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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

CASSANDRA NEGRETE, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

WINSUPPLY INC., a Delaware
corporation; ORANGE COUNTY
WINDUSTRIAL CO., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 30-2021-01188066-CU-OE-CXC

(Assigned for all purposes to the Hon. Randall J.
Sherman, Dept. CX105)

**SECOND AMENDED COMPLAINT FOR
DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE § 226.7
AND 512;**
- (2) VIOLATION OF LABOR CODE § 226.7;**
- (3) VIOLATION OF LABOR CODE §§ 510,
558, 1194, 1194.2, AND 1197.1;**
- (4) VIOLATION OF LABOR CODE § 226;**
- (5) VIOLATION OF LABOR CODE §§ 201-
203;**
- (6) VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, ET SEQ.;**
- (7) VIOLATION OF LABOR CODE § 2802;
AND**
- (8) VIOLATION OF LABOR CODE § 2698,
ET SEQ.**

DEMAND OVER \$25,000.00

Complaint Filed: March 9, 2021
Trial Date: None Set

1 Plaintiff Cassandra Negrete (“Plaintiff”) hereby submits this Second Amended Complaint
2 (“Complaint”) against Defendants Winsupply Inc., Orange County Windustrial Co., and Does 1
3 through 50 (collectively, “Defendants”), on behalf of herself and a class of all other similarly
4 situated current and former employees of Defendants for penalties and/or damages for failure to
5 provide off-duty meal and rest breaks, failure to pay all regular wages, minimum wages, and
6 overtime wages owed, failure to provide accurate itemized wage statements, failure to reimburse
7 business expenses, and failure to pay all wages owed upon separation of employment under
8 California Labor Code statutes, and restitution for unfair business practices in violation of Business
9 and Professions Code § 17200, *et seq.*, as follows:

10 **INTRODUCTION**

11 1. This class action is within the Court’s jurisdiction under California Labor Code
12 §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 1194.2, 1197.1, 2802, and 2698, *et seq.*, Business and
13 Professions Code § 17200, *et seq.* (the “UCL”), and the applicable Wage Orders of the California
14 Industrial Welfare Commission (“IWC”).

15 2. This Complaint challenges systemic illegal employment practices resulting in
16 violations of the California Labor Code and Business and Professions Code against individuals who
17 worked for Defendants.

18 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly
19 and severally, have acted intentionally and with deliberate indifference and conscious disregard to
20 the rights of all employees by failing to provide off-duty meal and rest breaks, pay all overtime
21 wages owed, provide accurate itemized wage statements, reimburse business expenses, and pay all
22 wages owed upon separation of employment to Plaintiff and the Class.

23 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
24 engaged in, among other things a system of willful violations of the California Labor Code and the
25 applicable IWC Wage Orders by creating and maintaining policies, practices, and customs that
26 knowingly deny employees the above stated rights and benefits.

27 5. The policies, practices and customs of Defendants described above and below have
28 resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that

1 routinely adhere to the strictures of the California Labor Code and the California Business and
2 Professions Code.

3 **JURISDICTION AND VENUE**

4 6. The Court has jurisdiction over the violations of the California Labor Code §§ 201-
5 203, 226, 226.7, 510, 512, 558, 1194, 2802, and 2698, *et seq.*, the UCL, and the applicable Wage
6 Orders.

7 7. Venue is proper in Orange County because Plaintiff worked for Defendants in
8 Anaheim, California.

9 **PARTIES**

10 8. Plaintiff was employed by Defendants as a Receptionist from about January 2017 to
11 about April 1, 2020. Plaintiff worked as an hourly, non-exempt employee.

12 9. Plaintiff was and is the victim of the policies, practices, and customs of Defendant
13 complained of in this action in ways that have deprived her of the rights guaranteed by California
14 Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 2802, and 2698, *et seq.*, the applicable
15 IWC Wage Orders, and the UCL.

16 10. Plaintiff is informed and believes, and based thereon alleges, that Winsupply Inc.
17 was and is a Delaware corporation that operates as an industrial equipment supplier in the State of
18 California, including in Orange County, California.

19 11. Plaintiff is informed and believes, and based thereon alleges, that Orange County
20 Windustrial Co. was and is a Delaware corporation that operates as an industrial equipment supplier
21 in the State of California, including in Orange County, California.

