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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

ADAM GONZALES, as an aggrieved
employee pursuant to the Private
Attorneys General Act ("PAGA"), on
behalf of the State of California and
other non-party Aggrieved
Employees,

Plaintiff,

vs.

THE SHERWIN-WILLIAMS
COMPANY, an Ohio corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: **23CV419922**

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Adam Gonzales, as an aggrieved employee and on behalf of the State of
2 California and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on May 25, 2023, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional
22 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
23 in this action given that the State of California, as the real party in interest in this action, is not
24 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
25 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
26 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
27 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the
28 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Adam Gonzales is a resident of San Jose, in Santa Clara County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately December 2021 to December 2022. Plaintiff worked as a Delivery Driver I out of Defendants' location in San Jose, California. Plaintiff typically worked nine (9) hours per day and five (5) days per week. At the time Plaintiff's employment with Defendants ended, he was compensated approximately \$21.37 per hour. Plaintiff's job duties included, without limitation, mixing paints, cleaning and loading delivery vans, and delivering paint to commercial clients.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute an arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented employees with an "Employment Dispute Mediation and Arbitration Agreement" ("Arbitration Agreement") during the onboarding process, which had to be reviewed and acknowledged immediately. Specifically, on information and belief, the Arbitration Agreement was one of several documents presented to new employees for signature during the orientation process, including Our Rules and Regulations, Workplace Violence Policy, Code of Conduct, and Problem Resolution Procedures, among other documents. Also, employees did not have a meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to sign on a take-it or leave-it

1 basis, along with all of the other on-boarding documents.

2 8. THE SHERWIN-WILLIAMS COMPANY was and is, upon information and
3 belief, an Ohio corporation, and at all times hereinafter mentioned, an employer whose
4 employees are engaged throughout this county, the State of California.

5 9. Plaintiff is unaware of the true names or capacities of the Defendants sued
6 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
7 amend the complaint and serve such fictitiously named Defendants once their names and
8 capacities become known.

9 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
10 were the partners, agents, owners, or managers of THE SHERWIN-WILLIAMS COMPANY
11 at all relevant times.

12 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
13 acts and omissions alleged herein was performed by, or is attributable to, THE SHERWIN-
14 WILLIAMS COMPANY and/or DOES 1 through 10 (collectively, “Defendants” or
15 “SHERWIN-WILLIAMS”), each acting as the agent, employee, alter ego, and/or joint
16 venturer of, or working in concert with, each of the other co-Defendants and was acting within
17 the course and scope of such agency, employment, joint venture, or concerted activity with
18 legal authority to act on the others’ behalf. The acts of any and all Defendants were in
19 accordance with, and represent, the official policy of Defendants.

20 12. At all relevant times, Defendants, and each of them, ratified each and every act
21 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
22 and abetted the acts and omissions of each and all the other Defendants in proximately causing
23 the damages herein alleged.

24 13. Plaintiff is informed and believes, and thereon alleges, that each of said
25 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
26 omissions, occurrences, and transactions alleged herein.

27 **PAGA REPRESENTATIVE ALLEGATIONS**

28 14. Defendants develop, manufacture, distribute, and sell paint, coatings and

1 related products for professional, industrial, commercial and retail customers. Upon
2 information and belief, Defendants maintain a single, centralized Human Resources (HR)
3 department at their corporate headquarters in Cleveland, Ohio, for all non-exempt, hourly paid
4 employees working for Defendants in California, which is responsible for the recruiting and
5 hiring of new employees, and communicating and implementing Defendants' company-wide
6 policies, including timekeeping policies and meal and rest period policies, to employees
7 throughout California.

8 15. In particular, Plaintiff and other non-party Aggrieved Employees, on
9 information and belief, received the same standardized documents and/or written policies.
10 Upon information and belief, the usage of standardized documents and/or written policies,
11 including new-hire documents, indicate that Defendants dictated policies at the corporate level
12 and implemented them company-wide, regardless of their employees' assigned locations or
13 positions. Upon information and belief, Defendants set forth uniform policies and procedures
14 in several documents provided at an employee's time of hire.

15 16. Upon information and belief, Defendants maintain a centralized Payroll
16 department at their corporate headquarters in Cleveland, Ohio, which processes payroll for all
17 non-exempt, hourly paid employees working for Defendants at their various locations in
18 California, including Plaintiff and other non-party Aggrieved Employees. Based upon
19 information and belief, Defendants issue the same formatted wage statements to all non-
20 exempt, hourly paid employees in California, irrespective of their work locations. Upon
21 information and belief, Defendants process payroll for departing employees in the same
22 manner throughout the State of California, regardless of the manner in which each employee's
23 employment ends.

24 17. Defendants continue to employ non-exempt or hourly paid employees in
25 California.

26 18. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
28 and advisors knowledgeable about California labor and wage law, employment and personnel

1 practices, and about the requirements of California law.

2 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
3 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
4 were not recorded.

5 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
7 receive certain wages for overtime compensation and that they were not receiving certain
8 wages for overtime compensation.

9 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that other non-party Aggrieved Employees were entitled to be paid at a
11 regular rate of pay, and corresponding rates of pay for overtime wages and/or meal and rest
12 period premiums, that included as eligible income all remuneration required by law, including
13 but not limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or
14 other forms of compensation, but failed to include all forms of remuneration in calculating the
15 regular rate of pay for other non-party Aggrieved Employees.

16 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 receive at least minimum wages for compensation and that they were not receiving at least
19 minimum wages for work that was required to be done off-the-clock. In violation of the
20 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
21 least minimum wages for work done off-the-clock.

22 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
24 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
25 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
26 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
27 other non-party Aggrieved Employees were not provided with all meal periods or payment of
28 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,

uninterrupted, thirty (30) minute meal period.

24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period and that Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take compliant rest periods or provided with payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period.

25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance with California law. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not provided complete and accurate wage statements.

26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that they had a duty to maintain accurate and complete payroll records in accordance with the California Labor Code and applicable IWC Wage Order, but willfully, knowingly, and intentionally failed to do so.

27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to timely payment of wages during their employment. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within permissible time periods.

28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to timely payment of all wages earned upon termination of employment. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive

1 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
2 and/or meal and rest period premiums, within permissible time periods.

3 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that they had a duty to maintain, for Plaintiff and other non-party
5 Aggrieved Employees, a temperature in work areas that provided reasonable comfort
6 consistent with industry-wide standards for the nature of the process and the work performed,
7 and to take all feasible means to reduce excessive heat or humidity to a degree providing
8 reasonable comfort, but failed to do so.

9 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
11 receive reimbursement for all business-related expenses and costs they incurred during the
12 course and scope of their employment and that they did not receive reimbursement of
13 applicable business-related expenses and costs incurred.

14 31. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, Defendants knew or should have known that Defendants had a duty to provide
16 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms
17 of their employment with Defendants as required by the California Wage Theft Prevention
18 Act, but failed to do so.

19 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants knew or should have known that they had a duty to compensate
21 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
22 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
23 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
24 that they were properly denied wages, all in order to increase Defendants' profits.

25 33. At all times herein set forth, PAGA provides that any provision of law under
26 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
27 assessed and collected by the LWDA for violations of the California Labor Code and
28 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a

1 civil action brought on behalf of themselves and other current or former employees pursuant
2 to procedures outlined in California Labor Code section 2699.3.

3 34. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
4 person who was employed by the alleged violator and against whom one or more of the
5 alleged violations was committed.”

6 35. Plaintiff and other current and former employees of Defendants are “aggrieved
7 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
8 or former employees and one or more of the alleged violations were committed against them.

