered through a civil action by an aggrieved employee on behalf of himself or herself, and collectively on behalf of all other current or former employees.

85. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees, has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions to assess a civil penalty.

86. Plaintiff and Defendants' non-exempt hourly employees who provide/provided pipeline services are "aggrieved employees" as defined by Labor Code §2699, in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

1 87. Plaintiff gave written notice electronically to the LWDA, and by certified mail to
2 Defendants of the specific provisions of this code alleged to have been violated, including the facts
3 and theories to support the alleged violations as required by Labor Code §2699.3. More than 65
4 days have lapsed since notice to the LWDA and the LWDA has not indicated that it intends to
5 investigate Defendants' Labor Code violations. Accordingly, Plaintiff may commence a civil
6 action to recover civil penalties for himself and other current and former employees under Labor
7 Code §2699 pursuant to §2699.3.

8 88. Plaintiff asserts all the claims in this Complaint against Defendants, individually
9 and on behalf of all aggrieved employees in their capacity as private attorney general and seeks all
10 applicable civil penalties available under the Labor Code.

11 89. Pursuant to Labor Code §2699, Plaintiff, individually and on behalf of all aggrieved
12 employees, requests and seeks to recover from the Defendants for: unpaid overtime and double
13 time wages, failing to provide meal and/or rest period premium payments at the regular rate of
14 compensation, wage statement violations, and waiting time penalties according to proof. Plaintiff
15 is further entitled to attorneys' fees and costs pursuant to Labor Code §2699(k)(1), as well as all
16 civil penalties, including, but not limited to:

- 17 1) Penalties under Code of Regulations, Title 8 §11010 in the amount of \$50 for each
18 aggrieved employee per pay period for the initial violation, and \$100 for each
19 aggrieved employee per pay period for each subsequent violation;
- 20 2) Penalties under Labor Code §558, in addition to and entirely independent and apart
21 from other penalties provided under the Labor Code, in the amount of \$50 for each
22 underpaid aggrieved employee for each pay period the aggrieved employee was
23 underpaid in addition to an amount sufficient to recover underpaid wages, and
24 \$100 for each subsequent violation for each underpaid employee for each pay
25 period for which the employee was underpaid in addition to an amount sufficient
26 to recover underpaid wages, with all wages recovered pursuant to Labor Code
27 §558 provided to the affected employees;
- 28 3) Penalties under Labor Code §2699(f)(2)(A), in addition to and entirely

independent and apart from other penalties provided in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each violation, or pursuant to Labor Code §2699(f)(2)(B) for \$200 for each aggrieved employee per pay period for each violation.

90. Any and all additional civil penalties and sums as provided by the Labor Code and/or other statutes.

91. Plaintiff seeks and is entitled to have 65% of all penalties obtained be allocated to the LWDA and 35% to aggrieved employees.

92. Further, , Plaintiff is entitled to seek and recover reasonable attorney's fees and costs pursuant to Labor Code §§2699(k)(1).

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. An order that the action be certified as a class action;
2. An order that Plaintiff be appointed class representative;
3. An order that counsel for Plaintiff be appointed class counsel;
4. An order requiring Defendants to identify, by name, email address, address and telephone number all current and former California hourly non-exempt employees of Defendants who provided manufacturing and/or production services for Defendants at any time from four (4) years prior to the filing of this action through the date of class certification;
5. For all unpaid wages due to Plaintiff and each Class member and liquidated damages, in amounts to be proven at trial;
6. For unpaid overtime and double time wages due to Plaintiff and each Class member;
7. For restitution of all unpaid wages due Plaintiff and each Class member;
8. For recovery as authorized by Labor Code §226(e);
9. For all applicable statutory penalties, in amounts to be proven at trial;
10. For all applicable civil penalties, in amounts to be proven at trial;

11. For an award of waiting time penalties pursuant to section 203 of the California Labor Code, in amounts to be proven at trial;
12. For general damages including compensatory damages according to proof;
13. For pre-judgment interest as allowed by Labor Code §§218.6 and 1194(a) and Cal. Civil Code §3287 and to the extent permitted by law, the California Constitution, and/or deemed equitable by the Court;
14. For all applicable interest on damages, wages, expenses, and penalties due;
15. For injunctive relief to prevent further violations of the California Labor Code;
16. For declaratory relief that Defendants engaged in unfair practices;
17. For declaratory relief that Defendants violated Labor Code §§ 201-203, 226, 226.7, 510, 512, and 1194;
18. For restitution of all moneys due to Plaintiff and Class members, and disgorged profits from the unlawful and/or unfair business practices of Defendants, pursuant to California Business & Professions Code §17200;
19. For costs of suit, expenses and attorneys' fees pursuant to Labor Code §§226(e) and (h), 1194(a), 2699(k)(1), Code of Civil Procedure §1021.5, *et seq.*, and all other applicable law,
20. On behalf of Plaintiff and all other aggrieved employees and the LWDA, for all civil penalties authorized by LC §2699, including but not limited to:
 - a. For civil penalties pursuant to LC §558 as follows:
 - i. For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
 - ii. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
 - b. For civil penalties per Code of Regulations, Title 8 §11010 in the amount of

1 \$50 for each aggrieved employee per pay period for the initial violation, and
2 \$100 for each aggrieved employee per pay period for each subsequent violation;
3 c. For civil Penalties under Labor Code §2699(f)(2)(A), in addition to and entirely
4 independent and apart from other penalties provided in the Labor Code and for
5 Labor Code violations without a specific civil penalty, in the amount of \$100
6 for each aggrieved employee per pay period for each violation, or pursuant to
7 Labor Code §2699(f)(2)(B) for \$200 for each aggrieved employee per pay
8 period for each violation, and;

9 21. For all such other and further relief that the Court may deem just and proper.

10 Date: 10/29/24

THE MYERS LAW GROUP, A.P.C.

11
12 By: 

13 David P. Myers,
14 Jason Hatcher,
15 Andriana N. Bravo
16 Attorneys for Plaintiff and all others similarly
17 situated
18
19
20
21
22
23
24
25
26
27
28