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

FRANCISCO CHAVEZ, individually, and
on behalf of other members of the general
public similarly situated and other aggrieved
employees pursuant to the California Private
Attorneys General Act,

Plaintiff,

vs.

AMERICAN PAPER AND PLASTICS,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 21STCV07182

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES &
ENFORCEMENT UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE § 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Business & Professions Code §§ 17200, et seq.
- (9) Violation of California Labor Code § 2698, et seq. (Private Attorneys General Act of 2004)

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff FRANCISCO CHAVEZ (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act (“PAGA”) and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiff, including but not limited to claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

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

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of Los Angeles.

PARTIES

5. Plaintiff FRANCISCO CHAVEZ is an individual residing in the State of California, County of Los Angeles.

6. Defendant AMERICAN PAPER AND PLASTICS, INC., at all times herein mentioned, was and is, an employer whose employees are engaged throughout the State of

1 California, including the County of Los Angeles.

2 7. At all relevant times, Defendant AMERICAN PAPER AND PLASTICS, INC.
3 was the “employer” of Plaintiff within the meaning of all applicable California laws and
4 statutes.

5 8. At all times herein relevant, Defendants AMERICAN PAPER AND PLASTICS,
6 INC., and DOES 1 through 100, and each of them, were the agents, partners, joint venturers,
7 joint employers, representatives, servants, employees, successors-in-interest, co-conspirators
8 and/or assigns, each of the other, and at all times relevant hereto were acting within the course
9 and scope of their authority as such agents, partners, joint venturers, joint employers,
10 representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or
11 omissions alleged herein were duly committed with the ratification, knowledge, permission,
12 encouragement, authorization and/or consent of each defendant designated as a DOE herein.

13 9. The true names and capacities, whether corporate, associate, individual or
14 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sue
15 said defendants by such fictitious names. Plaintiff is informed and believes, and based on that
16 information and belief alleges, that each of the defendants designated as a DOE is legally
17 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
18 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
19 Plaintiff will seek leave of court to amend this Complaint to show the true names and
20 capacities when the same have been ascertained.

21 10. Defendant AMERICAN PAPER AND PLASTICS, INC. and DOES 1 through
22 100 will hereinafter collectively be referred to as “Defendants.”

23 11. Plaintiff further alleges that Defendants directly or indirectly controlled or
24 affected the working conditions, wages, working hours, and conditions of employment of
25 Plaintiff and the other class members so as to make each of said Defendants employers liable
26 under the statutory provisions set forth herein.

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CLASS ACTION ALLEGATIONS

12. Plaintiff bring this action on his own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under California Code of Civil Procedure section 382.

13. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from February 24, 2017 to final judgment and who reside in California.

(Subclass A) All class members who received overtime compensation at a rate lower than their respective regular rate of pay because Defendants failed to include all non-discretionary bonuses or other incentive-based compensation.

14. Plaintiff reserves the right to establish other subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom he has a well-defined community of interest.

c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing

class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

- d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.
- e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

16. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants' had a corporate policy and practice of failing to pay their hourly-paid or non-exempt employees within the State of California for all hours worked and missed (short, late, interrupted, and/or missed altogether) meal periods and rest breaks in violation of California law;
- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day, over forty (40) hours per week, and/or over six (6) consecutive days per workweek and failed to pay the legally

- 1 required overtime compensation to Plaintiff and the other class members;
- 2 d. Whether Defendants failed to properly calculate the regular rate of pay,
- 3 including, *inter alia*, by failing to include earned commissions, non-
- 4 discretionary bonuses, monetary and non-monetary incentives, non-
- 5 discretionary production and/or performance pay, and/or shift
- 6 differentials in the calculation of the regular rate of pay used to calculate
- 7 the overtime rate of payment of overtime wages and/or the premium rate
- 8 for meal and/or rest premiums where Plaintiff and the other class
- 9 members earned commissions, non-discretionary bonuses, monetary and
- 10 non-monetary incentives, non-discretionary production and/or
- 11 performance pay, and/or shift differentials and overtime wages or meal
- 12 and/or rest premiums in the same pay period;
- 13 e. Whether Defendants deprived Plaintiff and the other class members of
- 14 meal and/or rest periods or required Plaintiff and the other class
- 15 members to work during meal and/or rest periods without compensation;
- 16 f. Whether Defendants failed to pay minimum wages to Plaintiff and the
- 17 other class members for all hours worked;
- 18 g. Whether Defendants failed to pay all wages due to Plaintiff and the other
- 19 class members within the required time upon their discharge or
- 20 resignation;
- 21 h. Whether Defendants failed to timely pay all wages due to Plaintiff and
- 22 the other class members during their employment;
- 23 i. Whether Defendants complied with wage reporting as required by the
- 24 California Labor Code; including, *inter alia*, section 226;
- 25 j. Whether Defendants failed to reimburse Plaintiff and the other class
- 26 members for necessary business-related expenses and costs;
- 27 k. Whether Defendants' conduct was willful or reckless;
- 28 l. Whether Defendants engaged in unfair business practices in violation of