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

- 12 (a) The aggrieved employee shall give written notice by online filing
13 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
14 to the employer of the specific provisions of the California Labor Code
15 alleged to have been violated, including the facts and theories to support
16 the alleged violations.
- 17 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
18 2699.3(a) and any employer response to that notice shall be
19 accompanied by a filing fee of seventy-five dollars (\$75).
- 20 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
21 employer and the aggrieved employee by certified mail that it does not
22 intend to investigate the alleged violation within sixty (60) calendar
23 days of the postmark date of the Employee’s Notice. Upon receipt of
24 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
25 five (65) calendar days of the postmark date of the Employee’s Notice,
26 the aggrieved employee may commence a civil action pursuant to
27 California Labor Code section 2699 to recover civil penalties in addition
28 to any other penalties to which the employee may be entitled.

1 37. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
2 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
3 provision other than those listed in Section 2699.5 after the following requirements have been
4 met:

5 (a) The aggrieved employee or representative shall give written notice by
6 online filing to the LWDA and by certified mail to the employer of the
7 specific provisions of the California Labor Code alleged to have been
8 violated (other than those listed in Section 2699.5), including the facts
9 and theories to support the alleged violation.

10 (b) An aggrieved employee's notice filed with the LWDA pursuant to
11 2699.3(c) and any employer response to that notice shall be
12 accompanied by a filing fee of seventy-five dollars (\$75).

13 (c) The employer may cure the alleged violation within thirty-three (33)
14 calendar days of the postmark date of the notice. The employer shall
15 give written notice by certified mail within that period of time to the
16 aggrieved employee or representative and the agency if the alleged
17 violation is cured, including a description of actions taken, and no civil
18 action pursuant to Section 2699 may commence. If the alleged violation
19 is not cured within the 33-day period, the employee may commence a
20 civil action pursuant to Section 2699.

21 38. On May 25, 2023, Plaintiff provided written notice by online filing to the
22 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
23 Code alleged to have been violated, including facts and theories to support the alleged
24 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
25 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
26 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
27 Plaintiff PAGA Case Number LWDA-CM-957569-23. A true and correct copy of Plaintiff's
28 written notice to the LWDA and Defendants dated May 25, 2023, is attached hereto as

1 “Exhibit 1.”

2 39. As of the filing date of this complaint, over 65 days have passed since Plaintiff
3 sent the written notice described above, and the LWDA has not responded that it intends to
4 investigate Plaintiff’s claims, and Defendants have not cured the violations.

5 40. Thus, Plaintiff has satisfied the administrative prerequisites under California
6 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
7 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
8 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

9 41. Labor Code section 558(a) provides “[a]ny employer or other person acting on
10 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
11 provision regulating hours and days of work in any order of the Industrial Welfare
12 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
13 dollars (\$50) for each underpaid employee for each pay period for which the employee was
14 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
15 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
16 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
17 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
18 as a private attorney general, seeks assessment and collection of civil penalties under Labor
19 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
20 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
21 and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
22 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
23 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
24 applicable IWC Wage Order.

25 42. Defendants, at all times relevant to this complaint, were employers or persons
26 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
27 Employees’ rights by violating various sections of the California Labor Code as set forth
28 above.

43. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

44. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

FIRST CAUSE OF ACTION

For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

45. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

46. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

47. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay, as set forth below;
- (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order for Defendants' failure to include all forms

of remuneration in the regular rate of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to other non-party Aggrieved Employees, as set forth below;

(c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;

(d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with meal periods, as set forth below;

(e) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff and other non-party Aggrieved Employees to take rest periods, as set forth below;

(f) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;

(g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as set forth below;

(h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as set forth below;

(i) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as set forth below;

(j) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to maintain a temperature in work areas that provided

1 reasonable comfort consistent with industry-wide standards for the
2 nature of the process and the work performed, and to take all feasible
3 means to reduce excessive heat or humidity to a degree providing
4 reasonable comfort, as set forth below;

5 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
6 and other non-party Aggrieved Employees for all business expenses
7 necessarily incurred, as set forth below; and

8 (l) Violation of Labor Code section 2810.5 for failure to provide notice of
9 material terms of employment, as set forth below.

10 **FAILURE TO PAY OVERTIME**

11 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

12 48. Labor Code section 1198 makes it illegal to employ an employee under
13 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
14 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
15 shall be the . . . standard conditions of labor for employees. The employment of any employee
16 . . . under conditions of labor prohibited by the order is unlawful.”

17 49. California Labor Code section 1198 and the applicable IWC Wage Order
18 provide that it is unlawful to employ persons without compensating them at a rate of pay
19 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
20 number of hours worked by the person on a daily or weekly basis.

21 50. Specifically, the applicable IWC Wage Order provides that Defendants are and
22 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
23 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
24 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
25 (40) hours in a workweek.

26 51. The applicable IWC Wage Order further provides that Defendants are and were
27 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
28 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.

1 An employee's regular rate of pay includes all remuneration for employment paid to, or on
2 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

3 52. California Labor Code section 510 codifies the right to overtime compensation
4 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
5 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
6 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
7 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
8 in a day on the seventh (7th) day of work.

9 53. During the relevant time period, Defendants willfully failed to pay all overtime
10 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
11 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
12 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
13 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
14 not recorded.

15 54. First, Defendants had, and continue to have, a company-wide policy and/or
16 practice of discouraging and impeding Plaintiff and other non-party Aggrieved Employees
17 from recording hours worked that were outside of their scheduled shifts in order to limit the
18 amount of overtime employees could accrue. Because Defendants discouraged overtime
19 accrual by, among other things, altering and/or falsifying timesheets, Plaintiff and other non-
20 party Aggrieved Employees were required to complete assigned tasks outside of their
21 scheduled shifts without being compensated for the time they worked. For example, Plaintiff
22 spent time working before his shifts preparing for the day by inspecting the delivery van for
23 cleanliness and safety issues, and attending to those issues (such as cleaning the inside of the
24 van). As a further example, Plaintiff was required to spend approximately one (1) hour
25 driving from San Jose, CA to Walnut Creek, CA to attend a mandatory training session, eight
26 (8) hours attending the training, and 1.5 hours traveling back, time for which he was not paid.
27 Plaintiff attempted to record this time spent working, but, on information and belief,
28 Defendants' management would subsequently alter his timesheets and shave off the time spent

1 preparing for the shift to avoid payment of additional wages to Plaintiff and other non-party
2 Aggrieved Employees.

3 55. Second, during the relevant time period, Defendants had, and continue to have,
4 a company-wide policy and/or practice of understaffing their locations while simultaneously
5 assigning heavy workloads, resulting in a failure to provide Plaintiff and other non-party
6 Aggrieved Employees with adequate meal period coverage. For example, Defendants have,
7 systematically, and on a company-wide basis, scheduled and dispatched their delivery drivers
8 to complete time-sensitive deliveries, which included driving to various distant locations and
9 unloading equipment and supplies from the vehicle, before the end of their shifts, and do so
10 without accruing overtime and without building in sufficient time to allow for 30-minute meal
11 periods, such that Plaintiff and other non-party Aggrieved Employees were prevented from
12 taking all uninterrupted 30-minute meal periods, and were also to work off-the-clock during
13 their meal periods to complete their assigned routes. Deliveries could take longer than the
14 time Defendants allotted for them, such that Plaintiff and other non-party Aggrieved
15 Employees were unable to take compliant meal periods. In conjunction with varying delivery
16 durations, travel time between delivery locations could take longer than anticipated due to
17 traffic conditions and availability of parking areas for the vehicles, which further impeded
18 Plaintiff from taking compliant meal periods. For example, Plaintiff was responsible for
19 making up to 20 deliveries per day, including unloading heavy gallons of paint without a dolly
20 at each stop, and sometimes delivering to locations that were 1-2 hours away. As a result,
21 Plaintiff worked through his meal periods at least four (4) times per week and often ate his
22 meals while driving to his next stop.

