

HAIG B. KAZANDJIAN LAWYERS, APC
801 N. Brand Blvd., Suite 970
Glendale, CA 91203
Tel: (818)696-2306 Fax: (818)696-2307

Haig B. Kazandjian, Esq. Bar No. 278622
haig@hbklawyers.com
Cathy Gonzalez, Esq. Bar No. 310625
cathy@hbklawyers.com
HAIG B. KAZANDJIAN LAWYERS, APC
801 North Brand Boulevard, Suite 970
Glendale, California 91203
Telephone: 1-818-696-2306
Facsimile: 1-818-696-2307

Attorneys for Plaintiff ALARIC BIDDLE and MAURICIO MORENO
individually and on behalf of all other Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

ALARIC BIDDLE and MAURICIO
MORENO, individually and on behalf of all
other Aggrieved Employees;

Plaintiff,

vs.

THE SHERWIN-WILLIAMS
MANUFACTURING COMPANY, an Ohio
Corporation, CHERYLYNN SHUMAN, an
individual, THE SHERWIN-WILLIAMS
COMPANY, an Ohio Corporation; and
DOES 2 through 100, inclusive,

Defendants.

Case No. 22STCV33983

[Honorable Kevin C. Brazile, Dept. 20]

**FIRST AMENDED COMPLAINT FOR
ENFORCEMENT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE § 2698, ET
SEQ.**

Violation of California Labor Code § 2698, et
seq. (California Labor Code Private Attorneys
General Act of 2004)

Plaintiff ALARIC BIDDLE and MAURICIO MORENO (hereinafter referred to as
“REPRESENTATIVE PLAINTIFFS”) alleges as follows:

PARTIES

1. REPRESENTATIVE PLAINTIFFS are individuals who reside in California and
have been employed by THE SHERWIN-WILLIAMS MANUFACTURING COMPANY
and/or THE SHERWIN-WILLIAMS COMPANY, during the relevant statutory time period that
is applicable to this Complaint.

FILED
Superior Court of California
County of Los Angeles

05/31/2023

David W. Slayton, Executive Officer / Clerk of Court

By: C. Cortez Deputy

2. REPRESENTATIVE PLAINTIFFS are informed and believe, and based on such information and belief, allege that at all times mentioned herein, THE SHERWIN-WILLIAMS MANUFACTURING COMPANY and THE SHERWIN-WILLIAMS COMPANY are Ohio Corporations, licensed to do business and actually doing business in the State of California.

3. REPRESENTATIVE PLAINTIFFS are informed and believe, and based on such information and belief, allege that DEFENDANTS sell and manufacture paint and other products. As set forth in The Sherwin-Williams Company website: “Founded by Henry Sherwin and Edward Williams in 1866, today The Sherwin-Williams Company (NYSE: SHW) is a global player in the manufacture, development, distribution, and sale of paint, coatings and related products.” See <https://sherwin.com.cn/eng/about-sherwin-williams/about-sherwin-williams/12/> Thus, DEFENDANTS are subject to the applicable California laws as alleged throughout this Complaint.

4. REPRESENTATIVE PLAINTIFFS are unaware of the true names and capacities, whether corporate, individual, or otherwise, of DEFENDANTS named as DOES 2 through 100, inclusive. Pursuant to California Code of Civil Procedure section 474, REPRESENTATIVE PLAINTIFFS will seek leave of court to amend this complaint to state said DEFENDANTS’ true names and capacities when the same have been ascertained. REPRESENTATIVE PLAINTIFFS are informed and believe, and based on such information and belief, allege, that said fictitiously-named DEFENDANTS are responsible in some manner for the injuries and damages to REPRESENTATIVE PLAINTIFFS and the other AGGRIEVED EMPLOYEES as further alleged herein.

5. The AGGRIEVED EMPLOYEES worked for all of the DEFENDANTS or for any of the DEFENDANTS as non-exempt, hourly-paid employees. Nothing in this Complaint should be interpreted as limiting the AGGRIEVED EMPLOYEES to non-exempt, hourly-paid employees who worked for all DEFENDANTS only.

6. Plaintiff ALARIC BIDDLE’s offer letter was from DEFENDANT, SHERWIN-WILLIAMS, also known as THE SHERWIN-WILLIAMS COMPANY. Additionally, Plaintiff ALARIC BIDDLE entered into several arbitration agreements related to Mr. Biddle’s

1 employment with the SHERWIN-WILLIAMS COMPANY. Notably, one of the arbitration
2 agreements entitled, “SWC – EDMAP Policy and Agreement” expressly includes its
3 subsidiaries in the definition of The Sherwin-Williams Company (the “Company”) including
4 The Sherwin Williams Company and all of its affiliates and subsidiaries, and successors, and
5 any alleged joint employers, as well as their respective officers, directors, managers, supervisors
6 and employees (current and former).”

