



April 12, 2024

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

SIMPLE CONTAINER SOLUTIONS

c/o Charles Veisoh

250 W. Artesia Blvd.

Rancho Dominguez, CA 90220

Sent via Certified Mail and Return Receipt No. 9589 0710 5270 0361 2319 80

INSULATED PRODUCTS CORPORATION

c/o Charles Shahin Veisoh

4824 South Santa Fe Ave.

Vernon, CA 900058

Sent via Certified Mail and Return Receipt No.

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff LUCIA HERRERA ("Plaintiff") and other aggrieved employees in a lawsuit against Defendants SIMPLE CONTAINER SOLUTIONS and INSULATED PRODUCTS CORPORATION ("Defendants"). Plaintiff was employed by Defendants in California from September 2019 to May of 2023, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to her and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all current and former non-exempt employees who worked for Defendants in California during the relevant claim period.

A true and correct copy of the Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues her investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney for Plaintiff

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

LUCIA HERRERA, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

SIMPLE CONTAINER SOLUTIONS, a
California corporation; INSULATED
PRODUCTS CORPORATION, a California
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: **24STCV07955**

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

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- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
 - 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
 - 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.
 - 9) VIOLATION OF GOV'T CODE § 12940 – RACIAL DISCRIMINATION

DEMAND FOR A JURY TRIAL

PLAINTIFF LUCIA HERRERA (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees, allege on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

1. Defendant SIMPLE CONTAINER SOLUTIONS, INC. (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant INSULATED PRODUCTS CORPORATION (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant SIMPLE CONTAINER SOLUTIONS, INC. was the employer of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

4. DEFENDANTS own and operate a packaging company throughout the state of California, including the county of Los Angeles, where PLAINTIFF worked.

5. PLAINTIFF was employed by DEFENDANT in California from September of 2019 to May of 2023, as a non-exempt employee, paid on an hourly basis, and entitled to the

1 legally required meal and rest periods and payment of minimum and overtime wages due for all
2 time worked.

3 6. PLAINTIFF brings this Class Action on behalf of himself and a California class,
4 defined as all persons who are or previously were employed by DEFENDANTS, and classified
5 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
6 four (4) years prior to the filing of this Complaint and ending on the date as determined by the
7 Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of the
8 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

9 7. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
10 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
11 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
12 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
13 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained
14 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
15 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
16 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
17 other members of the CALIFORNIA CLASS who have been economically injured by
18 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
19 relief.

20 8. The true names and capacities, whether individual, corporate, subsidiary,
21 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
22 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious
23 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
24 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
25 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
26 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
27 inclusive, are responsible in some manner for one or more of the events and happenings that
28 proximately caused the injuries and damages hereinafter alleged.

1 9. The agents, servants and/or employees of the Defendants and each of them acting
2 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
3 agent, servant and/or employee of the Defendants, and personally participated in the conduct
4 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
5 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
6 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
7 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
8 Defendants' agents, servants and/or employees.

9 10. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of the
10 PLAINTIFF'S employer, within the meaning of California Labor Code § 558, who violated or
11 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
12 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
13 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
14 at all relevant times.

15 11. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of
16 PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person,
17 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
18 employee a wage less than the minimum fixed by California state law, and as such, are subject to
19 civil penalties for each underpaid employee.

20 12. DEFENDANT's uniform policies and practices alleged herein were unlawful,
21 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
22 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

23 13. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
24 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
25 other members of the CALIFORNIA CLASS who has been economically injured by
26 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
27 relief.

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1 20. PLAINTIFF is informed and believes, and upon such information and belief alleges, that,
2 DEFENDANT's conduct in terminating PLAINTIFF was part of a pattern of behavior by
3 DEFENDANT aimed at removing employees who are Salvadorian like PLAINTIFF from
4 DEFENDANT's workforce.