22 12. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
23 mentioned Does 1 through 50, are and were corporations, business entities, individuals, and
24 partnerships, licensed to do business and actually doing business in the State of California. As such
25 and based upon all the facts and circumstances incident to Defendants' business, Defendants are
26 subject to the California Labor Code and the UCL.

27 13. Plaintiff does not know the true names or capacities, whether individual, partner or
28 corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said

1 defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
2 complaint when the true names and capacities are known. Plaintiff is informed and believes and
3 based thereon alleges that each of said fictitious defendants was responsible in some way for the
4 matters alleged herein and proximately caused Plaintiff and members of the general public and class
5 to be subject to the illegal employment practices, wrongs and injuries complained of herein.

6 14. At all times herein mentioned, each defendant participated in the doing of the acts
7 hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants, and
8 each of them, were the agents, servants and employees of each of the other defendants, as well as
9 the agents of all Defendants, and at all times herein mentioned, were acting within the course and
10 scope of said agency and employment.

11 15. Plaintiff is informed and believes, and based thereon alleges, that at all times
12 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
13 joint venturer of, or working in concert with each of the other co-Defendants and was acting within
14 the course and scope of such agency, employment, joint venture, or concerted activity. To the extent
15 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
16 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

17 16. At all times herein mentioned, Defendants, and each of them, were members of, and
18 engaged in, a joint venture, partnership, and common enterprise, and acting within the course and
19 scope of, and in pursuance of, said joint venture, partnership, and common enterprise. Specifically,
20 Defendants operate in a uniform fashion such that the allegedly distinct corporate entities should be
21 disregarded. For example, Winsupply Inc. explains on its website that it provides others the
22 opportunity to be an “equity owner of your own wholesaling location.” For local operations,
23 Winsupply gets to be “the majority owner of your business.” Winsupply Inc further explains that
24 local wholesale operations “put in most of the sweat equity and Winsupply puts in most of the
25 capital....” Winsupply Inc. also provides “oversight from [a] board of directors: three or four
26 people at Winsupply with business and wholesaling experience....” Accordingly, the operations of
27 Winsupply Inc. and Orange County Windustrial Co. are so intertwined such that they are virtually
28 the same business. Recognizing a distinct corporate form of these entities would result in injustice

1 because the Class may not be permitted to pursue its claims against Defendants, which on
2 information and belief, are controlling the working conditions of the Class.

3 17. On information and belief, Defendants operate with the same or similar human
4 resources departments, which rely on the same policy documents, including employee handbooks
5 and the like across all of Defendants' corporate forms. For example, Defendants' personnel
6 policies are entitled, "The Winsupply Family of Cos. Procedure Manual." These policies dictate
7 the working conditions of employees of Defendants, including Plaintiff and the Class. Other
8 documents provided by Defendants to Plaintiff utilize the "Winsupply" family logo, which
9 represents a unified interest amongst whatever corporate forms Defendants chose to incorporate.
10 Email addresses used by Defendants while communicating regarding the hiring of Plaintiff also
11 have a common domain name ("@windustrial.com" or "winwholesale.com"), which further
12 represents the unity of interest between Defendants.

13 18. Documents filed with the Secretary of State also identify a common address between
14 Defendants on Kettering Blvd. in Moraine, OH, which further demonstrates the unity of interests
15 between Defendants. On information and belief, Defendant Winsupply Inc. also employs other
16 individuals within the State of California who may work with other "minority partners." However,
17 Defendant Winsupply Inc. is the true employer of such individuals because it controls the working
18 conditions of such employees within the State of California.

19 19. At all times herein mentioned, the acts and omissions of various Defendants, and
20 each of them, concurred and contributed to the various acts and omissions of each and all of the
21 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
22 herein mentioned, Defendants, and each of them, ratified each and every act or omission
23 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
24 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
25 damages as herein alleged.