7 7. REPRESENTATIVE PLAINTIFFS are informed and believe and based thereon
8 allege that the SHERWIN-WILLIAMS COMPANY is the parent company of THE SHERWIN-
9 WILLIAMS MANUFACTURING COMPANY. PLAINTIFF ALARIC BIDDLE is informed
10 and believes and based on such information and belief alleges DEFENDANTS, and each of
11 them, used substantially the same facilities, or substantially the same workforce to offer
12 substantially the same services throughout the entire time Plaintiff ALARIC BIDDLE worked
13 for DEFENDANTS, regardless of who was paying him at any given time.

14 8. PLAINTIFF ALARIC BIDDLE is informed and believes and based on such
15 information and belief alleges that DEFENDANTS have substantially the same owners or
16 managers that controlled PLAINTIFF’s wages, hours, and/or working conditions and that the
17 human resources department that he reported to was controlled by THE SHERWIN-
18 WILLIAMS COMPANY. For example, THE SHERWIN-WILLIAMS COMPANY responded
19 to PLAINTIFF ALARIC BIDDLE’s request for his personnel file, although it did not produce
20 the personnel file prior to the initiation of this lawsuit.

21 9. PLAINTIFF ALARIC BIDDLE is informed and believes that Defendant THE
22 SHERWIN-WILLIAMS COMPANY, as the parent company of THE SHERWIN-WILLIAMS
23 MANUFACTURING COMPANY, during the time that is relevant to this Complaint had the
24 authority to hire, transfer, promote, discipline and/or discharge, that it had the discretion to
25 determine the amount of compensation paid to PLAINTIFF ALARIC BIDDLE and did so by
26 and through its subsidiary, THE SHERWIN-WILLIAMS MANUFACTURING COMPANY.

27 //

28 //

10. PLAINTIFF is informed and believes that DEFENDANTS are all closely related to each other, that they share the same common personnel policies, officers, directors, employees, stockholders, offices, management, ownership and financial control and are engaged in the same business, and DEFENDANTS were PLAINTIFF ALARIC BIDDLE's joint employers throughout the relevant time period that applies to this complaint in that they each exercised control over PLAINTIFF ALARIC BIDDLE's hours, wages and working conditions, suffered and permitted PLAINTIFF ALARIC BIDDLE to work and engaged PLAINTIFF ALARIC BIDDLE. Accordingly, THE SHERWIN-WILLIAMS MANUFACTURING COMPANY and THE SHERWIN-WILLIAMS COMPANY are Plaintiff Biddle's joint employers.

11. The definition of "employer" for purposes of the California Labor Code includes irregular working arrangements, and was specifically drafted in order to prevent evasion and subterfuge of California's labor laws. To that end, REPRESENTATIVE PLAINTIFFS are informed and believe, and based on such information and belief, allege, that DEFENDANTS, including any as of now unknown entities, must be classified as joint-employers for purposes of liability for civil penalties under the Private Attorneys General Act ("PAGA"). As such, DEFENDANTS are each liable for civil penalties for violation of the California Labor Code as to REPRESENTATIVE PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

12. The term "DEFENDANTS" used throughout this Complaint includes all named DEFENDANTS whether corporate, individual, or otherwise, and all unnamed DEFENDANTS whether corporate, individual, or otherwise, that are now unknown but are referred to throughout this Complaint as DOES 1 through 100, inclusive.

13. REPRESENTATIVE PLAINTIFFS are informed and believe, and based on such information and belief, allege, that DEFENDANT Cherylynn Shuman (hereinafter, "CHERYLYNN SHUMAN") is an individual who resides in the State of California and the County of San Diego. CHERYLYNN SHUMAN was and is an agent of DEFENDANTS, and in that capacity was and is responsible for overseeing and implementing DEFENDANTS timekeeping policies and procedures that REPRESENTATIVE PLAINTIFF and the other

AGGRIEVED EMPLOYEES were made to follow.

14. This is only a Private Attorney General Action Complaint, pursuant to California Labor Code section 2699 et seq., on behalf of REPRESENTATIVE PLAINTIFFS and all other persons similarly situated who worked for DEFENDANTS in their California locations as non-exempt, hourly employees (herein collectively identified as “AGGRIEVED EMPLOYEES”) for:

(i) failure to provide employment records in violation of Labor Code sections 226, 432, and 1198.5;

(ii) failure to pay overtime and double time in violation of Labor Code sections 510 and the applicable Wage Orders;

(iii) failure to provide rest and meal periods in violation of Labor Code sections 226.7, 512(a), and the applicable Wage Orders;

(iv) failure to pay minimum wage in violation of Labor Code sections 1182.2, 1194, 1197, 1197.1, and the applicable Wage Orders;

