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AEGIS LAW FIRM, PC

SAMUEL A. WONG, State Bar No. 217104

KASHIF HAQUE, State Bar No. 218672

JESSICA L. CAMPBELL, State Bar No. 280626

SIMON KWAK, State Bar No. 297362

9811 Irvine Center Drive, Suite 100

Irvine, California 92618

Telephone: (949) 379-6250

Facsimile: (949) 379-6251

Email: jcampbell@aegislawfirm.com

skwak@aegislawfirm.com

Attorneys for Plaintiff David Paniagua,
individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

DAVID PANIAGUA, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

WORTHINGTON INDUSTRIES, INC.;
STRUCTURAL COMPOSITES
INDUSTRIES LLC; and DOES 1 through
20, inclusive,

Defendants.

Case No. CIVDS2007258

[Amended as a matter of right, pursuant to
Labor Code section 2699.3(a)(2)(C)]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Overtime Wages;
2. Failure to Provide Meal Periods;
3. Failure to Permit Rest Breaks;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Failure to Pay All Wages Due Upon Separation of Employment;
6. Violation of Business and Professions Code §§ 17200, *et seq.*; and
7. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

DEMAND FOR JURY TRIAL

1 Plaintiff David Paniagua, individually and on behalf of others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff David Paniagua (“Plaintiff”) brings this putative class action, pursuant to
5 California Code of Civil Procedure § 382, and representative action, pursuant to the Private
6 Attorneys General Act of 2004 codified at California Labor Code § 2698, *et seq.*, against
7 defendants Worthington Industries, Inc.; Structural Composites Industries LLC; and DOES 1
8 through 20, inclusive (collectively, “Defendants”), on behalf of himself individually, other
9 aggrieved employees, and a putative class of non-exempt employees employed by Defendants at
10 their California business locations.

11 2. Defendants operate a metal manufacturing company.

12 3. Through this action, Plaintiff alleges that Defendants engaged in a systematic
13 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
14 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair
15 competition.

16 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
17 increased their profits by violating state wage and hour laws by, among other things:

- 18 (a) Failing to pay overtime wages at the proper rates;
- 19 (b) Failing to provide meal periods or compensation in lieu thereof;
- 20 (c) Failing to authorize or permit rest breaks or provide compensation in lieu
21 thereof;
- 22 (d) Failing to provide accurate itemized wage statements; and
- 23 (e) Failing to pay all wages due upon separation of employment.

24 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf
25 of himself and all others similarly situated in California to recover, among other things, unpaid
26 wages and benefits, interest, attorneys’ fees, costs and expenses and penalties pursuant to Labor
27 Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1198, and 2698, *et*
28 *seq.*

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

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business or have offices in this county and the acts and omissions alleged herein took place in this county.

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11. Plaintiff is informed and believes, and thereon alleges, that Defendants at all times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and IWC Wage Orders, whose employees were and are engaged throughout this county and the State of California.

13. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in

1 all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme,
2 business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
3 attributable to the other defendant. Furthermore, defendants in all respects acted as the employer
4 and/or joint employer of Plaintiff and the class members.

5 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
6 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1
7 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's
8 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
9 policy of Defendants.

10 15. At all relevant times, Defendants, and each of them, acted within the scope of such
11 agency or employment, or ratified each and every act or omission complained of herein. At all
12 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and
13 all the other Defendants in proximately causing the damages herein alleged.

14 16. Plaintiff is informed and believes, and thereon alleges, that each of said
15 Defendants is in some manner intentionally, negligently or otherwise responsible for the acts,
16 omissions, occurrences and transactions alleged herein.

17 **CLASS ACTION ALLEGATIONS**

18 17. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
19 himself and all others similarly situated who were affected by Defendants' Labor Code, Business
20 and Professions Code §§ 17200 and IWC Wage Order violations.

21 18. All claims alleged herein arise under California law for which Plaintiff seeks relief
22 authorized by California law.