26 **CLASS ACTION ALLEGATIONS**

27 20. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
28 California Code of Civil Procedure section 382. Plaintiff proposes the following classes

(collectively, “Class”):

- a. All current and former hourly-paid, non-exempt employees of Defendants in the State of California at any time from September 12, 2016, through the present (the “Non-Exempt Class”);
- b. All current and former non-exempt employees of Defendant Winsupply Inc. in the State of California, who worked more than 5 hours in any shift at any time from September 12, 2016, through the present (the “Meal Period Class”);
- c. All current and former non-exempt employees of Defendant Winsupply Inc. in the State of California, who worked 3.5 hours or more in any shift at any time from September 12, 2016, through the present (the “Rest Period Class”);
- d. All current and former non-exempt employees of Defendant Winsupply Inc. in the State of California, who earned overtime wages and non-discretionary remuneration during the same work week at any time from September 12, 2016, through the present (the “Overtime Class”);
- e. All former non-exempt employees of Defendant Winsupply Inc. in the State of California, who earned wages at any time from September 12, 2017, through the present (the “Separated Employee Class”);
- f. All current and former employees of Defendant Winsupply Inc. in the State of California, who earned wages at any time from September 12, 2019, through the present (the “Wage Statement Class”).
- g. All current and former non-exempt employees of Defendants in the State of California, who worked more than 5 hours in any shift at any time from September 12, 2016, through the present (the “Meal Period Sub-Class”);
- h. All current and former non-exempt employees of Defendants in the State of California, who worked 3.5 hours or more in any shift at any time from September 12, 2016, through the present (the “Rest Period Sub-Class”);
- i. All current and former non-exempt employees of Defendants in the State of

California, who earned overtime wages and non-discretionary remuneration during the same work week at any time from September 12, 2016, through the present (the “Overtime Sub-Class”);

j. All former non-exempt employees of Defendants in the State of California, who earned wages at any time from September 12, 2017, through the present (the “Separated Employee Sub-Class”); and

k. All current and former employees of Defendants in the State of California, who earned wages at any time from September 12, 2019, through the present (the “Wage Statement Sub-Class”).

21. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) failed to provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal period premiums in lieu thereof in violation of Labor Code §§ 201-203, 226.7, and 512; (b) failed to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu thereof in violation of Labor Code §§ 201-203 and 226.7; (c) failed to properly pay all regular wages, minimum wages, and overtime wages due in violation of Labor Code §§ 201-203, 510, 558, 1194, 1194.2, and 1197.1; (d) failed to provide accurate, itemized wage statements in violation of Labor Code § 226; (e) failed to pay all wages owed upon separation of employment in violation of Labor Code § 201-203; (f) failed to reimburse business expenses in violation of Labor Code § 2802; and (g) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

22. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff’s attorneys are ready, willing, and able to fully and adequately represent the Class and the individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California state and

1 federal courts.

2 23. Defendants uniformly administered a corporate policy, practice of: (a) failing to
3 provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay
4 meal period premiums in lieu thereof in violation of Labor Code §§ 201-203, 226.7, and 512; (b)
5 failing to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift
6 and/or pay rest period premiums in lieu thereof in violation of Labor Code §§ 201-203 and 226.7;
7 (c) failed to properly pay all regular wages, minimum wages, and overtime wages due in violation
8 of Labor Code §§ 201-203, 510, 558, 1194, 1194.2, and 1197.1;; (d) failing to provide accurate,
9 itemized wage statements in violation of Labor Code § 226; (e) failing to pay all wages owed upon
10 separation of employment in violation of Labor Code § 201-203; (f) failing to reimburse business
11 expenses in violation of Labor Code § 2802; and (g) engaging in Unfair Business Practices in
12 violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

13 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants had a
14 consistent and uniform policy, practice, and procedure of willfully failing to comply with Labor
15 Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, and 2802, the applicable IWC Wage Orders,
16 and the UCL.

17 25. **Common Question of Law and Fact:** There are predominant common questions of
18 law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning
19 Defendants' policy and practice of: (a) failing to provide off-duty meal periods to employees who
20 worked 5 hours or longer in one shift and/or pay meal period premiums in lieu thereof in violation
21 of Labor Code §§ 201-203, 226.7, and 512; (b) failing to provide off-duty rest periods to employees
22 who worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu thereof in
23 violation of Labor Code §§ 201-203 and 226.7; (c) failing to properly pay all regular wages,
24 minimum wages, and overtime wages due in violation of Labor Code §§ 201-203, 510, 558, 1194,
25 1194.2, and 1197.1;; (d) failing to provide accurate, itemized wage statements in violation of Labor
26 Code § 226; (e) failing to pay all wages owed upon separation of employment in violation of Labor
27 Code § 201-203; (f) failing to reimburse business expenses in violation of Labor Code § 2802; and
28 (g) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, and

1 the applicable IWC Wage Orders.

