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ALAN MONDUS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
CENTRAL DIVISION

ALAN MONDUS, an individual, on behalf of
himself and other aggrieved employees,

Plaintiff,

vs.

PROVIDIEN THERMOFORMING INC., a
California Corporation, CARLISLE
INTERCONNECT TECHNOLOGIES INC., a
Delaware Corporation, and DOES 1-20,
inclusive.

Defendants.

CASE NO.: 37-2022-00002816-CU-W/T-CTL

COMPLAINT FOR:

- 1) BREACH OF CONTRACT;**
- 2) PROMISSORY ESTOPPEL;**
- 3) VIOLATION OF CALIFORNIA
WHISTLEBLOWER PROTECTION
LAW;**
- 4) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**
- 5) FAILURE TO PAY OVERTIME;**
- 6) FAILURE TO PROVIDE MEAL-AND-
REST BREAKS;**
- 7) FAILURE TO PAY ALL WAGES
OWED AT DISCHARGE;**
- 8) FAILURE TO PROVIDE ACCURATE
WAGE STATEMENTS;**
- 9) REPRESENTATIVE ACTION FOR
CIVIL PENALTIES UNDER
CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT;**
- 10) UNLAWFUL, UNFAIR, OR
FRAUDULENT BUSINESS
PRACTICES UNDER CAL. BUS. &
PROF. CODE § 17200 ET SEQ.**

1 Plaintiff Alan Mondus (“Plaintiff” or “Mondus”) brings this Complaint against Providien
2 Thermoforming, Inc., (“Providien”) and Carlisle Interconnect Technologies, Inc., (“Carlisle”)
3 (collectively “Defendants”) and alleges as follows:

4 **NATURE OF THE ACTION**

5 1. This is a breach of contract, wrongful termination, and wage-and-hour action
6 brought pursuant to the provisions of the California Civil Code, California Business & Professions
7 Code, and California Labor Code.

8 **THE PARTIES**

9 2. Plaintiff is a resident of the State of California and was employed by Defendants.

10 3. Defendant Providien is a corporation, association, partnership, joint venture, or
11 other business entity, organized and existing under the laws of the State of California;
12 headquartered in Scottsdale, Arizona; and with its principal place of business in San Diego,
13 California.

14 4. Defendant Carlisle is a corporation, association, partnership, joint venture, or other
15 business entity, organized and existing under the laws of the State of Delaware; headquartered in
16 Scottsdale, Arizona; and at all times herein mentioned conducted business in the State of
17 California, and throughout the County of San Diego.

18 5. Plaintiff is unaware of the true names and capacities of the Defendants fictitiously
19 designated as “DOES” 1 through 20, and therefore sues those Defendants by these fictitious
20 names. Plaintiff will amend this Complaint when the true names and capacities of these factiously
21 designated Defendants have been ascertained. Plaintiff is informed and believes, and thereon
22 alleges, that “DOES” 1 through 20, are legally responsible in some manner for the events and
23 happenings referenced that caused the injuries to Plaintiff for which Plaintiff now seeks damages.

24 6. Plaintiff is informed and believes, and thereon alleges, that Defendants were the
25 agents, servants, employees of the other Defendants, and were acting within the scope, course and
26 authority of their agency and or employment. Plaintiff is further informed, believes, and thereon
27 alleges that each of the Defendants consented to, ratified, participated in, or authorized the acts of
28 the remaining Defendants.

1 **JURISDICTION, VENUE, AND EXHAUSTION OF REMEDIES**

2 7. Jurisdiction is proper in the Superior Court for the County of San Diego because it
3 has general subject matter jurisdiction and no statutory exceptions to jurisdiction exist.

4 8. This Court has jurisdiction over Defendant Providien because it is an association,
5 corporation, or business entity based in, authorized, registered to conduct, or in fact conducts
6 substantial business in the State of California, County of San Diego.

7 9. This Court has jurisdiction over Defendant Carlisle because it is an association,
8 corporation, or business entity based in, authorized, registered to conduct, or in fact conducts
9 substantial business in the State of California, County of San Diego.

