

LIDMAN LAW, APC

Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen (SBN 238571)
enguyen@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
Romina Tamiry (SBN 328420)
rtamiry@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
CARLOS CHACON

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
CARLOS CHACON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

CARLOS CHACON, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

EXEMPLIS LLC, a California limited liability
company; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 30-2020-01157341-CU-OE-CXC

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

Assigned for All Purposes
Judge William Claster

CX-104

1 Plaintiff Carlos Chacon Plaintiff”), on behalf of himself and all aggrieved employees, hereby
2 brings this Representative Action Complaint against Exemplis LLC, a California limited liability
3 company, and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief
4 alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all aggrieved employees, hereby brings this
7 representative action for recovery of unpaid wages and penalties under California Labor Code Private
8 Attorneys General Act (“PAGA”), Cal. Labor Code § 2698 *et seq.* This Court has jurisdiction over
9 Defendants’ violations of the California Labor Code because the amount in controversy exceeds this
10 Court’s jurisdictional minimum.

11 **VENUE**

12 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§ 395(a)
13 and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of
14 Orange. Defendants own, maintain offices, transact business, have agent(s) within the County of
15 Orange, and/or otherwise are found within the County of Orange, and Defendants are within the
16 jurisdiction of this Court for purposes of service of process.

17 **PARTIES**

18 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
19 Plaintiff was and currently is, a California resident. During the one year immediately preceding
20 Plaintiff giving the required notice under the PAGA, and within the statute of limitations periods
21 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
22 employee.

23 4. Plaintiff is informed and believes, and based thereon alleges, that during the one-year
24 preceding April 6, 2020¹ and Plaintiff giving the required notice under the PAGA, and continuing to
25 the present, Defendants did (and continue to do) business of manufacturing custom designed chairs.

26 _____
27 ¹ On April 6, 2020, the Chief Justice of California issued Emergency Rule 9 which tolls the statute of
28 limitations for civil causes of action, notwithstanding any other law, from April 6, 2020 until 90 days
after the Governor of California declares that the state of emergency related to the COVID-19 pandemic
is lifted.

1 Defendants employed Plaintiff and other, non-exempt employees within, among other counties,
2 Orange County and the state of California and, therefore, were (and are) doing business in Orange
3 County and the State of California.

4 5. Plaintiff does not know the true names or capacities, whether individual, partner, or
5 corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
6 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend
7 this Representative Action Complaint when such true names and capacities are discovered. Plaintiff is
8 informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether
9 individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged
10 herein, and proximately caused Plaintiff and other aggrieved employees to be subject to the unlawful
11 employment practices, wrongs, injuries and damages complained of herein.

12 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
13 herein, Defendants were and are the employers of Plaintiff and all other aggrieved employees.

14 7. At all times herein mentioned, each of said Defendants participated in the doing of the
15 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
16 and each of them, were the agents, servants, and employees of each and every one of the other
17 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
18 within the course and scope of said agency and employment. Defendants, and each of them, approved
19 of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of
20 herein.

21 8. At all times mentioned herein, Defendants, and each of them, were members of and
22 engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope
23 of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges
24 that all Defendants were joint employers for all purposes of Plaintiff and all other aggrieved employees.

25 **GENERAL FACTUAL ALLEGATIONS**

26 9. Plaintiff, a current employee, was hired by Defendants as a non-exempt employee in on
27 or about August 1, 2016 at Defendants' facility in Buena Park, California. During his employment
28 with Defendants, Plaintiff was generally scheduled to work from 6:00 a.m. – 2:30 p.m., Monday

1 through Friday.

2 10. Throughout Plaintiff's employment with Defendants, Plaintiff was not provided all
3 legally required meal periods due to Defendants' meal period policies and practices. Specifically,
4 Defendants used a bell to signify the start of a meal period at 11:00 a.m. and the stop of a meal period
5 at 11:30 a.m. Defendants required employees to be at their work stations ready to resume work by the
6 time the bell signifying the end of a meal period rang, which resulted in a meal period of less than 30
7 minutes. As such, Plaintiff and other non-exempt employees were required to spend part of their meal
8 period preparing to work. Further, because Plaintiff would often clock in early and begin his shift
9 before 6:00 a.m., any meal periods which commenced at 11:00 a.m. were untimely as they started after
10 the end of his fifth hour of work. Lastly, Defendants required Plaintiff and other non-exempt
11 employees to remain on the premises during meal periods. Requiring Plaintiff and other non-exempt
12 employees to remain on the premises for meal periods rendered any meal periods allegedly provided
13 unlawful because they were unable to use the time as they saw fit and remained under Defendants'
14 direction and control. Additionally, upon information and belief, during at least a portion of the class
15 period, Defendants would automatically deduct thirty (30) minutes from Plaintiff's hours worked
16 regardless of whether or not a meal period was actually taken.

