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on behalf of himself and others similarly situated

Attorneys for Plaintiff JOSE IRIZARRY,
on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT**

JOSE G. IRIZARRY, on behalf of himself and
other aggrieved employees,

Plaintiff,

vs.

HUNTSMAN ADVANCED MATERIALS
AMERICAS, LLC; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: **22STCV34624**

PAGA ACTION

**PLAINTIFF JOSE G. IRIZARRY'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff JOSE G. IRIZARRY ("Plaintiff"), who alleges and complains
against Defendants HUNTSMAN ADVANCED MATERIALS AMERICAS, LLC; and DOES 1
to 100, inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
and other current and former aggrieved employees of Defendants who worked as hourly non-

1 exempt employees in California during the relevant time period seeking civil penalties associated
2 with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all
3 hours worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure
4 to authorize or permit all legally required and/or compliant meal periods or pay meal period
5 premium wages; failure to authorize or permit all legally required and/or compliant rest periods or
6 pay rest period premium wages; statutory penalties for failure to timely pay earned wages during
7 employment; statutory penalties for failure to provide accurate wage statements; statutory waiting
8 time penalties in the form of continuation wages for failure to timely pay employees all wages due
9 upon separation of employment. Plaintiff seeks on a representative basis, following notice to the
10 Labor and Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to
11 Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California,
12 and others aggrieved.

13 **II. JURISDICTION AND VENUE**

14 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
15 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
16 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
17 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
18 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
19 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
20 aggrieved California-based hourly non-exempt employees occurred in locations throughout
21 California, including but not limited to Los Angeles County, at 521 W. San Fernando Road, Los
22 Angeles, California 90039.

23 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
24 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
25 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
26 tolled from April 6, 2020, until October 1, 2020.

27 **III. PARTIES**

28 1. Plaintiff brings this action as a representative of the Labor and Workforce

1 Development Agency on behalf of himself and other current and former employees subject to
2 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
3 filed include current, former and/or future employees of Defendants who work, worked, or will
4 work for Defendants as direct employees as well as temporary employees employed through temp
5 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
6 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
7 employed by Defendants in an hourly position at Defendants' location in Los Angeles from in or
8 around May 28, 2019, until on or about February 17, 2022.

9 2. Plaintiff is informed and believes and thereon alleges that Defendant HUNTSMAN
10 ADVANCED MATERIALS AMERICAS, LLC is authorized to do business within the State of
11 California and is doing business in the State of California and/or that Defendants DOES 1-50 are,
12 and at all times relevant hereto were persons acting on behalf of Defendant HUNTSMAN
13 ADVANCED MATERIALS AMERICAS, LLC in the establishment of, or ratification of, the
14 aforementioned illegal wage and hour practices or policies. Defendant HUNTSMAN
15 ADVANCED MATERIALS AMERICAS, LLC operates in Los Angeles County and employed
16 Plaintiff and putative class members in Los Angeles County, including but not limited to, at 521
17 W. San Fernando Road, Los Angeles, California 90039.

18 3. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
19 through 50 are corporations, or are other business entities or organizations of a nature unknown to
20 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
21 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
22 working conditions of employment of Plaintiff and aggrieved employees.

23 4. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
24 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
25 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
26 supervisor, independent contractor and/or employee of each defendant who violated or caused to
27 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
28 the Industrial Welfare Commission's wage orders regulating hours and days of work.

1 Wage Orders.

2 12. In this case, Plaintiff and other current and former aggrieved California-based
3 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
4 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
5 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
6 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but
7 not limited to:

8 (a) Since the outbreak of COVID-19, Defendant required Plaintiff and other current
9 and former aggrieved California-based hourly non-exempt employees to line up and wait to
10 undergo and undergo off-the-clock temperature checks prior to clocking in for their start shift.

11 13. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
12 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
13 control without paying wages for that time. This resulted in Plaintiff and other current and former
14 aggrieved California-based hourly non-exempt employees working time for which they were not
15 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
16 Wage Order.

17 14. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
18 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
19 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
20 which includes all time that an employee is under control of the employer and all time the
21 employee is suffered and permitted to work. This includes the time an employee spends, either
22 directly or indirectly, performing services that inure to the benefit of the employer.'

