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on behalf of themselves and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JESUS DIAZ and HECTOR GARCIA on
behalf of themselves and all others similarly
situated

Plaintiffs,

vs.

CAL PLATE, Inc., a California Corporation,
and DOES 1 through 50, inclusive,

Defendants.

Case No. 20STCV00696
ASSIGNED FOR ALL PURPOSES TO:
JUDGE: Hon. Elihu M. Berle
DEPT: 6

**FIRST AMENDED CLASS ACTION
COMPLAINT**

- 1) Failure to pay Lawful Wages Owed;**
- 2) Failure to Provide Lawful Meal
Periods or Compensation in Lieu
Thereof;**
- 3) Failure to Provide Lawful Rest
Periods or Compensation in Lieu
Thereof;**
- 4) Failure to Timely Pay Wages;**
- 5) Knowing and Intentional Failure to
Comply With Itemized Employee
Wage Statement Provisions; and**
- 6) Violations of the Unfair Competition
Law**

JURY TRIAL DEMANDED

Plaintiffs JESUS DIAZ and HECTOR GARCIA (hereinafter "Plaintiffs") on behalf of
themselves and all others similarly situated assert claims against Defendant CAL PLATE, INC.,

1 and DOES 1 through 50, inclusive (hereinafter collectively referred to as "Defendants") as
2 follows:

3 **I.**

4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, brought
6 against Defendants and any subsidiaries and affiliated companies on behalf of Plaintiffs and all
7 Non-Exempt Employees employed by Defendants in California who occupied positions of
8 "machine operator" or similar positions (hereinafter referred to as "Non-Exempt Employees" or
9 "Class Members").

10 2. During the liability period, defined as the applicable statute of limitations for each
11 and every cause of action contained herein, Defendants enforced shift schedules, employment
12 policies and practices, and workload requirements wherein Plaintiffs and all Non-Exempt
13 Employees: (a) were not paid proper wages they earned for all hours they worked including
14 proper overtime compensation; (b) were not permitted to take their full statutorily authorized rest
15 and meal periods, or had their rest and meal periods shortened and/or provided to them late due
16 to the scheduling and work load and time requirements placed upon them by Defendants.
17 Defendants failed to pay such employees one (1) hour of pay at the employees regular rate of
18 compensation for each workday that the meal period and/or rest period that was not properly
19 provided.

20 3. During the liability period, Defendants have also failed to maintain accurate
21 itemized records reflecting total hours worked and have failed to provide Non-Exempt
22 Employees with accurate, itemized wage statements reflecting total hours worked and
23 appropriate rates of pay for those hours worked.

24 4. Plaintiffs, on behalf of themselves and Class Members, bring this action pursuant
25 to Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 558, 1194, 1198, Title 8, Section
26 11010 and any other applicable Industrial Welfare Commission ("IWC") Wage Orders, seeking
27 unpaid lawful wages, unpaid rest and meal period compensation, penalties and other equitable
28 relief, and reasonable attorneys' fees and costs.

5. Plaintiffs, on behalf of themselves and others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seeks restitution from Defendants for their failure to pay all overtime wages and rest and meal period premiums to each of their Non-Exempt Employees.

II.

VENUE

6. Venue as to each Defendant is proper in this judicial district pursuant to Code of Civil Procedure section 395. Defendant conducts substantial and continuous business activities in Los Angeles County, California and is within the jurisdiction of this Court for service of process purposes. Defendants employ numerous Class Members in Los Angeles County, California.

III.

PARTIES

7. Plaintiff Diaz is, and at all times mentioned in this complaint was, a resident of Bellflower, California.

8. Plaintiff Garcia is, and at all times mentioned in this complaint was, a resident of Compton, California.

9. On information and belief, Defendants were at all times mentioned herein licensed and qualified to do business in California. On information and belief, Plaintiffs allege that at all relevant times referenced herein Defendants did and continue to transact business throughout California. Defendants are in the business of art, prepress, and tooling solutions for the packaging industry.

10. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiffs are informed and believe, and based thereon alleges that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the

1 true names and capacities of the Defendants designated hereinafter as DOES when such identities
2 become known.

3 11. Plaintiffs are informed and believe, and based thereon allege, that Defendants
4 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
5 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
6 Defendant are legally attributable to the other Defendants.

7 IV.

8 **FACTUAL BACKGROUND**

9 12. On information and belief, Defendants are licensed to do business in Los Angeles
10 County, California. They engage in art, prepress, and tooling solutions for the packaging industry
11 in Los Angeles and other Counties throughout California.

12 13. Plaintiff Diaz was employed by Defendants from about May 15, 1993 through
13 about June 12, 2018. He was a machine operator at Defendants' Artesia facility.