23 56. Additionally, Defendants, on a company-wide basis, had a practice of failing to
24 schedule meal periods which, in conjunction with the assignment of heavy workloads, further
25 caused Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties
26 for compliant meal periods. Thus, Plaintiff and other non-party Aggrieved Employees worked
27 through meal periods and/or had meal periods interrupted and cut short to complete their
28 assigned workloads and meet delivery expectations. Defendants did not pay Plaintiff and

1 other non-party Aggrieved Employees for the time they continued to perform tasks during
2 meal periods.

3 57. Moreover, Plaintiff and other non-party Aggrieved Employees were required to
4 respond to calls from management on their personal cellular phones during unpaid meal
5 periods. Defendants knew or should have known that Plaintiff and other non-party Aggrieved
6 Employees were being made to work during unpaid meal periods, including communicating
7 with management regarding progress on deliveries and length of stops, but failed to
8 compensate them for this off-the-clock work.

9 58. Third, on information and belief, because Defendants frowned upon employees
10 accruing meal period penalties, Defendants' management pressured Plaintiff and other non-
11 party Aggrieved Employees to clock out for meal periods, on threat of discipline, and/or
12 adjusted their time records to reflect compliant meal periods regardless of whether they had
13 received a compliant meal period or not, in order to strictly limit meal penalties that
14 Defendants would otherwise owe. For example, Defendants' management told Plaintiff to
15 clock out for his meal periods, but continue working in order to get all his deliveries done
16 within his scheduled shift, and reprimanded him if he did not do so. In addition, Defendants'
17 company-wide timekeeping system prevented Plaintiff and other non-party Aggrieved
18 Employees from recording all hours worked when their meal periods were shortened or
19 interrupted, because the system locked out Plaintiff and other non-party Aggrieved Employees
20 once they clocked out for a meal period, and did not permit them to clock back in from a meal
21 period before 30 minutes elapsed. Thus, Defendants did not record all hours worked during
22 meal periods and Plaintiff and other non-party Aggrieved Employees performed work during
23 meal periods for which they were not paid.

24 59. Defendants knew or should have known that, as a result of these company-wide
25 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
26 their assigned duties off-the-clock before their shifts, on days off, and during meal periods,
27 and were suffered or permitted to perform work for which they were not paid. Because
28 Plaintiff and other non-party Aggrieved Employees worked shifts of eight (8) hours a day or

1 more, or forty (40) hours a week or more, some of this off-the-clock work qualified for
2 overtime premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were
3 not paid overtime wages for all of the overtime hours they actually worked.

4 60. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
5 correct overtime rates for the recorded overtime hours that they generated. In addition to an
6 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
7 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
8 California Labor Code, on information and belief, Defendants failed to incorporate all
9 remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation
10 of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore,
11 during times when other non-party Aggrieved Employees worked overtime and received these
12 other forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime
13 rate than required.

14 61. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
15 the balance of overtime compensation as required by California law, violates the provisions of
16 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
17 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
18 558 and/or 2699(a), (f), and (g).

19 **FAILURE TO PAY MINIMUM WAGES**

20 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

21 62. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
22 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
23 to be paid to employees, and the payment of a wage less than the minimum so fixed is
24 unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the time
25 during which an employee is subject to the control of an employer, and includes all the time
26 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code
27 Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

28 63. First, as set forth above, due to Defendants' restrictions on overtime accrual,

1 Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees
2 for actual hours worked outside their scheduled shifts, because these hours were not
3 accurately recorded. Thus, Plaintiff and other non-party Aggrieved Employees were required
4 to perform work off-the-clock prior to the start of their shifts and on days off, including
5 preparing for the shift by inspecting and attending to cleanliness and safety issues inside the
6 delivery vans, and traveling to and attending training sessions. As also stated, on information
7 and belief, Defendants had, and continue to have, a company-wide policy of adjusting or
8 shaving down Plaintiff's and other non-party Aggrieved Employees' hourly clock-in and
9 clock-out times in their timekeeping system, further resulting in the failure to pay Plaintiff and
10 other non-party Aggrieved Employees minimum wages for all hours actually worked.

11 64. Second, as also stated above, due to Defendants' policies and/or practices of
12 understaffing, assigning heavy workloads while allowing insufficient time for the drivers to
13 actually complete the deliveries without accruing overtime, failing to schedule meal periods,
14 and requiring employees to respond to calls at all times, Plaintiff and other non-party
15 Aggrieved Employees were forced to forego meal periods, have their meal periods interrupted,
16 and/or were otherwise not relieved of all duties during meal periods. Moreover, as stated, in
17 order to prevent employees from accruing meal period penalties, Defendants' management
18 pressured employees to record compliant meal periods when meal periods were missed, short,
19 and/or interrupted, and/or adjusted their time records to reflect compliant meal periods. In
20 addition, as stated, Defendants' company-wide timekeeping system prevented Plaintiff and
21 other non-party Aggrieved Employees from entering time worked during meal periods
22 because the system locked out Plaintiff and other non-party Aggrieved Employees for a full
23 30 minutes. Thus, Defendants systematically failed to pay Plaintiff and other non-party
24 Aggrieved Employees for actual hours worked during unpaid meal periods because these
25 hours were not always correctly recorded.

26 65. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
27 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
28 not qualify for overtime premium payment, Defendants did not pay at least minimum wages

1 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
2 1194, 1197, and 1198.

3 66. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
4 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
5 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
6 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

7 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
8 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

9 67. At all relevant times herein set forth, the applicable IWC Wage Order and
10 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
11 other non-party Aggrieved Employees' employment by Defendants.

12 68. At all relevant times herein set forth, California Labor Code section 512(a)
13 provides that an employer may not require, cause, or permit an employee to work for a period
14 of more than five (5) hours per day without providing the employee with a meal period of not
15 less than thirty (30) minutes, except that if the total work period per day of the employee is
16 not more than six (6) hours, the meal period may be waived by mutual consent of both the
17 employer and the employee. Under California law, first meal periods must start after no more
18 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

19 69. At all relevant times herein set forth, California Labor Code sections 226.7,
20 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
21 meal period mandated by an applicable order of the IWC.

22 70. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
23 1198, and the applicable IWC Wage Order also require employers to provide a second meal
24 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
25 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
26 the total hours worked is no more than twelve (12) hours, the second meal period may be
27 waived by mutual consent of the employer and the employee only if the first meal period was
28 not waived.

1 71. First, as stated, Defendants had, and continue to have, company-wide policies
2 and/or practices of understaffing, assigning heavy workloads, scheduling time-sensitive
3 deliveries while allowing insufficient time for the drivers to actually complete the deliveries,
4 and failing to schedule meal periods, which have resulted in a lack of meal period coverage
5 and prevented Plaintiff and other non-party Aggrieved Employees from taking all timely,
6 uninterrupted meal periods to which they were entitled. As result, Plaintiff and other non-
7 party Aggrieved Employees had to work through all or part of their meal periods, had their
8 meal periods interrupted, and/or had to wait extended periods of time before taking meal
9 periods. For example, Plaintiff was required to work through most of his meal periods.
10 Moreover, Plaintiff's meal periods were regularly interrupted and/or cut short by his
11 supervisors calling him about the status of his deliveries and because he had to eat while he
12 drove to his next stop pursuant to Defendants' expectations.

13 72. Second, as stated above, on information and belief, because Defendants
14 frowned upon employees accruing meal period penalties, Defendants' management pressured
15 Plaintiff and other non-party Aggrieved Employees to clock out for meal periods, upon threat
16 of discipline, or adjusted their time records to reflect compliant meal periods, regardless of
17 whether they had received a compliant meal period or not, in order to strictly limit meal
18 penalties that would need to be paid by Defendants. For example, Plaintiff was required to
19 clock out for his meal period to record that he had received compliant meal periods on shifts
20 when he had not, in fact, received these timely meal periods.

