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Superior Court Of California,
Sacramento
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By Deputy
Case Number:
24-2022-00320638

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

JUSTIN BIGBY, an individual, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

ACE INSULATION, INC.; and DOES 1 to
50, inclusive,

Defendants.

Case No.: 2022-00320638

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Pay Timely Wages Pursuant to Labor Code § 204
3. Failure to Keep Records Pursuant to Labor Code § 1199(c) and Wage Order 4-2001
4. Failure to Provide Meal Periods Pursuant to Labor Code §§ 226.7 and 512
5. Failure to Provide Rest Periods Pursuant to Labor Code § 226.7
6. Violation of Labor Code § 226(a)
7. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
8. Penalties Pursuant to Labor Code § 203
9. Violation of Business & Professions Code § 17200
10. Penalties Pursuant to Labor Code § 2699, *et seq.*

JURY TRIAL DEMANDED

1 Plaintiff JUSTIN BIGBY, an individual, on behalf of himself, all others similarly
2 situated, complains of Defendant ACE INSULATION, INC. (“Defendant”) and each of them, as
3 follows:

4 I

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of
7 Plaintiff and a Proposed Class defined as:

8 All persons who are employed or have been employed as an
9 hourly employee by ACE INSULATION, INC. in the State of
10 California since four (4) years prior to the filing of this action
to the present.

11 2. From at least four (4) years prior to the filing of this action continuing to the
12 present, Defendant has had a consistent policy of failing to pay wages and/or overtime to all
13 hourly employees for all work perform at the proper rate of compensation. On a regular and
14 consistent basis, Defendant required Plaintiff and the Proposed Class to perform work “off the
15 clock” without compensation. Plaintiff and the Proposed Class were required to travel to and
16 from different jobsites in the company vehicle. However, Defendant would simply pay Plaintiff
17 and the Proposed Class for an eight (8) hour day, regardless of the punch in and punch out
18 records. Therefore, Plaintiff and the Proposed Class were not properly paid for these work tasks
19 as a condition of employment at the proper rate of pay. This resulted in underpayment of wages
20 and/or overtime. As a result of Defendant’s unlawful policies, Plaintiff and the Proposed Class
21 were paid at a regular rate less than the rate required under California law.

22 3. For at least four (4) years prior to the filing of this action continuing to the
23 present, Defendant has had a consistent policy of failing to timely pay their California
24 employees after the conclusion of each pay period in compliance with Labor Code § 204.

25 4. For at least four (4) years prior to the filing of this action continuing to the
26 present, Defendant has had a consistent policy of failing to keep accurate time records. Wage
27 Order 4-2001 Section 7(A)(3) requires an employer to keep records of when the employee
28 begins and ends each work period and meal periods. Labor Code § 1199(c) requires employers

1 to comply with any order of the commission. As such, Defendant has violated this statute and
2 the Wage Order by failing to keep accurate records.

3 5. For at least four (4) years prior to the filing of this action and continuing to the
4 present, Defendant has had a consistent policy of failing to inform employees of their right to
5 take meal periods and requiring employees within the State of California, including Plaintiff, to
6 work at least five (5) hours without a meal period and failing to pay such employees one (1)
7 hour of pay at the employees' regular rate of compensation for each workday that the meal
8 period is not provided or provided after five (5) hours, as required by California state wage and
9 hour laws.

10 6. For at least four (4) years prior to the filing of this action and continuing to the
11 present, Defendant has had a consistent policy of failing to inform employees of their right to
12 take rest periods and of failing to provide employees within the State of California, including
13 Plaintiff, rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
14 thereof and failing to pay such employees one (1) hour of pay at the employees regular rate of
15 compensation for each workday that the rest period was not provided, as required by California
16 state wage and hour laws.

17 7. For at least four (4) year prior to the filing of this action continuing to the
18 present, Defendant has failed to comply with Labor Code § 226(a) by failing to include
19 necessary and required information on wage statements provided to Plaintiff and the Proposed
20 Class. Defendant failed to include the total hours worked, all applicable hourly rates in effect
21 during the pay period, and the corresponding number of hours worked at each hourly rate by the
22 employee.