(v) failure to keep accurate payroll records and provide itemized wage statements in violation of Labor Code sections 226(a), 1174(d), 1198, and the applicable Wage Orders;

(vi) failure to pay reporting time wages in violation of California Code of Regulations, Title 8, section 11050(5)(A);

(vii) failure to pay split shift wages in violation of California Code of Regulations 11050(4)(C);

(viii) failure to pay all wages earned on time in violation of Labor Code section 204, 210;

(ix) failure to pay all wages earned upon discharge or resignation in violation of Labor Code sections 201, 202, and 203;

(x) failure to reimburse necessary, business-related expenses in violation of Labor Code sections 2800 and 2802;

(xi) failure to provide notice of paid sick time and accrual in violation of Labor Code section 246;

(xii) employers, and individuals acting on behalf of employers, violating or causing to be violated a section of the Labor Code or any Wage Order in violation of Labor Code section 558(a).

VENUE AND JURISDICTION

15. Venue as to each Defendant is proper in this judicial district pursuant to California Code of Civil Procedure section 395 and under California Government Code section 12965(b), in that DEFENDANTS conduct business within the County of Los Angeles and each Defendant is within the jurisdiction of this Court for service of process, REPRESENTATIVE PLAINTIFFS' injuries were incurred within the County of Los Angeles, the actions giving rise to REPRESENTATIVE PLAINTIFFS' Complaint arose within the County of Los Angeles, and DEFENDANTS are located in the County of Los Angeles.

16. Under the plain meaning of the relevant venue statutes, DEFENDANTS' "liability" (§ 395.5), and "some part of the cause" (§ 393), arose in Los Angeles County because Labor Code violations allegedly occurred there. (See *Black Diamond Asphalt, Inc. v. Superior Court* (2003) 109 Cal.App.4th 166, 172, 134 Cal.Rptr.2d 510 [under § 395.5, liability arises where a breach of legal rights occurs]; *Dow AgroSciences LLC v. Superior Court, supra*, 16 Cal.App.5th at pp. 1074-1077, 224 Cal.Rptr.3d 761 [under § 393, subd. (a), in an action against a corporation for breach of statutory duty to warn residents about toxic fumigant, the cause "arose" where the residents were exposed to the fumigants].) See *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County* (2021) 60 Cal.App.5th 1069 [275 Cal.Rptr.3d 316, 60 Cal.App.5th 1069].

17. REPRESENTATIVE PLAINTIFFS are informed and believe, and based on such information and belief, allege, that no federal question is raised and that the Class Action Fairness Act ("CAFA"), 28 U.S.C. Section 1322(d) does not apply, or in the alternative that exceptions for local cases or controversies under the CAFA do apply and prohibit removal of the action to federal Court.

18. REPRESENTATIVE PLAINTIFFS are informed and believe, and based on such information and belief, allege, that based on the total number of pay periods

1 REPRESENTATIVE PLAINTIFFS worked, REPRESENTATIVE PLAINTIFFS' individual
2 claims do not arise to the necessary amount in controversy so as to implicate traditional
3 jurisdiction under 28 U.S.C. 1322(a) or jurisdiction under the CAFA.

4 19. Further, as a representative action under the PAGA, the matter is not subject to
5 removal under 28 U.S.C. Sections 1322(a)-(d). PAGA civil penalty actions are not subject to
6 federal jurisdiction.

7 20. This Court has jurisdiction over REPRESENTATIVE PLAINTIFFS' claims for
8 civil penalties under the PAGA, California Labor Code sections 2698 *et seq.*

9 **SCOPE**

10 21. The "AGGRIEVED EMPLOYEES" are DEFENDANTS' current and former
11 hourly-paid, non-exempt employees, who either were or are employed in the State of California
12 from April 28, 2021 through the date of judgment in this action.

13 **STATEMENT OF FACTS**

14 22. DEFENDANTS, jointly and/or separately, employed REPRESENTATIVE
15 PLAINTIFFS as hourly-paid, non-exempt employees. PLAINTIFF ALARIC BIDDLE was
16 employed by DEFENDANTS THE SHERWIN-WILLIAMS COMPANY and THE
17 SHERWIN-WILLIAMS MANUFACTURING COMPANY from on or about February 2017
18 through the date of this amended complaint. PLAINTIFF MAURICIO MORENO was
19 employed by DEFENDANT THE SHERWIN-WILLIAMS COMPANY from on or about
20 August of 2022 through November of 2022.

21 23. While employed by DEFENDANTS, ALARIC BIDDLE's job title was Shipping
22 Technician, tasked with asked with pulling and loading orders for delivery; ensuring
23 specifications, quantity and quality of orders are correct; verifying stock and identifying losses;
24 and maintaining an organized layout and safe work environment. While employed by
25 DEFENDANT THE SHERWIN-WILLIAMS COMPANY, MAURICIO MORENO's job title
26 was Assistant Store Manager tasked with responding to customers issues and closing the store
27 where he worked.