21 73. Further, as stated, Defendants' company-wide timekeeping system prevented
22 Plaintiff and other non-party Aggrieved Employees from recording all hours worked when
23 their meal periods were shortened or interrupted, because the system locked out Plaintiff and
24 other non-party Aggrieved Employees once they clocked out for a meal period, and would not
25 permit them to clock back in from a meal period before 30 minutes had elapsed. For example,
26 Plaintiff was unable to record when his meal periods were interrupted or cut short by
27 management asking him questions regarding the status of deliveries.

28 74. Additionally, Defendants did not provide other non-party Aggrieved

1 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
2 hours in one day. Plaintiff and other non-party Aggrieved Employees did not sign valid meal
3 period waivers on days that they were entitled to meal periods and were not relieved of all
4 duties.

5 75. At all times mentioned herein, Defendants knew or should have known that, as
6 a result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented
7 from being relieved of all duties and required to perform some of their assigned duties during
8 meal periods. Defendants further knew or should have known that they did not pay Plaintiff
9 and other non-party Aggrieved Employees meal period premiums when meal periods were
10 late, interrupted, shortened, and/or missed.

11 76. Furthermore, Defendants engaged in a company-wide practice and/or policy of
12 not paying all meal period premiums owed when compliant meal periods are not provided.
13 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
14 have not received premium pay for all missed, late, and interrupted meal periods.
15 Alternatively, to the extent that Defendants did pay other non-party Aggrieved Employees
16 premium pay for missed, late, and interrupted meal periods, Defendants did not pay other non-
17 party Aggrieved Employees the correct rate of pay for premiums because Defendant
18 systematically failed to include all forms of compensation such as incentive pay,
19 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

20 77. Defendants' conduct violates the applicable IWC Wage Order, and California
21 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
22 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
23 558 and/or 2699(a), (f), and (g).

24 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

25 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

26 78. At all relevant times herein set forth, the applicable IWC Wage Order and
27 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
28 non-party Aggrieved Employees' employment by Defendants.

1 79. At all relevant times, the applicable IWC Wage Order provides that “[e]very
2 employer shall authorize and permit all employees to take rest periods, which insofar as
3 practicable shall be in the middle of each work period” and that the “rest period time shall be
4 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
5 hours or major fraction thereof” unless the total daily work time is less than three and one-half
6 (3 ½) hours.

7 80. At all relevant times, California Labor Code section 226.7 provides that no
8 employer shall require an employee to work during any rest period mandated by an applicable
9 order of the California IWC. To comply with its obligation to authorize and permit rest
10 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
11 employer must “relinquish any control over how employees spend their break time, and
12 relieve their employees of all duties—including the obligation that an employee remain on
13 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
14 *Inc.*, 2 Cal. 5th 257, 273 (2016).

15 81. Pursuant to the applicable IWC Wage Order and California Labor Code section
16 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
17 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
18 required rest period was not authorized and permitted.

19 82. During the relevant time period, Defendants regularly failed to authorize and
20 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
21 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
22 Defendants’ company-wide practices of understaffing and assigning heavy workloads resulted
23 in a lack of rest period coverage and prevented Plaintiff and other non-party Aggrieved
24 Employees from being relieved of all duty to take rest periods. Defendants also failed to
25 schedule rest periods, which, coupled with Defendants’ failure to provide adequate rest period
26 coverage, further led to Plaintiff and other non-party Aggrieved Employees not being
27 authorized and permitted to take rest periods. Moreover, as stated, Plaintiff and other non-
28 party Aggrieved Employees were required to respond to communications from management

1 on their personal cellular phones at all times, including during rest periods.

2 83. Furthermore, on information and belief, during the relevant time period,
3 Defendants maintained and implemented a company-wide on-premises rest period policy,
4 which effectively required that Plaintiff and/or other non-party Aggrieved Employees remain
5 on Defendants' premises during their rest periods. Because Plaintiff and/or other non-party
6 Aggrieved Employees were restricted from leaving Defendants' premises during rest periods,
7 they were denied the ability to use their rest periods freely for their own purposes, such as
8 running personal errands. Thus, Defendants effectively maintained control over Plaintiff
9 and/or other non-party Aggrieved Employees during rest periods.

10 84. As a result of Defendants' practices and policies, Plaintiff and other non-party
11 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
12 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
13 were entitled. For example, throughout his employment, Plaintiff regularly had to forego his
14 rest periods because he was rushing to complete his time-sensitive deliveries for the day.

15 85. Defendants have also engaged in a systematic, company-wide practice and/or
16 policy of not paying all rest period premiums owed when rest periods are not authorized and
17 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
18 Employees have not received premium pay for all missed rest periods. Alternatively, to the
19 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
20 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
21 Employees at the correct rate of pay for premiums because Defendants failed to include all
22 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
23 of remuneration, in the regular rate of pay.

24 86. Accordingly, Defendants failed to authorize and permit all compliant rest
25 periods and failed to pay the full rest period premiums due. Defendants' conduct violates the
26 applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198.
27 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
28 penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS
VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198

87. At all relevant times herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

88. During the relevant time period, Defendants have knowingly and intentionally provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

89. Because Defendants did not record the time Plaintiff and other non-party Aggrieved Employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

90. Additionally, because Defendants did not calculate other non-party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, Defendants did not list the correct amount of gross wages in

1 compliance with section 226(a)(1) and did not list the correct amount of net wages in violation
2 of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in
3 effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and
4 rest period premiums, in violation of section 226(a)(9).

5 91. The wage statement deficiencies also include, among other things, failing to list
6 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
7 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
8 for which aggrieved employees were paid; failing to list the name of the employee and only
9 the last four digits of his or her social security number or an employee identification number
10 other than a social security number; failing to list the name and address of the legal entity that
11 is the employer; and/or failing to state all hours worked as a result of not recording or stating
12 the hours worked off-the-clock.

13 92. California Labor Code section 1174(d) provides that “[e]very person employing
14 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
15 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
16 plants or establishments at which employees are employed, payroll records showing the hours
17 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
18 applicable piece rate paid to, employees employed at the respective plants or
19 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
20 civil penalty if they fail to maintain accurate and complete records as required by section
21 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
22 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
23 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
24 as a result of failing to record the off-the-clock hours that they worked.

25 93. California Labor Code section 1198 provides that the maximum hours of work
26 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
27 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
28 employment of any employees for longer hours than those fixed by the order or under

conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198. Furthermore, in light of Defendants’ failure to provide other non-party Aggrieved Employees with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

94. Defendants’ conduct violates California Labor Code 226(a), 1174(d), and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES DURING EMPLOYMENT
VIOLATION OF LABOR CODE SECTION 204

95. At all relevant times herein set forth, California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

96. At all relevant times herein, California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all relevant times herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by

1 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
2 more than seven (7) calendar days following the close of the payroll period.

3 97. During the relevant time period, Defendants willfully failed to pay Plaintiff and
4 other non-party Aggrieved Employees all wages due to them within any time period specified
5 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
6 wages, and/or meal and rest period premiums.

7 98. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
8 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

9 **FAILURE TO PAY WAGES UPON TERMINATION**

10 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

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

18 100. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
19 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
20 above, including, but not limited to, overtime wages, minimum wages, and/or meal and rest
21 period premiums, either at the time of discharge, or within seventy-two (72) hours of their
22 leaving Defendants' employ.

23 101. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
24 who are no longer employed by Defendants their wages earned and unpaid at the time of
25 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
26 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
27 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
28 2699(a), (f), and (g).