23 8. For at least four (4) years prior to the filing of this action and continuing to the
24 present, Defendant has not reimbursed Plaintiff and the Proposed Class the cost and
25 maintenance of their personal cell phones necessary to perform their job duties during the
26 relevant time period in violation of Labor Code § 2802.

27 9. Based on the allegations alleged above, from at least four (4) years prior to the
28 filing of this action continuing to the present, Defendant has failed to pay all wages due at the

1 time of termination or resignation to Plaintiff and the Proposed Class.

2 10. Plaintiff, on behalf of himself and all Proposed Class Members brings this action
3 pursuant to Labor Code §§ 203, 204, 210, 226(a), 226.7, 510, 512, 1194, 1197, 1199, 2802;
4 Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, seeking unpaid
5 wages and/or overtime, timely payment of wages, accurate recordkeeping, meal break
6 premiums, rest break premiums, penalties for accurate itemized wage statements,
7 reimbursement of expenses, wages upon termination or resignation, other penalties, injunctive
8 and other equitable relief, and reasonable attorney's fees and costs.

9 11. Plaintiff, on behalf of himself and all Proposed Class Members, pursuant to
10 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
11 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

12 12. Plaintiff, on behalf of himself and all members of the Proposed Class, brings this
13 representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant's
14 violation of California Labor Code §§ 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1194, 1197,
15 1199, and 2802.

16 II

17 **JURISDICTION AND VENUE**

18 13. This Court has subject matter jurisdiction over all causes of action asserted
19 herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil
20 Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in
21 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
22 arises under the laws of the State of California or is subject to adjudication in the courts of the
23 State of California.

24 14. This Court has personal jurisdiction over Defendant because Defendant has
25 caused injuries in the County of Sacramento and the State of California through their acts, and
26 by their violation of the California Labor Code, California state common law, and California
27 Business & Professions Code § 17200, *et seq.*

28 15. Venue as to each Defendant is proper in this judicial district, pursuant to Code of

1 Civil Procedure § 395. Defendant operates within California and does business within the
2 County of Sacramento. The unlawful acts alleged herein have a direct effect on Plaintiff and all
3 Proposed Class Members within the State of California and the County of Sacramento.

4 16. This case should be classified as complex according to Rule 3.400 of the
5 California Rules of Court, and assigned to a complex litigation judge and department, as it will
6 involve substantial documentary evidence, a large number of witnesses, and is likely to involve
7 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
8 and would require substantial post judgment judicial supervision.

9 III

10 PARTIES

11 A. PLAINTIFF

12 17. Plaintiff JUSTIN BIGBY is a resident of California.

13 18. Plaintiff and the Proposed Class Members were regularly required to:

- 14 a. Work without being paid for all hours worked at the proper rate;
- 15 b. Work without being paid wages in a timely manner;
- 16 c. Work without being supplied accurate time records;
- 17 d. Work without being provided their meal periods;
- 18 e. Work without being provided their rest periods;
- 19 f. Work without Defendant maintaining accurate time records showing
20 when the employee begins and ends each work period, meal periods, and total daily hours
21 worked and work without being provided an accurate itemized wage statement that reflects all
22 deductions from payment of wages and accurately report total hours worked, including when the
23 employee begins and ends each work period, meal periods, and total daily hours worked, and
24 the applicable rates of pay by Plaintiff and Proposed Class Members; and
- 25 g. Work without being reimbursed for expenses as a condition of
26 employment.

27 19. Defendant willfully failed to compensate Plaintiff and all Proposed Class
28 Members for wages at the termination of their employment with Defendant.

1 20. As a result of this conduct, Defendant has engaged in unfair competition and
2 unlawful business practices.

3 21. Plaintiff, on behalf of himself and all members of the Proposed Class, brings this
4 representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant's
5 violation of California Labor Code §§ 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1194, 1197,
6 1199, and 2802.