10 10. Venue is proper in the County of San Diego as a substantial part of the events and
11 omissions giving rise to the claims occurred in this County.

12 11. Additionally, the contract that forms the center of the Parties' dispute states that the
13 conduct of the Parties thereunder constitutes the minimum contracts necessary to make them
14 subject to the personal jurisdiction and venue of any state court in San Diego County, California.

15 12. Plaintiff has given written notice by certified mail to the California Labor and
16 Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the
17 Labor Code he alleged to have been violated, including the facts and theories to support the
18 alleged violations; and the LWDA gave no notice that it intended to investigate the alleged
19 violations. Plaintiff has thus exhausted his administrative remedies.

20 **FACTS COMMON TO ALL CAUSES OF ACTION**

21 13. Defendant Providien first approached Plaintiff about a position as Business
22 Development Manager in or around March 2018. This role required Plaintiff identify and target
23 new business opportunities, as well as implement sales strategies to maintain a sufficient earnings
24 pipeline and achieve strategic growth.

25 14. Plaintiff spoke with Bill Gerard—then-President of Providien—about the
26 expectations of the role, and what sort of compensation Plaintiff could anticipate. Plaintiff had
27 experience in sales, and wanted to ensure this new role would compensate him similarly.
28

1 15. Gerard informed Plaintiff that the sales process for Providien's industry was much
2 longer. And, as a result, Providien's salespeople typically did not see their commission until 18
3 months after closing a deal; with most companies reaching peak production after three to five
4 years.

5 16. Gerard's statements concerned Plaintiff, as his compensation in prior roles was
6 heavily rooted in commission. If Plaintiff would not earn the bulk of his remuneration until a
7 year-and-a-half after landing an account, he stood to take a substantial pay cut. Plaintiff and
8 Gerard thus discussed short-term goals and a fair compensation plan. Those discussions led to
9 Gerard presenting Plaintiff with a Sales Incentive Plan, which was a significant factor in Plaintiff's
10 decision to move forward with Providien.

11 17. Providien thereafter offered the Business Sales Manager role to Plaintiff. However,
12 before accepting that role, Plaintiff discussed his compensation with Brett Bannister—then-Vice-
13 President of Providien—as Plaintiff would directly report to Bannister. Bannister and Plaintiff
14 agreed that, to offset the lack of attainable commission in Plaintiff's first year of employment,
15 Providien would compensate him pursuant to a bonus plan. Plaintiff would then begin the Sales
16 Incentive Plan in his second year of employment.

17 18. Plaintiff accepted the offer and began working with Providien on May 29, 2018.
18 Plaintiff continuously met the goals set by Providien, and established ongoing relationships with
19 key partners at Avail MedSystems and Cianna Medical.

20 19. In or around August 2019—a year and a few months after he began at Providien—
21 Plaintiff entered into the first Sales Incentive Plan, as Gerard promised. However, he was
22 surprised to find the Plan applied retroactively to January 1, 2019; and that it only lasted a year.
23 When Plaintiff expressed some apprehension about these terms, representatives at Providien
24 assured Plaintiff that Providien renewed the SIP every year, adjusting only the dates. Bannister
25 even told Plaintiff that, since starting in 2010, he had never seen Defendant Providien alter the
26 terms of the Sales Incentive Plan.

27 20. Plaintiff was nevertheless still apprehensive, as the one-year term of the Sales
28 Incentive Plan could allow Providien to avoid its obligations thereunder—and avoid paying

1 Plaintiff commissions—merely by refusing to renew. But Providien assured Plaintiff that it had
2 always honored commissions for accounts landed in prior years, and that the one-year term was
3 simply due to the nature of Defendant Providien’s business. Plaintiff trusted and relied on all of
4 these representations.

5 21. Plaintiff’s 2019 SIP promised that Providien would pay Plaintiff a 5% commissions
6 on cumulative sales revenue increases for new business opportunities, with new or existing
7 customers for all Providien locations. Plaintiff was also entitled to commission on year-over-year
8 growth for existing businesses and/or products described in Exhibit A, which during the 2019
9 fiscal year included Cianna Medical and Avail MedSystems. He worked successfully under the
10 2019 plan, and continued developing relationships with new potential clients.