23 19. Plaintiff's proposed Class consists of and is defined as follows:

24 Class

25 All California citizens currently or formerly employed as non-exempt employees
26 by Defendants in California within four years prior to the filing of this action to
the date of class certification.

27 20. Plaintiff also seeks to certify the following Subclass of employees:

28 Waiting Time Subclass

1 All members of the Class who separated their employment from Defendants
2 within three years prior to the filing of this action to the date of class certification.

3 21. Members of the Class and Subclass described above will be collectively referred to
4 as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or
5 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
6 specific theories of liability.

7 22. This action has been brought and may properly be maintained as a class action
8 under the California Code of Civil Procedure § 382 because there are common questions of law
9 and fact as to the Class that predominate over questions affecting only individual members
10 including, but not limited to:

- 11 (a) Whether Defendants paid Plaintiff and class members overtime
12 compensation at the proper rates;
- 13 (b) Whether Defendants deprived Plaintiff and class members of compliant
14 meal periods;
- 15 (c) Whether Defendants deprived Plaintiff and class members of compliant
16 rest breaks;
- 17 (d) Whether Defendants failed to timely pay Plaintiff and former class
18 members all wages due upon termination or within 72 hours of resignation;
- 19 (e) Whether Defendants failed to furnish Plaintiff and class members with
20 accurate, itemized wage statements; and
- 21 (f) Whether Defendants engaged in unfair business practices in violation of
22 Business & Professions Code §§ 17200, *et seq.*

23 23. There is a well-defined community of interest in this litigation and the Class is
24 readily ascertainable:

- 25 (a) Numerosity: The members of the Class are so numerous that joinder of all
26 members is impractical. Although the members of the Class are unknown
27 to Plaintiff at this time, on information and belief, the Class is estimated to
28 be greater than 100 individuals. The identity of the class members are

1 readily ascertainable by inspection of Defendants' employment and payroll
2 records.

3 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
4 claims (or defenses, if any) of the Class because Defendants' failure to
5 comply with the provisions of California wage and hour laws entitled each
6 class member to similar pay, benefits and other relief. The injuries
7 sustained by Plaintiff are also typical of the injuries sustained by the Class
8 because they arise out of and are caused by Defendants' common course of
9 conduct as alleged herein.

10 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent
11 and protect the interests of all members of the Class because it is in his best
12 interest to prosecute the claims alleged herein to obtain full compensation
13 and penalties due to him and the Class. Plaintiff's attorneys, as proposed
14 class counsel, are competent and experienced in litigating large
15 employment class actions and are versed in the rules governing class action
16 discovery, certification and settlement. Plaintiff has incurred and,
17 throughout the duration of this action, will continue to incur attorneys' fees
18 and costs that have been and will be necessarily expended for the
19 prosecution of this action for the substantial benefit of each class member.

20 (d) Superiority: The nature of this action makes the use of class action
21 adjudication superior to other methods. A class action will achieve
22 economies of time, effort and expense as compared with separate lawsuits,
23 and will avoid inconsistent outcomes because the same issues can be
24 adjudicated in the same manner and at the same time for each Class. If
25 appropriate this Court can, and is empowered to, fashion methods to
26 efficiently manage this case as a class action.

27 (e) Public Policy Considerations: Employers in the State of California and
28 other states violate employment and labor laws every day. Current

1 employees are often afraid to assert their rights out of fear of direct or
2 indirect retaliation. Former employees are fearful of bringing actions
3 because they believe their former employers might damage their future
4 endeavors through negative references and/or other means. Class actions
5 provide the class members who are not named in the complaint with a
6 type of anonymity that allows for the vindication of their rights at the
7 same time as affording them privacy protections.

8 **GENERAL ALLEGATIONS**

9 24. At all relevant times mentioned herein, Defendants employed Plaintiff and other
10 persons as non-exempt employees at their California locations.

11 25. Plaintiff was employed in a non-exempt position at Defendants' California
12 location(s).

13 26. Defendants continue to employ non-exempt employees at their California
14 locations.