28 24. REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES that

1 REPRESENTATIVE PLAINTIFFS seek to represent in this action, working as non-exempt,
2 hourly-paid employees were regularly required to work off-the-clock, and/or during their rest
3 and/or meal periods.

4 25. REPRESENTATIVE PLAINTIFF ALARIC BIDDLE filed a PAGA Notice on
5 April 28, 2022 by serving a PAGA Notice to DEFENDANTS The Sherwin-Williams
6 Manufacturing Company and Cherylynn Shuman, and to the LWDA in compliance with Labor
7 Code section 2699.3. Thereafter, on September 28, 2022, Plaintiff ALARIC BIDDLE amended
8 his initial PAGA Notice by adding and serving Defendant The Sherwin-Williams Company.
9 Finally, on May 30, 2023, Plaintiff ALARIC BIDDLE filed and served a 2nd Amended PAGA
10 Notice adding Plaintiff Mauricio Moreno. As of the date of the filing of this amended complaint
11 more than 65 Days have passed since the initial PAGA Notice was served and
12 REPRESENTATIVE PLAINTIFF has not received correspondence from the LWDA regarding
13 its intent to investigate PLAINTIFF's claims.

14 **FAILURE TO PROVIDE EMPLOYMENT RECORDS**

15 26. California Labor Code Section 226 provides, "An employer who receives a
16 written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a
17 current or former employee [records of hours worked and wages paid]...shall comply with the
18 request as soon as practicable, but no later than 21 calendar days from the date of the request."

19 27. California Labor Code Section 432 provides, "If an employee signs any
20 instrument relating to the obtaining or holding of employment, he shall be given a copy of the
21 instrument upon request."

22 28. California Labor Code Section 1198.5 provides that every employee shall be
23 permitted to inspect and obtain a copy of their personnel records upon request.

24 29. In accordance with the process set out in Labor Code Section 226,
25 REPRESENTATIVE PLAINTIFFS requested, in writing by letter via certified first-class mail
26 to DEFENDANTS and regular first-class mail to DEFENDANTS, that DEFENDANTS provide
27 REPRESENTATIVE PLAINTIFFS with wage and payroll history, all documents signed by
28 REPRESENTATIVE PLAINTIFFS pursuant to Labor Code Section 432, and a copy of

1 REPRESENTATIVE PLAINTIFFS' personnel records pursuant to Labor Code Section 1198.5.

2 30. The time periods provided to DEFENDANTS by Labor Code Sections 226, 432,
3 1198.5 and any other relevant statutes have elapsed since DEFENDANTS received
4 REPRESENTATIVE PLAINTIFF ALARIC BIDDLE's correspondence requesting documents
5 pursuant to Labor Code Sections 226, 432, and 1198.5, and a copy of REPRESENTATIVE
6 PLAINTIFF ALARIC BIDDLE's personnel records pursuant to Labor Code Section 1198.5.
7 However, DEFENDANTS failed to provide REPRESENTATIVE PLAINTIFF with the
8 employment documents to which he is entitled.

9 31. REPRESENTATIVE PLAINTIFFS are informed and believe, and based thereon
10 allege, that DEFENDANTS failed to provide records in compliance with Labor Code Sections
11 226, 432, and 1198.5 to other AGGRIEVED EMPLOYEES in response to their requests.

12 **OVERTIME / DOUBLE TIME**

13 32. California Labor Code sections 510 and the applicable Wage Orders require
14 employers to pay employees working more than eight (8) hours in a day or more than 40 hours
15 in a week at the rate of at least time-and-one-half (1.5) times their regular rate of pay
16 ("overtime") for time such worked, and two (2) times their regular rate of pay ("double time")
17 for such hours worked in excess of 12 hours in a day. "Regular rate" includes all remuneration,
18 including non-discretionary bonuses and incentives.

19 33. During the relevant time period, REPRESENTATIVE PLAINTIFFS and other
20 AGGRIEVED EMPLOYEES regularly worked in excess of eight (8), and in excess of 12, hours
21 in a workday and/or 40 hours in a workweek.

22 34. DEFENDANTS routinely required REPRESENTATIVE PLAINTIFFS and the
23 other AGGRIEVED EMPLOYEES to perform work tasks before and/or after their scheduled
24 shifts, and/or during off-the-clock meal breaks, and/or during rest breaks. As a consequence,
25 DEFENDANTS willfully failed to pay REPRESENTATIVE PLAINTIFFS and the other
26 AGGRIEVED EMPLOYEES all of the wages to which they were entitled.