7 **B. DEFENDANTS**

8 22. Defendant ACE INSULATION, INC. is believed to be a California corporation
9 operating within the State of California. Defendant's corporate address is believed to be 1306
10 Dynamic St., Petaluma, CA 94954. Upon information and belief, Defendant employed Plaintiff
11 and similarly situated persons as employees within California. Defendant has done and does
12 business throughout the State of California.

13 23. The true names and capacities, whether individual, corporate, associate, or
14 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
15 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
16 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
17 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
18 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names
19 and capacities of the Defendants designated hereinafter as DOES when such identities become
20 known.

21 24. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
22 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
23 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
24 Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all
25 respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class
26 Members.

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1 IV

2 **FACTUAL BACKGROUND**

3 25. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
4 classified as employees by Defendant.

5 26. Upon information and belief, Plaintiff and the Proposed Class are covered by
6 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
7 Code of Regs. § 11040).

8 27. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid
9 at the proper rate of compensation. On a regular and consistent basis, Defendant required
10 Plaintiff and the Proposed Class to perform work “off the clock” without compensation.
11 Plaintiff and the Proposed Class were required to travel to and from different jobsites in the
12 company vehicle. However, Defendant would simply pay Plaintiff and the Proposed Class for
13 an eight (8) hour day, regardless of the punch in and punch out records. This resulted in
14 underpayment of wages and/or overtime. As a result of Defendant’s unlawful policies, Plaintiff
15 and the Proposed Class were paid at a regular rate less than the rate required under California
16 law.

17 28. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid
18 timely at the conclusion of the pay period. Defendant’s employees are issued their wages more
19 than seven (7) calendar days after the payroll period ends in violation of Labor Code §§ 204(a),
20 204(d) and 210.

21 29. On a regular and consistent basis Defendant has had a consistent policy of failing
22 to keep accurate time records. IWC Wage Order 4-2001 and Labor Code specifically require
23 that Defendant maintains time records showing when the employee begins and ends each work
24 period. *See* IWC Wage Order 4-2001(7). Further, meal periods, split shift intervals and total
25 daily hours worked shall also be recorded. *Id.* Here, Defendant’s own policies and procedures
26 failed to record the start and stop of each meal period as required by the Wage Order and Labor
27 Code. As a result, it is impossible to determine by Defendant’s records if Plaintiff and the
28 Proposed Class received a proper and timely thirty (30) minute uninterrupted meal period.

1 Further, this violates the Wage Order and Labor Code as Defendant failed to record when the
2 employee begins and ends each works period. This is to the detriment of Plaintiff and the
3 Proposed Class.

4 30. Plaintiff and the Proposed Class Members have been forced by Defendant to
5 work over five (5) hours in one day without being provided a thirty (30) minute uninterrupted
6 meal break and not being compensated one (1) hour of pay at the regular rate of compensation
7 for each workday that a meal period was not provided or provided after five (5) hours, all in
8 violation of California labor laws, regulations, and Industrial Welfare Commission Wage
9 Orders. Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right
10 to take meal periods by way of a lawful policy.

11 31. Plaintiff and the Proposed Class have been required to work four-hour
12 increments (or major fractions thereof) without being provided with a ten (10) minute rest
13 period. Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right
14 to take rest periods by way of a lawful policy.

15 32. Defendant has failed to provide accurate itemized wage statements in compliance
16 with Labor Code § 226(a) by failing to maintain time records showing when the employee
17 begins and ends each work period, meal periods, total daily hours worked by itemizing in wage
18 statements all deductions from payment of wages, accurately reporting total hours and
19 applicable rates of pay for Plaintiff and the Proposed Class.

20 33. On a regular and consistent basis, Plaintiff and the Proposed Class have not been
21 properly reimbursed expenses associated with the cost and maintenance of their personal cell
22 phones necessary to perform their job duties as a condition of employment.

23 34. Defendant willfully failed to pay wages and compensation, when Plaintiff and
24 Proposed Class Members quit or were discharged. Defendant failed to pay the wages described
25 above at the time of termination or resignation. This failure was willful, without legal
26 justification, and interfered with Plaintiff's and the Proposed Class Members' rights.