2 26. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
3 Class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical
4 manner as the Class Members. As a pattern and practice, Defendants routinely denied off-duty meal
5 and rest breaks to Plaintiff and other non-exempt employees. Because of the staffing and other
6 operational needs of the employer, Plaintiff and other employees were not allowed to take off-duty
7 meal breaks of at least 30 minutes for each shift of 5 hours or longer and off-duty rest breaks of at
8 least 10 minutes for each 3.5 hours worked. In lieu of providing proper off-duty meal and rest
9 breaks, Defendants did not pay any meal and/or rest period premium compensation to Plaintiff.
10 Additionally, as with other non-exempt employees, Plaintiff routinely earned non-discretionary
11 remuneration, including without limitation bonuses. During workweeks when Plaintiff worked in
12 excess of eight hours in a workday and/or forty hours in a workweek and received non-
13 discretionary remuneration during the same workweek, Defendants failed to include any non-
14 discretionary remuneration earned into the calculation of the regular rate. Defendants also failed to
15 properly pay all regular and/or minimum wages due and owing. Thus, Plaintiff is owed additional
16 overtime pay based on the correct, higher regular rate of pay. Moreover, Plaintiff was required to
17 use her personal cellular phone in order to perform her job. Defendants, however, did not reimburse
18 Plaintiff for the cost of using her cell phone. To date, Plaintiff has yet to receive the underpaid
19 and/or unpaid overtime wages, meal and rest premium compensation, and reimbursement of
20 business expenses owed to her. Thus, Defendants are liable for waiting time penalties under Labor
21 Code § 203. Furthermore, Defendants failed to pay Plaintiff all regularly earned wages upon
22 termination of employment. Despite Plaintiff's termination on April 1, 2020, she was not paid her
23 final wages until about April 10, 2020. Finally, given the underpayment and/or nonpayment of
24 overtime wages, meal and rest period premiums, and business expense reimbursement, the wage
25 statements provided to Plaintiff displayed inaccurate net and gross wages earned and overtime rate
26 of pay. As a separate violation, Plaintiff's wage statements did not identify the pay period start date
27 and correct overtime rate of pay. Rather, Plaintiff's wage statements only identified the "period
28 ending" date and a single rate of pay regardless of what type of wages were earned. Therefore,

1 Plaintiff is a member of the Class and has suffered the alleged violations of Labor Code §§ 201-
2 203, 226, 226.7, 510, 512, 558, 1194, 1194.2, 1197.1, and 2802, and the UCL.

3 27. The California Labor Code upon which Plaintiff bases these claims are broadly
4 remedial in nature. These laws and labor standards serve an important public interest in establishing
5 minimum working conditions and standards in California. These laws and labor standards protect
6 the average working employee from exploitation by employers who may seek to take advantage of
7 superior economic and bargaining power in setting onerous terms and conditions of employment.

8 28. The nature of this action and the format of laws available to Plaintiff and members
9 of the Class identified herein make the class action format a particularly efficient and appropriate
10 procedure to redress the wrongs alleged herein. If each employee were required to file an individual
11 lawsuit, the corporate defendants would necessarily gain an unconscionable advantage since it
12 would be able to exploit and overwhelm the limited resources of each individual plaintiff with their
13 vastly superior financial and legal resources. Requiring each Class member to pursue an individual
14 remedy would also discourage the assertion of lawful claims by employees who would be
15 disinclined to file an action against their former and/or current employer for real and justifiable fear
16 of retaliation and permanent damage to their careers at subsequent employment.

17 29. The prosecution of separate actions by the individual class members, even if
18 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to
19 individual Class members against the Defendants and which would establish potentially
20 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
21 individual Class members which would, as a practical matter, be dispositive of the interest of the
22 other Class members not parties to the adjudications or which would substantially impair or impede
23 the ability of the Class members to protect their interests. Further, the claims of the individual
24 members of the Class are not sufficiently large to warrant vigorous individual prosecution
25 considering all of the concomitant costs and expenses.