5 **Wage and Hour Class Action Claims**

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7 16. In violation of the applicable sections of the California Labor Code and the
8 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
9 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
10 failed to provide legally compliant meal and rest periods, failed to accurately compensate
11 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
12 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
13 time worked, failed to compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
14 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
15 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
16 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
17 Members for business expenses, and failed to issue to PLAINTIFF and the members of the
18 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
19 applicable hourly rates in effect during the pay periods and the corresponding amount of time
20 worked at each hourly rate. DEFENDANT's uniform policies and practices are intended to
21 purposefully avoid the accurate and full payment for all time worked as required by California
22 law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors
23 who comply with the law. To the extent equitable tolling operates to toll claims by the
24 CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted
25 accordingly.

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1 **A. Meal Period Violations**

2 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
3 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
4 meaning the time during which an employee is subject to the control of an employer, including
5 all the time the employee is suffered or permitted to work. From time to time during the CLASS
6 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
7 without paying them for all the time they were under DEFENDANT's control. Specifically,
8 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
9 PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
10 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
11 Members forfeited minimum wage and overtime compensation by regularly working without their
12 time being accurately recorded and without compensation at the applicable minimum wage and
13 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
14 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
15 records.

16 18. From time to time during the CLASS PERIOD, as a result of their rigorous work
17 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
18 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
19 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
20 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
21 more than five (5) hours during some shifts without receiving a meal break. The nature of the
22 work performed by PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for
23 the limited and narrowly construed "on-duty" meal period exception. When they were provided
24 with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to
25 time, required to remain on duty and on call. DEFENDANT's failure to provide PLAINTIFF and
26 the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
27 DEFENDANT's business records. PLAINTIFF and other members of the CALIFORNIA CLASS
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1 therefore forfeit meal breaks without additional compensation and in accordance with
2 DEFENDANT's strict corporate policy and practice.

3 **B. Rest Period Violations**

4 19. From time to time during the CLASS PERIOD, PLAINTIFF and other
5 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
6 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
7 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied
8 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
9 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
10 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
11 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
12 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
13 CLASS Members were, from time to time, required to remain on duty and/or on call. PLAINTIFF
14 and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu*
15 thereof. As a result of their rigorous work schedules and DEFENDANT's inadequate staffing,
16 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
17 proper rest periods by DEFENDANT and DEFENDANT's managers.

18 **C. Unreimbursed Business Expenses**

19 20. DEFENDANT as a matter of corporate policy, practice, and procedure,
20 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
21 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
22 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
23 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
24 are required to indemnify employees for all expenses incurred in the course and scope of their
25 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct consequence
27 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
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1 even though unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful."

3 21. In the course of their employment, DEFENDANT required PLAINTIFF and other
4 CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance
5 of their job duties, including but not limited to receiving and/or responding to work-related
6 communications and performing work-related duties. However, DEFENDANT unlawfully failed
7 to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the use of their personal
8 cell phones. As a result, in the course of their employment with DEFENDANT, the PLAINTIFF
9 and other CALIFORNIA CLASS Members incurred unreimbursed business expenses that
10 included, but were not limited to, costs related to the use of their personal cell phones.

11 **D. Wage Statement Violations**

12 22. California Labor Code Section 226 required an employer to furnish its employees
13 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
14 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
15 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
16 name of the employee and only the last four digits of the employee's social security number or an
17 employee identification number other than a social security number, (8) the name and address of
18 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
19 period and the corresponding number of hours worked at each hourly rate by the employee.

20 23. From time to time during the CLASS PERIOD, when PLAINTIFF and other
21 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
22 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also
23 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
24 accurate wage statements which failed to show, among other things, all deductions, the total hours
25 worked and all applicable hourly rates in effect during the pay period and the corresponding
26 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
27 meal and rest periods.

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1 24. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
2 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
3 Cal. Lab. Code § 226.

4 25. As a result, DEFENDANT issued PLAINTIFF and other members of the
5 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
6 DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional
7 payroll error due to clerical or inadvertent mistake.

8 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

9 26. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
10 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
11 for all hours worked.

