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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

Assigned for All Purposes
Judge Randall J. Sherman

ALEXANDER HERNANDEZ, individually,
and on behalf of other members of the
general public similarly situated;

Plaintiff,

v.

SAINT-GOBAIN PERFORMANCE
PLASTICS CORPORATION, a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 30-2020-01142388-CU-OE-CXC

**CLASS ACTION COMPLAINT FOR
DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code §§ 2698, *et seq.*, Private Attorney General Act of 2004; and
- (9) Violation of California Business & Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff ALEXANDER HERNANDEZ (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiff, including claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Orange. The majority of the acts and omissions alleged herein relating to Plaintiff took place in the State of California. Defendants employed Plaintiff within the State of California.

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PARTIES

5. Plaintiff ALEXANDER HERNANDEZ is an individual residing in the State of California

6. Defendant SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION, at all times herein mentioned, was and is, upon information and belief, a California corporation, and at all times herein mentioned, was and is, an employer whose employees are engaged throughout the State of California, including the County of Orange.

7. At all relevant times, Defendant SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION was the “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

8. At all times herein relevant, Defendants SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization, and consent of each defendant designated herein.

9. The true names and capacities, whether corporate, associate, individual or otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who sues said defendants by such fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the Defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff and the other class members as alleged in this Complaint. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

10. Defendants SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

11. Plaintiff further alleges that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff and the other class members so as to make each of said Defendants employers and employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

12. Plaintiff brings this action on her own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under Code of Civil Procedure section 382.

13. The proposed class is defined as follows:

All current and former California-based (*i.e.*, currently “residing” in California with the intent to remain in California indefinitely) hourly-paid or non-exempt employees employed by Defendants within the State of California at any time during the period from four years preceding the filing of this Complaint to final judgment.

14. Plaintiff reserves the right to establish subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff's claims are typical of all other class members' claims as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom she has a well-defined community of interest.

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1 c. Adequacy: Plaintiff will fairly and adequately protect the interests of
2 each class member, with whom she has a well-defined community of
3 interest and typicality of claims, as demonstrated herein. Plaintiff has no
4 interest that is antagonistic to the other class members. Plaintiff's
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiff has
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.

11 d. Superiority: A class action is superior to other available methods for the
12 fair and efficient adjudication of this litigation because individual joinder
13 of all class members is impractical.

14 e. Public Policy Considerations: Certification of this lawsuit as a class
15 action will advance public policy objectives. Employers of this great
16 state violate employment and labor laws every day. Current employees
17 are often afraid to assert their rights out of fear of direct or indirect
18 retaliation. However, class actions provide the class members who are
19 not named in the complaint anonymity that allows for the vindication of
20 their rights.

21 16. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the California Labor Code, was willful;

26 b. Whether Defendants failed to pay their hourly-paid or non-exempt
27 employees within the State of California for all hours worked, missed
28 meal periods and rest breaks in violation of California law;

- 1 c. Whether Defendants required Plaintiff and the other class members to
2 work over eight (8) hours per day and/or over forty (40) hours per week
3 and failed to pay the legally required overtime compensation to Plaintiff
4 and the other class members;
- 5 d. Whether Defendants properly calculated the regular rate for Plaintiff and
6 the other class members to worked overtime and earned incentive pay;
- 7 e. Whether Defendants deprived Plaintiff and the other class members of
8 meal and/or rest periods or required Plaintiff and the other class
9 members to work during meal and/or rest periods without compensation;
- 10 f. Whether Defendants failed to pay minimum wages to Plaintiff and the
11 other class members for all hours worked;
- 12 g. Whether Defendants failed to pay all wages due to Plaintiff and the other
13 class members within the required time upon their discharge or
14 resignation;
- 15 h. Whether Defendants failed to timely pay all wages due to Plaintiff and
16 the other class members during their employment;
- 17 i. Whether Defendants complied with wage reporting as required by the
18 California Labor Code, including, inter alia, section 226;
- 19 j. Whether Defendants failed to reimburse Plaintiff and the other class
20 members for necessary business-related expenses and costs; [L]
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- 21 k. Whether Defendants' conduct was willful or reckless;
- 22 l. Whether Defendants engaged in unfair business practices in violation of
23 California Business & Professions Code section 17200, *et seq.*;
- 24 m. The appropriate amount of damages, restitution, and/or monetary
25 penalties resulting from Defendants' violation of California law; and
- 26 n. Whether Plaintiff and the other class members are entitled to
27 compensatory damages pursuant to the California Labor Code.