California Business & Professions Code section 17200, et seq.;

m. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and

n. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

PAGA ALLEGATIONS

17. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

18. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

19. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

20. Plaintiff was employed by Defendants and the alleged violations were committed against him during his time of employment and she is, therefore, an aggrieved employee. Plaintiff and the other employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are current or former employees of Defendants, and one or more of the alleged violations were committed against them.

21. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

a. The aggrieved employee shall give written notice by certified mail (hereinafter "Employee's Notice") to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been

1 violated, including the facts and theories to support the alleged
2 violations.

3 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
4 employer and the aggrieved employer by certified mail that it does not
5 intend to investigate the alleged violation within sixty (60) calendar days
6 of the postmark date of the Employee’s Notice. Upon receipt of the
7 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
8 (65) calendar days of the postmark date of the Employee’s Notice, the
9 aggrieved employee may commence a civil action pursuant to California
10 Labor Code section 2699 to recover civil penalties in addition to any
11 other penalties to which the employee may be entitled.

12 22. On February 25, 2022, Plaintiff provided written notice by certified mail to the
13 LWDA and to Defendants of the specific provisions of the California Labor Code alleged to
14 have been violated, including the facts and theories to support the alleged violations.
15 Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to
16 recover civil penalties, including unpaid wages and premium wages per California Labor Code
17 section 558 against Defendants, in addition to other remedies, for violations of California
18 Labor Code sections 201, 202, 203, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1194, 1197,
19 1197.1, 1198, 2800, and 2802 have been satisfied.

20 **GENERAL ALLEGATIONS**

21 23. At all relevant times set forth herein, Defendants employed Plaintiff and other
22 persons as hourly-paid or non-exempt employees within the State of California, including the
23 County of Los Angeles.

24 24. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-
25 exempt employee, from approximately October of 2015 to approximately October of 2018, in
26 the State of California, County of Los Angeles.

27 25. Defendants hired Plaintiff and the other class members, classified them as
28 hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and

missed, late, short, and/or interrupted, meal periods and/or rest breaks.

26. Defendants had the authority to hire and terminate Plaintiff and the other class members, to set work rules and conditions governing Plaintiff's and the other class members' employment, and to supervise their daily employment activities.

27. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff and the other class members.

28. Defendants directly hired and paid wages and benefits to Plaintiff and the other class members.

29. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

30. Plaintiff and the other class members worked over eight (8) hours in a day, forty (40) hours in a week, and/or over six (6) consecutive days in a workweek during their employment with Defendants.

31. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt employees within the State of California. This scheme involved, *inter alia*, failing to pay them for all hours worked and for missed, short, late, and/or interrupted meal periods and rest breaks in violation of California law.

32. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive certain wages for overtime compensation and that they were not receiving accurate overtime compensation for all overtime hours worked. The deficiencies include, *inter alia*, requiring Plaintiff and the other class members to perform work overtime off-the-clock.

33. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to provide Plaintiff and the other class members all required rest and meal periods during the relevant time period as required under the Industrial Welfare Commission Wage Orders and thus they are entitled to any and all applicable penalties.

1 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class
4 member's regular rate of pay when a meal period was missed, short, late, or interrupted, and
5 they did not receive all meal periods or payment of one additional hour of pay at Plaintiff's and
6 the other class member's regular rate of pay when a meal period was missed, short, late, or
7 interrupted.

8 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knew or should have known that Plaintiff and the other class members were entitled to receive
10 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class
11 member's regular rate of pay when a rest period was missed, short, late, or interrupted and they
12 did not receive all rest periods or payment of one additional hour of pay at Plaintiff's and the
13 other class members' regular rate of pay when a rest period was missed, short, late, or
14 interrupted.

15 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 knew or should have known that Plaintiff and the other class members were entitled to receive
17 at least minimum wages for compensation and that they were not receiving at least minimum
18 wages for all hours worked.