12 27. During the CLASS PERIOD, from time-to-time DEFENDANT required
13 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
14 work, including but not limited to, opening and closing keyholder duties, assisting
15 DEFENDANT'S customers, and being subjected to Covid screenings each morning after clocking
16 in. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS having to work
17 while off-the-clock.

18 28. DEFENDANT directed and directly benefited from the undercompensated off-the-
19 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

20 29. DEFENDANT controlled the work schedules, duties, and protocols, applications,
21 assignments, and employment conditions of PLAINTIFF and the other members of the
22 CALIFORNIA CLASS.

23 30. DEFENDANT was able to track the amount of time PLAINTIFF and the other
24 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
25 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
26 wages earned and owed for all the work they performed.

27 31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
28 exempt employees, subject to the requirements of the California Labor Code.

1 32. DEFENDANT's policies and practices deprived PLAINTIFF and the other
2 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
3 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
4 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
5 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime
6 pay.

7 33. DEFENDANT knew or should have known that PLAINTIFF and the other
8 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

9 34. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
10 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and
11 benefit for the time spent working while off-the-clock. DEFENDANT's uniform policy and
12 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
13 hours worked in accordance with applicable law is evidenced by DEFENDANT's business
14 records.

15 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
16 **and Redeemed Sick Pay**

17 35. From time to time during the CLASS PERIOD, DEFENDANT failed and
18 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
19 Members for their overtime and double time hours worked, meal and rest period premiums, and
20 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
21 forfeited wages due to them for working overtime without compensation at the correct overtime
22 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
23 DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at
24 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick
25 pay in accordance with applicable law is evidenced by DEFENDANT's business records.

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1 36. State law provides that employees must be paid overtime at one-and-one-half times
2 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
3 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
4 employee’s performance.

5 37. The second component of PLAINTIFF’S and other CALIFORNIA CLASS
6 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
7 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
8 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
9 paid on an hourly basis with bonus compensation when the employees met the various
10 performance goals set by DEFENDANTS.

11 38. However, from time to time, when calculating the regular rate of pay in those pay
12 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
13 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
14 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus
15 compensation as part of the employee’s “regular rate of pay” and/or calculated all hours worked
16 rather than just all non-overtime hours worked. Management and supervisors described the
17 incentive/bonus program to potential and new employees as part of the compensation package.
18 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
19 CLASS Members must be included in the “regular rate of pay.” The failure to do so has resulted
20 in a systematic underpayment of overtime and double time compensation, meal and rest period
21 premium payments, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS
22 Members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that
23 paid sick time for non-exempt employees shall be calculated in the same manner as the regular
24 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or
25 not the employee actually works overtime in that workweek. DEFENDANTS’ conduct, as
26 articulated herein, by failing to include the incentive compensation as part of the “regular rate of
27 pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
28 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

1 39. In violation of the applicable sections of the California Labor Code and the
2 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a
3 matter of company policy, practice, and procedure, intentionally and knowingly failed to
4 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
5 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
6 sick pay as required by California law which allowed DEFENDANT to illegally profit and gain
7 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
8 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANT, the
9 CLASS PERIOD should be adjusted accordingly.

10 **G. Violations for Untimely Payment of Wages**

11 40. Pursuant to California Labor Code section 204, PLAINTIFF and the
12 CALIFORNIA CLASS members were entitled to timely payment of wages during their
13 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
14 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
15 meal period premium wages, and rest period premium wages within permissible time period.

16 41. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
17 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to
18 Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become
19 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
20 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
21 wages at the time of quitting.” PLAINTIFF and the CALIFORNIA CLASS Members were, from
22 time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or
23 at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

24 42. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
25 paying all wages due at time of termination for all CALIFORNIA CLASS Members whose
26 employment ended during the CLASS PERIOD.

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1 **H. Unlawful Deductions**

2 43. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF
3 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
4 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANT
5 violated Labor Code § 221.

6 **I. Timekeeping Manipulation**

7 44. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an
8 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
9 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
10 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
11 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
12 unilaterally alter the time recorded in DEFENDANT'S timekeeping system for PLAINTIFF and
13 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
14 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
15 missed rest breaks.