14 14. Plaintiff Garcia was employed by Defendants from in or about 1998 through in or
15 about April 2020. During his employment, he worked in the "Airmark" department and was
16 engaged in different job duties including, but not limited to, machine operator.

17 15. During the liability period, Plaintiffs and Class Members were required to perform
18 work "off the clock" either prior to the start of their work shift or during their scheduled meal
19 periods. Plaintiffs were not compensated for time spent "off the clock" and under Defendant's
20 control.

21 16. During the liability period, Defendant's policy was that meal breaks were
22 scheduled depending on the needs of the facility. Due to the demands of work shifts, Plaintiffs
23 and Class Members were frequently required to work in excess of five (5) hours without being
24 provided an uninterrupted thirty (30) minute meal period by the end of the fifth hour and were
25 not compensated one (1) hour of pay at their regular rate of compensation for each workday that
26 a compliant meal period was not provided, in violation of California labor laws, regulations and
27 IWC Wage Orders.

1 17. During the liability period, Defendant's policy was that rest breaks were scheduled
2 depending on the needs of the facility. Due to the time constraints resulting from the demands of
3 work shifts, Plaintiffs and Class Members were frequently unable to take any rest breaks during
4 their work shift or had their rest breaks shortened to less than 10 minutes.

5 18. During the liability period, due to the workload requirements and time constraints
6 resulting from the demands of work shifts, Plaintiffs and Class Members were not permitted to
7 take a minimum ten (10) minute rest period for every four hours or major fraction thereof
8 worked. Plaintiffs and Class Members were not compensated one (1) hour of pay at her regular
9 rate of compensation for each workday that a rest period was not provided, in violation of
10 California labor laws, regulations, and IWC Wage Orders.

11 19. Defendants have also failed to maintain accurate itemized records reflecting total
12 hours worked and have failed to provide Non-Exempt Employees with accurate, itemized wage
13 statements reflecting total hours worked and appropriate rates of pay for those hours worked.

14 20. On information and belief, Defendant willfully failed to pay all earned wages in a
15 timely manner to Non-Exempt Employees; nor has Defendant paid to Non-Exempt Employees,
16 upon or after termination of their employment, all compensation due, including but not limited to
17 all wages owed and compensation for having failed to properly provide rest periods and meal
18 periods.

19 21. Plaintiffs are informed and believe, and based thereon allege, that Defendants
20 currently employ and during the relevant period have employed over one hundred (100)
21 employees in the State of California in non-exempt hourly positions.

22 22. Class Members employed by Defendants all times pertinent hereto, have been
23 Non-Exempt Employees within the meaning of the California Labor Code, and the implementing
24 rules and regulations of the IWC California Wage Orders.

25 **V.**

26 **CLASS ACTION ALLEGATIONS**

27 23. Plaintiffs seek to represent a Class comprised of and defined as:

28 “All persons who are employed or have been employed by Defendants in the state of

1 California and who are/were not classified as “Exempt” or primarily employed in executive,
2 professional, or administrative capacities within four (4) years prior to the date this lawsuit is
3 filed (“liability period”) until resolution of this lawsuit (collectively referred to as the “Class”
4 and/or Class Members”).

5 24. Plaintiffs also seek to represent Subclasses which are composed of persons
6 satisfying the following definitions:

7 a. All Non-Exempt Employees employed by Defendants in California
8 who were not accurately and fully paid all lawful wages owed to them including proper
9 overtime compensation for all their hours worked;

10 b. All Non-Exempt Employees employed by Defendants in California who
11 have not been provided an uninterrupted 30 minute meal period when they worked over five
12 hours in a work shift by the end of the fifth hour and/or have not been provided a second 30
13 minute meal break when worked shifts over ten hours and were not provided compensation in
14 lieu thereof;

15 c. All Non-Exempt Employees employed by Defendants in California who
16 have not been provided a minimum ten (10) minute rest period for every four (4) hours or
17 major fraction thereof worked per day and were not provided compensation in lieu thereof;

18 d. All Non-Exempt Employees employed by Defendants in California
19 within the statutory liability period and were not timely paid all wages due and owed to them
20 upon the termination of their employment with Defendants; and

21 e. All Non-Exempt Employees employed by Defendants in California
22 within the statutory liability period, and were not provided with accurate and complete itemized
23 wage statements.

24 25. Plaintiffs reserve the right under Rule 3.765, California Rules of Court, to
25 amend or modify the class description with greater specificity or further division into
26 subclasses or limitation to particular issues.

26. This action has been brought and may properly be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity

27. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiffs are informed and believe that Defendants currently employ, and/or during the relevant time period employed, approximately over 60 Non-Exempt Employees in California who are or have been affected by Defendants' unlawful practices as alleged herein.