11 22. The revenue pipeline and business relationships that Plaintiff (and others)
12 developed for Providien quickly caught the greedy-eyes of Defendant Carlisle. Carlisle thus
13 announced its intent to acquire Providien in or around October 2019. They completed that
14 acquisition on November 20, 2019.

15 23. Naturally, Plaintiff was concerned that the acquisition would impact his Sales
16 Incentive Plan. But Providien’s new management assured him they would honor the SIP post-
17 acquisition. Based on these representations, and believing that Defendants would remain
18 committed to their promises, Plaintiff kept working in his role. Between August 2019 and July
19 2020, he even developed additional business relationships with three more companies—Outset,
20 POM, and KSI.

21 24. In or around July 2020, Plaintiff entered into the 2020 Sales Incentive Plan. As
22 Bannister promised, the 2020 Plan was largely identical to the 2019 Plan. It just covered different
23 dates, and included four new companies in its Exhibit A—Outset Medical (PIM), Outset Medical
24 (PDA), POM Medical and KSI (PMM)—thereby increasing Plaintiff’s year-over-year
25 commission.

26 25. Plaintiff continued working diligently through 2020, having spent two and half
27 years developing business with companies nearing their maximum profitability. Once there,
28

1 Plaintiff would finally realize the level of commission reflective of his efforts at Providien and
2 Carlisle.

3 26. However, in October of 2020, Plaintiff heard rumors that Carlisle might be
4 changing the compensation structure. Plaintiff became concerned Carlisle would not honor their
5 agreements under the SIP as promised. Plaintiff thus spoke with his immediate manager, noting
6 the forecasted commission he would earn from 2022 to 2024 for Outset alone totaled \$625,000.
7 He was told that Carlisle would get back to him shortly. And so, Plaintiff continued to work, and
8 even began another profitable relationship for Carlisle with Iridex (PDA).

9 27. On March 26, 2021, Carlisle provided Plaintiff with a letter—post-dated February
10 22, 2021—stating that it would eliminate the Providien Sale Incentive Plan starting January 1,
11 2022. Carlisle would thereafter change Plaintiff’s commission structure to an annual target bonus
12 of 15% of Plaintiff’s base salary with a maximum award opportunity up to 172% of Plaintiff’s
13 annual target bonus.

14 28. Additionally, Carlisle sent a proposed Sales Incentive Plan meant to apply for all of
15 2021. Under the new plan, Carlisle would pay commissions four-to-six weeks following the end
16 of the fiscal quarter, rather than the prior three-to-four week period. And—as Carlisle clearly
17 realized that it would owe a significant amount to Plaintiff tied to the year-over-year earnings of
18 the businesses in Appendix A—the new SIP expressly stated it would “be permanently
19 terminated” at the end of year.

20 29. Carlisle’s craven, miserly decision would reduce Plaintiff’s commissions from
21 millions of dollars over the next four years down to just \$120,000. Carlisle, of course, was happy
22 to pocket the difference. And it did not care that it had previously promised not to change the SIP,
23 or that Providien had repeatedly assured Plaintiff that the company would never do exactly what
24 Carlisle now planned.

25 30. Carlisle cared about one thing—money. And it knew Plaintiff, through his own
26 effort and hard work, was entitled to millions. After all, Plaintiff had proven as much to his
27 manager back in October. So Carlisle moved swiftly, creating a new plan that would preclude
28

1 Plaintiff from earning commission due to him just before those companies in Appendix A reached
2 peak profitability.

3 31. Plaintiff attempted to reach out to Carlisle's management multiple times with his
4 concerns. It was not until June 3, 2021, that Carlisle returned with an ultimatum—sign the new
5 contract, and forgo millions in commission to which he was rightfully entitled, or it would
6 terminate him.

7 32. Plaintiff refused, and instead attempted to negotiate a new agreement whereby
8 Plaintiff would receive commission on year-over-year existing business as Providien and Carlisle
9 *repeatedly* promised. Carlisle was unmoved. On June 8, 2021, it unceremoniously terminated
10 Plaintiff, all so that it could steal *millions of dollars* from Plaintiff unabated.