27 **MEAL / REST BREAKS**

35. California Labor Code sections 226.7, 512(a), and the applicable Wage Orders require employers to pay employees one (1) additional hour of pay at the employees' regular rate for each work day that a legally compliant meal and/or rest break was not provided. Employers cannot require, cause, or permit an employee to work more than five (5) hours per day without providing an uninterrupted meal break. If an employee works over ten (10) hours in a workday, employers are required to either provide a second, uninterrupted 30-minute meal break or pay employees an additional one (1) hour of pay at the employees' regular rate. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. Furthermore, no employer shall require an employee to work during any rest period. Rest periods requirements are based on the total hours worked; employees are legally entitled to ten (10) minutes per four (4) hours, or major fraction thereof, that employee worked.

36. DEFENDANTS failed to provide REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES with the required rest and meal break periods. REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES were routinely required to work through these periods instead, because of understaffing, inadequate coverage, unreasonably high workload and expectations, and/or other actions, inactions, or decisions made by and within the sole control and discretion of DEFENDANTS.

37. REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES worked shifts in excess of five (5) hours without a meal break, and worked shifts of ten (10) hours or more without a second meal break, due to understaffing, inadequate coverage, unreasonably high workload and expectations, and/or other actions, inactions, or decisions made by and within the sole control and discretion of DEFENDANTS.

38. REPRESENTATIVE PLAINTIFFS are informed and believe, and based on such information and belief, allege, that any purported appearance of meal and rest break compliance is because DEFENDANTS systematically and routinely clocked out for and/or otherwise altered the timekeeping records of REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES in an attempt to hide the aforementioned infractions. DEFENDANTS, knowingly and contrary to law and public policy, employed a tactic of clocking-out employees

for rest and/or meal periods that were never taken and/or were legally non-compliant, and/or otherwise falsified or altered timekeeping records.

39. The California Supreme Court opinion in *Ferra v. Loews Hollywood Hotel, LLC* holds that, similar to the requirement that employers pay overtime at the “regular rate of pay” (which includes commissions, bonuses or other nondiscretionary pay), employers are required to pay meal and rest break premiums at a regular rate that includes commissions, bonuses or other non-discretionary pay. Plaintiff alleges that Defendants failed to include the non-discretionary bonuses in its calculations for overtime pay and for meal and/or rest period penalties

40. DEFENDANTS knew, or should have known, that their behavior caused REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES to work through the above-described meal and/or rest periods. As a company-wide policy, DEFENDANTS still chose not to pay meal and rest period premiums required by law.

MINIMUM WAGE

41. California Labor Code sections 1182.12, 1194, 1197, and 1197.1 require employers to pay the minimum wage as set by the IWC. California Labor Code section 1182.12, as amended by Senate Bill 3, Chapter 4, Section 3, defines the minimum wage as;

(1) For any employer who employs 26 or more employees:

(A) From January 1, 2017, to December 31, 2017, \$10.50 per hour.

(B) From January 1, 2018, to December 31, 2018, \$11 per hour.

(C) From January 1, 2019, to December 31, 2019, \$12 per hour.

(D) From January 1, 2020, to December 31, 2020, \$13 per hour.

(E) From January 1, 2021, to December 31, 2021, \$14 per hour.

(F) From January 1, 2022, and until adjusted by subdivision (c) \$15 per hour.

(2) For any employer who employs 25 or fewer employees:

(A) From January 1, 2018, to December 31, 2018, \$10.50 per hour.

(B) From January 1, 2019, to December 31, 2019, \$11 per hour.

(C) From January 1, 2020, to December 31, 2020, \$12 per hour.

(D) From January 1, 2021, to December 31, 2021, \$13 per hour.

(E) From January 1, 2022, to December 31, 2022, \$14 per hour.

(F) From January 1, 2023, and until adjusted by subdivision (c) \$15 per hour.

42. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage.

43. As alleged throughout this Complaint, due to the company-wide failures of DEFENDANTS, REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES were forced to work off-the-clock before and/or after their scheduled work shifts, and/or during rest breaks, and/or during meal breaks. DEFENDANTS failed to pay REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES minimum wage for this time and/or falsified timekeeping records to hide this fact.

ACCURATE/ITEMIZED WAGE STATEMENTS

44. California Labor Code 226(a) requires employers to create and provide to employees true and accurate employment records. California Labor Code section 226(e) provides that if an employer fails to furnish an employee with same, the employee is entitled to recover the greater of all actual damages, or \$50.00 for an initial infraction, and \$100 per employee for each subsequent violation in any pay period. California Labor Code 226.3 imposes civil penalties on any employer in violation of section 226(a) at \$250 per employee violation in an initial citation, and \$1,000 per employee for each subsequent violation.