16 45. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
17 time-to-time, forfeited time worked by working without their time being accurately recorded and
18 without compensation at the applicable pay rates.

19 46. The mutability of the timekeeping system also allowed DEFENDANT to alter
20 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT's
21 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
22 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
23 were not at all times provided an off-duty meal break. This practice is a direct result of
24 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)
25 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

26 47. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
27 forfeited wages due them for all hours worked at DEFENDANT'S direction, control and benefit
28 for the time the timekeeping system was inoperable. DEFENDANT'S uniform policy and

1 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
2 hours worked in accordance with applicable law is evidenced by DEFENDANT'S business
3 records.

4 **J. Sick Pay Violations**

5 48. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after
6 July 1, 2015, works in California for the same employer for 30 or more days within a year from
7 the commencement of employment is entitled to paid sick days as specified in this section."
8 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From
9 time to time, DEFENDANT failed to have a policy or practice in place that provided PLAINTIFF
10 and other members of the CALIFORNIA CLASS with sick days and/or paid sick leave.

11 49. California Labor Code Section 246(i) requires an employer to furnish its
12 employees with written wage statements setting forth the amount of paid sick leave available.
13 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF
14 and other members of the CALIFORNIA CLASS with wage statements setting forth the amount
15 of paid sick leave available.

16 **CLASS ACTION ALLEGATIONS**

17 50. PLAINTIFF brings this Class Action on behalf of himself, and a California class
18 defined as all persons who are or previously were employed by Defendant Insulated Products
19 Corporation and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
20 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
21 date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
22 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
23 (\$5,000,000.00).

24 51. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
25 deprived of wages and penalties from unpaid wages earned and due, including but not limited to,
26 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
27 illegal meal and rest period policies, failure to reimburse for business expenses, failure to
28 compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure

1 to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and
2 expenses.

3 52. The members of the class are so numerous that joinder of all class members is
4 impractical.

5 53. Common questions of law and fact regarding DEFENDANT's conduct, including
6 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to
7 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
8 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
9 provide legally compliant meal and rest periods, failed to reimburse for business expenses,
10 failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid
11 at least minimum wage and overtime, exist as to all members of the class and predominate over
12 any questions affecting solely any individual members of the class. Among the questions of law
13 and fact common to the class are:

- 14 a. Whether DEFENDANT maintained legally compliant meal period policies and
15 practices;
- 16 b. Whether DEFENDANT maintained legally compliant rest period policies and
17 practices;
- 18 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
19 Members accurate premium payments for missed meal and rest periods;
- 20 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
21 Members accurate overtime wages;
- 22 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
23 Members at least minimum wage for all hours worked;
- 24 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
25 CLASS Members for required business expenses;
- 26 g. Whether DEFENDANT issued legally compliant wage statements;

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1 h. Whether DEFENDANT committed an act of unfair competition by systematically
2 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
3 CLASS for all time worked;

4 i. Whether DEFENDANT committed an act of unfair competition by systematically
5 failing to record all meal and rest breaks missed by PLAINTIFF and other
6 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
7 of this work, required employees to perform this work and permits or suffers to
8 permit this work;

9 j. Whether DEFENDANT committed an act of unfair competition in violation of the
10 UCL, by failing to provide the PLAINTIFF and the other members of the
11 CALIFORNIA CLASS with the legally required meal and rest periods.

12 54. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
13 a result of DEFENDANT's conduct and actions alleged herein.

14 55. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
15 PLAINTIFF have the same interests as the other members of the class.

16 56. PLAINTIFF will fairly and adequately represent and protect the interests of the
17 CALIFORNIA CLASS Members.

18 57. PLAINTIFF retained able class counsel with extensive experience in class action
19 litigation.

20 58. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
21 interest of the other CALIFORNIA CLASS Members.

22 59. There is a strong community of interest among PLAINTIFF and the members of
23 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
24 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
25 sustained.

26 60. The questions of law and fact common to the CALIFORNIA CLASS Members
27 predominate over any questions affecting only individual members, including legal and factual
28 issues relating to liability and damages.

61. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory, and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

- a. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- b. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

62. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT.

FIRST CAUSE OF ACTION

Unlawful Business Practices

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

63. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

64. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof. Code § 17021.

/ / /

1 65. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
2 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
3 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
4 as follows:

5 Any person who engages, has engaged, or proposes to engage in unfair competition may
6 be enjoined in any court of competent jurisdiction. The court may make such orders or
7 judgments, including the appointment of a receiver, as may be necessary to prevent the
8 use or employment by any person of any practice which constitutes unfair competition, as
defined in this chapter, or as may be necessary to restore to any person in interest any
money or property, real or personal, which may have been acquired by means of such
unfair competition. (Cal. Bus. & Prof. Code § 17203).

9 66. By the conduct alleged herein, DEFENDANT has engaged and continues to
10 engage in a business practice which violates California law, including but not limited to, the
11 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
12 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
13 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
14 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
15 constitute unfair competition, including restitution of wages wrongfully withheld.

16 67. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair
17 in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous
18 or substantially injurious to employees, and were without valid justification or utility for which
19 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
20 Business & Professions Code, including restitution of wages wrongfully withheld.

21 68. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
22 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
23 mandated meal and rest periods and the required amount of compensation for missed meal and
24 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
25 necessary business expenses incurred, due to a systematic business practice that cannot be
26 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
27 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
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1 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
2 restitution of wages wrongfully withheld.

3 69. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
4 unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANT.

7 70. By the conduct alleged herein, DEFENDANT's practices were also unfair and
8 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
9 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
10 required by Cal. Lab. Code §§ 226.7 and 512.

11 71. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
12 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
13 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
14 each workday in which a second off-duty meal period was not timely provided for each ten (10)
15 hours of work.

16 72. PLAINTIFF further demands on behalf of herself and on behalf of each
17 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
18 was not timely provided as required by law.

19 73. By and through the unlawful and unfair business practices described herein,
20 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
21 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
22 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
23 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
24 to unfairly compete against competitors who comply with the law.

25 74. All the acts described herein as violations of, among other things, the Industrial
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
27 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
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1 unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business
2 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

3 75. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
4 and do, seek such relief as may be necessary to restore to them the money and property which
5 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
6 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
7 unfair business practices, including earned but unpaid wages for all time worked.

8 76. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
9 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
10 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
11 engaging in any unlawful and unfair business practices in the future.

12 77. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
13 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
14 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
15 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
16 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable
17 legal and economic harm unless DEFENDANT is restrained from continuing to engage in these
18 unlawful and unfair business practices.

19 **SECOND CAUSE OF ACTION**

20 **Failure To Pay Minimum Wages**

21 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

22 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

23 78. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
24 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
25 Complaint.

26 79. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
27 for DEFENDANT's willful and intentional violations of the California Labor Code and the
28

1 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate
2 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

3 80. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
4 policy, an employer must timely pay its employees for all hours worked.

5 81. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a less wage than
7 the minimum so fixed is unlawful.

8 82. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
9 including minimum wage compensation and interest thereon, together with the costs of suit.

10 83. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
11 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
12 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
13 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
14 CALIFORNIA CLASS.

15 84. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
16 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
17 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
18 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

19 85. In committing these violations of the California Labor Code, DEFENDANT
20 inaccurately calculated the correct time worked and consequently underpaid the actual time
21 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS
22 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
23 violation of the California Labor Code, the Industrial Welfare Commission requirements and
24 other applicable laws and regulations.

25 86. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
26 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
27 minimum wage compensation for their time worked for DEFENDANT.

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1 87. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
3 failure to pay all earned wages.

4 88. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
5 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
6 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
7 suffered and will continue to suffer an economic injury in amounts which are presently unknown
8 to them, and which will be ascertained according to proof at trial.

9 89. DEFENDANT knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA CLASS were under-compensated for their time worked.
11 DEFENDANT systematically elected, either through intentional malfeasance or gross
12 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
13 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
14 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
15 for their time worked.