11 **FIRST CAUSE OF ACTION**

12 **BREACH OF CONTRACT**

13 **(Against All Defendants)**

14 33. Plaintiff restates and incorporates by reference each and every allegation in all
15 preceding paragraphs as though fully set forth herein.

16 34. The Parties entered into a valid, enforceable contract in or around August 2019
17 captioned "2019 Sales Incentive Plan for Alan Mondus," which entitled Plaintiff to commission on
18 year-over-year profits for all companies listed in its Appendix A.

19 35. The Parties entered into another valid, enforceable contract in or around August
20 2020 captioned "2020 Sales Incentive Plan for Alan Mondus," which entitled Plaintiff to
21 commission on year-over-year profits for all companies listed in its Appendix A.

22 36. Although Plaintiff fully cooperated with Defendants at all times, and fulfilled his
23 own obligations under these Agreements, Defendants nevertheless materially breached and
24 repudiated these agreements in numerous ways, including but not limited to:

- 25 a. Refusing to honor the year-over-year commission promised for those companies
26 developed by Plaintiff from 2018 through 2021;
27 b. Informing Plaintiff that, if he did not agree to sacrifice the commission previously
28 promised him, they would terminate his employment;

- 1 c. Terminating Plaintiff for refusing to agree to a new commission structure; *and*
2 d. Failing to make commission payments due to Plaintiff under these agreements.

3 37. As a direct and proximate cause of the above, Plaintiff has suffered damages in an
4 amount to be proven at trial, and will suffer additional damages in an amount to be proven at trial.

5 **SECOND CAUSE OF ACTION**

6 **PROMISSORY ESTOPPEL**

7 **(Against All Defendants)**

8 38. Plaintiff restates and incorporates by reference each and every allegation in all
9 preceding paragraphs as though fully set forth herein.

10 39. Defendants made a clear and unambiguous promise to Plaintiff that he would
11 receive the commissions reflected in the Sales Incentive Plans, as all Parties involved understood
12 the profitability timelines for those businesses that Defendants tasked Plaintiff with developing.

13 40. Defendants also made a clear and unambiguous promise that Plaintiff would be
14 entitled to continue receiving commissions under his Sales Incentive Plans for as long as he
15 remained employed by Defendants.

16 41. Plaintiff reasonably and justifiably relied on these representations, trusting
17 Defendants would honor and fulfill their promises to fairly and accurately compensate Plaintiff for
18 his hard work. As such, and in reliance of these promises, Plaintiff developed a multi-million
19 dollar book of business for Defendants.

20 42. Defendants, however, did not perform as promised. Rather than continuing to
21 compensate Plaintiff for his efforts developing business, they instead tried to remove all of the
22 commissions due to Plaintiff by unilaterally modifying his commission structure, and then
23 terminating Plaintiff when he refused to forgo the commission owed to him.

24 43. Plaintiff's reliance on Defendants' promises were a substantial factor in causing
25 Plaintiff the harm as alleged herein.

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1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA'S WHISTLEBLOWER PROTECTION LAW**

3 **(Against All Defendants)**

4 44. Plaintiff restates and incorporates by reference each and every allegation in all
5 preceding paragraphs as though fully set forth herein.

6 45. California Labor Code § 2751(a) requires that, whenever “an employer enters into a
7 contract of employment with an employee for services to be rendered within this state and the
8 contemplated method of payment of the employee involves commissions, the contract shall be in
9 writing and shall set forth the method by which the commissions shall be computed and paid.”

10 46. California Labor Code § 2751(b) provides that “[i]n the case of a contract that
11 expires and where the parties nevertheless continue to work under the terms of the expired
12 contract, the contract terms are presumed to remain in full force and effect until the contract is
13 superseded or employment is terminated by either party.”

14 47. In or around August 2020, the Parties entered into an employment contract
15 captioned “2020 Sales Incentive Plan for Alan Mondus,” which entitled Plaintiff to commission on
16 year-over-year profits for all companies listed in its Appendix A. As this contract contemplated a
17 method of payment that “involves commissions,” it was governed by the requirements of
18 California Labor Code § 2751.