19 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Plaintiff and the other class members were entitled to receive
21 all wages owed to them upon discharge or resignation, including earned but unpaid overtime
22 and minimum wages and meal and rest period premiums, and they did not, in fact, receive all
23 such wages owed to them at the time of their discharge or resignation.

24 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 knew or should have known that Plaintiff and the other class members were entitled to receive
26 complete and accurate wage statements in accordance with California law, but, in fact, they did
27 not receive complete and accurate wage statements from Defendants. The deficiencies
28 included, *inter alia*, the failure to include the actual number of hours worked by Plaintiff and

1 the other class members, including work to be performed off-the-clock.

2 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 knew or should have known that Defendants had to keep complete and accurate payroll records
4 for Plaintiff and the other class members in accordance with California law, but, in fact, did
5 not keep complete and accurate payroll records.

6 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 knew or should have known that Plaintiff and the other class members were entitled to
8 reimbursement for necessary business-related expenses.

9 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knew or should have known that they had a duty to compensate Plaintiff and the other class
11 members pursuant to California law, and that Defendants had the financial ability to pay such
12 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
13 represented to Plaintiff and the other class members that they were properly denied wages, all
14 in order to increase Defendants' profits.

15 42. During the relevant time period, Defendants failed to pay overtime wages to
16 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other
17 class members did not receive overtime compensation at one-and-one-half the regular rate of
18 pay for all hours spent performing job duties in excess of eight (8) hours per day and/or forty
19 (40) hours per week, and/or for the first eight (8) hours worked on the seventh day of work in a
20 workweek.

21 43. During the relevant time period, Defendants failed to provide all requisite
22 uninterrupted meal and rest periods to Plaintiff and the other class members.

23 44. During the relevant time period, Defendants failed to pay Plaintiff and the other
24 class members at least minimum wages for all hours worked.

25 45. During the relevant time period, Defendants failed to pay Plaintiff and the other
26 class members all wages owed to them upon discharge or resignation.

27 46. During the relevant time period, Defendants failed to pay Plaintiff and the other
28 class members all wages within any time permissible under California law.

48. During the relevant time period, Defendants failed to keep complete or accurate payroll records for Plaintiff and the other class members.

49. During the relevant time period, Defendants failed to reimburse Plaintiff and the other class members for all necessary business-related expenses and costs.

50. During the relevant time period, Defendants failed to properly compensate Plaintiff and the other class members pursuant to California law in order to increase Defendants' profits.

51. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against AMERICAN PAPER AND PLASTICS, INC. and DOES 1 through 100)

52. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 51, and each and every part thereof with the same force and effect as though fully set forth herein.

53. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

54. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and the other class members employed by Defendants, and working more than eight (8) hours in a day, more than forty (40) hours in a week, and/or more than six (6) consecutive days in a workweek at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a week, and/or the

1 first eight (8) hours worked on the seventh day of work in a workweek.

2 55. The applicable IWC Wage Order further provides that Defendants are and were
3 required to pay Plaintiff and the other class members overtime compensation at a rate of two
4 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

5 56. California Labor Code section 510 codifies the right to overtime compensation
6 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
7 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
8 of work, and to overtime compensation at twice the regular hourly rate for hours worked in
9 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
10 of work.

11 57. During the relevant time period, Plaintiff and the other class members worked in
12 excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

13 58. During the relevant time period, Defendants intentionally and willfully failed to
14 pay overtime wages owed to Plaintiff and the other class members.

15 59. Defendants' failure to pay Plaintiff and the other class members the unpaid
16 balance of overtime compensation, as required by California laws, violates the provisions of
17 California Labor Code sections 510 and 1198, and is therefore unlawful.

18 60. Pursuant to California Labor Code section 1194, Plaintiff and the other class
19 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
20 attorneys' fees.

21 **SECOND CAUSE OF ACTION**

22 **(Violation of California Labor Code §§ 226.7 and 512(a))**

23 **(Against AMERICAN PAPER AND PLASTICS, INC. and DOES 1 through 100)**

24 61. Plaintiff incorporates by reference the allegations contained in paragraphs 1
25 through 60, and each and every part thereof with the same force and effect as though fully set
26 forth herein.

27 62. At all relevant times, the IWC Order and California Labor Code sections 226.7
28 and 512(a) were applicable to Plaintiff's and the other class members' employment by

Defendants.

63. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

64. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

65. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

66. During the relevant time period, Plaintiff and the other class members who were scheduled to work for a period of time no longer than six (6) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or rest period.