45. California Labor Code 1174(d) requires employers to keep payroll records showing hours worked, and wages paid to and/or number of piece-rate units earned, for all employees. California Labor Code section 1174.5 subjects employers to a \$500 penalty for failing to maintain same.

46. California Labor Code section 1198 provides that maximum hours and standard conditions of labor are fixed by the Labor Commissioner in the applicable Wage Orders. Pursuant to the applicable Wage Order, employers must keep accurate records of when

employees begin and end each work period and each meal period.

47. DEFENDANTS knowingly provided employees with records that do not meet the statutory requirements of truth and accuracy, because DEFENDANTS failed to truthfully and accurately document, among other things, employees off-the-clock work. As a result, DEFENDANTS failed to accurately list the correct amount of gross and/or net wages earned by REPRESENTATIVE PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

48. The statements in question are deficient in many other ways, including, but not limited to: failure to list total hours worked, failing to list applicable hourly rates and the numbers of hours worked at each rate, failure to list piece-rate units earned and the applicable piece-rate, failure to list deductions, failure to track sick leave, failure to list the employee and SSN/EID properly, failure to list the full legal name and address of the employer, failure to list inclusive dates for which employees are paid, failure to provide employees with the ability to easily access wage statements and get hard copies at no expense to the employee, and/or failure to state all hours worked as a result of off-the-clock work. The California Supreme Court in *Naranjo v. Spectrum Security Services, Inc.* (Cal., May 23, 2022, No. S258966) 2022 WL 1613499) held that missed-break premium pay is indeed wages subject to the Labor Code's timely payment and reporting requirements, and it can support section 203 waiting time penalties and section 226 wage statement penalties.

49. DEFENDANTS willfully failed to maintain accurate payroll records for REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES as a result of DEFENDANTS failure to accurately record employees rest breaks, and/or meal breaks, and/or off-the-clock work. DEFENDANTS failure makes it impossible for REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES to accurately determine the extent of their underpayment, thereby causing further injuries to each of them.

REPORTING TIME

50. California Code of Regulations, Title 8, section 11050(5)(A) provides that for each workday when an employee is required to and does in fact report to work, but is either not put to work or is furnished less than half of said employee's usual scheduled day's work, that

employee should be paid for no less than half, and in no event less than two (2) hours, of the employees' regular rate of pay.

51. REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES were frequently told by DEFENDANTS to report to work and were either not put to work or were furnished less than half of said employee's usual scheduled day's work. DEFENDANTS routinely failed to pay the required reporting time wages to REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES for each of these instances.

SPLIT SHIFTS

52. California Code of Regulations 11050(4)(C) provides that when an employee works a "split shift", one (1) hour's pay at the State or local minimum wage (whichever is greater) must be paid in addition to the minimum wage for that workday. A "split shift" is defined as a work schedule which is interrupted by non-paid, non-working periods established by the employer, other than *bona fide* rest or meal periods.

53. DEFENDANTS routinely scheduled REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES for multiple different shifts throughout the same workday, separated by periods other than *bona fide* rest or meal breaks. DEFENDANTS failed to pay REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES one (1) hour's pay at the applicable minimum wage, which resulted in REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES being paid less than the applicable minimum wage for that day. As a further consequence, DEFENDANTS also failed to separately list "split shift" payments on REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES wage statements.

ALL WAGES PAID ON TIME

54. California Labor Code section 204 requires that all wages earned, other than those due upon termination, be paid on time as defined by the statute.

55. As a result of the numerous company-wide failures of DEFENDANTS as described throughout this Complaint, DEFENDANTS failed to pay REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES all wages due to them, including, but not

limited to minimum wages, overtime wages, double time wages, split shift pay and/or reporting time pay, within the statutorily required time period.

ALL WAGES PAID ON DISCHARGE / TERMINATION

56. California Labor Code sections 201, 202, and 203 provide that employees who are terminated are due all wages earned immediately. Employees who resign their employment without giving 72-hours' notice are due all wages earned within 72 hours of their resignation. Employees who resign their employment giving 72-hours' notice are entitled to all wages earned at the time their resignation becomes effective.

57. MAURICIO MORENO resigned with notice on or about November 1, 2022 and was not paid his final wages pursuant to the labor code. When MAURICIO MORENO finally received his final paycheck, that final paycheck was legally deficient in that it did not account for all wages earned despite DEFENDANTS knowing that such wages were due to him.

58. Due to the company-wide failures of DEFENDANTS as described throughout this Complaint, DEFENDANTS similarly failed to pay other AGGRIEVED EMPLOYEES timely wages upon their discharge or resignation.

FAILURE TO REIMBURSE

59. California Labor Code Sections 2800 and 2802 require that an employer indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties.

60. REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES were directed and expected to incur personal expenses on behalf of DEFENDANTS while performing their job duties. Such personal expenses include, but are not limited to, use of personal cell phone, travel expenses, and parking expenses. REPRESENTATIVE PLAINTIFFS and the other AGGRIEVED EMPLOYEES would not have been able to successfully accomplish their job duties absent incurring these personal expenses. DEFENDANTS failed to indemnify

1 REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES for all necessary
2 expenditures or losses accordingly

3 **NOTICE OF PAID SICK TIME AND ACCRUAL**

4 61. California Labor Code section 246 provides that an employee who works for the
5 same employer for more than 30 days is entitled to paid sick days. Paid sick leave is to accrue
6 at a rate not less than one (1) hour per every 30 hours worked, such accrual beginning at the
7 commencement of employment. Employers must provide employees with written notice setting
8 the amount of sick leave available (or paid time off in lieu thereof) for use on either itemized
9 wage statements (as described in Labor Code section 226) or in a separate writing accompanying
10 such wage statements.

11 62. REPRESENTATIVE PLAINTIFFS ALARIC BIDDLE and MAURICIO
12 MORENO were hired by DEFENDANTS on or about February 2017, and August, 2022,
13 respectively. REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES
14 worked for DEFENDANT for more than 30 days, triggering the protections of Labor Code
15 section 246 as described above. Nevertheless, DEFENDANTS failed to furnish upon
16 REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES, either on itemized
17 wage statements or in a separate writing accompanying such wage statements, the amount of
18 sick leave available to REPRESENTATIVE PLAINTIFFS and other AGGRIEVED
19 EMPLOYEES.

20 63. As such, DEFENDANTS unlawfully retained and continue to retain paid sick
21 leave that should have been paid to REPRESENTATIVE PLAINTIFFS and other
22 AGGRIEVED EMPLOYEES but for DEFENDANTS failure to properly institute and/or adhere
23 to a legally compliant paid sick leave program. REPRESENTATIVE PLAINTIFFS are
24 informed and believe, and based on such information and belief, allege, that these practices were
25 experienced and continue to be experienced by the other AGGRIEVED EMPLOYEES.

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1 **CIVIL PENALTIES AND INDIVIDUAL LIABILITY**

2 64. California Labor Code section 558(a) provides that any employer, including
3 individuals acting on behalf of employers, that violates, or causes to be violated, a section of the
4 Labor Code or any applicable Wage Orders are subject to the following penalties;

- 5 • \$50 for any initial violation for each underpaid employee for each pay period for
6 which the employee was underpaid in addition to an amount sufficient to recover
7 unpaid wages;
8 • \$100 for each subsequent violation for each underpaid employee for each pay period
9 for which the employee was underpaid in addition to an amount to recover unpaid
10 wages;

11 65. Labor Code section 558.1 permits joint and several liability as to both an
12 individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802.
13 Labor Code section 558(c) provides that the penalties in this section are in addition to any other
14 civil penalty.

15 66. DEFENDANTS THE SHERWIN-WILLIAMS COMPANY and THE
16 SHERWIN-WILLIAMS MANUFACTURING COMPANY are employers, and CHERYLYNN
17 SHUMAN, acting on behalf thereof, violated REPRESENTATIVE PLAINTIFFS and other
18 AGGRIEVED EMPLOYEES' rights by violating, or causing to be violated, various sections of
19 this code as described throughout this Complaint.

20 **FIRST CAUSE OF ACTION**

21 **(VIOLATION OF LABOR CODE § 2698, ET SEQ.)**

22 **(By REPRESENTATIVE PLAINTIFFS Against DEFENDANTS)**

23 67. REPRESENTATIVE PLAINTIFFS incorporate by reference the allegations
24 contained in each of the preceding paragraphs and each and every part thereof with the same
25 force and effect as though fully set forth herein.

26 68. PAGA expressly establishes that any provisions of the California Labor Code
27 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
28 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.

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

70. REPRESENTATIVE PLAINTIFFS and the other hourly-paid or non-exempt employees, are "AGGRIEVED EMPLOYEES" within the meaning of California Labor Code section 2699(c) as they are all current or former employees of DEFENDANTS, and one or more of the alleged violations was committed against them.

Failure to Provide Employment Records

71. DEFENDANTS failure to provide REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES with employment records constitutes unlawful and/or unfair activity and is prohibited by California Labor Code 226, 432, and 1198.5.

Failure to Pay Overtime / Double Time

72. DEFENDANTS failure to pay legally required overtime and double time wages to REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES is in violation of the Wage Orders and constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 510 and 1198.

Failure to Provide Meal and Rest Periods

73. DEFENDANTS failure to provide legally required meal and rest periods to REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 226.7, 512(a), and the applicable Wage Orders.