15 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
16 mentioned, Defendants were advised by skilled lawyers, employees and other professionals who
17 were knowledgeable about California's wage and hour laws, employment and personnel practices
18 and the requirements of California law.

19 28. Plaintiff is informed and believes, and thereon alleges, that Defendants improperly
20 calculated the overtime rate of pay for Plaintiff and Class Members because the rates did not
21 include non-discretionary wages, including, but not limited to, shift premiums, bonuses, and/or
22 other incentive pay into the computation of their regular rate of pay for purposes of calculating the
23 overtime rate of pay.

24 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to receive all required meal
26 periods or payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of
27 pay when they did not receive a timely meal period. In violation of the Labor Code and IWC
28 Wage Orders, Plaintiff and class members did not receive all timely meal periods or payment of

1 one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when they did not
2 receive a timely meal period.

3 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive all rest breaks or
5 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when
6 a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class
7 members did not receive all rest breaks or payment of one (1) additional hour of pay at Plaintiff
8 and class members' regular rate of pay when a rest break was missed.

9 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to receive itemized wage
11 statements that accurately showed the employer's name and address, their gross and net wages
12 earned, inclusive dates of pay periods, total hours worked and all applicable hourly rates in effect
13 and the number of hours worked at each hourly rate in accordance with California law. In
14 violation of the Labor Code, Plaintiff and class members were not provided with accurate itemized
15 wage statements.

16 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and Waiting Time Subclass members were entitled to timely
18 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
19 and Waiting Time Subclass members did not receive payment of all wages within permissible time
20 periods.

21 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known they had a duty to compensate Plaintiff and class members, and Defendants
23 had the financial ability to pay such compensation but willfully, knowingly and intentionally failed
24 to do so all in order to increase Defendants' profits.

25 **FIRST CAUSE OF ACTION**

26 **FAILURE TO PAY OVERTIME WAGES**

27 **(Violation of Labor Code §§ 510, 1194 and 1198; Violation of IWC Wage Order)**

28 34. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as

1 though fully set forth herein.

2 35. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful
3 to employ persons without compensating them at a rate of pay either one and one-half or two times
4 the person's regular rate of pay, depending on the number of hours worked by the person on a
5 daily or weekly basis.

6 36. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
7 period, Defendants were required to compensate Plaintiff and class members for all overtime hours
8 worked, calculated at one and one-half (1½) times the regular rate of pay for hours worked in
9 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8) hours
10 of the seventh consecutive work day, with double time after eight (8) hours on the seventh day of
11 any work week, or after twelve (12) hours in any work day.

12 37. Plaintiff and class members were non-exempt employees entitled to the protections
13 of California Labor Code §§ 510 and 1194.

14 38. During the relevant time period, Defendants failed to pay Plaintiff and class
15 members overtime wages at the correct rate because they failed to include non-discretionary
16 wages, including, but not limited to, bonuses, shift premiums, and/or other incentive pay in the
17 computation of their overtime rate of pay, which caused Plaintiff and Class Members to not be
18 paid all overtime wages owed.

19 39. In violation of state law, Defendants have knowingly and willfully refused to
20 perform their obligations and compensate Plaintiff and class members for all wages earned as
21 alleged above.

22 40. Defendants' failure to pay Plaintiff and class members the unpaid balance of
23 overtime compensation, as required by California law, violates the provisions of Labor Code §§
24 510 and 1198, and is therefore unlawful.

25 41. Pursuant to Labor Code § 1194, Plaintiff and class members are entitled to recover
26 their unpaid overtime compensation as well as interest, costs and attorneys' fees.

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1 the applicable IWC Wage Order.

2 50. As a result of Defendants' failure to pay Plaintiff and class members an additional
3 hour of pay for each day a meal period was not provided, Plaintiff and class members suffered and
4 continue to suffer a loss of wages and compensation.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PERMIT REST BREAKS**

7 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order)**

8 51. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
9 though fully set forth herein.