23 15. Labor Code sections 510 and 1194 require an employer to compensate employees a
24 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
25 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

26 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
27 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
28 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
(12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
rate of pay for an employee. In addition, any work in excess of eight (8) hours on any

seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code section 510.

16. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

(a) Since the outbreak of COVID-19, Defendant required Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to line up and wait to undergo and undergo off-the-clock temperature checks prior to clocking in for their start shift.

17. Overtime is based upon an employee's regular rate of pay. "The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee." See Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

In this case, Plaintiff alleges that when he and other current and former aggrieved California-based hourly non-exempt employees earned overtime wages, Defendants failed to pay them overtime wages at the proper overtime rate of pay due to Defendants' failure to include all remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration such as shift differential pay, for example, when calculating Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regular rate of pay for the purpose of paying overtime.

18. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510 and 1194 and the applicable Wage Order.

19. **Failure to pay wages to hourly non-exempt employees for workdays that**

1 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
2 current and former aggrieved California-based hourly non-exempt employees regularly worked
3 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

4 20. California law requires an employer to authorize or permit an employee an
5 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
6 all duties and the employer relinquishes control over the employee's activities prior to the
7 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 1 at §11; *Brinker*
8 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
9 employee for a work period of more than ten (10) hours per day without providing the employee
10 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
11 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
12 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
13 period is only permitted when: (1) the nature of the work prevents an employee from being
14 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

15 21. If an employer fails to provide an employee a meal period in accordance with the
16 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
17 for each workday that a legally required and compliant meal period was not provided. Labor Code
18 section 226.7; Wage Order 1 at §11.

19 22. In this case, Defendants failed to authorize or permit legally required and compliant
20 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
21 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
22 limited to:

23 (b) Failing to provide Plaintiff and other current and former aggrieved California-based
24 hourly non-exempt employees a second uninterrupted duty-free meal period of no less than thirty
25 (30) minutes when then worked shifts in excess of 10 hours.

26 23. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
27 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
28 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each

1 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
2 employees did not receive legally required and compliant meal periods, in violation of Labor Code
3 section 226.7.

4 24. Finally, on occasions when Defendants paid Plaintiff and other current and former
5 aggrieved California-based hourly non-exempt employees a “premium” wage for late, missed,
6 short, on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1)
7 additional hour of pay at Plaintiff and other current and former aggrieved California-based hourly
8 non-exempt employees regular rate of compensation. Specifically, Defendants maintained a
9 policy, practice, and/or procedure of failing to include all remuneration such as shift differential
10 pay, for example, when calculating Plaintiff and other current and former aggrieved California-
11 based hourly non-exempt employees regular rate of compensation for the purpose of paying meal
12 period premium wages.

13 25. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff
14 and other current and former aggrieved California-based hourly non-exempt employees not
15 receiving wages to compensate them for workdays during which Defendants did not provide them
16 with meal periods in compliance with California law.

17 26. **Failure to pay wages to hourly non-exempt employees for workdays that**
18 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
19 current and former aggrieved California-based hourly non-exempt employees regularly worked
20 shifts of more than three-and-a-half (3.5) hours.

21 27. California law requires every employer to authorize and permit an employee a rest
22 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
23 Code section 226.7; Wage Order 1 at §12. Under California law, “[e]mployees are entitled to 10
24 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
25 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
26 on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
27 section 226.7; Wage Order 1 at §12. Rest periods, insofar as practicable, shall be in the middle of
28 each work period. Wage Order 1 at §12. Additionally, the rest period requirement “obligates

1 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
2 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
3 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

4 28. If the employer fails to authorize or permit a required rest period, the employer
5 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
6 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
7 Wage Order 1 at § 12.

8 29. In this case, Defendants failed to authorize or permit all legally required and
9 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
10 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
11 limited to:

12 (a) Failing to provide Plaintiff and other current and former aggrieved California-based
13 hourly non-exempt employees a third uninterrupted duty-free rest period of a net ten (10) minutes
14 for shifts exceeding ten (10) hours.

15 30. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
16 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
17 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
18 workday they did not receive legally required and compliant rest periods, in violation of Labor
19 Code section 226.7.