Failure to Pay Minimum Wages

74. DEFENDANTS failure to pay legally required minimum wages to REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 1182.12, 1194,

1197, 1197.1, and the applicable Wage Orders.

Failure to Keep Accurate and Provide Itemized Wage Statements

75. DEFENDANTS failure to keep accurate and provide itemized wage statements to REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a), 1174(d), and 1198.

Failure to Pay Reporting Time

76. DEFENDANTS failure to pay REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES who were required to and did in fact report to work, but who were then furnished less than half of such employees usual scheduled day's work, with at least half, and in no event less than two (2) hours, of the employees' regular rate of pay constitutes unlawful and/or unfair activity prohibited by California Code of Regulations 11050 (5)(A).

Failure to Pay "Split Shift" Premiums

77. DEFENDANTS failure to pay REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES one (1) hour's pay at the minimum wage in addition to the wages for that workday for any workday in which REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES were scheduled for and required to work a "split shift" constitutes unlawful or unfair activity prohibited by California Labor Code 1198 and California Code of Regulations 11050(4)(C).

Failure to Timely Pay Wages During Employment

78. DEFENDANTS failure to timely pay wages to REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES during their employment constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

Failure to Timely Pay Wages Upon Termination

79. DEFENDANTS failure to timely pay wages to REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES upon termination constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201, 202, and 203.

Failure to Reimburse Necessary Business-Related Expenses and Costs

80. DEFENDANTS failure to reimburse REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES for necessary business-related expenses and costs constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

Failure to Provide Notice of Paid Sick Time and Accrual

81. DEFENDANTS failure to provide REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES that works for DEFENDANTS for more than 30 days with written notice setting the amount of sick leave available (or paid time off in lieu thereof) for use in their itemized wage statements or in a separate writing accompanying such statements constitutes unlawful and/or unfair activity prohibited by California Labor Code section 246.

Civil Penalties

82. CHERYLYNN SHUMAN's actions, as outlined above, on behalf of DEFENDANTS that violated, or caused to be violated, the above-mentioned labor codes constitute unfair and/or unlawful activity in violation of California Labor Code section 558(c). California Labor Code section 558(c) specifically clarifies that penalties in this section are in addition to any other civil penalty.

83. Pursuant to California Labor Code section 2699, REPRESENTATIVE PLAINTIFFS, individually, and on behalf of all AGGRIEVED EMPLOYEES, request and are entitled to recover penalties from DEFENDANTS and each of them, for violations of the Labor Code as more fully described herein according to proof, interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, 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 penalties 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, including, but not limited to, penalties pursuant to California Labor Code 558(a).

84. Pursuant to California Labor Code section 2699(i), civil penalties recovered 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.

85. Further, **REPRESENTATIVE PLAINTIFFS** are 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.

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THEREFORE, REPRESENTATIVE PLAINTIFFS and the individuals they seek to represent request relief as described below:

PRAYER

THEREFORE, REPRESENTATIVE PLAINTIFFS pray for judgment against DEFENDANTS, and Does 2 through 100, and each of them, as follows:

1. Statutory attorneys' fees and costs under PAGA and California Code of Civil Procedure Section 1021.5;
2. Statutory penalties under PAGA;
3. Costs of suit; and
4. Such further relief as the Court deems just and proper.

Dated: May 31, 2023

HAIG B. KAZANDJIAN LAWYERS, APC.

By: Haig B. Kazandjian, Esq.,
Cathy Gonzalez, Esq.,
Attorneys for Plaintiffs

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 801 North Brand Boulevard, Suite 970, Glendale, California 91203.

On May 31, 2023, I served the foregoing document(s) described as: FIRST AMENDED COMPLAINT FOR ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE § 2698, ET SEQ. by method indicated below, on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY U.S. MAIL:** I enclosed said document(s) in a sealed envelope or package to each addressee. I placed the envelope for collection and mailing, following our firm's ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. Under that practice, the correspondence is deposited with the United States Postal Service, with postage fully prepaid, on the same day in the ordinary course of business.

☒ **BY ELECTRONIC MAIL:** I transmitted the foregoing document(s) by electronic mail from cathy@hbklawyers.com to the electronic mail addresses indicated on the attached mailing list. The transmission was reported as complete and without error.

☒ (STATE): I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 31, 2023 at Glendale, California.

/s/ Cathy Gonzalez

Cathy Gonzalez

SERVICE LIST

Shareef S. Farag, SBN 251650
Nicholas D. Poper, SBN 293900
Kerri H. Sakaue, SBN 301043
BAKER & HOSTETLER LLP
11601 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025-0509
Telephone: 310.820.8800
Facsimile: 310.820.8859
Emails: sfarag@bakerlaw.com
npoper@bakerlaw.com
ksakaue@bakerlaw.com
Attorneys for Defendants