67. During the relevant time period, Plaintiff and the other class members who were scheduled to work for a period of time in excess of six (6) hours were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or rest period.

68. During the relevant time period, Plaintiff and the other class members' meal periods were missed, shortened, late, and/or were interrupted because Defendants required

1 them to perform and complete work duties, even when it resulted in missed, shortened, late, or
2 interrupted meal periods. Defendants interrupted Plaintiff and the other class members during
3 purported meal periods with business-related inquires, instructions for tasks, and/or to require
4 them to return to work before a full thirty (30) minutes elapsed to complete or begin tasks.

5 69. As a result, Defendants failed to relieve Plaintiff and the other class members of
6 all duties, failed to relinquish control over Plaintiff and the other class members' activities,
7 failed to permit Plaintiffs and the other class members a reasonable opportunity to take, and
8 impeded or discouraged them from taking thirty (30) minute uninterrupted meal periods no
9 later than the end of their fifth hour of work for shifts lasting at least six (6) hours, and/or to
10 take second thirty (30) minute uninterrupted meal periods no later than their tenth hour of work
11 for shifts lasting more than ten (10) hours.

12 70. During the relevant time period, Defendants intentionally and willfully required
13 Plaintiff and the other class members to work during meal periods and failed to compensate
14 Plaintiff and the other class members the full meal period premium for work performed during
15 meal periods.

16 71. During the relevant time period, Defendants failed to pay Plaintiff and the other
17 class members the full meal period premium due pursuant to California Labor Code section
18 226.7.

19 72. Defendants' conduct violates applicable IWC Wage Order and California Labor
20 Code sections 226.7 and 512(a).

21 73. Pursuant to applicable IWC Wage Order and California Labor Code section
22 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one
23 additional hour of pay at the employee's regular rate of compensation for each work day that
24 the meal or rest period is not provided.

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THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against AMERICAN PAPER AND PLASTICS, INC. and DOES 1 through 100)

74. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 73, and each and every part thereof with the same force and effect as though fully set forth herein.

75. At all times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff's and the other class members' employment by Defendants.

76. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

77. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

78. During the relevant time period, Defendants required Plaintiff and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

79. During the relevant time period, Defendants willfully required Plaintiff and the other class members to work during rest periods and failed to pay Plaintiff and the other class members the full rest period premium for work performed during rest periods.

80. During the relevant time period, Defendants failed to pay Plaintiff and the other class members the full rest period premium due pursuant to California Labor Code section 226.7.

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81. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

82. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194, 1197, and 1197.1)

(Against AMERICAN PAPER AND PLASTICS, INC. and DOES 1 through 100)

83. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 82, and each and every part thereof with the same force and effect as though fully set forth herein.

84. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

85. During the relevant time period, Defendants failed to pay minimum wage to Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1. Defendants' failure to pay minimum wages included, *inter alia*, Defendants' effective payment of zero dollars per hour for hours Plaintiff and the other class members worked off-the-clock performing work duties.

86. Defendants' failure to pay Plaintiff and the other class members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

87. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee

1 minimum wages.

2 88. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class
3 members are entitled to recover liquidated damages in an amount equal to the wages
4 unlawfully unpaid and interest thereon.

5 **FIFTH CAUSE OF ACTION**

6 **(Violation of California Labor Code §§ 201 and 202)**

7 **(Against AMERICAN PAPER AND PLASTICS, INC. and DOES 1 through 100)**

8 89. Plaintiff incorporates by reference the allegations contained in paragraphs 1
9 through 88, and each and every part thereof with the same force and effect as though fully set
10 forth herein.

11 90. At all relevant times herein set forth, California Labor Code sections 201 and
12 202 provide that if an employer discharges an employee, the wages earned and unpaid at the
13 time of discharge are due and payable immediately, and if an employee quits his or her
14 employment, his or her wages shall become due and payable not later than seventy-two (72)
15 hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her
16 intention to quit, in which case the employee is entitled to his or her wages at the time of
17 quitting.

18 91. During the relevant time period, Defendants intentionally and willfully failed to
19 pay Plaintiff and the other class members who are no longer employed by Defendants their
20 wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.
21 Plaintiff and other class members were not paid at the time of their discharge wages earned and
22 unpaid throughout their employment, including but not limited to, minimum wages for time
23 worked off-the-clock to perform work duties, overtime compensation, and/or for meal and rest
24 period premium payments.