20 31. Finally, on occasions when Defendants did pay Plaintiff and other current and
21 former aggrieved California-based hourly non-exempt employees a “premium” wage for late,
22 missed, short, on-premise, on-duty, and/or interrupted rest periods, Defendants failed to pay the
23 one (1) additional hour of pay at Plaintiff and other current and former aggrieved California-based
24 hourly non-exempt employees regular rate of compensation. Specifically, Defendants maintained a
25 policy, practice, and/or procedure of failing to include all remuneration such as shift differential
26 pay, for example, when calculating Plaintiff and other current and former aggrieved California-
27 based hourly non-exempt employees regular rate of pay for the purpose of paying rest period
28 premiums.

1 32. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
2 and other current and former aggrieved California-based hourly non-exempt employees not
3 receiving wages to compensate them for workdays in which Defendants did not provide them with
4 rest periods in compliance with California law.

5 33. **Failure to timely pay earned wages during employment:** In California, wages
6 must be paid at least twice during each calendar month on days designated in advance by the
7 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
8 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
9 16th and the 26th day of that month and wages earned between the 16th and the last day,
10 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
11 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
12 paid within seven (7) calendar days following the close of the payroll period in which wages were
13 earned. Labor Code section 204(d).

14 34. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
15 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
16 exempt employees' earned wages (including minimum wages, overtime wages, meal period
17 premium wages and/or rest period premium wages), in violation of Labor Code section 204.
18 Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay
19 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
20 their earned wages within the applicable time frames outlined in Labor Code section 204.

21 35. **Failure to provide complete and accurate wage statements:** Labor Code section
22 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
23 employee his or her wages, the employer must "furnish each of his or her employees ... an
24 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
25 employee, except for any employee whose compensation is solely based on a salary and who is
26 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
27 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
28 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all

1 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
2 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
3 name of the employee and his or her social security number, (8) the name and address of the legal
4 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
5 the corresponding number of hours worked at each hourly rate by the employee.”

6 36. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
7 and other current and former aggrieved California-based hourly non-exempt employees all wages
8 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
9 period premium wages) rendered Plaintiff’s and other current and former aggrieved California-
10 based hourly non-exempt employees’ wage statements inaccurate, in violation of Labor Code
11 section 226.

12 37. **Failure to pay employees all wages due at time of termination/resignation:** An
13 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
14 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
15 hours of resignation (Labor Code section 202).

16 38. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
17 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
18 all their earned wages (including minimum wages, overtime wages, meal period premium wages,
19 and/or rest period premium wages), Defendants failed to pay those employees timely after each
20 employee’s termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

21 39. Defendants’ violations of Wage Order 1 constituted violations of Labor Code
22 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

23 40. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
24 employee, on behalf of himself or herself and other current or former employees, to bring a civil
25 action to recover civil penalties against all Defendants pursuant to the procedures specified in
26 Labor Code section 2699.3.

27 41. Plaintiff has complied with the procedures for bringing suit specified in Labor
28 Code section 2699.3. On July 14, 2022, Plaintiff filed a PAGA Claim Notice with the LWDA and

1 provided notice to Defendants by certified mail which provided notice of the specific provisions of
2 the Labor Code alleged to have been violated, including the facts and theories to support the
3 violations alleged.

4 42. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
5 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
6 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
7 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
8 to investigate Plaintiff's claims.

9 43. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
10 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510,
11 512, 1194, 1197, beginning one (1) year preceding Plaintiff sending the initial PAGA Claim
12 Notice to the LWDA to the present, in the following amounts:

13 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 2802, 512,
14 and 1197; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
15 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
16 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

17 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
18 for each employee for each pay period for the initial violation, and for each subsequent violation,
19 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
20 established by Labor Code section 226.3].

21 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
22 employee for each pay period for the initial violation, and for each subsequent violation, one
23 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
24 established by Labor Code section 558] and any unpaid wages.

25 d. For violations of Labor Code section 1194 and 1197, one hundred dollars
26 (\$100) for each underpaid employee for each pay period for the initial violation, and for each
27 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay
28 period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

44. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorneys' fees and costs in connection with his claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to those recoverable under the California Labor Code, including but not limited to section 2699(f);

3. For attorneys' fees and costs of suit, including but not limited to those recoverable under California Labor Code section 2699(g); and

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate

Dated: October 28, 2022

Respectfully submitted,
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