B. Commonality

28. There are questions of law and fact common to the Class predominating over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- i. Whether Defendants violated Labor Code §§ 510, 1194 and applicable IWC Wage Orders by failing to pay all earned wages including overtime compensation to Non-Exempt Employees who worked “off the clock” and in excess of eight (8) hours in a work day and/or more than forty (40) hours in a workweek;
- ii. Whether Defendants violated Labor Code §§ 226.7, 512 and applicable IWC Wage Order by failing to provide statutorily compliant thirty (30) minute meal periods to Non-Exempt Employees on days in which they worked in excess of five (5) hours and/or ten (10) hours and failing to compensate said employees one hour wages in lieu of meal periods;
- iii. Whether Defendants violated Labor Code sections 226.7 and applicable IWC Wage Orders by failing to authorize and permit minimum ten (10) minute rest periods to Non-Exempt Employees for every four hours or major fraction thereof worked and failing to compensate said employees one (1) hours wages in lieu of rest periods;

- iv. Whether Defendants violated sections 201-203 of the Labor Code by failing to pay all earned wages and/or premium wages due and owing at the time that any Non-Exempt Employees' employment with Defendants terminated;
- v. Whether Defendants violated sections 226 of the Labor Code and applicable IWC Wage Orders by failing to, among other violations, maintain accurate records of Non-Exempt Employees' earned wages, work periods, meal periods and deductions;
- vi. Whether Defendants violated section 17200 *et seq.* of the Business and Professions Code by failing to pay proper minimum and/or overtime wages to Non-Exempt Employees; failing to provide proper rest and/or meal periods and failing to pay compensation in lieu thereof; failing to timely pay wages, failing to keep accurate records all in violation of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1198, 1199, and applicable IWC Wage Orders; and
- vii. Whether Defendants violated section 17200 *et seq.* of the Business and Professions Code and Labor Code sections §§ 201, 202, 203, 204, 221, 225, 226, 226.7, 510, 512, 1194, 1198, 1199, and applicable IWC Wage Orders which violation constitutes a violation of fundamental public policy.

C. Typicality

29. The claims of the named Plaintiffs are typical of the claims of the Class. Plaintiffs and all members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of California laws, regulations, and statutes as alleged herein.

D. Adequacy of Representation

30. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represents Plaintiffs is competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

31. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and

1 questions of law and fact common to the Class predominate over any questions affecting only
2 individual members of the Class. Each member of the Class has been damaged and is entitled to
3 recovery by reason of Defendants' unlawful policy and/or practice herein complained of.

4 32. Class action treatment will allow those similarly situated persons to litigate their
5 claims in the manner that is most efficient and economical for the parties and the judicial system.
6 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of
7 this action that would preclude its maintenance as a class action.

8 **VI.**
9 **CAUSES OF ACTION**

10 **First Cause of Action**

11 Failure to Pay Lawful Wages Including Overtime Wages
12 (Lab. Code §§ 510, 1194)
13 (Against All Defendants)

14 33. Plaintiffs repeat and incorporate herein by reference each and every allegation set
15 forth above, as though fully set forth herein.

16 34. Defendants' policies, practices and work shift requirements resulted in Plaintiffs
17 and Non-Exempt Employees working "off the clock" and not receiving compensation for all
18 earned wages including overtime in violation of California state wage and hour laws.

19 35. During the liability period, Defendants' policies and/or practices resulted in
20 Plaintiffs and Non-Exempt Employees working in excess of eight (8) hours in a workday and/or
21 forty (40) hours in a workweek without receiving the proper compensation at the rate of time and
22 one-half (1 1/2) of such employee's regular rate of pay.

23 36. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek
24 to represent have been deprived of compensation for all earned wages including overtime wages
25 in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest
26 and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code section 1194.

27 37. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as
28 described herein and below.

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Second Cause of Action

Failure to Provide Lawful Meal Periods
Or Compensation in Lieu Thereof
(Lab. Code §§226.7, 512, IWC Wage Orders)
(Against All Defendants)

38. Plaintiffs repeat and incorporate herein by reference each and every allegation set forth above, as though fully set forth herein.

39. By their failure to provide thirty (30) minute uninterrupted meal periods by the end of the fifth hour for days on which Non-Exempt Employees work(ed) work periods in excess of five (5) hours, Defendants violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

40. By failing to record and maintain adequate and accurate time records according to sections 226 and 1174 (d) of the Labor Code, Defendants have injured Plaintiffs and Class Members and made it difficult to calculate the unpaid meal period compensation due Plaintiffs and Class Members.

41. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code §226.7.

42. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described herein and below.