26 30. Such a pattern, practice and uniform administration of corporate policy regarding
27 illegal employee compensation described herein is unlawful and creates an entitlement to recovery
28 by Plaintiff and the Class identified herein, in a civil action, for unpaid wages, including interest

thereon, applicable penalties, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 218.5, 226, 1194, and 2802, the applicable IWC Wage Orders, and Code of Civil Procedure § 1021.5.

31. Proof of a common business practice or factual pattern, which the named Plaintiff experienced and is representative of, will establish the right of each of the members of the Plaintiff Class to recovery on the causes of action alleged herein.

32. The Class is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendants. This action is brought for the benefit of the entire class and will result in the creation of a common fund.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 226.7 AND 512

(BY PLAINTIFF, THE CLASS, MEAL PERIOD CLASS, AND THE MEAL PERIOD SUB-CLASS AGAINST ALL DEFENDANTS)

33. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

34. This cause of action is brought pursuant to Labor Code §§ 226.7 and 512, which requires an employer to provide a duty-free, 30-minute meal period within the first five (5) hours for shifts in excess of five (5) hours per day. Plaintiff and Class members regularly worked in excess of five (5) hours per day and accordingly had a right to take a 30-minute meal period each day worked in excess of five (5) hours.

35. At all relevant times, Defendants failed in their affirmative obligation to ensure that Plaintiff and Class members had the opportunity to take and were provided with off-duty meal periods in accordance with the mandate of the California Labor Code and the applicable IWC Wage Order. At all relevant times, Plaintiff and Class members were suffered and permitted to work through legally required meal breaks and were denied the opportunity to take their off-duty meal breaks. This included, without limitation, Defendants requiring Plaintiff and Class members to work continuously and either forgo their lunch breaks or take them after five hours of work. As

1 such, Plaintiff and Class members were denied legally compliant off-duty meal periods, and thus
2 Defendants are responsible for paying premium compensation pursuant to Labor Code §§ 226.7 and
3 512 and the applicable IWC Wage Order. Defendants, as a matter of corporate policy and
4 procedure, regularly failed to pay such premium compensation for each 30-minute duty-free meal
5 period Plaintiff and Class members missed.

6 36. As a pattern and practice, Defendants regularly required employees to work through
7 their meal periods without proper compensation and denied Plaintiff and Class members the right to
8 take proper meal periods as required by law.

9 37. Such a pattern, practice and uniform administration of corporate policy as described
10 herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class in a civil action,
11 for the unpaid balance of the unpaid premium compensation pursuant to California Labor Code §§
12 226.7 and 512, and the applicable IWC Wage Order, including interest thereon, penalties, and costs
13 of suit.

14 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
15 willful failure to provide all meal period premium wages due and owing to Plaintiff and Class
16 members upon separation of employment results in a continued payment of wages up to thirty (30)
17 days from the time the wages were due. Therefore, Plaintiff and Class members who have separated
18 from employment are entitled to compensation pursuant to Labor Code § 203.

19 **SECOND CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE § 226.7**

21 **(BY PLAINTIFF, THE CLASS, THE REST PERIOD CLASS, AND THE REST PERIOD**
22 **SUB-CLASS AGAINST ALL DEFENDANTS)**

23 39. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though
24 fully set forth herein.

25 40. This cause of action is brought pursuant to Labor Code § 226.7, which requires an
26 employer to provide a duty-free, 10-minute rest period for every 4 hours worked, or major fraction
27 thereof. Plaintiff and other Class members regularly worked shifts of three and one-half (3.5) hours
28 or more per day, and accordingly had a right to take a 10-minute rest period each day.

1 41. At all relevant times, Defendants failed in their affirmative obligation to provide
2 Plaintiff and other Class members with the opportunity to take rest periods in accordance with the
3 mandate of the California Labor Code and the applicable IWC Wage Order. As a pattern and
4 practice, Defendants suffered and permitted Plaintiff and Class members to work through legally
5 required rest breaks and denied Plaintiff and Class members the opportunity to take off-duty rest
6 breaks. As a result, Plaintiff and Class members remained on-duty during these purported rest
7 breaks and Defendants are responsible for paying premium compensation for missed rest breaks
8 pursuant to Labor Code § 226.7.