FAILURE TO MAINTAIN WORK TEMPERATURE PROVIDING REASONABLE COMFORT

VIOLATION OF LABOR CODE SECTION 1198

102. At all relevant times, California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

103. California Code of Regulations, Title 8, sections 11070(15)(A) and (B) provide that “[t]he temperature maintained in each work area shall provide reasonable comfort consistent with industrywide standards for the nature of the process and the work performed. . . . If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.” California law requires an employer to endeavor to provide a safe and healthy workplace (Cal. Code Regs. tit. 8, § 3203). Moreover, California Labor Code section 6720 required the California Division of Occupational Safety and Health (“OSHA”) to propose an indoor heat illness standard by January 1, 2019; OSHA’s draft standard, as of April 22, 2019, applies its proposed regulations to “all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when employees are present.”

104. Upon information and belief, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(15), because Defendants failed to maintain a temperature in work areas that provided reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed and failed to take all feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort.

105. During the relevant time period, Plaintiff and other non-party Aggrieved Employees were subjected to excessive heat and/or humidity resulting in temperatures

1 equaling or exceeding 82 degrees Fahrenheit. Defendants failed to provide Plaintiff and other
2 non-party Aggrieved Employees with reasonable comfort by maintaining the indoor
3 temperature within the range of industry standards by providing adequate air conditioning, in
4 violation of California Labor Code section 1198 and IWC Wage Order No. 7-2001, Section
5 15. For example, Plaintiff and other non-party Aggrieved Employees who were present in
6 Defendants' warehouse areas were not provided air conditioning or fans, and would be
7 required to work indoors at 82 degrees Fahrenheit or more.

8 106. Accordingly, Defendants failed to maintain, in their work areas, a temperature
9 providing reasonable comfort for their employees, including Plaintiff and other non-party
10 Aggrieved Employees, in violation of California Labor Code section 1198 and California
11 Code of Regulations, Title 8, section 11070(15). Plaintiff and other non-party Aggrieved
12 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
13 2699(a), (f), and (g).

14 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

15 **VIOLATION OF LABOR CODE SECTION 2802**

16 107. At all times herein set forth, California Labor Code section 2802 provides that
17 an employer must reimburse employees for all necessary expenditures and losses incurred by
18 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
19 to prevent employers from passing off their cost of doing business and operating expenses on
20 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
21 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen
22 tools or equipment are required by the employer or are necessary to the performance of a job,
23 such tools and equipment shall be provided and maintained by the employer, except that an
24 employee whose wages are at least two (2) times the minimum wage may provide and
25 maintain hand tools and equipment customarily required by the particular trade or craft."
26 IWC Wage Order No. 7-2001 further provides that: "[w]hen uniforms are required by the
27 employer to be worn by the employee as a condition of employment, such uniforms shall be
28 provided and maintained by the employer."

1 108. First, during the relevant time period, Defendants had a company-wide policy
2 of requiring Plaintiff and other non-party Aggrieved Employees to utilize their own personal
3 mobile devices, including, but not limited to cellular phones, and/or mobile data to carry out
4 their job duties, but failed to reimburse them for all costs of their work-related mobile device
5 expenses. For example, Plaintiff was required to use his personal cellular phone to
6 communicate with management about the status of his deliveries, to call clients, and for GPS
7 navigation while driving. Although Defendants required Plaintiff and other non-party
8 Aggrieved Employees to utilize their personal mobile devices and/or mobile data to carry out
9 their work-related responsibilities, Defendants failed to reimburse them entirely for these
10 costs.

11 109. Second, during the relevant time period, Defendants, on a company-wide basis,
12 required Plaintiff and other non-party Aggrieved Employees to wear special safety shoes such
13 as steel-toed shoes, which they were required to wear while at work and that were necessary
14 for the completion of their work-related duties. For example, during his employment, Plaintiff
15 spent about \$55 to purchase safety equipment such as steel-toed shoes, because Defendants
16 failed to provide him with these necessary tools, supplies, and/or safety equipment which were
17 required for the workplace to operate properly and/or meet management's expectations.
18 Although Defendants required Plaintiff and other non-party Aggrieved Employees to purchase
19 and use their own tools, supplies, and/or safety equipment in the performance of their duties,
20 they did not reimburse them for these expenses.

21 110. Third, during the relevant time period, Defendants, on a company-wide basis,
22 required Plaintiff and other non-party Aggrieved Employees use their own personal vehicles
23 to travel to mandatory trainings, but failed to reimburse them for all costs of travel, including
24 mileage. For example, Plaintiff was required to travel a total of about 100 miles to and from a
25 training site in Walnut Creek, California. Although Defendants required Plaintiff and other
26 non-party Aggrieved Employees to utilize their personal vehicles to carry out their work-
27 related responsibilities, Defendants failed to reimburse them for their mileage or travel
28 expenses.

111. Fourth, during the relevant time period, Defendants required Plaintiff and other non-party Aggrieved Employees to wear uniforms bearing the company logo, including a uniform shirt. However, Defendants did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. For example, Defendants only provided Plaintiff with three (3) uniform shirts at the time of hire. Because Defendants failed to provide Plaintiff and other non-party Aggrieved Employees with an adequate number of uniform items in relation to their scheduled shifts, Plaintiff and other non-party Aggrieved Employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of his work, Plaintiff's uniform would become covered in paint stains and/or acquire an unpleasant odor such that he was unable to mix these clothes in with his other laundry. As a result, Plaintiff had to wash his uniform items separately from his regular clothing, thus incurring additional laundry expenses for the upkeep of his uniforms. Thus, Defendants failed to maintain uniforms they required Plaintiff and other non-party Aggrieved Employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

112. Defendants could have provided Plaintiff and other non-party Aggrieved Employees with the actual equipment for use on the job, such as company mobile devices, safety shoes, company vehicles, and an adequate number of uniforms or access to laundering services; or, Defendants could have reimbursed employees for the costs of their mobile device usage, safety shoes, mileage and travel expenses, and laundering expenses or provided a uniform maintenance allowance. Instead, Defendants passed these operating costs off onto Plaintiff and other non-party Aggrieved Employees. At all relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

113. Defendants' company-wide policy and/or practice of passing on their operating costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and other non-party Aggrieved Employees for necessary business-related expenses and costs.

114. Plaintiff and other non-party Aggrieved Employees are therefore entitled to

1 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

2 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
3 **EMPLOYMENT**

4 **VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

5 115. California's Wage Theft Prevention Act was enacted to ensure that employers
6 provide employees with basic information material to their employment relationship at the
7 time of hiring, and to ensure that employees are given written and timely notice of any
8 changes to basic information material to their employment. Codified at California Labor
9 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
10 employer must provide written notice to employees containing basic and material payroll
11 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
12 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
13 overtime, the regular payday designated by the employer, and any allowances claims as part
14 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
15 (C).

16 116. Defendants failed to provide Plaintiff and other non-party Aggrieved
17 Employees written notice that lists all the requisite information set forth in Labor Code section
18 2810.5(a)(1)(A)-(C). Specifically, Defendants failed to provide Plaintiff with the hourly
19 rate(s) of pay, including the overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A).

20 117. Defendants' failure to provide Plaintiff and other non-party Aggrieved
21 Employees with written notice of basic information regarding their employment with
22 Defendants is in violation of California Labor Code section 2810.5. Plaintiff and other non-
23 party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor
24 Code sections 2699(a), (f), and (g).

25 **REQUEST FOR JURY TRIAL**

26 Plaintiff requests a trial by jury.

27 **PRAYER FOR RELIEF**

28 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and

1 judgment against Defendants, jointly and severally, as follows:

2 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
3 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different
4 amount.