16 90. In performing the acts and practices herein alleged in violation of California labor
17 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
18 and provide them with the requisite compensation, DEFENDANT acted and continues to act
19 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
20 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
21 consequences to them, and with the despicable intent of depriving them of their property and
22 legal rights, and otherwise causing them injury in order to increase company profits at the
23 expense of these employees.

24 91. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
25 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
26 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
27 California Labor Code and/or other applicable statutes. To the extent minimum wage
28 compensation is determined to be owed to the CALIFORNIA CLASS Members who have

1 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
2 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
3 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
4 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
5 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
6 recover statutory costs.

7 **THIRD CAUSE OF ACTION**

8 **Failure To Pay Overtime Compensation**

9 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

10 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

11 92. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
12 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
13 Complaint.

14 93. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
15 for DEFENDANT's willful and intentional violations of the California Labor Code and the
16 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
17 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
18 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

19 94. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
20 policy, an employer must timely pay its employees for all hours worked.

21 95. Cal. Lab. Code § 510 provides that employees in California shall not be employed
22 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless
23 they receive additional compensation beyond their regular wages in amounts specified by law.

24 96. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
25 including minimum and overtime compensation and interest thereon, together with the costs of
26 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
27 than those fixed by the Industrial Welfare Commission is unlawful.

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1 97. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
2 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
3 they worked, including overtime work.

4 98. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
5 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
6 implementing a uniform policy and practice that failed to accurately record overtime worked by
7 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
8 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
9 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
10 (12) hours in a workday, and/or forty (40) hours in any workweek.

11 99. In committing these violations of the California Labor Code, DEFENDANT
12 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
13 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
14 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
15 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
16 regulations.

17 100. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
18 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
19 overtime compensation for their time worked for DEFENDANT.

20 101. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
21 from the overtime requirements of the law. None of these exemptions are applicable to
22 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
23 other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
24 agreement that would preclude the causes of action contained herein this Complaint. Rather,
25 PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA CLASS based on
26 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of
27 California.

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1 102. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for overtime worked than they were entitled to,
3 constituting a failure to pay all earned wages.

4 103. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
5 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
6 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
7 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly
8 required to work, and did in fact work overtime, and did in fact work overtime as to which
9 DEFENDANT failed to accurately record and pay as evidenced by DEFENDANT's business
10 records and witnessed by employees.

11 104. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
12 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
13 amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA
14 CLASS have suffered and will continue to suffer an economic injury in amounts which are
15 presently unknown to them, and which will be ascertained according to proof at trial.

16 105. DEFENDANT knew or should have known that PLAINTIFF and the other
17 members of the CALIFORNIA CLASS were undercompensated for their time worked.
18 DEFENDANT systematically elected, either through intentional malfeasance or gross
19 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
20 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
21 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages
22 for their overtime worked.

23 106. In performing the acts and practices herein alleged in violation of California labor
24 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
25 and provide them with the requisite compensation, DEFENDANT acted and continues to act
26 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
27 CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the
28 consequences to them, and with the despicable intent of depriving them of their property and

1 legal rights, and otherwise causing them injury in order to increase company profits at the
2 expense of these employees.

3 107. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
4 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
5 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
6 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
7 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
8 employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and
9 therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code §
10 203, which penalties are sought herein. DEFENDANT's conduct as alleged herein was willful,
11 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
12 Members are entitled to seek and recover statutory costs.

13 **FOURTH CAUSE OF ACTION**

14 **Failure To Provide Required Meal Periods**

15 **(Cal. Lab. Code §§ 226.7 & 512)**

16 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

17 108. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
19 Complaint.

20 109. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
21 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
22 required by the applicable Wage Order and Labor Code. The nature of the work performed by
23 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
24 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
25 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often
26 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
27 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
28 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by

1 DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF and
2 CALIFORNIA CLASS Members with a second off-duty meal period on some workdays in
3 which these employees were required by DEFENDANT to work ten (10) hours of work. As a
4 result, PLAINTIFF and other members of the CALIFORNIA CLASS forfeited meal breaks
5 without additional compensation and in accordance with DEFENDANT's strict corporate policy
6 and practice.