9 42. As a pattern and practice, Defendants regularly required employees to work through
10 their rest periods without proper compensation and denied Plaintiff and Class members the right to
11 take proper rest periods as required by law.

12 43. Such a pattern, practice and uniform administration of corporate policy as described
13 herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class in a civil action,
14 for the unpaid balance of the unpaid premium compensation pursuant to California Labor Code §
15 226.7 and the applicable IWC Wage Order, including interest thereon, penalties, and costs of suit.

16 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
17 willful failure to provide all rest period premium wages due and owing to Plaintiff and Class
18 members upon separation of employment results in a continued payment of wages up to thirty (30)
19 days from the time the wages were due. Therefore, Plaintiff and Class members who have separated
20 from employment are entitled to compensation pursuant to Labor Code § 203.

21 **THIRD CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE §§ 510, 558, 1194, 1194.2, AND 1197.1**

23 **(BY PLAINTIFF, THE CLASS, THE NON-EXEMPT CLASS, THE OVERTIME CLASS,**
24 **AND THE OVERTIME SUB-CLASS AGAINST ALL DEFENDANTS)**

25 45. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though
26 fully set forth herein.

27 46. This cause of action is brought pursuant to Labor Code § 510, which requires an
28 employer to pay employees overtime at a rate of one and one-half the employee's regular rate of

1 pay for any work in excess of eight hours in a workday or forty hours in a workweek.

2 47. As a pattern and practice, Defendants suffered and permitted employees to work in
3 excess of eight hours in a workday and/or over forty hours in a workweek without proper overtime
4 pay. During workweeks when Plaintiff and Class members worked overtime and earned non-
5 discretionary remuneration such as bonuses, Defendants failed to properly calculate the regular rate
6 of pay for purposes of paying overtime. Specifically, Defendants failed to factor any non-
7 discretionary remuneration earned into the calculation of the regular rate of pay for purposes of
8 paying overtime wages. As a result of such policy and practice, Defendants underpaid overtime
9 wages to Plaintiff and the Class and thus owe additional overtime wages.

10 48. Such a pattern, practice, and uniform administration of corporate policy regarding
11 illegal employee compensation as described herein is unlawful and creates an entitlement to
12 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
13 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to
14 the mandate of California Labor Code §§ 218.5, 510, 558, and 1194.

15 49. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
16 willful failure to provide all overtime wages due and owing to Plaintiff and Class Members upon
17 separation from employment results in a continued payment of wages up to thirty (30) days from
18 the time the wages were due. Therefore, Plaintiff and other members of the Class who have
19 separated from employment from Defendants are entitled to compensation pursuant to Labor Code
20 § 203.

21 **FOURTH CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE § 226**

23 **(BY PLAINTIFF, THE CLASS, THE MEAL PERIOD CLASS, THE MEAL PERIOD SUB-**
24 **CLASS, THE REST PERIOD CLASS, THE REST PERIOD SUB-CLASS, THE OVERTIME**
25 **CLASS, THE OVERTIME SUB-CLASS, THE WAGE STATEMENT CLASS, AND THE**
26 **WAGE STATEMENT SUB-CLASS AGAINST ALL DEFENDANTS)**

27 50. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though
28 fully set forth herein.

51. Defendants failed in their affirmative obligation to provide accurate itemized wage statements. Defendants, as a matter of policy and practice, did not provide accurate records in violation of Labor Code § 226 by failing to provide accurate payroll records to employees.

52. Here, Plaintiff and some of the Class were paid hourly. As such, the wage statements should have reflected the applicable hourly rates of pay, gross and net wages earned, and inclusive payroll period dates, pursuant to Labor Code section 226. However, the wage statements provided to Plaintiff and other employees failed to identify such information. More specifically, as a result of the underpayment and/or nonpayment of overtime wages and meal and rest period premiums, the wage statements provided to Plaintiff displayed inaccurate net and gross wages earned. Moreover, whenever overtime wages were paid, the wage statements failed to identify the correct rates of pay. In addition, for all employees in the Wage Statement Class, the wage statements failed to identify the pay period start date.

53. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code § 226.