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

6 2. That the Court declare, adjudge and decree that Defendants violated the
7 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
8 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
9 (by failing to include all forms of remuneration in the regular rate of pay for purposes of
10 paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and
11 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
12 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
13 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
14 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned
15 wages during employment); 201 and 202 (by failing to timely pay all earned wages upon
16 termination); 1198 and the applicable IWC Wage Order (by failing to maintain reasonable
17 work temperature); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing
18 to provide written notice of information material to employment);

19 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
20 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
21 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

22 4. For attorneys' fees and costs pursuant to California Labor Code section
23 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
24 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
25 1197, 1198, 2802, and 2810.5;

26 5. For pre-judgment and post-judgment interest as provided by law; and

27 //

28 //

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

3
4 Dated: July 31, 2023

Respectfully submitted,

5 Capstone Law APC

6
7 By: 

8 Orlando Villalba

Helga Hakimi

9 Joseph D. Parsons

10 Attorneys for Plaintiff Adam Gonzales
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EXHIBIT “1”



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

SAIRAH BUDHWANI
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Sairah.Budhwani@capstonelawyers.com

May 25, 2023

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Adam Gonzales v. The Sherwin-Williams Company*

Dear PAGA Administrator:

This office represents Adam Gonzales in connection with his claims under the California Labor Code. Mr. Gonzales was an employee of THE SHERWIN-WILLIAMS COMPANY ("SHERWIN-WILLIAMS").

The employer may be contacted directly at the address below:

THE SHERWIN-WILLIAMS COMPANY
101 WEST PROSPECT AVENUE
CLEVELAND, OH 44115

Mr. Gonzales intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Gonzales seeks relief on behalf of himself, the State of California, and other persons who are or were employed by SHERWIN-WILLIAMS as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

SHERWIN-WILLIAMS employed Mr. Gonzales as an hourly paid, non-exempt employee from approximately December 2021 to December 2022. Mr. Gonzales worked for SHERWIN-WILLIAMS as a Delivery Driver I out of its location in San Jose, California. During his employment, Mr. Gonzales typically worked nine (9) hours per day and five (5) days per week. At the time his employment ended, Mr. Gonzales was compensated approximately \$21.37 per hour. Mr. Gonzales' primary job duties included, without limitation, mixing paints, cleaning and loading delivery vans, and delivering paint to commercial clients.

SHERWIN-WILLIAMS committed one or more of the following Labor Code violations against Mr. Gonzales, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

SHERWIN-WILLIAMS’s Company-Wide and Uniform Payroll and HR Practices

THE SHERWIN-WILLIAMS COMPANY is an Ohio corporation that develops, manufactures, distributes, and sells paint, coatings and related products for professional, industrial, commercial and retail customers. SHERWIN-WILLIAMS operates approximately 300 locations throughout California. Upon information and belief, SHERWIN-WILLIAMS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Cleveland, Ohio, for all non-exempt, hourly paid employees working for SHERWIN-WILLIAMS in California, including Mr. Gonzales and other aggrieved employees. At all relevant times, SHERWIN-WILLIAMS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Gonzales and other aggrieved employees, regardless of their location or position.

Upon information and belief, SHERWIN-WILLIAMS maintains a centralized Payroll department at its corporate headquarters in Cleveland, Ohio, which processes payroll for all non-exempt, hourly paid employees working for SHERWIN-WILLIAMS in California, including Mr. Gonzales and other aggrieved employees. Further, SHERWIN-WILLIAMS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Gonzales and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, SHERWIN-WILLIAMS utilized the same methods and formulas when calculating wages due to Mr. Gonzales and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

SHERWIN-WILLIAMS willfully failed to pay all overtime wages owed to Mr. Gonzales and other aggrieved employees. During the relevant time period, Mr. Gonzales and other aggrieved employees

¹ These facts, theories, and claims are based on Mr. Gonzales’ experience and counsel’s review of those records currently available relating to Mr. Gonzales’ employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Gonzales reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of ten (10) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, SHERWIN-WILLIAMS had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Gonzales and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. Because SHERWIN-WILLIAMS discouraged overtime accrual by, among other things, altering and/or falsifying timesheets, Mr. Gonzales and other aggrieved employees were required to complete assigned tasks outside of their scheduled shifts without being compensated for the time they worked. For example, Mr. Gonzales spent time working before his shifts preparing for the shift by inspecting the delivery van for cleanliness and safety issues, and attending to those issues (such as cleaning the inside of the van). As a further example, Mr. Gonzales was required to spend approximately 1 hour driving from San Jose, CA to Walnut Creek, CA to attend a mandatory training session, 8 hours attending the training, and 1.5 hours traveling back, for which he was not paid. Mr. Gonzales attempted to record this time spent working, but, on information and belief, SHERWIN-WILLIAMS's management would subsequently alter his timesheets and shave off the time spent preparing for the shift to avoid payment of additional wages to Mr. Gonzales and other aggrieved employees.

Second, during the relevant time period, SHERWIN-WILLIAMS had, and continues to have, a company-wide policy and/or practice of understaffing its locations while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage. For example, SHERWIN-WILLIAMS has, systematically, and on a company-wide basis, scheduled and dispatched its delivery drivers to complete time-sensitive deliveries, which included driving to various distant locations and unloading equipment and supplies from the vehicle, before the end of their shifts, and do so without accruing overtime and without building in sufficient time to allow for 30-minute meal periods, such that Mr. Gonzales and other aggrieved employees were prevented from taking all uninterrupted 30-minute meal periods, and were also to work off-the-clock during their meal periods to complete their assigned routes. Deliveries could take longer than the time SHERWIN-WILLIAMS allotted for them, such that Mr. Gonzales and other aggrieved employees were unable to take compliant meal periods. In conjunction with varying delivery durations, travel time between delivery locations could take longer than anticipated due to traffic conditions and availability of parking areas for the vehicles, which further impeded Mr. Gonzales from taking compliant meal periods. For example, Mr. Gonzales was responsible for making up to 20 deliveries per day, including unloading heavy gallons of paint without a dolly at each stop, and sometimes delivering to locations that were 1-2 hours away. As a result, he worked through his meal periods at least four (4) times per week and often ate his meals while driving to his next stop.

Additionally, SHERWIN-WILLIAMS, on a company-wide basis, had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Gonzales and other aggrieved employees to not be relieved of their duties for compliant meal periods. Thus, Mr. Gonzales and other aggrieved employees worked through meal periods and/or had meal periods interrupted and cut short in order to complete their assigned workloads and meet delivery expectations. SHERWIN-WILLIAMS did not pay Mr. Gonzales and other aggrieved employees for the time they continued to perform tasks during meal periods.

Moreover, Mr. Gonzales and other aggrieved employees were required to respond to calls from management on their personal cellular phones during unpaid meal periods. SHERWIN-WILLIAMS

knew or should have known that Mr. Gonzales and other aggrieved employees were being made to work during unpaid meal periods, including communicating with management regarding progress on deliveries and length of stops, but failed to compensate them for this off-the-clock work.

Third, on information and belief, because SHERWIN-WILLIAMS frowned upon employees accruing meal period penalties, SHERWIN-WILLIAMS's management pressured employees to clock out for meal periods, on threat of discipline, and/or adjusted their time records to reflect compliant meal periods regardless of whether they had received a compliant meal period or not, in order to limit the meal penalties that SHERWIN-WILLIAMS would otherwise owe. For example, SHERWIN-WILLIAMS's management told Mr. Gonzales to clock out for his meal periods, but continue working in order to get all his deliveries done within his scheduled shift, and reprimanded him if he did not do so. In addition, SHERWIN-WILLIAMS's company-wide timekeeping system prevented Mr. Gonzales and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Gonzales and other aggrieved employees once they clocked out for a meal period, and did not permit them to clock back in from a meal period before 30 minutes elapsed. Thus, SHERWIN-WILLIAMS did not record all hours worked during meal periods, and Mr. Gonzales and other aggrieved employees performed work during meal periods for which they were not paid.