27 35. As a result of the facts alleged above, Defendant has engaged in unfair
28 competition and unlawful business practices.

36. As a result of the acts alleged herein, Defendant violated Labor Code § 2699, *et seq.*

V

CLASS ACTION ALLEGATIONS

37. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent proposed class composed of and defined as follows:

All persons who are employed or have been employed as a non-exempt employee by ACE INSULATION, INC. in the State of California since four (4) years prior to the filing of this action to the present.

38. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

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

A. Numerosity

40. The potential members of the Proposed Class as defined are so numerous that joinder of all the members of the Proposed Class is impracticable. While the precise number of Proposed Class Members has not been determined at this time, Plaintiff is informed and believes that Defendant currently employ, and during the relevant time periods employed 50 to 99 members of the Proposed Class at any given time.

41. Plaintiff alleges that Defendant's employment records would provide information as to the number and location of all Proposed Class Members. Joinder of all members of the Proposed Class is not practicable.

B. Commonality

42. There are questions of law and fact common to the Proposed Class that predominate over any questions affecting only individual Proposed Class Members. These

1 common questions of law and fact include, without limitation:

2 a. Whether Defendant failed to pay wages to Plaintiff and the Proposed
3 Class as required by the Labor Code and Wage Orders under Labor Code §§ 510, 558, 1194,
4 1197, and 1199;

5 b. Whether Defendant failed to timely pay wages to Plaintiff and the
6 Proposed Class during the course of employment, in violation of Labor Code § 204;

7 c. Whether Defendant failed to keep accurate records in violation of Wage
8 Order 4-2001 Section 7(A)(3) and Labor Code § 1199(c);

9 d. Whether Defendant failed to provide all lawful meal periods or pay one
10 hour of wages in lieu thereof statements to Plaintiff and the Proposed Class;

11 e. Whether Defendant failed to provide all lawful rest periods or pay one
12 hour of wages in lieu thereof statements to Plaintiff and the Proposed Class;

13 f. Whether Defendant violated Labor Code § 226(a) and Wage Order 4-
14 2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by
15 failing to issue accurate and complete itemized wage statements;

16 g. Whether Defendant violated Labor Code § 2802 and/or Wage Order 4-
17 2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for
18 the cost and maintenance of their personal cell phones necessary to perform their job duties;

19 h. Whether Defendant violated §§ 201-203 of the Labor Code by failing to
20 pay compensation due and owing at the time that any Proposed Class Member's employment
21 with Defendant terminated;

22 i. Whether Defendant violated § 17200, *et seq.* of the Business &
23 Professions Code by engaging in the acts previously alleged;

24 j. Whether Plaintiff and the members of the Proposed Class are entitled to
25 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*; and

26 k. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in
27 the acts alleged herein.

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1 paragraphs as if fully set forth herein.

2 48. Labor Code § 510(a) states that eight hours of labor constitutes a day's work and
3 any work in excess of eight hours in one workday and any work in excess of 40 hours in any
4 one workweek must be compensated at the rate of no less than one and one-half times the
5 regular rate of pay for an employee. Labor Code §§ 1194 and 1199 require an employer to pay
6 its employees the legal minimum wage and the legal overtime compensation applicable.
7 California law also requires that any compensation, including a bonus, must be included in the
8 regular rate of pay.

9 49. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid
10 at the proper rate of compensation. On a regular and consistent basis, Defendant required
11 Plaintiff and the Proposed Class to perform work "off the clock" without compensation.
12 Plaintiff and the Proposed Class were required to travel to and from different jobsites in the
13 company vehicle. However, Defendant would simply pay Plaintiff and the Proposed Class for
14 an eight (8) hour day, regardless of the punch in and punch out records. This resulted in
15 underpayment of wages and/or overtime. As a result of Defendant's unlawful policies, Plaintiff
16 and the Proposed Class were paid at a regular rate less than the rate required under California
17 law.