Third Cause of Action

Failure to Provide Rest Periods
Or Compensation in Lieu Thereof
(Lab. Code §§226.7, IWC Wage Orders)
(Against All Defendants)

43. Plaintiffs repeat and incorporate herein by reference each and every allegation set forth above, as though fully set forth herein.

44. By their failure to authorize and permit a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked per day by Non-Exempt Employees, and failing to provide compensation for such non-provided rest periods, as alleged above, Defendants

1 willfully violated the provisions of Labor Code section 226.7 and IWC applicable Wage Orders.

2 45. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek
3 to represent have been deprived of premium wages in amounts to be determined at trial, and are
4 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
5 §226.7.

6 46. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as
7 described herein and below.

8 **Fourth Cause of Action**

9 Failure to Timely Pay Wages Due At Termination

10 Lab. Code §§ 201-203, 227.3)

11 (Against All Defendants)

12 47. Plaintiffs incorporate by reference and re-allege each and every allegation
13 contained above, as though fully set forth herein.

14 48. Sections 201 and 202 of the California Labor Code require Defendants to pay its
15 employees all wages due within 72 hours of termination of employment. Section 203 of the
16 Labor Code provides that if an employer willfully fails to timely pay such wages the employer
17 must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in
18 full or an action is commenced. The penalty cannot exceed 30 days of wages.

19 49. Plaintiffs and affected class members are entitled to compensation for all forms of
20 wages earned, including compensation for non provided rest and meal periods, but to date have
21 not received such compensation therefore entitling them Labor Code section 203 penalties.

22 50. More than 30 days have passed since Plaintiffs and affected Class Members have
23 left Defendants' employ, and on information and belief, have not received payment pursuant to
24 Labor Code §203. As a consequence of Defendants' willful conduct in not paying all earned
25 wages, certain Class Members are entitled to 30 days' wages as a penalty under Labor Code
26 section 203 for failure to pay legal wages.

27 51. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as
28 described herein and below.

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Fifth Cause of Action
Knowing and Intentional Failure to Comply With Itemized Employee
Wage Statement Provisions
(Lab. Code § 226(b))
(Against All Defendants)

52. Plaintiffs repeat and incorporate herein by reference each and every allegation set forth above, as though fully set forth herein.

53. Section 226(a) of the California Labor Code requires Defendants to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiffs and the members of the proposed class. IWC Wage Orders require Defendants to maintain time records showing, among others, when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked in an itemized wage statement, and must show all deductions and reimbursements from payment of wages, and accurately report total hours worked by Plaintiffs and the members of the proposed class. On information and belief, Defendants have failed to record all or some of the items delineated in Industrial Wage Orders and Labor Code §226.

54. Plaintiffs and Class Members have been injured by Defendants' actions by rendering them unaware of the full compensation to which they were entitled under applicable provisions of the California Labor Code and applicable IWC Wage Orders.

55. Pursuant Labor Code §226, Plaintiffs and Class Members are entitled up to a maximum of \$4,000.00 each for record-keeping violations.

56. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described herein and below.

Sixth Cause of Action
Violation of Unfair Competition Law
(Bus. & Prof. Code, §§ 17200-17208)
(Against All Defendants)

57. Plaintiffs repeat and incorporate herein by reference each and every allegation set forth above, as though fully set forth herein.

58. Business & Professions Code Section 17200 provides:

As used in this chapter, unfair competition shall mean and include any **unlawful, unfair** or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.) (Emphasis added.)

59. Defendants' violations of the Labor Code and Wage Order provisions set forth above constitute unlawful and/or unfair business acts or practices.

60. The actions of Defendants, as alleged within this Complaint, constitute false, fraudulent, unlawful, unfair, fraudulent and deceptive business practices, within the meaning of Business and Professions Code section 17200, *et seq.*

61. Plaintiffs and Class Members have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein.

62. As a direct and proximate result of the unfair business practices of Defendants, and each of them, Plaintiffs, individually and on behalf of all employees similarly situated, is entitled to restitution of all wages which have been unlawfully withheld from Plaintiffs and members of the Plaintiffs Class as a result of the business acts and practices described herein.

63. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described herein and below.

VII.

PRAYER

WHEREFORE, Plaintiffs pray for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. For compensatory damages in an amount according to proof with interest thereon;
3. For economic and/or special damages in an amount according to proof with interest thereon;
4. For premium wages pursuant to Labor Code §§ 226.7 and 512;
5. For premium pay and penalties pursuant to Labor Code §§ 203, 226;
6. For attorneys' fees, interests and costs of suit under Labor Code §§ 1194; and
7. For such other and further relief as the Court deems just and proper.

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Dated: March 1, 2021

James R. Hawkins, Esq.

Isandra Y. Fernandez, Esq.

Attorneys for Plaintiffs

JESUS DIAZ and HECTOR GARCIA