SHERWIN-WILLIAMS knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Gonzales and other aggrieved employees were performing their assigned duties off-the-clock before their shifts, on days off, and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Gonzales and other aggrieved employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Gonzales and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, SHERWIN-WILLIAMS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, SHERWIN-WILLIAMS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, on information and belief, SHERWIN-WILLIAMS failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, SHERWIN-WILLIAMS failed to pay all overtime wages by paying a lower overtime rate than required.

SHERWIN-WILLIAMS's failure to pay Mr. Gonzales and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Gonzales and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum

so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

First, as set forth above, due to SHERWIN-WILLIAMS’s restrictions on overtime accrual, SHERWIN-WILLIAMS systematically failed to pay Mr. Gonzales and other aggrieved employees for actual hours worked outside their scheduled shifts, because these hours were not accurately recorded. Thus, Mr. Gonzales and other aggrieved employees were required to perform work off-the-clock prior to the start of their shifts and on days off, including preparing for the shift by inspecting and attending to cleanliness and safety issues inside the delivery vans, and traveling to and attending training sessions. As also stated, on information and belief, SHERWIN-WILLIAMS had, and continues to have, a company-wide policy of adjusting or shaving down Mr. Gonzales’ and other aggrieved employees’ hourly clock-in and clock-out times in its timekeeping system, further resulting in the failure to pay Mr. Gonzales and other aggrieved employees minimum wages for all hours actually worked.

Second, as stated above, due to SHERWIN-WILLIAMS’s policies and/or practices of understaffing, assigning heavy workloads while allowing insufficient time for the drivers to actually complete the deliveries without accruing overtime, failing to schedule meal periods, and requiring employees to respond to calls at all times, Mr. Gonzales and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Also, as stated, in order to prevent employees from accruing meal period penalties, SHERWIN-WILLIAMS’s management pressured employees to record compliant meal periods when meal periods were missed, short, and/or interrupted, and/or adjusted their time records to reflect compliant meal periods. In addition, as stated, SHERWIN-WILLIAMS’s company-wide timekeeping system prevented Mr. Gonzales and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Gonzales and other aggrieved employees for a full 30 minutes. Thus, SHERWIN-WILLIAMS systematically failed to pay Mr. Gonzales and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, SHERWIN-WILLIAMS did not pay minimum wages for all hours worked by Mr. Gonzales and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, SHERWIN-WILLIAMS did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, SHERWIN-WILLIAMS regularly failed to pay at least minimum wages to Mr. Gonzales and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Gonzales and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at

the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as set forth above, SHERWIN-WILLIAMS had, and continues to have, company-wide policies and/or practices of understaffing, assigning heavy workloads, scheduling time-sensitive deliveries while allowing insufficient time for the drivers to actually complete the deliveries, and failing to schedule meal periods, which have resulted in a lack of meal period coverage and prevented Mr. Gonzales and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Gonzales and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had to forgo their meal periods altogether. For example, Mr. Gonzales was required to work through most of his meal periods. Moreover, Mr. Gonzales' meal periods were regularly interrupted and/or cut short by his supervisors calling him about the status of his deliveries and because he had to eat while he drove to his next stop pursuant to SHERWIN-WILLIAMS's expectations.

Second, as stated above, on information and belief, because SHERWIN-WILLIAMS frowned upon employees accruing meal period penalties, SHERWIN-WILLIAMS's management pressured Mr. Gonzales and other aggrieved employees to clock out for meal periods, upon threat of discipline, or adjusted their time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to limit meal penalties that would need to be paid by SHERWIN-WILLIAMS. For example, Mr. Gonzales was required to clock out for his meal period to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely meal periods.

Further, as stated, SHERWIN-WILLIAMS's company-wide timekeeping system prevented Mr. Gonzales and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Gonzales and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Mr. Gonzales was unable to record when his meal periods were interrupted or cut short by management asking him questions regarding the status of deliveries.

Additionally, SHERWIN-WILLIAMS did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. Mr. Gonzales and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, SHERWIN-WILLIAMS knew or should have known that, as a result of these policies, Mr. Gonzales and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. SHERWIN-WILLIAMS further knew or should have known that it did not pay Mr. Gonzales and other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, SHERWIN-WILLIAMS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Gonzales and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that SHERWIN-WILLIAMS did pay other aggrieved employees for missed, late, and interrupted meal periods, SHERWIN-WILLIAMS did not pay other aggrieved employees at the correct rate of pay for premiums because SHERWIN-WILLIAMS systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SHERWIN-WILLIAMS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Gonzales and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, SHERWIN-WILLIAMS regularly failed to authorize and permit Mr. Gonzales and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SHERWIN-WILLIAMS's company-wide practices of understaffing and assigning heavy workloads resulted in a lack of rest period coverage and prevented Mr. Gonzales and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. SHERWIN-WILLIAMS also failed to schedule rest periods, which, coupled with SHERWIN-WILLIAMS's failure to provide adequate rest period coverage,

further led to Mr. Gonzales and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, as stated, Mr. Gonzales and other aggrieved employees were required to respond to communications from management on their personal cellular phones at all times, including during rest periods.

Furthermore, on information and belief, during the relevant time period, SHERWIN-WILLIAMS maintained and implemented a company-wide on-premises rest period policy, which effectively required that Mr. Gonzales and/or other aggrieved employees remain on the work premises during their rest periods. Because Mr. Gonzales and/or other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, SHERWIN-WILLIAMS effectively maintained control over Mr. Gonzales and/or other aggrieved employees during rest periods.

As a result of SHERWIN-WILLIAMS's practices and policies, Mr. Gonzales and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Gonzales regularly had to forego his rest periods because he was rushing to complete his time-sensitive deliveries for the day.

SHERWIN-WILLIAMS has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Gonzales and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that SHERWIN-WILLIAMS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SHERWIN-WILLIAMS did not pay other aggrieved employees at the correct rate of pay for premiums because SHERWIN-WILLIAMS failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SHERWIN-WILLIAMS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Gonzales and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. SHERWIN-WILLIAMS has not provided Mr. Gonzales and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, SHERWIN-WILLIAMS has knowingly and intentionally provided Mr. Gonzales and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SHERWIN-WILLIAMS issued uniform wage statements to Mr. Gonzales and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, SHERWIN-WILLIAMS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because SHERWIN-WILLIAMS did not record the time Mr. Gonzales and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), SHERWIN-WILLIAMS did not list the correct amount of gross wages and net wages earned by Mr. Gonzales and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SHERWIN-WILLIAMS failed to accurately list the total number of hours worked by Mr. Gonzales and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9)).

In addition, because SHERWIN-WILLIAMS did not calculate Mr. Gonzales and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, and/or meal and rest period premiums, SHERWIN-WILLIAMS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, SHERWIN-WILLIAMS failed to list the correct amount of net wages in violation of section 226(a)(5). SHERWIN-WILLIAMS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d), SHERWIN-WILLIAMS willfully failed to maintain accurate payroll records for Mr. Gonzales and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for

longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, SHERWIN-WILLIAMS engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and stop times for Mr. Gonzales and other aggrieved employees, in violation of section 1198. Also, in light of SHERWIN-WILLIAMS’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, SHERWIN-WILLIAMS kept no records of meal start and end times for second meal periods.

Because SHERWIN-WILLIAMS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Gonzales and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Gonzales and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Gonzales and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, SHERWIN-WILLIAMS willfully failed to pay Mr. Gonzales and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

Mr. Gonzales and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, SHERWIN-WILLIAMS has a company-wide practice or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Gonzales was terminated via phone on or around December 20, 2022; however, he did not receive all of his final wages until about December 30, 2022. Thus, SHERWIN-WILLIAMS failed to pay Mr. Gonzales his final wages immediately, in violation of California Labor Code section 201.