19 48. The 2020 Sales Incentive Plan stated it would end December 31, 2020. However,
20 Plaintiff continued working for Defendants after December 31, and without a new SIP, meaning
21 “the contract terms are presumed to remain in full force and effect until the contract is superseded
22 or” employment is terminated. Terms that included the three-to-four week payment deadline.

23 49. In or around June 2021, Defendants demanded that Plaintiff execute a new Sales
24 Incentive Plan that would apply retroactively to work performed since January 1, 2021. Under it,
25 Carlisle would only pay commission on that work “four to six weeks following the end of the
26 fiscal quarter of the measured performance,” despite the fact Plaintiff performed that work under a
27 contract promising payment “three to four weeks following the end of the fiscal quarter.” And,
28

1 unlike the old plan and contrary to several promises to Plaintiff otherwise, the amended 2021 SIP
2 threatened to end the Sales Incentive Plan compensation structure entirely at the end of the year.

3 50. This type of unilateral, retroactive change to a commission plan is contrary to
4 California law,¹ and violates the clear language of Labor Code § 2751.

5 51. California Labor Code § 1102.5 makes it unlawful for Defendants to “retaliate
6 against an employee for refusing to participate in an activity that would result in a violation of
7 state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or
8 regulation.” Yet that is precisely what Defendants did when they terminated Plaintiff for refusing
9 to acquiesce to Defendants’ unlawful practices discussed above, and for opposing their unilateral
10 attempt to alter the terms of his commission plan retroactively.

11 52. As a direct and proximate result of the acts of Defendants, and each of them, as
12 alleged above, Plaintiff has incurred compensatory damages, including lost earnings and other
13 economic damages; suffered emotional distress; and has generally been damaged in an amount to
14 be ascertained at trial.

15 53. Plaintiff has also incurred and continues to incur legal expenses and attorneys’ fees,
16 which he is entitled to recover in an amount according to proof under applicable law.

17 **FOURTH CAUSE OF ACTION**

18 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

19 **(Against All Defendants)**

20 54. Plaintiff restates and incorporates by reference each and every allegation in all
21 preceding paragraphs as though fully set forth herein.

22 55. The above-described conduct of Defendants, and each of them, was against the
23 public policy of the State of California as evinced by its enactment of the California Labor Code.

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25
26 ¹ See *Mathews v. Orion HealthCorp Inc.*, 2014 U.S. Dist. LEXIS 120916, at *31 (N.D. Cal.
27 Aug. 27, 2014) (“Although the commission plans contained a clause reserving to Defendant the
28 right to unilaterally change the plans, such a clause is contrary to California law if applied
retroactively.”); *Asmus v. Pac. Bell*, 23 Cal. 4th 1, 16 (2000).

56. By terminating Plaintiff because of his refusal to acquiesce to Defendants' unlawful practices discussed above, and for opposing their unilateral attempt to retroactively alter the terms of his commission plan, the Defendants terminated Plaintiff in violation of public policy.

57. As a direct and proximate result of the acts of Defendants, and each of them, as alleged above, Plaintiff has incurred compensatory damages, including lost earnings and other economic damages; suffered emotional distress; and has generally been damaged in an amount to be ascertained at trial.

58. Plaintiff has also incurred and continues to incur legal expenses and attorneys' fees, which he is entitled to recover in an amount according to proof under applicable law.

FIFTH CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(Against All Defendants)

59. Plaintiff restates and incorporates by reference each and every allegation in all preceding paragraphs as though fully set forth herein.

60. Defendants willfully misclassified Plaintiff as exempt from overtime in order to avoid their obligations under California Labor Code §§ 510, 1194, and the applicable wage order.

61. Plaintiff did not customarily and regularly work more than half his working time away from the employer's business selling tangible or intangible items or obtaining orders or contracts for products, services, or use of facilities; and instead spent the majority of his time doing such sales from Defendants' offices. Plaintiff thus does not qualify for the outside sales exemption.