25 92. Defendants' failure to pay Plaintiff and the other class members who are no
26 longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72)
27 hours of their leaving Defendants' employ, is in violation of California Labor Code sections
28 201 and 202.

93. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

94. Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against AMERICAN PAPER AND PLASTICS, INC. and DOES 1 through 100)

95. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 94, and each and every part thereof with the same force and effect as though fully set forth herein.

96. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

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1 104. Plaintiff and the other class members incurred necessary business-related
2 expenses and costs that were not fully reimbursed by Defendants.

3 105. Defendants have intentionally and willfully failed to reimburse Plaintiff and the
4 other class members for all necessary business-related expenses and costs.

5 106. Plaintiff and the other class members are entitled to recover from Defendants
6 their business-related expenses and costs incurred during the course and scope of their
7 employment, plus interest accrued from the date on which the employee incurred the necessary
8 expenditures at the same rate as judgments in civil actions in the State of California.

9 **EIGHTH CAUSE OF ACTION**

10 **(Violation of California Business & Professions Code §§ 17200, et seq.)**

11 **(Against AMERICAN PAPER AND PLASTICS, INC. and DOES 1 through 100)**

12 107. Plaintiff incorporates by reference the allegations contained in paragraphs 1
13 through 106, and each and every part thereof with the same force and effect as though fully set
14 forth herein.

15 108. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
16 unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants'
17 competitors. Accordingly, Plaintiff seek to enforce important rights affecting the public
18 interest within the meaning of Code of Civil Procedure section 1021.5.

19 109. Defendants' activities as alleged herein are violations of California law, and
20 constitute unlawful business acts and practices in violation of California Business &
21 Professions Code section 17200, et seq.

22 110. A violation of California Business & Professions Code section 17200, et seq.
23 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
24 policies and practices of requiring employees, including Plaintiff and the other class members,
25 to work overtime without paying them proper compensation violate California Labor Code
26 sections 510 and 1198. Additionally, Defendants' policies and practices of requiring
27 employees, including Plaintiff and the other class members, to work through their meal and
28 rest periods without paying them proper compensation violate California Labor Code sections

226.7 and 512(a). Defendants' policies and practices of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff and the other class members violate California Labor Code sections 201 and 202. Defendants also violated California Labor Code sections 226(a), 2800 and 2802.

111. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

112. Plaintiff and the other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

113. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiff and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences February 24, 2017; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

NINTH CAUSE OF ACTION

(Violation of California Labor Code § 2698, et seq.)

(Against AMERICAN PAPER AND PLASTICS, INC., and DOES 1 through 100)

114. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 113, and each and every part thereof with the same force and effect as though fully set forth herein.

115. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

116. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action

1 is authorized to exercise the same discretion, subject to the same limitations and conditions, to
2 assess a civil penalty.

3 117. Plaintiff and the other hourly-paid or non-exempt employees, are “aggrieved
4 employees” as defined by California Labor Code section 2699(c) in that they are all current or
5 former employees of Defendants, and one or more of the alleged violations was committed
6 against them.

7 **Failure to Pay Overtime**

8 118. Defendants’ failure to pay overtime in violation of the Wage Orders and
9 California Labor Code sections 510 and 1198, as alleged above, constitutes unlawful and/or
10 unfair activity prohibited by California Labor Code sections 510 and 1198.

11 **Failing to Provide Meal Periods**

12 119. Defendants’ failure to provide legally required meal periods and/or premium
13 payments at the correct rate in lieu thereof in violation of the Wage Orders and California
14 Labor Code sections 226.7 and 512(a), as alleged above, constitutes unlawful and/or unfair
15 activity prohibited by California Labor Code sections 226.7 and 512(a).

16 **Failure to Provide Rest Periods**

17 120. Defendants’ failure to provide legally required rest periods and/or premium
18 payments at the correct rate in lieu thereof in violation of the Wage Orders and California
19 Labor Code section 226.7, as alleged above, constitutes unlawful and/or unfair activity
20 prohibited by California Labor Code section 226.7.

21 **Failure to Pay Minimum Wages**

22 121. Defendants’ failure to pay minimum wages in violation of the Wage Orders and
23 California Labor Code sections 1194, 1197 and 1197.1, as alleged above, constitutes unlawful
24 and/or unfair activity prohibited by California Labor Code sections 1194, 1197, and 1197.1.

25 **Failure to Timely Pay Wages Upon Termination**

26 122. Defendants’ failure to timely pay wages upon termination in violation of
27 California Labor Code sections 201 and 202, as alleged above, constitutes unlawful and/or
28 unfair activity prohibited by California Labor Code sections 201 and 202.