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GENERAL ALLEGATIONS

17. During the relevant time period set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California.

18. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt employee during the statutory period in the State of California.

19. Defendants had the authority to hire and terminate Plaintiff and the other class members; to set work rules and conditions governing Plaintiff's and other class members' employment; and to supervise their daily employment activities.

20. Defendants exercised sufficient authority over the terms and conditions of Plaintiff and the other class members' employment for them to be joint employers of Plaintiff and other class members.

21. Defendants directly hired and paid wages and benefits to Plaintiff and the other class members.

22. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

23. Plaintiff and other class members worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

24. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt employees within the State of California. This scheme involved, inter alia, failing to pay them for all hours worked, missed meal periods, and missed rest breaks in violation of California law.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and other class members were entitled to receive certain wages for overtime compensation and that they were not receiving wages for overtime compensation.

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1 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 failed to provide Plaintiff and other class members the required rest and meal periods during
3 the relevant time period as required under the Industrial Welfare Commission Wage Orders
4 and thus they are entitled to any and all applicable penalties.

5 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knew or should have known that Plaintiff and other class members were entitled to receive all
7 timely and complete meal periods or payment of one additional hour of pay at Plaintiff's and
8 the other class members' regular rate of pay when a meal period was missed, late or
9 interrupted, and they did not receive all timely and proper meal periods or payment of one
10 additional hour of pay at Plaintiff's and other class members' regular rate of pay when a meal
11 period was missed.

12 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knew or should have known that Plaintiff and other class members were entitled to receive all
14 timely rest periods without interruption or payment of one additional hour of pay at Plaintiff
15 and the other class members' regular rate of pay when a rest period was missed, late or
16 interrupted, and they did not receive all rest periods or payment of one additional hour of pay
17 at Plaintiff's and the other class members' regular rate of pay when a rest period was missed.

18 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 knew or should have known that Plaintiff and other class members were entitled to receive at
20 least minimum wages for compensation and that they were not receiving at least minimum
21 wages for all hours worked.

22 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 knew or should have known that Plaintiff and other class members were entitled to receive the
24 wages owed to them upon discharge or resignation, including overtime and minimum wages
25 and meal and rest period premiums, and they did not, in fact, receive such wages owed to them
26 at the time of their discharge or resignation.

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1 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and other class members were entitled to receive
3 complete and accurate wage statements in accordance with California law, but, in fact, they did
4 not receive complete and accurate wage statements from Defendants. The deficiencies
5 included, inter alia, the failure to include the total number of hours worked by Plaintiff and
6 other class members.

7 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Plaintiff and the other class members were entitled to
9 reimbursement for necessary business-related expenses.

10 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 knew or should have known that Defendants had to keep complete and accurate payroll records
12 for Plaintiff and other class members in accordance with California law, but, in fact, did not
13 keep complete and accurate payroll records.

14 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knew or should have known that they had a duty to compensate Plaintiff and other class
16 members pursuant to California law, and that Defendants had the financial ability to pay such
17 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
18 represented to Plaintiff and other class members that they were properly denied wages, all in
19 order to increase Defendants' profits.

20 35. As a pattern and practice, during the relevant time period set forth herein,
21 Defendants failed to pay overtime wages to Plaintiff and other class members for all hours
22 worked. Plaintiff and other class members were required to work more than eight (8) hours per
23 day and/or forty (40) hours per week without overtime compensation.

24 36. As a pattern and practice, during the relevant time period set forth herein,
25 Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to
26 Plaintiff and other class members.

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1 37. As a pattern and practice, during the relevant time period set forth herein,
2 Defendants failed to pay Plaintiff and other class members at least minimum wages for all
3 hours worked.

4 38. As a pattern and practice, during the relevant time period set forth herein,
5 Defendants failed to pay Plaintiff and other class members the wages owed to them upon
6 discharge or resignation.

7 39. As a pattern and practice, during the relevant time period set forth herein,
8 Defendants failed to provide complete or accurate wage statements to Plaintiff and other class
9 members.

10 40. As a pattern and practice, during the relevant time period set forth herein,
11 Defendants failed to keep complete or accurate payroll records for Plaintiff and other class
12 members.