7 110. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
8 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
9 who were not provided a meal period, in accordance with the applicable Wage Order, one
10 additional hour of compensation at each employee's regular rate of pay for each workday that a
11 meal period was not provided.

12 111. As a proximate result of the aforementioned violations, PLAINTIFF and
13 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
14 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

15 **FIFTH CAUSE OF ACTION**

16 **Failure To Provide Required Rest Periods**

17 **(Cal. Lab. Code §§ 226.7 & 512)**

18 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

19 112. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
20 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
21 Complaint.

22 113. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
23 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
24 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
25 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
26 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
27 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
28 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour

1 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other
2 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
3 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate
4 PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the
5 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
6 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
7 periods is evidenced by DEFENDANT's business records.

8 114. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
9 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
10 who were not provided a rest period, in accordance with the applicable Wage Order, one
11 additional hour of compensation at each employee's regular rate of pay for each workday that
12 rest period was not provided.

13 115. As a proximate result of the aforementioned violations, PLAINTIFF and
14 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
15 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

16 **SIXTH CAUSE OF ACTION**

17 **Failure To Reimburse Employees For Required Expenses**

18 **(Cal. Lab. Code §§ 2802)**

19 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

20 116. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
21 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
22 Complaint.

23 117. Cal. Lab. Code § 2802 provides, in relevant part, that:

24 An employer shall indemnify his or her employee for all necessary expenditures or
25 losses incurred by the employee in direct consequence of the discharge of his or her
26 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them
to be unlawful.

27 118. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
28 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS

1 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
2 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
3 members for expenses which included, but were not limited to, their personal cell phones as a
4 result of and in furtherance of their job duties, including but not limited to receiving and/or
5 responding to work-related communications and performing work-related duties. Specifically,
6 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to
7 use their personal cell phones to execute their essential job duties on behalf of DEFENDANT.
8 DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and
9 the CALIFORNIA CLASS members for expenses resulting from using their personal cell phones
10 for DEFENDANT within the course and scope of their employment for DEFENDANT. These
11 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
12 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
13 necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,
14 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
15 members for these expenses as an employer is required to do under the laws and regulations of
16 California.

17 119. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
18 by them and the CALIFORNIA CLASS members in the discharge of their job duties for
19 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the
20 statutory rate and costs under Cal. Lab. Code § 2802.

21 **SEVENTH CAUSE OF ACTION**

22 **Failure To Provide Accurate Itemized Statements**

23 **(Cal. Lab. Code § 226)**

24 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

25 120. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
26 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
27 Complaint.

28 121. Cal. Labor Code § 226 provides that an employer must furnish employees with an

1 “accurate itemized” statement in writing showing:

- 2 a. Gross wages earned,
- 3 b. (2) total hours worked by the employee, except for any employee whose
- 4 compensation is solely based on a salary and who is exempt from payment of
- 5 overtime under subdivision (a) of Section 515 or any applicable order of the
- 6 Industrial Welfare Commission,
- 7 c. the number of piece-rate units earned and any applicable piece rate if the employee
- 8 is paid on a piece-rate basis,
- 9 d. all deductions, provided that all deductions made on written orders of the employee
- 10 may be aggregated and shown as one item,
- 11 e. net wages earned,
- 12 f. the inclusive dates of the period for which the employee is paid,
- 13 g. the name of the employee and his or her social security number, except that by
- 14 January 1, 2008, only the last four digits of his or her social security number of an
- 15 employee identification number other than social security number may be shown
- 16 on the itemized statement,
- 17 h. the name and address of the legal entity that is the employer, and
- 18 i. all applicable hourly rates in effect during the pay period and the corresponding
- 19 number of hours worked at each hourly rate by the employee.