18 50. Plaintiff and the Proposed Class were forced to work on a regular and consistent
19 basis without receiving compensation for all hours worked at the proper rate. Specifically,
20 Plaintiff and the Proposed Class were not paid at the proper overtime rate when they were
21 working more than eight (8) hours in one day or forty (40) hours in one week.

22 51. By their policy of requiring Plaintiff and the Proposed Class to work in excess of
23 eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them
24 at the rate of one-half (1 1/2) their regular rate of pay, Defendant willfully violated the
25 provisions of Labor Code §§ 510, 1194 and 1199.

26 52. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
27 have been deprived of wages and overtime in amounts to be determined at trial, and are entitled
28 to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and costs.

1 VII

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO TIMELY PAY WAGES PURSUANT TO LABOR CODE § 204**

4 53. Plaintiff incorporates each and every allegation set forth in all of the foregoing
5 paragraphs as if fully set forth herein.

6 54. Labor Code § 204(a) states that all wages earned by any person in any
7 employment are due and payable twice during each calendar month. Further, Labor Code
8 § 204(d) requires that employees paid on a weekly, biweekly, or semimonthly basis be paid no
9 later than seven (7) calendar days after the payroll period ends. Defendant's California
10 employees are issued their wages more than seven (7) calendar days after each payroll period
11 ends. Thus, Defendant's practice violates Labor Code §§ 204(a), 204(d) and 210.

12 55. As a proximate result of Defendant's violations of Labor Code § 204, Plaintiff
13 and the Proposed Class have been damaged in an amount according to proof at the time of trial.

14 VIII

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO KEEP ACCURATE TIME RECORDS PURSUANT TO**

17 **WAGE ORDER 4-2001 AND LABOR CODE § 1199**

18 56. Plaintiff incorporates each and every allegation set forth in all of the foregoing
19 paragraphs as if fully set forth herein.

20 57. Labor Code § 1199 requires employers to comply with any provision of this
21 chapter or any order or ruling of the commission.

22 58. Wage Order 4-2001 Section 7(A)(3) requires an employer to keep records of
23 when the employee begins and ends each work period and meal periods.

24 59. Defendant failed to keep accurate records of when an employee begins and ends
25 each work period and accurate meal period times. Defendant does not keep these records for
26 Plaintiff and the Proposed Class.

27 60. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
28 are entitled to penalties thereon, attorney's fees, and costs.

IX

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO LABOR CODE § 226.7

AND LABOR CODE § 512

61. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

62. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of these rights.

63. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.

64. Defendant failed to provide Plaintiff and the Proposed Class with proper meal periods of not less than thirty (30) minutes as required by the Labor Code during the relevant time period. When Defendant provided these meal periods, they were often less than thirty (30) minutes in length.

65. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum to be proven at trial.

X

FIFTH CAUSE OF ACTION

FAILURE TO ALLOW REST PERIODS PURSUANT TO LABOR CODE § 226.7

66. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

67. Labor Code § 226.7 require an employer to pay an additional hour (1) of compensation for each rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked (or major fraction thereof). Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

68. Plaintiff and the Proposed Class consistently worked shifts with no rest breaks or with only some of their required rest breaks, and Defendant failed to maintain an accurate policy advising Plaintiff and the Proposed Class of these rest breaks and failed to provide Plaintiff and the Proposed Class with rest breaks of not less than ten (10) minutes as required by the Labor Code during the relevant time period.

69. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven at trial.

XII

SIXTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226(a)

70. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

71. California Labor Code § 226(a) requires employers to itemize in wage statements all deductions from payment of wages, the appropriate rates of pay, and to accurately report total hours worked by Plaintiff and the Proposed Class.

72. Labor Code § 226(a)(2) requires that the itemized wage statement properly state the total hours worked by the employee. Plaintiff and the Proposed Class are issued wage statements that do not state the total hours worked during the pay period.

73. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the Proposed Class are issued wage statements that do not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

74. Defendant's failure to provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a regular and consistent basis.

75. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

XII

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE EXPENSES PURSUANT TO LABOR CODE § 2802

76. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

77. Labor Code § 2802 requires employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties.

78. Defendant has failed to reimburse Plaintiff and the Proposed Class the cost and maintenance of their personal cell phones necessary to perform their job duties during the relevant time period.

79. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have been deprived of reimbursement in the amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and costs.

XIII

EIGHTH CAUSE OF ACTION

WAITING TIME PENALTIES UNDER LABOR CODE § 203

80. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

81. Numerous members of the Proposed Class including the Plaintiff are no longer employed by Defendant. They were either fired or quit Defendant's employ.

82. Defendant's failure to pay wages, as alleged above was willful in that Defendant knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to

1 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
2 penalty until paid for a period of up to thirty (30) days from the time they were due.

3 83. Defendant has failed to pay Plaintiff and others a sum certain at the time of
4 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
5 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff
6 and the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed
7 Class Members' daily wage multiplied by thirty (30) days.

8 **XIV**

9 **NINTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION PURSUANT TO**

11 **BUSINESS & PROFESSIONS CODE § 17200**

12 84. Plaintiff incorporates each and every allegation set forth in all of the foregoing
13 paragraphs as if fully set forth herein.

14 85. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of
15 himself, on behalf of the general public, and on behalf of the Proposed Class, brings this claim
16 pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged
17 in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the
18 general public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the
19 public interest within the meaning of Code of Civil Procedure § 1021.5.

20 86. Plaintiff is a "person" within the meaning of Business & Professions Code
21 § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution,
22 and other appropriate equitable relief.

23 87. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair
24 business practices.

25 88. California's wage and hour laws express fundamental public policies. Providing
26 employees with proper wages and compensation are fundamental public policies of this State
27 and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to
28 enforce vigorously minimum labor standards, to ensure that employees are not required or

1 permitted to work under substandard and unlawful conditions, and to protect law-abiding
2 employers and their employees from competitors who lower their costs by failing to comply
3 with minimum labor standards.

4 89. Defendant has violated statutes and public policies as alleged herein. Through
5 the conduct alleged in this Complaint, Defendant has acted contrary to these public policies,
6 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
7 unfair business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving
8 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
9 privileges guaranteed to all employees under law.

10 90. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
11 violation of § 17200, *et seq.* of the Business & Professions Code.

12 91. Defendant, by engaging in the conduct herein alleged, either knew or in the
13 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
14 violation of § 17200, *et seq.* of the Business & Professions Code.

15 92. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
16 others similarly situated have been damaged in a sum as may be proven.

17 93. Unless restrained, Defendant will continue to engage in the unlawful conduct as
18 alleged above. Pursuant to the Business & Professions Code, this court should make such
19 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the
20 use or employment by Defendant, its agents, or employees, of any unlawful or deceptive
21 practices prohibited by the Business & Professions Code, and/or, including but not limited to,
22 restitution and disgorgement of profits which may be necessary to restore Plaintiff and the
23 Proposed Class the money Defendant has unlawfully failed to pay.

24 **XV**

25 **TENTH CAUSE OF ACTION**

26 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

27 94. Plaintiff incorporates each and every allegation set forth in all of the foregoing
28 paragraphs as if fully set forth herein.

95. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, *et seq.* because of Defendant's violation of Labor Code §§ 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1199, and 2802, which call for civil penalties.

96. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. \$100 for the initial violation per employee per pay period; and
- b. \$200 for each subsequent violation per employee per pay period.

97. These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees.

98. On May 25, 2022, in compliance with Labor Code § 2699.3(a)(1), Plaintiff gave written notice by online filing to the LWDA, setting forth the facts and theories of the violations alleged against Defendant (“Notice Letter”, see Exhibit “1”) and paid the filing fee. Plaintiff also mailed notice to Defendant by certified mail, return receipt requested, to the address listed on the California Secretary of State’s website as the entity address for Defendant ACE INSULATION, INC., 1306 Dynamic St., Petaluma, CA 94954. (See Exhibit “2”).

99. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of May 25, 2022. Therefore, Plaintiff is entitled to commence a civil action as though the LWDA has chosen not to investigate. Plaintiff will also provide the LWDA with a filed-stamped copy of the First Amended Complaint immediately.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of unpaid wages and/or overtime not paid to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For penalties pursuant to Labor Code § 210 for violation of Labor Code § 204 in the amount of one hundred dollars (\$100) for the initial pay period in which a violation occurs and two hundred dollars (\$200) per employee for each violation in a subsequent pay period, plus

1 25% of the amount unlawfully withheld;

2 3. For compensatory damages in the amount of Plaintiff's and each Proposed Class
3 Members' hourly wage for each meal period missed or taken late from at least four (4) years
4 prior to the filing of this action to the present as may be proven;

5 4. For compensatory damages in the amount of Plaintiff's and each Proposed Class
6 Members' hourly wage for each rest period missed or taken late from at least four (4) years prior
7 to the filing of this action to the present as may be proven;

8 5. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
9 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
10 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
11 exceeding an aggregate penalty of four thousand dollars (\$4,000);

12 6. For compensatory damages in the amount of Plaintiff's and each Proposed Class
13 Members' out of pocket expenses as a requirement of employment;

14 7. For penalties pursuant to Labor Code § 203 for all employees who were
15 terminated or resigned equal to their daily wage times thirty (30) days;

16 8. An award of prejudgment and post judgment interest;

17 9. An order enjoining Defendant and its agents, servants, and employees, and all
18 persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class
19 with proper wages and/or overtime, timely payment of wages, accurate time records, meal
20 periods, rest periods, accurate itemized wage statements, reimbursement of expenses, and wages
21 upon termination/resignation pursuant to Labor Code §§ 203, 204, 210, 226(a), 226.7, 510, 512,
22 558, 1194, 1197, 1199, 2802, and IWC 4-2001;

23 10. For restitution for unfair competition pursuant to Business & Professions Code
24 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

25 11. For penalties and other relief pursuant to Labor Code § 2699, *et seq.*;

26 12. An award providing for payment of costs of suit;

27 13. An award of attorney's fees; and

28 14. Such other and further relief as this Court may deem proper and just.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

DATED: August 16, 2022

KINGSLEY & KINGSLEY, APC

By: 

DARREN M. COHEN

Attorneys for Plaintiff and the Proposed Class

EXHIBIT 1

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Wednesday, May 25, 2022 12:33 PM
To: Kimberly Madrid
Subject: Thank you for submission of your PAGA Case.

External Email!

5/25/2022

LWDA Case No. LWDA-CM-885642-22
Law Firm : Kingsley & Kingsley APC
Plaintiff Name : Justin Bigby
Employer: Ace Insulation, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C01%7Ckimberly%40kingsleykingsley.com%7C40365764a41c4b8de38508da3e856b61%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C637891040034615155%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=lr1x3ILDNBPqQm4lG5GhFwPim4vHXQeB6eEYAG6mOeM%3D&reserved=0

KINGSLEY & KINGSLEY

| L A W Y E R S |

May 25, 2022

PAGAfilings@dir.ca.gov
<https://dir.tfaforms.net/308>

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

ACE INSULATION, INC.
1306 Dynamic St.
Petaluma, CA 94954
Certified Mailing: # 7019 2970 0001 4016 6346

Re: Justin Bigby v. Ace Insulation, Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Justin Bigby (“Plaintiff”) for the violations of California Labor Code §§ 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1199, and 2802. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et seq.* We herein set forth the facts and theories of California Labor Code violations, which we allege Ace Insulation, Inc. (“Defendant”) engaged in with respect to our client and all of their California employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by Ace Insulation, Inc., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’ (“aggrieved employees”).¹

¹ Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”]. Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Specifically, Defendant has violated Labor Code §§ 510, 558, 1194, 1197, and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and the aggrieved employees for all hours worked. On a regular and consistent basis, Defendant required Plaintiff and the aggrieved employees to perform work “off the clock” without compensation. Plaintiff and the aggrieved employees were required to travel to and from different jobsites in the company vehicle. However, Defendant would simply pay Plaintiff and the aggrieved employees for an eight (8) hour day, regardless of the punch in and punch out records. As a result, Plaintiff and the aggrieved employees were not properly paid for these work tasks as a condition of employment at the proper rate of pay. This resulted in underpayment of wages and/or overtime.