13 41. As a pattern and practice, during the relevant time period set forth herein,
14 Defendants failed to properly compensate Plaintiff and other class members pursuant to
15 California law in order to increase Defendants' profits.

16 42. California Labor Code section 218 states that nothing in Article 1 of the Labor
17 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty
18 due to him [or her] under this article."

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1 **FIRST CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 510 and 1198)**

3 **(Against SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION and DOES 1**
4 **through 100)**

5 43. Plaintiff incorporates by reference the allegations contained in Paragraphs 1
6 through 42, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 44. California Labor Code section 1198 and the applicable Industrial Welfare
9 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
10 compensating them at a rate of pay either time-and-one-half or two-times that person's regular
11 rate of pay, depending on the number of hours worked by the person on a daily or weekly
12 basis.

13 45. Specifically, the applicable IWC Wage Order provides that Defendants are and
14 were required to pay Plaintiff and other class members employed by Defendants, who
15 work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at
16 the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
17 than forty (40) hours in a workweek.

18 46. The applicable IWC Wage Order further provides that Defendants are and were
19 required to pay Plaintiff and other class members overtime compensation at a rate of two times
20 their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

21 47. California Labor Code section 510 codifies the right to overtime compensation
22 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
23 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
24 of work, and overtime compensation at twice the regular hourly rate for hours worked in
25 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
26 of work.

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48. During the relevant time period set forth herein, Plaintiff and other class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

49. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and other class members.

50. Defendants' pattern and practice of failing to pay Plaintiff and other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

51. Pursuant to California Labor Code section 1194, Plaintiff and other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION and DOES 1 through 100)

52. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 51, and each and every part thereof with the same force and effect as though fully set forth herein.

53. During the relevant time period set forth herein, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and other class members' employment by Defendants.

54. During the relevant time period set forth herein, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

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1 55. During the relevant time period set forth herein, the applicable IWC Wage
2 Order and California Labor Code section 512(a) provide that an employer may not require,
3 cause or permit an employee to work for a work period of more than five (5) hours per day
4 without providing the employee with a meal period of not less than thirty (30) minutes, except
5 that if the total work period per day of the employee is no more than six (6) hours, the meal
6 period may be waived by mutual consent of both the employer and employee.

7 56. During the relevant time period set forth herein, the applicable IWC Wage
8 Order and California Labor Code section 512(a) further provide that an employer may not
9 require, cause, or permit an employee to work for a work period of more than ten (10) hours
10 per day without providing the employee with a second uninterrupted meal period of not less
11 than thirty (30) minutes, except that if the total hours worked is no more than twelve (12)
12 hours, the second meal period may be waived by mutual consent of the employer and the
13 employee only if the first meal period was not waived.

14 57. As a pattern and practice, during the relevant time period set forth herein,
15 Plaintiff and other class members who were scheduled to work for a period of time no longer
16 than six (6) hours, and who did not waive their legally-mandated meal periods by mutual
17 consent, were required to work for periods longer than five (5) hours without an uninterrupted
18 meal period of not less than thirty (30) minutes and/or without a rest period.

19 58. As a pattern and practice, during the relevant time period set forth herein,
20 Plaintiff and other class members who were scheduled to work for a period of time in excess of
21 six (6) hours were required to work for periods longer than five (5) hours without an
22 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

23 59. As a pattern and practice, during the relevant time period set forth herein,
24 Defendants intentionally and willfully required Plaintiff and other class members to work
25 during meal periods and failed to compensate Plaintiff and the other class members the full
26 meal period premium for work performed during meal periods.

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60. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiff and other class members the full meal period premium due pursuant to California Labor Code section 226.7.

61. Defendants' conduct violates applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

62. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and other class members are entitled to recover from Defendants 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.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION and DOES 1 through 100)

63. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 62, and each and every part thereof with the same force and effect as though fully set forth herein.

64. During the relevant time period set forth herein, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff's and other class members' employment by Defendants.

65. During the relevant time period set forth herein, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

66. During the relevant time period set forth herein, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

67. As a pattern and practice, during the relevant time period set forth herein, Defendants required Plaintiff and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

68. As a pattern and practice, during the relevant time period set forth herein, Defendants willfully required Plaintiff and other class members to work during rest periods and failed to pay Plaintiff and the other class members the full rest period premium for work performed during rest periods.

69. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiff and the other class members the full rest period premium due pursuant to California Labor Code section 226.7

70. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

71. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194 and 1197)

(Against SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION and DOES 1 through 100)

72. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 71 and each and every part thereof with the same force and effect as though fully set forth herein.

73. During the relevant time period set forth herein, California Labor Code sections 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed, is unlawful.

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74. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay minimum wages to Plaintiff and other class members as required, pursuant to California Labor Code sections 1194 and 1197.

75. Defendants' failure to pay Plaintiff and other class members the minimum wage as required violates California Labor Code sections 1194 and 1197. Pursuant to those sections, Plaintiff and other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

76. Pursuant to California Labor Code section 1194.2, Plaintiff and other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION and DOES 1 through 100)

77. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 76, and each and every part thereof with the same force and effect as though fully set forth herein.

78. During the relevant time period set forth herein, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours 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.

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79. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay Plaintiff and other class members (but not all class members) who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

80. Defendants' pattern and practice of failing to pay Plaintiff and other class members (but not all class members) who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

81. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

82. Plaintiff and other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum as provided by Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION and

DOES 1 through 100)

83. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 82, and each and every part thereof with the same force and effect as though fully set forth herein.

84. During the relevant time period set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages

1 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
2 employee and his or her social security number, (8) the name and address of the legal entity
3 that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employee. The deductions
5 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
6 showing the month, day, and year, and a copy of the statement or a record of the deductions
7 shall be kept on file by the employer for at least three years at the place of employment or at a
8 central location within the State of California.

9 85. As a pattern and practice, Defendants have intentionally and willfully failed to
10 provide Plaintiff and other class members (but not all) with complete and accurate wage
11 statements. The deficiencies include but are not limited to: the failure to include the total
12 number of hours worked by Plaintiff and other class members.

13 86. As a result of Defendants' violation of California Labor Code section 226(a),
14 Plaintiff and other class members (but not all) have suffered injury and damage to their
15 statutorily protected rights.

16 87. More specifically, Plaintiff and other class members (but not all) have been
17 injured by Defendants' intentional and willful violation of California Labor Code section
18 226(a) because they were denied both their legal right to receive, and their protected interest in
19 receiving, accurate and itemized wage statements pursuant to California Labor Code section
20 226(a).

21 88. Plaintiff and other class members (but not all) are entitled to recover from
22 Defendants the greater of their actual damages caused by Defendants' failure to comply with
23 California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand
24 dollars per employee.

25 89. Plaintiff and other class members (but not all) are also entitled to injunctive
26 relief to ensure compliance with this section, pursuant to California Labor Code section 226(g).

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1 **SEVENTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 2800 and 2802)**

3 **(Against SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION and DOES 1**
4 **through 100)**

5 90. Plaintiff incorporates by reference the allegations contained in paragraphs 1
6 through 89, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 91. Pursuant to California Labor Code sections 2800 and 2802, an employer must
9 reimburse its employee for all necessary expenditures incurred by the employee in direct
10 consequence of the discharge of his or her job duties or in direct consequence of his or her
11 obedience to the directions of the employer.

12 92. Defendants have intentionally and willfully failed to reimburse Plaintiff and other
13 class members (but not all) for all necessary business-related expenses and costs. Plaintiff and
14 other class members (but not all) are entitled to recover from Defendants their business-related
15 expenses and costs incurred during the course and scope of their employment, plus interest
16 accrued from the date on which the employee incurred the necessary expenditures at the same
17 rate as judgments in civil actions in the State of California.

18 **EIGHTH CAUSE OF ACTION**

19 **(Violation of California Labor Code §§ 2698, *et seq.*)**

20 **(Against SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION and DOES 1**
21 **through 100)**

22 93. Plaintiff incorporates by reference the allegations contained in paragraphs 1
23 through 92, and each and every part thereof with the same force and effect as though fully set
24 forth herein.

25 94. The Private Attorneys General Act of 2004 (“PAGA”) expressly establishes that
26 any provision of the California Labor Code of which provides for a civil penalty to be assessed
27 and collected by the Labor and Workforce Development Agency (“LWDA”), or any of its
28 departments, divisions, commissions, boards, agencies or employees for a violation of the

California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

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

96. On March 30, 2020 Plaintiff provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code she contends were violated, and the theories supporting her contentions. Attached hereto as Exhibit 1 and incorporated by reference is a copy of the written notice to the LWDA. Plaintiff believes that on or about June 3, 2020, the sixty-five (65) day notice period expired as to all Defendants, and the LWDA did not take any action to investigate or prosecute this matter. Therefore, Plaintiff has exhausted the statutory time period to bring this action.

97. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all current and former employees of Defendants, and one or more of the alleged violations was committed against them.

98. In addition to civil penalties, California Labor Code Section 558 authorizes collection of wages for violation of a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission.

Failure to Provide Meal and Rest Break Wages

99. Defendants’ failure to provide legally required meal and rest periods or to pay premium wages for missed or interrupted meal and rest periods to Plaintiffs and the other aggrieved employees was in violation of the Wage Orders and constitute unlawful or unfair activity by California Labor sections 226.7 and 512(a).

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1 **Failure to Pay Minimum Wages and Overtime Wages**

2 100. Defendants' failure to pay legally required minimum wages and overtime
3 wages to Plaintiff and other aggrieved employees is in violation of the Wage Orders and
4 constitutes unlawful or unfair activity prohibited by California Labor Code section 510, 1194,
5 and 1198.

6 **Failure to Pay Timely Wages**

7 101. Defendants' failure to timely pay wages to Plaintiff and other aggrieved
8 employees upon termination of employment in accordance with Labor Code section 201 and
9 202 constitute unlawful and/or unfair activity prohibited by Labor Code section 203.

10 **Failure to Provide Complete and Accurate Wage Statements**

11 102. Defendants' failure to provide complete and accurate wage statements to
12 Plaintiff and other aggrieved employees in accordance with Labor Code section 226(a)
13 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

14 103. Pursuant to California Labor Code Section 2699, Plaintiff, individually, and on
15 behalf of all aggrieved employees, requests and is entitled to recover from Defendants and
16 each of them, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees
17 and costs pursuant to California Labor Code section 218.5, as well as statutory penalties
18 against Defendants, and each of them including, but not limited to:

- 19 a. Penalties under California Labor Code section 2699 in the amount of a
20 hundred dollars (\$100) for each aggrieved employee per pay period for
21 the initial violation, and two hundred dollars (\$200) for each aggrieved
22 employee per pay period for each subsequent violation;
- 23 b. Penalties under California Code of Regulation Title 8 section 11070 in
24 the amount of fifty dollars (\$50) for each aggrieved employee per pay
25 period for the initial violation, and one hundred dollars (\$100) for each
26 aggrieved employee per pay period for each subsequent violation;

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- 1 c. Penalties under California Labor Code section 210 in addition to, and
2 entirely independent and apart from, any other penalty, provided in the
3 California Labor Code in the amount of a hundred dollars (\$100) for
4 each aggrieved employee per pay period for each subsequent violation;
5 and
6 d. Any and all additional penalties and sums as provided by the California
7 Labor Code and/or other statutes.

8 104. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
9 aggrieved employees shall be distributed as follows: seventy-five (75%) to the Labor and
10 Workforce Development Agency for the enforcement of labor laws and education of
11 employers and employees about their rights and responsibilities and twenty five percent (25%)
12 to the aggrieved employees. Wages covered pursuant to California Labor Code section 558
13 shall be paid directly to the affected employees.

14 105. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and
15 costs pursuant to California Labor Code section 2699, 218.5, and 210, and any other applicable
16 statute.

17 **NINTH CAUSE OF ACTION**

18 **(Violation of California Business & Professions Code §§ 17200, *et seq.*)**

19 **(Against SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION and DOES 1**
20 **through 100)**

21 106. Plaintiff incorporates by reference the allegations contained in paragraphs 1
22 through 105, and each and every part thereof with the same force and effect as though fully set
23 forth herein.

24 107. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
25 unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants'
26 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public
27 interest within the meaning of Code of Civil Procedure section 1021.5.

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108. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code section 17200, *et seq.*

109. A violation of California Business & Professions Code section 17200, *et seq.* may be predicated on the violation of any state or federal law. In this instant case, Defendants' pattern and practice of requiring Plaintiff and other class members work overtime hours without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' pattern and practice of requiring Plaintiff and other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants' pattern and practice of failing to timely pay wages to Plaintiff and other class members violate California Labor Code sections 201 and 202. Defendants also violated California Labor Code sections 226(a), 1194, 1197, 2800 and 2802.

110. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

111. Plaintiff and other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

112. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated, requests a trial by jury.