Additionally, SHERWIN-WILLIAMS willfully failed to pay Mr. Gonzales and other aggrieved employees who are no longer employed by SHERWIN-WILLIAMS the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving SHERWIN-WILLIAMS's employ.

Mr. Gonzales and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 15 – Failure to Maintain Work Temperature Providing Reasonable Comfort

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, sections 11070(15)(A) and (B) provide that “[t]he temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. . . . If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.” California law requires an employer to endeavor to provide a safe and healthy workplace (Cal. Code Regs. tit. 8, § 3203). Moreover, California Labor Code section 6720 required the California Division of Occupational Safety and Health (“OSHA”) to propose an indoor heat illness standard by January 1, 2019; OSHA's draft standard, as of April 22, 2019, applies its proposed regulations to “all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when employees are present.”

Upon information and belief, SHERWIN-WILLIAMS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(15), because SHERWIN-WILLIAMS failed to maintain a temperature in work areas that provided reasonable comfort consistent with

industry-wide standards for the nature of the process and the work performed and failed to take all feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort.

During the relevant time period, Mr. Gonzales and other aggrieved employees were subjected to excessive heat and/or humidity resulting in temperatures equaling or exceeding 82 degrees Fahrenheit. SHERWIN-WILLIAMS failed to provide Mr. Gonzales and other aggrieved employees with reasonable comfort by maintaining the indoor temperature within the range of industry standards by providing adequate air conditioning, in violation of California Labor Code section 1198 and IWC Wage Order 7-2001, subdivision 15. For example, Mr. Gonzales and other aggrieved employees who were present in SHERWIN-WILLIAMS's warehouse areas were not provided air conditioning or fans, and would be required to work indoors at 82 degrees Fahrenheit or more. Accordingly, SHERWIN-WILLIAMS failed to maintain, in its work areas, a temperature providing reasonable comfort for its employees, including Mr. Gonzales and other aggrieved employees, in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(15).

Mr. Gonzales and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." IWC Wage Order No. 7-2001 further provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

First, during the relevant time period, SHERWIN-WILLIAMS, on a company-wide basis, required Mr. Gonzales and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Gonzales was required to use his personal cellular phone to communicate with management about the status of his deliveries, to call clients, and for GPS navigation while driving. Although SHERWIN-WILLIAMS required Mr. Gonzales and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, SHERWIN-WILLIAMS failed to reimburse them for all of their costs incurred.

Second, during the relevant time period, SHERWIN-WILLIAMS, on a company-wide basis, required Mr. Gonzales and other aggrieved employees to wear special safety shoes such as steel-toed shoes, which they were required to wear while at work and necessary for the completion of their work-related duties. For example, Mr. Gonzales spent around \$55 on steel-toed shoes during his employment, but was not reimbursed for his costs.

Third, during the relevant time period, SHERWIN-WILLIAMS, on a company-wide basis, required that Mr. Gonzales and other aggrieved employees use their own personal vehicles to travel to mandatory trainings. For example, Mr. Gonzales was required to travel a total of about 100 miles to and from a training site in Walnut Creek, California. Although SHERWIN-WILLIAMS required Mr. Gonzales and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, SHERWIN-WILLIAMS failed to reimburse them for their mileage or travel expenses.

Fourth, during the relevant time period, SHERWIN-WILLIAMS required Mr. Gonzales and other aggrieved employees to wear uniforms bearing the company logo, including a uniform shirt. However, SHERWIN-WILLIAMS did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, SHERWIN-WILLIAMS only provided Mr. Gonzales with three (3) uniform shirts at the time of hire. Because SHERWIN-WILLIAMS failed to provide Mr. Gonzales and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts, Mr. Gonzales and other aggrieved employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of his work, Mr. Gonzales' uniform would become covered in paint stains and/or acquire an unpleasant odor such that he was unable to mix these clothes in with his other laundry. As a result, Mr. Gonzales had to wash his uniform items separately from his regular clothing, thus incurring additional laundry expenses for the upkeep of his uniforms. Thus, SHERWIN-WILLIAMS failed to maintain uniforms it required Mr. Gonzales and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

SHERWIN-WILLIAMS could have provided Mr. Gonzales and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, safety shoes, company vehicles, and an adequate number of uniforms or access to laundering services; or, SHERWIN-WILLIAMS could have reimbursed employees for the costs of their mobile device usage, safety shoes, mileage and travel expenses, and laundering expenses or provided a uniform maintenance allowance. Instead, SHERWIN-WILLIAMS passed these operating costs off onto Mr. Gonzales and other aggrieved employees. At all relevant times, Mr. Gonzales did not earn at least two (2) times the minimum wage.

Thus, SHERWIN-WILLIAMS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Gonzales and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging

allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

SHERWIN-WILLIAMS failed to provide Mr. Gonzales and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, SHERWIN-WILLIAMS failed to provide Mr. Gonzales with the hourly rate(s) of pay, including the overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A). SHERWIN-WILLIAMS's failure to provide Mr. Gonzales and other aggrieved employees with written notice of basic information regarding their employment with SHERWIN-WILLIAMS is in violation of Labor Code section 2810.5.

Mr. Gonzales and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." SHERWIN-WILLIAMS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Gonzales' and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Gonzales seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Gonzales, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against SHERWIN-WILLIAMS for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Gonzales seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Gonzales' reasonable attempt to settle his dispute with SHERWIN-WILLIAMS prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform SHERWIN-WILLIAMS of Mr. Gonzales' aforementioned grievances and the proposed remedies as detailed below, while affording SHERWIN-WILLIAMS a reasonable opportunity to satisfy Mr. Gonzales' demands.

Demand is hereby made that SHERWIN-WILLIAMS shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. SHERWIN-WILLIAMS shall pay Mr. Gonzales and all other aggrieved employees employed by SHERWIN-WILLIAMS at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. SHERWIN-WILLIAMS shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. SHERWIN-WILLIAMS shall conduct a survey or interview all current and former aggrieved employees in California who worked for SHERWIN-WILLIAMS in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mobile device expenses; safety equipment; travel expenses; mileage; laundering services or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. SHERWIN-WILLIAMS shall pay Mr. Gonzales and each aggrieved employee one hour of pay at her or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. SHERWIN-WILLIAMS also shall pay Mr. Gonzales and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. SHERWIN-WILLIAMS shall properly calculate aggrieved employees' rates of pay for overtime, and/or meal and rest period premiums based on all remuneration paid, pursuant to Labor Code sections 226.7 and 510.
6. SHERWIN-WILLIAMS shall reimburse Mr. Gonzales and all aggrieved employees who were required to pay for any business expenses incurred for SHERWIN-WILLIAMS's benefit, including, but not limited to, costs of mobile device usage, safety equipment, travel expenses, mileage, and/or laundering services, as required by Labor Code section 2802.
7. SHERWIN-WILLIAMS shall pay accrued legal interest to Mr. Gonzales and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. SHERWIN-WILLIAMS shall provide Mr. Gonzales and all aggrieved employees employed by SHERWIN-WILLIAMS at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. SHERWIN-WILLIAMS shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.

10. SHERWIN-WILLIAMS shall maintain a temperature in work areas that provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed and take all feasible means to reduce excessive heat to a degree providing reasonable comfort, as required by California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(15).
11. SHERWIN-WILLIAMS shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
12. SHERWIN-WILLIAMS shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 7-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Sairah Budhwani
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Sairah Budhwani

Copy: THE SHERWIN-WILLIAMS COMPANY (via U.S. Certified Mail)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

**THE SHERWIN-WILLIAMS
COMPANY
101 WEST PROSPECT AVENUE
CLEVELAND, OH 44115**



9590 9402 7690 2122 7163 51

2. Article Number (Transfer from service label)

7022 2410 0000 2405 8429

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
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