FIFTH CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 201-203

**(BY PLAINTIFF, THE CLASS, THE SEPARATED EMPLOYEE CLASS, AND THE
SEPARATED EMPLOYEE SUB-CLASS AGAINST ALL DEFENDANTS)**

54. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

55. Labor Code § 201 provides that all wages earned and unpaid at the time of an employee's discharge are due and payable immediately. Labor Code § 202 provides that, in the case of an employee who resigns or quits, such wages must be paid not later than 72 hours thereafter, unless the employee has given 72 hours previous notice, in which case the employee must be paid all wages due and earned at the time of quitting. Labor Code § 203 further provides that an employer who willfully fails to pay such wages due to an employee who is discharged or quits must

1 pay that employee waiting-time penalties in the form of a day's wages up to 30 days until all of the
2 wages owed are paid.

3 56. As a pattern and practice, Defendants violated Labor Code §§ 201, 202, and 203 by
4 issuing final payment of wages more than 72 hours after termination of employment.

5 57. Such a pattern, practice and uniform administration of corporate policy regarding
6 illegal employee compensation as described herein is unlawful and creates an entitlement to
7 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
8 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to
9 the mandate of California Labor Code §§ 201, 202, and 203.

10 **SIXTH CAUSE OF ACTION**

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

12 **(BY PLAINTIFF THE CLASS, THE MEAL PERIOD CLASS, THE MEAL PERIOD SUB-**
13 **CLASS, THE REST PERIOD CLASS, THE REST PERIOD SUB-CLASS, THE OVERTIME**
14 **PERIOD CLASS, AND THE OVERTIME SUB-CLASS AGAINST ALL DEFENDANTS)**

15 58. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though
16 fully set forth herein.

17 59. Defendants, and each of them, have engaged and continue to engage in unfair and
18 unlawful business practices in California by practicing, employing, and utilizing the employment
19 practices outlined above, including by: (a) failing to provide off-duty meal periods to employees
20 who worked 5 hours or longer in one shift and/or pay meal period premiums in lieu thereof in
21 violation of Labor Code §§ 201-203, 226.7, and 512; (b) failing to provide off-duty rest periods to
22 employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu
23 thereof in violation of Labor Code §§ 201-203 and 226.7; (c) failing to correctly calculate the
24 regular rate of pay for the purposes of paying overtime wages in violation of Labor Code §§ 201-
25 203, 510, 558, and 1194; and (d) failing to reimburse business expenses in violation of Labor Code
26 § 2802.

27 60. Defendants' utilization of such unfair and unlawful business practices constitutes
28 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors.

1 61. Plaintiff seeks, individually and on behalf of other members of the Class similarly
2 situated, full restitution of monies, as necessary and according to proof, to restore any and all
3 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
4 complained of herein.

5 62. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
6 mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as
7 proscribed by California Business & Professions Code § 17200, *et seq.*, including those set forth
8 herein above thereby depriving Plaintiff and other members of the Class the minimum working
9 condition standards and conditions due to them under the California laws as specifically described
10 therein.

11 **SEVENTH CAUSE OF ACTION**

12 **VIOLATION OF LABOR CODE § 2802**

13 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

14 63. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though
15 fully set forth herein.

16 64. Pursuant to Labor Code § 2802, an employer shall indemnify his or her employee for
17 all necessary expenditures or losses incurred by the employee in direct consequence of his or her
18 duties.

19 65. Defendants violated Labor Code § 2802 by failing to reimburse Plaintiff and other
20 members of the Class for expenses incurred in the performance of their duties, including expenses
21 associated with the use of personal cellular phones, which Plaintiff and other members of the Class
22 were required to use in performance of their duties.

23 66. As a direct and proximate result of Defendants' failure to reimburse Plaintiff and
24 other members of the Class for work-related expenses, Plaintiff and the Class are entitled to recover
25 their out-of-pocket expenses, including interest, attorneys' fees, and costs pursuant to Labor Code §
26 2802 in an amount to be determined at trial.

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1 **SEVENTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

3 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
4 **AGAINST ALL DEFENDANTS)**

5 67. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though
6 fully set forth herein.