62. Alternatively, while Defendants compensated Plaintiff with a base salary plus commissions, his commissions did not represent more than half of his compensation. Plaintiff thus does not qualify for the inside sales exemption.

63. Alternatively, Plaintiff did not “customarily and regularly exercise discretion and independent judgment in the performance of [his] duties” as required to qualify as exempt from California’s overtime laws.

64. Thus, Defendants violated the Labor Code by failing to compensate Plaintiff for all overtime, calculated at one and one-half times the regular rate of pay for all hours worked in excess of 8 hours per day and/or 40 hours per week, and for the first 8 hours on the seventh consecutive workday, with double time for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of 8 hours on the seventh consecutive day of work in any workweek.

65. Defendants' violation of California law was knowing and willful. As a proximate result, Plaintiff has suffered, and continues to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligations under state law, and to his respective damages in amounts according to proof at time of trial, and within the jurisdiction of this Court. Plaintiff is also entitled to recover the unpaid balance of wages owed to him by Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL-AND-REST BREAKS

(Against All Defendants)

66. Plaintiff restates and incorporates by reference each and every allegation in all preceding paragraphs as though fully set forth herein.

67. Defendants willfully misclassified Plaintiff as exempt from California's meal and rest break laws in order to avoid their obligations under California Labor Code §§ 226.7, 516, and the applicable wage order.

68. Plaintiff did not customarily and regularly work more than half the working time away from the employer's business selling tangible or intangible items or obtaining orders or contracts for products, services, or use of facilities; and instead spent the majority of his time doing such sales from Defendants' offices. Plaintiff thus does not qualify for the outside sales exemption.

1 69. Alternatively, while Defendants allegedly compensated Plaintiff with a base salary
2 plus commissions, his commissions did not represent more than half of his compensation. Plaintiff
3 thus does not qualify for the inside sales exemption.

4 70. Alternatively, Plaintiff did not “customarily and regularly exercise discretion and
5 independent judgment in the performance of [his] duties” as required to qualify as exempt from
6 California’s meal-and-rest break laws.

7 71. Plaintiff worked over four hours per shift and/or over five hours per shift, and was
8 entitled to a duty-free paid rest period of not less than ten minutes for every four hours worked, or
9 major fraction thereof; as well as to a duty-free meal period of not less than thirty minutes for
10 every five hours worked, or major fraction thereof.

11 72. Defendants failed to provide legally compliant rest and meal periods during the
12 relevant time period and, as such, violated California law.

13 73. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of legally
14 compliant rest breaks and meal periods, and is thus entitled to recover damages in the amount of
15 one additional hour of compensation at his regular rate of pay for each day a paid rest break was
16 not provided; and one additional hour of compensation at his regular rate of pay for each day a
17 meal period was not provided; as well as recovery of pre-judgment interest on all amounts
18 recovered herein, in addition to any damages and penalties otherwise owed.

19 **SEVENTH CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES OWED AT DISCHARGE**

21 **(Against All Defendants)**

22 74. Plaintiff restates and incorporates by reference each and every allegation in all
23 preceding paragraphs as though fully set forth herein.

24 75. Pursuant to Labor Code §§ 201–204, Defendants are required to pay all earned and
25 unpaid wages to an employee who is discharged. Labor Code § 201 mandates that if an employer
26 discharges an employee, the employee’s wages earned and unpaid at the time of discharge are due
27 and payable immediately.
28

1 76. Furthermore, pursuant to Labor Code § 202, Defendants are required to pay all
2 accrued wages due to an employee no later than 72 hours after the employee quits his or her
3 employment, unless the employee provided 72 hours previous notice of his or her intention to quit,
4 in which case the employee is entitled to his or wages at the time of quitting.

5 77. Labor Code § 203 provides that if an employer willfully fails to pay, in accordance
6 with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the
7 employer is liable for waiting time penalties in the form of continued compensation to the
8 employee at the same rate for up to 30 workdays.

9 78. Defendants' misclassification of Plaintiff as exempt, and ensuing failure to pay
10 overtime, has meant it willfully failed to pay accrued wages and other compensation to Plaintiff in
11 accordance with Labor Code §§ 201 and 202.