20 122. When DEFENDANT did not accurately record PLAINTIFF’S and other
21 CALIFORNIA CLASS Members’ missed meal and rest breaks, or were paid inaccurate missed
22 meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated
23 Cal. Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other
24 CALIFORNIA CLASS Members with complete and accurate wage statements which failed to
25 show, among other things, all deductions, the accurate gross wages earned, net wages earned,
26 the total hours worked and all applicable hourly rates in effect during the pay period and the
27 corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty
28 payments or missed meal and rest periods.

123. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

124. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

EIGHTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code § 203)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

125. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

126. Cal. Lab. Code § 200 provides that:

As used in this article:

- (d) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.
- (e) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the to be paid for is performed personally by the person demanding payment.

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1 127. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges
2 an employee, the wages earned and unpaid at the time of discharge are due and payable
3 immediately.”

4 128. Cal. Lab. Code § 202 provides, in relevant part, that:
5 If an employee not having a written contract for a definite period quits his or her
6 employment, his or her wages shall become due and payable not later than 72 hours
7 thereafter, unless the employee has given 72 hours previous notice of his or her intention
8 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
9 Notwithstanding any other provision of law, an employee who quits without providing a
72-hour notice shall be entitled to receive payment by mail if he or she so requests and
designates a mailing address. The date of the mailing shall constitute the date of payment
for purposes of the requirement to provide payment within 72 hours of the notice of
quitting.

10 129. There was no definite term in PLAINTIFF’S or any CALIFORNIA CLASS
11 Members’ employment contract.

12 130. Cal. Lab. Code § 203 provides:
13 If an employer willfully fails to pay, without abatement or reduction, in accordance with
14 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
15 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.

16 131. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
17 terminated, and DEFENDANT has not tendered payment of wages to these employees who
18 missed meal and rest breaks, as required by law.

19 132. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
20 members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands up to
21 thirty (30) days of pay as penalty for not paying all wages due at time of termination for all
22 employees who terminated employment during the CLASS PERIOD and demands an accounting
23 and payment of all wages due, plus interest and statutory costs as allowed by law.

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NINTH CAUSE OF ACTION

**VIOLATION OF GOVERNMENT CODE §12940 et seq. – RACIAL
DISCRIMINATION**

(Alleged By PLAINTIFF and against all Defendants)

1. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

2. PLAINTIFF was employed by DEFENDANT.

3. DEFENDANT is employer covered by Government Code §12940 et seq.

4. PLAINTIFF was terminated from his employment and/or suffered other adverse employment actions.

5. PLAINTIFF'S race was a substantial motivating reason(s) for her termination and other adverse employment actions.

6. As a result of DEFENDANT's conduct, PLAINTIFF has suffered substantial losses in earnings and employment benefits and emotional distress in an amount to be determined according to proof at trial.

7. In doing the acts herein alleged, DEFENDANT acted with malice and oppression, and with a conscious disregard of PLAINTIFF'S rights, and PLAINTIFF is entitled to exemplary and punitive damages from DEFENDANT in an amount to be punish DEFENDANTS and to deter such wrongful conduct in the future.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

- 5 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
6 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
7 b. An order temporarily, preliminarily and permanently enjoining and restraining
8 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
9 c. An order requiring DEFENDANTS to pay all overtime wages and all sums
10 unlawfully withheld from compensation due to PLAINTIFF and the other members
11 of the CALIFORNIA CLASS; and
12 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
13 for restitution of the sums incidental to DEFENDANT's violations due to
14 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

15 2. On behalf of the CALIFORNIA CLASS:

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
17 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
18 to Cal. Code of Civ. Proc. § 382;
19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for overtime compensation due to PLAINTIFF and the other members of
21 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
22 thereon at the statutory rate;
23 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
24 the applicable IWC Wage Order;
25 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
26 which a violation occurs and one hundred dollars (\$100) per each member of the
27 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
28 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for

violation of Cal. Lab. Code § 226

e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit

3. On all claims:

a. An award of interest, including prejudgment interest at the legal rate;

b. Such other and further relief as the Court deems just and equitable; and

c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: March 28, 2024

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay

Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: March 28, 2024

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay

Attorney for PLAINTIFF