10 52. Labor Code § 226.7(a) provides that no employer shall require an employee to
11 work during any rest period mandated by the IWC Wage Orders.

12 53. Section 12 of the applicable IWC Wage Order states "every employer shall
13 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
14 middle of each work period" and the "authorized rest period time shall be based on the total hours
15 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
16 thereof" unless the total daily work time is less than three and one-half (3½) hours.

17 54. During the relevant time period, Plaintiff and class members did not receive a ten
18 (10) minute rest period for every four (4) hours or major fraction thereof worked.

19 55. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
20 an employer to pay an employee one additional hour of pay at the employee's regular rate of
21 compensation for each work day that the rest period is not provided.

22 56. At all relevant times, Defendants failed to pay Plaintiff and class members rest
23 period premiums for rest period violations pursuant to Labor Code § 226.7(b) and section 12 of the
24 applicable IWC Wage Order.

25 57. As a result of Defendants' failure to pay Plaintiff and class members an additional
26 hour of pay for each day a rest period was not provided, Plaintiff and class members suffered and
27 continue to suffer a loss of wages and compensation.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **(Violation of Labor Code § 226; Violation of IWC Wage Order)**

4 58. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 59. Labor Code § 226(a) requires Defendants to provide each employee with an
7 accurate wage statement in writing showing nine pieces of information, including: (1) gross wages
8 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any
9 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that
10 all deductions made on written orders of the employee may be aggregated and shown as one item,
11 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
12 name of the employee and the last four digits of his or her social security number or an employee
13 identification number other than a social security number, (8) the name and address of the legal
14 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
15 the corresponding number of hours worked at each hourly rate by the employee.

16 60. During the relevant time period, Defendants have knowingly and intentionally
17 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff and
18 class members. The deficiencies include, among other things, the failure to correctly state the
19 gross and net wages earned, total hours worked, employer name and address, and all applicable
20 hourly rates in effect and the number of hours worked at each hourly rate by Plaintiff and class
21 members.

22 61. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
23 and class members have suffered injury and damage to their statutorily protected rights.
24 Specifically, Plaintiff and class members have been injured by Defendants' intentional violation of
25 California Labor Code § 226(a) because they were denied both their legal right to receive, and
26 their protected interest in receiving, accurate itemized wage statements under California Labor
27 Code § 226(a). Plaintiff has had to file this lawsuit in order to determine the extent of the
28 underpayment of wages, thereby causing Plaintiff to incur expenses and lost time. Plaintiff would

1 not have had to engage in these efforts and incur these costs had Defendants provided the accurate
2 wages earned. This has also delayed Plaintiff's ability to demand and recover the underpayment of
3 wages from Defendants.

4 62. California Labor Code § 226(a) requires an employer to pay the greater of all
5 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and
6 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
7 attorney's fees and costs, to each employee who was injured by the employer's failure to comply
8 with California Labor Code § 226(a).

9 63. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
10 class members from knowing, understanding and disputing the wages paid to them, and resulted in
11 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
12 intentional failure to comply with California Labor Code § 226(a), Plaintiff and class members
13 have suffered an injury, and the exact amount of damages and/or penalties is all in an amount to be
14 shown according to proof at trial.

15 64. Plaintiff and class members are also entitled to injunctive relief under California
16 Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and
17 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND** 20 **WITHIN THE REQUIRED TIME**

21 **(Violation of Labor Code §§ 201, 202 and 203; Violation of IWC Wage Order)**

22 65. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
23 though fully set forth herein.

24 66. California Labor Code §§ 201 and 202 provide that if an employer discharges an
25 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
26 and that if an employee voluntarily leaves his employment, his wages shall become due and
27 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
28 two (72) hours previous notice of his intention to quit, in which case the employee is entitled to his

1 wages at the time of quitting.

2 67. During the relevant time period, Defendants willfully failed to pay Plaintiff and
3 Waiting Time Subclass members all their earned wages upon termination including, but not
4 limited to, proper minimum wages and overtime compensation, either at the time of discharge or
5 within seventy-two (72) hours of their leaving Defendants' employ.