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Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current contact information (address, e-mail and telephone numbers) of all class members.

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;
6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and
9. For such other and further relief as the court may deem just and proper.

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

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1 11. That the Court make an award to Plaintiff and the other class members of one
2 (1) hour of pay at each employee's regular rate of compensation for each workday that a meal
3 period was not provided;

4 12. For all actual, consequential, and incidental losses and damages, according to
5 proof;

6 13. For premium wages pursuant to California Labor Code section 226.7(b);

7 14. For pre-judgment interest on any unpaid wages from the date such amounts
8 were due;

9 15. For reasonable attorneys' fees and costs of suit incurred herein; and

10 16. For such other and further relief as the court may deem just and proper.

11 **As to the Third Cause of Action**

12 17. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
14 rest periods to Plaintiff and the other class members;

15 18. That the Court make an award to Plaintiff and the other class members of one
16 (1) hour of pay at each employee's regular rate of compensation for each workday that a rest
17 period was not provided;

18 19. For all actual, consequential, and incidental losses and damages, according to
19 proof;

20 20. For premium wages pursuant to California Labor Code section 226.7(b);

21 21. For pre-judgment interest on any unpaid wages from the date such amounts
22 were due; and

23 22. For such other and further relief as the court may deem just and proper.

24 **As to the Fourth Cause of Action**

25 23. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiff and
27 the other class members;

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1 24. For general unpaid wages and such general and special damages as may be
2 appropriate;

3 25. For pre-judgment interest on any unpaid compensation from the date such
4 amounts were due;

5 26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 California Labor Code section 1194(a);

7 27. For liquidated damages pursuant to California Labor Code section 1194.2; and

8 28. For such other and further relief as the court may deem just and proper.

9 **As to the Fifth Cause of Action**

10 29. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the
12 time of termination of the employment of the other class members no longer employed by
13 Defendants;

14 30. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 31. For statutory wage penalties pursuant to California Labor Code section 203 for
17 the other class members who have left Defendants' employ;

18 32. For pre-judgment interest on any unpaid compensation from the date such
19 amounts were due; and

20 33. For such other and further relief as the court may deem just and proper.

21 **As to the Sixth Cause of Action**

22 34. That the Court declare, adjudge and decree that Defendants violated the record
23 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
24 as to Plaintiff and other class members, and willfully failed to provide accurate itemized wage
25 statements thereto;

26 35. For actual, consequential and incidental losses and damages, according to proof;

27 36. For statutory penalties pursuant to California Labor Code section 226(e);

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1 37. For injunctive relief to ensure compliance with this section, pursuant to
2 California Labor Code section 226(g); and

3 38. For such other and further relief as the court may deem just and proper.

4 **As to the Seventh Cause of Action**

5 39. That the Court declare, adjudge and decree that Defendants violated California
6 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and other class
7 members for all necessary business-related expenses as required by California Labor Code
8 sections 2800 and 2802;

9 40. For actual, consequential and incidental losses and damages, according to proof;

10 41. For the imposition of civil penalties and/or statutory penalties;

11 42. For punitive damages and/or exemplary damages according to proof at trial;

12 43. For reasonable attorneys' fees and costs of suit incurred herein; and

13 44. For such other and further relief as the court may deem just and proper.

14 **As to the Eighth Cause of Action**

15 45. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code section 2698, *et seq.*, the PAGA, for civil penalties pursuant to Defendants'
17 violations of Labor Code §§ 201, 202, 203, 204, 218.5, 221, 223, 226(a), 226.3, 226.7, 510,
18 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198 2800, and 2802;

19 46. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code
20 Sections 210, 1194, and 2699, and any other applicable statute; and

21 47. For such other and further relief as the Court may deem just and proper.

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As to the Ninth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members, failing to pay Plaintiff's and other class members' wages timely as required by California Labor Code section 201, 202.

49. For restitution of unpaid wages to Plaintiff and other class members and all pre-judgment interest from the day such amounts were due and payable;

50. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, *et seq.*;

51. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

52. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, *et seq.*; and

53. For such other and further relief as the court may deem just and proper.

Dated: June 11, 2020

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Daniel J. Park
Attorneys for Plaintiff

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On July 1, 2020, I served the foregoing document described as

on interested parties in this action by electronically submitting as follows:

**State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814**

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 1, 2020, at Pasadena, California.



Melanie Abzun