Also, Defendant has engaged in the practice of untimely compensating their employees following the conclusion of each pay period, in violation of Labor Code §§ 204 and 210. Labor Code § 204(a) states that all wages earned by any person in an employment are due and payable twice during each calendar month. Also, Labor Code § 204(d) requires that employees paid on a weekly, biweekly, or semimonthly basis be paid no later than seven (7) calendar days after the payroll period ends. Defendant’s aggrieved employees are issued their wages more than seven (7) days after each payroll period ends. Thus, Defendant’s practice violates Labor Code §§ 204(a), 204(d), and 210.

Defendant has violated Labor Code § 512. Labor Code § 512 states that an employer may not employ an employee 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. Additionally, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty-minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner. Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendant required Plaintiff and the aggrieved employees to work shifts without providing them with meal periods. When employees were required to work through meal periods, Defendant failed to pay such employees one hour of pay at their regular rate of compensation.

Further, IWC Wage Order 4, ¶ 7 imposes on employers an obligation to record and maintain accurate records of “meal periods.” Labor Code § 1199 prohibits an employer from causing any employee to work under conditions of labor prohibited by an order of the IWC or from violating, refusing, or neglecting to comply with any order of the commission’s orders regarding wages, hours, and working conditions. Defendant does not maintain accurate records of meal periods for Plaintiff and the aggrieved employees. As such, Defendant has violated this statute and the Wage Order by failing to keep accurate records.

In addition, pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to provide Plaintiff and the aggrieved employees with these rest periods and failed to inform them of their right to rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at their regular rate of compensation for each missed rest period as required by Labor Code § 226.7.

Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement. Specifically, Labor Code § 226(a)(2) requires that the itemized wage statement properly state the total hours worked by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not state the total hours worked during the pay period. Further, Labor Code § 226(a)(9) requires that the itemized wage statement properly state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not include the applicable regular rate, overtime rate, and double time rates. Also, Plaintiff and the aggrieved employees are issued wage statements that do not include the correct number of hours worked at each applicable hourly rate and do not include meal/rest period premiums. Thus, Plaintiff is an aggrieved employee within the meaning PAGA and Defendant has violated Labor Code § 226(a) with respect to Plaintiff and the aggrieved employees.

In addition, Labor Code § 2802 and Wage Order 4-2001 require employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties. Defendant has failed to properly reimburse Plaintiff and aggrieved employees the cost of using and maintaining their personal cell phones. These expenses were incurred as a necessary part of the performance of Plaintiff's and the aggrieved employees' job duties. As such, Defendant violated Labor Code § 2802.

Lastly, Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, 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 therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not timely paid all wages due upon their separation from Defendant's employ as required. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code § 203.

Defendant's failure to provide wages and/or overtime for all hours worked at the proper rate, failure to pay timely wages, failure to provide meal and rest periods, failure to provide compliant itemized wage statements, failure to reimburse expenses, and failure to pay all wages upon termination/resignation were all done on a regular and consistent basis.

LABOR & WORKFORCE DEVELOPMENT AGENCY

ACE INSULATION, INC.

California Labor Code § 2699 Penalties

May 25, 2022

Page 4 of 4

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1199, and 2802, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 
DARREN M. COHEN

DMC/km

LWDA Filed Electronic Submission via <https://dir.tfaforms.net/308>

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

ACE INSULATION, INC. # 7019 2970 0001 4016 6346

EXHIBIT 2

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ace Insulation, Inc.
1306 Dynamic St.
Petaluma, CA 94954



9590 9402 7136 1251 6484 00

2. Article Number (Transfer from service label)

7019 2970 0001 4016 6346

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted

Delivery

☐ Signature Confirmation™☐ Signature Confirmation
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KINGSLEY & KINGSLEY, APC
16133 VENTURA BLVD.
SUITE 1200
ENCINO, CA 91436

PAGA Letter
Ace Insulation