12 79. As a result, Plaintiff is entitled to all available statutory penalties, including the
13 waiting time penalties provided in Labor Code §§ 203 and 204, together with interest thereon, as
14 well as other available remedies.

15 **EIGHTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

17 **(Against All Defendants)**

18 80. Plaintiff restates and incorporates by reference each and every allegation in all
19 preceding paragraphs as though fully set forth herein.

20 81. California Labor Code § 226(a) requires Defendants to "semimonthly or at the time
21 of each payment of wages . . . to his or her employee, either as a detachable part of the check,
22 draft, or voucher paying the employee's wages, or separately if wages are paid by personal check
23 or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
24 worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units
25 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
26 deductions, provided that all deductions made on written orders of the employee may be
27 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
28 which the employee is paid, (7) the name of the employee and only the last four digits of his or her

1 social security number or an employee identification number other than a social security number,
2 (8) the name and address of the legal entity that is the employer and, if the employer is a farm
3 labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal
4 entity that secured the services of the employer, and (9) all applicable hourly rates in effect during
5 the pay period and the corresponding number of hours worked at each hourly rate by the
6 employee.”

7 82. Labor Code § 226(e) provides that an employee is entitled to recover the greater of
8 all actual damages or \$50 for the initial pay period in which a violation of § 226 occurs and \$100
9 for each subsequent pay period, not to exceed an aggregate penalty of \$4,000, as well as an award
10 of costs and reasonable attorneys’ fees, for all pay periods in which the employer knowingly and
11 intentionally failed to provide timely and accurate itemized wage statements to the employees.

12 83. At all material times, Defendants knowingly and intentionally failed to provide
13 Plaintiff with wage statements reflecting the correct gross and net wages earned, correct applicable
14 hourly rates at the corresponding hours worked, or correct total hours worked.

15 84. At all material times, Defendants also knowingly and intentionally failed to provide
16 Plaintiff with wage statements reflecting the applicable hourly rates at the corresponding hours
17 worked for any commission earned during the applicable pay period; or, alternatively, if Plaintiff
18 earned commission outside of the pay period reflected at the top of his wage statements—thereby
19 obviating the requirement that rates and hours for that commission be included on Plaintiff’s
20 paystubs²—then at all material times Defendants knowingly and intentionally failed to provide
21 Plaintiff with wage statements reflecting the inclusive dates of the period for which Plaintiff was
22 paid commission.

23 85. Such a pattern, practice, and uniform administration of corporate policy as
24 described herein is unlawful and creates an entitlement to recovery by Plaintiff, in a civil action,
25 for all damages or penalties pursuant to Labor Code §226(a), including interest thereon, injunctive
26
27

28 ² See *Magadia v. Wal-Mart Assocs.*, 999 F.3d 668, 681 (9th Cir. 2021).

1 relief pursuant to Labor Code § 226(h), attorneys' fees, and costs of suit according to the mandate
2 of California Labor Code §226.

3 **NINTH CAUSE OF ACTION**

4 **REPRESENTATIVE ACTION FOR CIVIL PENALTIES**

5 **UNDER CALIFORNIA'S PRIVATE ATTORNEYS GENERAL ACT (PAGA)**

6 **(Against All Defendants)**

7 86. Plaintiff restates and incorporates by reference each and every allegation in all
8 preceding paragraphs as though fully set forth herein.

9 87. Defendants violated California Labor Code § 2751(b) by implementing a
10 commission plan in June 2021 that would apply retroactively to work Plaintiff performed earlier
11 that year under the terms of the 2020 Sales Incentive Plan, and substantially diminish the
12 commission to which Plaintiff was entitled.

13 88. Defendants violated California Labor Code § 226 by failing to provide Plaintiff
14 with wage statements reflecting the correct gross and net wages earned, correct applicable hourly
15 rates at the corresponding hours worked, or correct total hours worked.

16 89. Defendants also violated California Labor Code § 226 by omitting rates and hours
17 for any commission Plaintiff earned from his wage statements; or, alternatively, by providing
18 Plaintiff with wage statements that did not reflect the inclusive dates of the period for which
19 Plaintiff was paid commission.