6 68. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all their
7 earned wages at the time of discharge or within seventy-two (72) hours of their leaving
8 Defendants' employ is in violation of Labor Code §§ 201 and 202.

9 69. California Labor Code § 203 provides that if an employer willfully fails to pay
10 wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201
11 and 202, then the wages of the employee shall continue as a penalty from the due date at the same
12 rate until paid or until an action is commenced; but the wages shall not continue for more than
13 thirty (30) days.

14 70. Plaintiff and Waiting Time Subclass members are entitled to recover from
15 Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass
16 members' regular daily wages for each day they were not paid, at their regular hourly rate of pay,
17 up to a thirty (30) day maximum pursuant to Labor Code § 203.

18 SIXTH CAUSE OF ACTION

19 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, *ET SEQ.***

20 71. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
21 though fully set forth herein.

22 72. Defendants' conduct, as alleged herein, has been and continues to be unfair,
23 unlawful and harmful to Plaintiff and class members. Plaintiff seek to enforce important rights
24 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

25 73. Defendants' activities, as alleged herein, violate California law and constitute
26 unlawful business acts or practices in violation of California Business and Professions Code
27 §§ 17200, *et seq.*

28 74. A violation of Business and Professions Code §§ 17200, *et seq.* may be predicated

1 on the violation of any state or federal law.

2 75. Defendants' policies and practices have violated state law in at least the following
3 respects:

- 4 (a) Failing to pay all overtime wages at the proper rate to Plaintiff and class
5 members in violation of Labor Code §§ 510, 1194 and 1198;
- 6 (b) Failing to provide timely meal periods without paying Plaintiff and class
7 members premium wages for every day said meal periods were not
8 provided in violation of Labor Code §§ 226.7 and 512;
- 9 (c) Failing to authorize or permit rest breaks without paying Plaintiff and
10 class members premium wages for every day said rest breaks were not
11 authorized or permitted in violation of Labor Code § 226.7;
- 12 (d) Failing to provide Plaintiff and class members with accurate itemized
13 wage statements in violation of Labor Code § 226; and
- 14 (e) Failing to timely pay all earned wages to Plaintiff and Waiting Time
15 Subclass members upon separation of employment in violation of Labor
16 Code §§ 201, 202 and 203.

17 76. Defendants intentionally avoided paying Plaintiff and class members' wages and
18 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
19 undercut their competitors and establish and gain a greater foothold in the marketplace.

20 77. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class
21 members are entitled to restitution of the wages unlawfully withheld and retained by Defendants
22 during a period that commences four years prior to the filing of the Complaint; an
23 award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws;
24 and an award of costs.

25 **SEVENTH CAUSE OF ACTION**

26 **ENFORCEMENT OF LABOR CODE §§ 2698 *ET SEQ.* ("PAGA")**

27 78. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as
28 though fully set forth herein.

1 79. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
2 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
3 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for
4 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
5 an aggrieved employee on behalf of himself or herself and other current or former employees
6 pursuant to the procedures specified in Labor Code § 2699.3.

7 80. For all provisions of the Labor Code except those for which a civil penalty is
8 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
9 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
10 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
11 period in which Defendants violated these provisions of the Labor Code.

12 81. The following sections of the Labor Code include those violated by Defendants
13 and those upon which Plaintiff seeks the recovery of civil penalties:

- 14 (a) Labor Code §§ 201-204, 210, 510, 558, 1194, and 1198 for failure to
15 timely pay all earned wages (including overtime wages and sick pay)
16 owed to Plaintiff and other aggrieved employees during employment and
17 upon separation of employment as herein alleged;
- 18 (b) Labor Code §§ 226.7 and 512 for failure to provide meal periods to
19 Plaintiff and other aggrieved employees and failure to pay premium wages
20 for missed meal periods as herein alleged;
- 21 (c) Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and other
22 aggrieved employees and failure to pay premium wages for missed rest
23 periods as herein alleged;
- 24 (d) Labor Code §§ 226 and 226.3 for failure to provide accurate itemized
25 wage statements to Plaintiff and other aggrieved employees as herein
26 alleged; and
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1 (e) Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and
2 complete records showing, among other things, the hours worked daily by
3 and the wages paid to aggrieved employees.