17 11. Moreover, Defendants' meal period policies and procedures failed to provide Plaintiff
18 and other non-exempt employees with a second meal period when they worked shifts in excess of 10.0
19 hours. Defendants' policies and practices resulted in the failure by Defendants to provide lawful and
20 duty-free meal periods and failure to pay wages (including minimum and overtime wages) to Plaintiff
21 and other non-exempt employees.

22 12. Although Plaintiff was not provided with all legally-compliant meal periods to which
23 he was entitled, Defendants failed to compensate Plaintiff with the required meal period premium for
24 each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7.
25 Upon information and belief during at least a portion of the class period, Defendants maintained no
26 payroll code or other mechanism for the payment of meal period premium payments under Labor Code
27 § 226.7 in the event that a legally compliant meal period was not provided to Plaintiff and their non-
28 exempt employees.

1 13. Plaintiff was also not authorized and permitted to take all legally required and compliant
2 rest periods due to Defendants' rest period policies and practices. Defendants' rest period policies and
3 practices fail to authorize and permit duty-free rest periods for every four hours worked, or *major*
4 *fraction thereof*. Specifically, Defendants required Plaintiff and the other non-exempt employees to
5 remain on the premises during their rest periods. Because Defendants' rest period policy or practice
6 requires employees to remain on the work premises during rest periods, Defendants' rest period policy
7 fails to relinquish control over how employees spend their time during rest periods in violation of
8 California law. As a result, Defendants' rest period policy fails to authorize and permit legally-
9 compliant duty-free rest periods.

10 14. Although Plaintiff was not authorized and permitted to take all legally-compliant rest
11 periods to which he was entitled, Defendants failed to compensate Plaintiff with the required rest period
12 premium for each workday in which he experienced a rest period violation as mandated by Labor Code
13 § 226.7. Further, upon information and belief, during at least a portion of the class period, Defendants
14 maintained no payroll code or other mechanism for paying rest period premiums when Defendants
15 failed to provide a legally compliant rest period.

16 15. During his employment with Defendants, Plaintiff routinely worked in excess of eight
17 hours per workday and/or more than forty hours per workweek, but did not receive overtime
18 compensation equal to one and one-half times his regular rate of pay for working overtime hours.
19 Specifically, for at least a portion of the time period relevant to his claims, Plaintiff received non-
20 discretionary incentive bonuses, based on number of chairs produced each day, and/or other forms of
21 pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the
22 aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendants'
23 payment of Incentive Pay to Plaintiff, Defendants failed to include all forms of Incentive Pay when
24 calculating Plaintiff's regular rate of pay, thereby causing Plaintiff to be underpaid all of his required
25 overtime wages. Rather, Plaintiff was only paid one and a half times (or two times in the case of
26 double-time hours) his base hourly rate, which was not equal to his regular rate, as Defendants failed
27 to include the various forms of Incentive Pay earned during corresponding time periods that were
28 required to be included in the regular rate.

16. In addition to miscalculating Plaintiff's regular rate of pay, and as a result of Defendants' policies and practices of automatically deducting time from Plaintiff's work time for purported meal periods, irrespective of whether or not a meal period was actually taken, Plaintiff was systematically underpaid for all hours worked. This practice resulted in Plaintiff and other non-exempt employees not being paid all wages, including minimum and overtime wages.

17. As a result of Defendants' failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT OF 2004

(AGAINST ALL DEFENDANTS)

18. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though fully set forth herein.

19. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Plaintiff and other aggrieved employees all overtime compensation earned;
- b. Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked;
- c. Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees;
- d. Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees;
- e. Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements;
- f. Defendants violated Labor Code § 204 by failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month; and
- g. Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees.

20. On June 22, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 19 (a)-(g). Now that at least sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

21. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to recover under California Labor Code § 2699(g).

1 **PRAYER**

2 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this
3 suit is brought against Defendants, as follows:

4 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
5 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a)
6 and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
7 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to
8 Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld;
9 (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor
10 Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each
11 subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) \$100.00
12 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for
13 those violations of the Labor Code for which no civil penalty is specifically provided, based on the
14 Labor Code violations cited in Paragraph 19 (a)-(g) above.

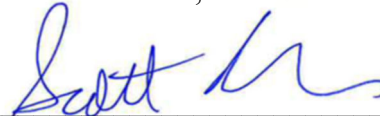
15 2. Upon the First Cause of Action, for attorneys' fees and costs as provided by Labor
16 Code § 2699(g) and Code of Civil Procedure § 1021.5; and

17 3. For such other and further relief the Court may deem just and proper.

18
19 Dated: August 27, 2020

Respectfully submitted,
LIDMAN LAW, APC

20
21 By:



22 Scott M. Lidman
23 Elizabeth Nguyen
24 Milan Moore
25 Attorneys for Plaintiff
26 CARLOS CHACON
27
28