Failure to Provide Compliant Wage Statements

123. Defendants' failure to provide compliant wage statements in violation of California Labor Code section 226(a), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

Failure to Reimburse Necessary Business Expenses

124. Defendants' failure to reimburse all necessary business-related expenses and costs in violation of California Labor Code sections 2800 and 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

125. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of all aggrieved employees and the State of California, requests and is entitled to recover from Defendants and each of them, business expenses, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all penalties against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11010, *et seq.* in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for

each subsequent violation; and

d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

126. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

127. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action with respect to the first eight causes of action;
2. That Plaintiff be appointed as the representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

9. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the Court may deem just and proper.

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As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

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29. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other class members no longer employed by Defendants;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employ;

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

34. For such other and further relief as the Court may deem just and proper.

As to the Sixth Cause of Action

35. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

36. For actual, consequential and incidental losses and damages, according to proof;

37. For statutory penalties pursuant to California Labor Code section 226(e);

38. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h); and

39. For such other and further relief as the Court may deem just and proper.

As to the Seventh Cause of Action

40. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

- 1 41. For actual, consequential and incidental losses and damages, according to proof;
2 42. For the imposition of civil penalties and/or statutory penalties;
3 43. For reasonable attorneys' fees and costs of suit incurred herein; and
4 44. For such other and further relief as the Court may deem just and proper.

5 **As to the Eighth Cause of Action**

6 45. That the Court decree, adjudge and decree that Defendants violated California
7 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the
8 other class members all overtime compensation due to them, failing to provide all meal and
9 rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to
10 Plaintiff and the other class members, failing to pay Plaintiff's and the other class members'
11 wages timely as required by California Labor Code section 201 and 202 by violating California
12 Labor Code sections 226(a), 2800 and 2802.

13 46. For restitution of unpaid wages to Plaintiff and all the other class members and
14 all pre-judgment interest from the day such amounts were due and payable;

15 47. For the appointment of a receiver to receive, manage and distribute any and all
16 funds disgorged from Defendants and determined to have been wrongfully acquired by
17 Defendants as a result of violation of California Business and Professions Code sections
18 17200, et seq.;

19 48. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
20 California Code of Civil Procedure section 1021.5;

21 49. For injunctive relief to ensure compliance with this section, pursuant to
22 California Business and Professions Code sections 17200, et seq.; and

23 50. For such other and further relief as the Court may deem just and proper.

24 **As to the Ninth Cause of Action**

25 51. For civil penalties and wages pursuant to California Labor Code sections
26 2699(a), (f), and (g) plus costs and attorneys' fees for violation of California Labor Code
27 sections 201, 202, 203, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1194, 1197, 1197.1, 1198,
28 2800, and 2802; and

1 52. For such other and further relief as the Court may deem equitable and
2 appropriate.

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4 Dated: November 15, 2022

LAWYERS for JUSTICE, PC

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6 By: 
7 Edwin Aiwanian
8 Attorneys for Plaintiff
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PROOF OF SERVICE

STATE OF CALIFORNIA, 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 410 West Arden Avenue, Suite 203, Glendale, California 91203.

On January 25, 2023, I served the foregoing document(s) described as: **SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES & ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE § 2698, ET SEQ.** on interested parties in this action as follows:

Chad D. Bernard (Chad.Bernard@jacksonlewis.com)
Danielle Cepeda (Danielle.Cepeda@jacksonlewis.com)
JACKSON LEWIS P.C.
725 South Figueroa Streets, Suite 2500
Los Angeles, California 90017-5408
Telephone: (213)689-0404
Facsimile: (213)689-0430

Attorneys for Defendant American Paper and Plastic Inc.

[X] BY ELECTRONIC SERVICE

Pursuant to the Court's Order regarding Electronic Service, I caused the documents described above to be E-Served through Case Anywhere by electronically mailing a true and correct copy through Case Anywhere to the individual(s) listed above.

State of California, Labor & Workforce Development Agency

Web URL:

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

[X] BY ONLINE SUBMISSION

The foregoing documents were transmitted to the California Labor and Workforce Development Agency through the online system established for the submission of notices and documents, in conformity with California Labor Code section 2699(l). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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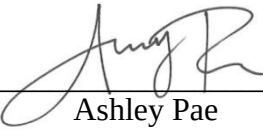
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[X] STATE
I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 25, 2023, at Glendale, California.


Ashley Pae