4 82. Plaintiff is an “aggrieved employee” because he was employed by the alleged
5 violator and had one or more of the violations committed against him, and therefore is properly
6 suited to represent the interests of all other aggrieved employees.

7 83. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as
8 to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all
9 other aggrieved employees under PAGA.

10 84. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
11 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
12 cited above.

13 85. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
14 herein.

15 **PRAYER FOR RELIEF**

16 Plaintiff, on his own behalf and on behalf of all others similarly situated, prays for relief
17 and judgment against Defendants, jointly and severally, as follows:

18 1. For certification of this action as a class action, including certifying the Class
19 and Subclass(es) alleged by Plaintiff;

20 2. For appointment of David Paniagua as the class representative;

21 3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;

22 4. For compensatory damages in an amount according to proof with interest
23 thereon;

24 5. For economic and/or special damages in an amount according to proof with
25 interest thereon;

26 6. For reasonable attorneys’ fees, costs of suit and interest to the extent permitted
27 by law, including pursuant to Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e),
28 1194, and 2698 *et seq.*;

1 7. For statutory penalties to the extent permitted by law, including those pursuant
2 to the Labor Code and IWC Wage Orders;

3 8. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

4 9. For an order requiring Defendants to restore and disgorge all funds to each
5 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
6 or fraudulent and, therefore, constituting unfair competition under Business and Professions
7 Code §§ 17200, *et seq.*;

8 10. For an award of damages in the amount of unpaid compensation including, but
9 not limited to, unpaid wages, benefits and penalties, including interest thereon;

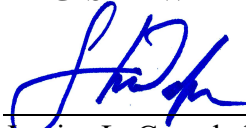
10 11. For pre-judgment interest;

11 12. For civil penalties; and

12 13. For such other relief as the Court deems just and proper.

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14 Dated: July 7, 2020

AEGIS LAW FIRM, PC

15
16 By:  _____

Jessica L. Campbell

Simon Kwak

Attorneys for Plaintiff

17
18
19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

21
22 Dated: July 7, 2020

AEGIS LAW FIRM, PC

23
24 By:  _____

Jessica L. Campbell

Simon Kwak

Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
4 my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

On July 7, 2020, I served the foregoing document entitled:

5 • **FIRST AMENDED COMPLAINT**

6 on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true
7 copy thereof on the party(ies) addressed below as follows:

8 Richard A. Ergo
9 Jason J. Granskog
10 BOWLES & VERNA LLP
11 California Plaza
12 2121 N. California Blvd., Suite 875
13 Walnut Creek, CA 94596

14 *Attorneys for Defendant*

15 WORTHINGTON INDUSTRIES, INC., and
16 STRUCTURAL COMPOSITES INDUSTRIES, LLC

17 ☒ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
18 correspondence for mailing. Under that practice it would be deposited with the U.S.
19 Postal Service on that same day with postage thereon fully prepaid at Irvine, California
20 in the ordinary course of business. I am aware that on motion of the party served, service
21 is presumed invalid if postage cancellation date or postage meter date is more than one
22 day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
23 *R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

24 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
25 practice of Aegis Law Firm PC for collection and processing correspondence for
26 overnight delivery, and I caused such document(s) described herein to be deposited for
27 delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
28 *Code Civ. Proc.* § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

☐ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
5(b)(2)(A).)

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

Executed on July 7, 2020, at Irvine, California.


Delaney Graves

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5

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Richard A. Ergo, Jason J. Granskog
California Plaza
BOWLES & VERNAL LP
2121 N. California Blvd., Suite 875
Walnut Creek CA 94596-7335