20 90. Defendants violated California Labor Code § 204 by failing to pay Plaintiff earned
21 commissions once calculable; instead utilizing an arbitrary deadline tied to several weeks after the
22 close of the fiscal quarter.

23 91. Defendants violated California Labor Code § 203 by failing to pay Plaintiff all
24 wages owed at discharge.

25 92. Defendants violated California Labor Code §§ 510, 1194, and the applicable wage
26 order by misclassifying Plaintiff as exempt to avoid their obligations under California's overtime
27 laws.

93. Defendants violated California Labor Code §§ 226.7, 516, and the applicable wage order by misclassifying Plaintiff as exempt to avoid their obligations under California’s meal and rest break laws.

94. Plaintiff is thus an “aggrieved employee” within the meaning of Labor Code § 2699(c), and a proper representative to bring a civil action on behalf of himself and other current and former employees of Defendant Carlisle pursuant to the procedures specified in Labor Code § 2699.3.

95. Plaintiff thus seeks to recover civil penalties, including but not limited to penalties under Labor Code § 2699 from Defendant Carlisle in a representative action for the violation of the California Labor Code set forth above, as well as penalties “for different [Labor Code] violations that affected other employees.”³ Plaintiff is also entitled to an award of reasonable attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

96. Plaintiff has complied with all of the requirements set forth in Labor Code § 2699.3 to commence a representative action under PAGA.

TENTH CAUSE OF ACTION

UNLAWFUL, UNFAIR, OR FRAUDULENT BUSINESS PRACTICES

UNDER CAL. BUS. & PROF. CODE § 17200 ET SEQ.

(Against All Defendants)

97. Plaintiff restates and incorporates by reference each and every allegation in all preceding paragraphs as though fully set forth herein.

98. Section 17200 of the California Business and Professions Code prohibits any unlawful, unfair, or fraudulent business act or practice.

99. Each and every one of Defendants' acts and omissions as alleged herein—including but not limited to their breach of Plaintiff's contract, failure to pay commission owed, misrepresentations, termination of Plaintiff in violation of the California Labor Code and Public

³ *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 750 (2018)

1 Policy, and various violations of the California Labor Code—constitute unfair and unlawful
2 business practices under California Business & Professions Code § 17200 *et seq.*

3 100. As a result of Defendants’ unfair and unlawful business practices, Defendants have
4 reaped unfair and illegal profits at the expense of Plaintiff, all aggrieved employees, and members
5 of the public. Defendants should thus be made to disgorge their ill-gotten gains and restore them
6 to Plaintiff and any aggrieved employees; and Plaintiff and the aggrieved employees are entitled to
7 all monies to be disgorged from Defendants in an amount according to proof at the time of trial.
8 Defendants’ unfair and unlawful business practices also entitle Plaintiff to seek preliminary and
9 injunctive relief.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
12 follows:

- 13 1. For nominal, actual, and compensatory damages;
- 14 2. For special and/or non-economic damages in an amount according to proof;
- 15 3. For punitive and/or exemplary damages in an amount according to proof;
- 16 4. For liquidated damages in an additional amount equal to the entire award of other
17 damages;
- 18 5. For statutory and civil penalties according to proof, including but not limited to all
19 penalties authorized by the Labor Code §§ 226(f) and 2699;
- 20 6. For attorneys’ fees pursuant to applicable laws;
- 21 7. For costs of suit incurred herein;
- 22 8. For pre-judgment interest to the extent allowed by law;
- 23 9. For post-judgment interest to the extent allowed by law;
- 24 10. For declaratory relief declaring that Defendants committed the unlawful practices
25 alleged herein;
- 26 11. For injunctive relief restraining Defendants from committing any similar future
27 unlawful employment practices and implementing practices to deter or discourage similar future
28 unlawful practices; and

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

DATED: January 24, 2022

MOUTON LAW
STACEY Y. MOUTON

By: /s/ Stacey Y. Mouton
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ALAN MONDUS

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DATED: January 24, 2022

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COMPLAINT