7 68. Plaintiff brings this cause of action as a proxy for the State of California and in this
8 capacity, seeks penalties on behalf of all Aggrieved Employees from September 7, 2019, through
9 the present, for Defendants' violations of Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, and
10 1194, 1194.2, and 1197.1 arising from Defendants' policy and practice of: (a) failing to provide off-
11 duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal period
12 premiums in lieu thereof in violation of Labor Code §§ 201-203, 226.7, and 512; (b) failing to
13 provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay
14 rest period premiums in lieu thereof in violation of Labor Code §§ 201-203 and 226.7; (c) failing to
15 correctly calculate the regular rate of pay for the purposes of paying overtime wages in violation of
16 Labor Code §§ 201-203, 510, 558, and 1194; (d) failing to provide accurate, itemized wage
17 statements in violation of Labor Code § 226; (e) failing to pay all wages owed upon separation of
18 employment in violation of Labor Code § 201-203; (f) failing to properly reimburse employees for
19 business expenses, including the use of personal cell phones, in violation of Labor Code § 2802;
20 and (g) failing to properly pay employees all regular and/or minimum wages in violation of Labor
21 Code §§ 1194.2 and 1197.1.

22 69. On or about March 4, 2021, Plaintiff sent written notice to the California Labor &
23 Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-203,
24 226, 226.7, 510, 512, 558, and 1194, pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys
25 General Act ("PAGA"). On March 24, 2022, Plaintiff sent a supplemental written notice to the
26 LWDA informing it of Defendants' violations of Labor Code § 2802, and, on December 19, 2022,
27 Plaintiff sent a second supplemental written notice to the LWDA informing it of Defendants'
28 violations of Labor Code §§ 1194.2 and 1197.1. To date, the LWDA has not responded to

1 Plaintiff's written notices.

2 70. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and
3 all applicable civil penalties for Defendants' violation of Labor Code §§ 201-203, 226, 226.7, 510,
4 512, 558, 1194, 1194.2, 1197.1, and 2802, for the time period described above, on behalf of herself
5 and other Aggrieved Employees.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this
8 suit is brought against Defendants, jointly and severally, as follows:

- 9 1. For an order certifying the proposed Classes;
- 10 2. For an order appointing Plaintiff as the representative of the Classes as described
11 herein;
- 12 3. For an order appointing counsel for Plaintiff as class counsel;
- 13 4. Upon the First Cause of Action, for damages and/or penalties pursuant to California
14 Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys' fees;
- 15 5. Upon the Second Cause of Action, for damages and/or penalties pursuant to
16 California Labor Code §§ 201-203 and 226.7, and for costs and attorneys' fees;
- 17 6. Upon the Third Cause of Action, for damages and/or penalties pursuant to California
18 Labor Code §§ 201-203, 510, 558, and 1194, and for costs and attorneys' fees;
- 19 7. Upon the Fourth Cause of Action, for damages or penalties pursuant to California
20 Labor Code § 226, and for costs and attorneys' fees;
- 21 8. Upon the Fifth Cause of Action, for damages and/or penalties pursuant to California
22 Labor Code §§ 201-203, and for costs and attorneys' fees;
- 23 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly
24 affected members of the general public of all funds unlawfully acquired by Defendants by means of
25 any acts or practices declared by this Court to be in violation of Business & Professions Code §
26 17200, *et seq.*, for the time periods described above;
- 27 10. Upon the Seventh Cause of Action, for damages and/or penalties pursuant to
28 California Labor Code § 2802, and for costs and attorneys' fees;

1 11. Upon the Eighth Cause of Action, for civil penalties according to proof pursuant to
2 Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

3 12. On all causes of action for attorneys' fees and costs as provided by California Labor
4 Code §§ 218.5, 226, 1194, 2802, and 2699, and Code of Civil Procedure § 1021.5; and

5 13. For such other and further relief the Court may deem just and proper.

6
7 DATED: January 19, 2023

DIVERSITY LAW GROUP, P.C.

8
9 By: 

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff and the Class
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PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On January 19, 2023, I served the following document(s) described as: **SECOND AMENDED COMPLAINT FOR DAMAGES FOR** on the interested parties in this action as follows:

Rachel J. Lee
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Attorneys for Defendant Winsupply Inc. and Orange County Windustrial Co.

 X BY ELECTRONIC SERVICE VIA ONE LEGAL: I caused the above-entitled document(s) to be served through One Legal at the website www.onelegal.com, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the One Legal Filing Receipt/Confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 19, 2023, at Los Angeles, California.



Erika Mejia