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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

10 DANIEL A. GUTIERREZ, an individual, and  
11 ARTURO NAVARRETE, an individual, as  
individuals and on behalf of all others similarly  
12 situated,

13 Plaintiffs,

14 vs.

15 SCHMID INSULATION CONTRACTORS,  
16 INC., a California corporation doing business as  
PARAGON SCHMID BUILDING PRODUCTS;  
17 and MASCO CONTRACTOR SERVICES, INC.  
a Delaware corporation; and DOES 1 through 10  
18 inclusive,

19 Defendants.  
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**CASE NUMBER:**

[Class Action]

**COMPLAINT FOR DAMAGES**

- (1) **FAILURE TO PAY FOR ALL HOURS WORKED, INCLUDING ALL TRAVEL AND ADMINISTRATIVE TIME (LAB. CODE §§ 223, 510, 1194, AND I.W.C. WAGE ORDERS);**
- (2) **FAILURE TO PAY MINIMUM WAGE FOR ALL HOURS WORKED (LAB. CODE §§ 221, 223, 1194, 1194.2, 1197, I.W.C. WAGE ORDERS);**
- (3) **UNLAWFUL DEDUCTIONS FROM WAGES (LAB. CODE §§ 221, 2802, I.W.C. WAGE ORDERS);**
- (4) **FAILURE TO PAY FOR OVERTIME AND PROVIDE FOR COMPLETELY OFF-DUTY MEAL AND REST PERIODS (LAB. CODE §§ 226.7, 512, I.W.C. WAGE ORDERS);**
- (5) **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS (LAB. CODE §§ 226, 226.3, 1174, 1174.5); AND**
- (6) **UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES (BUS. & PROF. CODE §§ 17200-17208).**

**JURY TRIAL DEMAND**

1 Plaintiffs DANIEL A. GUTIERREZ, and ARTURO NAVARRETE, on behalf of themselves  
2 and all others similarly situated (collectively referred to as “Plaintiffs”), complain and allege as  
3 follows:

4 **I. INTRODUCTION**

5 1. This is a class action, under California Code of Civil Procedure section 382, brought on  
6 behalf of construction personnel employed by, or on behalf of, defendants to install building-contractor  
7 products, such as gutters, fireplaces, firestopping, weather stripping, cabinets, garage doors,  
8 insulation/air filtration, central vacuum, and/or blow-in-blankets. The installation personnel have been  
9 denied pay for all hours worked, including being denied pay for time spent traveling to company-  
10 assigned work sites in company trucks, time spent setting up, preparing, or measuring at the job sites,  
11 as well as time spent loading, maintaining and unloading the company product and equipment. In  
12 addition, Plaintiffs are required not to record all of their time spent while at work on their time records,  
13 under the threat of not being paid at all. Defendants lure in the laborers by initially paying them on an  
14 hourly basis, and only later switching to payments based on a variable piece-rate basis, which results in  
15 the Plaintiffs routinely being denied pay for all hours worked, being denied overtime, and being  
16 subjected to unlawful deductions (e.g., “negative bonuses”) taken from their wages.

17 2. This action seeks unpaid wages for all hours worked, reimbursement of all necessary  
18 work-related costs and expenses, reimbursement of unauthorized wage deductions, interest on unpaid  
19 wages, compensation for failure to furnish timely statements accurately showing total hours worked,  
20 and reasonable attorneys’ fees and costs, under, *inter alia*, Labor Code §§ 218.5, 218.6, 221, 223, 226,  
21 226.3, 226.7, 510, 512, 558, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 2802, and Code of Civil  
22 Procedure § 1021.5, on behalf of Plaintiffs and all other persons who are or have been employed by  
23 SCHMID INSULATION CONTRACTORS, INC., a California corporation doing business as  
24 PARAGON SCHMID BUILDING PRODUCTS; and MASCO CONTRACTOR SERVICES, INC., a  
25 Delaware corporation; and DOES 1 through 10 inclusive (collectively “Defendants”). The plaintiffs  
26 all suffered unpaid wages for all hours worked based on Defendants’ purported “piece-rate” method as  
27 construction installation personnel within the State of California at any time since four years prior to  
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1 the filing of this Complaint. Plaintiffs, on behalf of themselves and the putative class members  
2 (collectively referred to as “installers”), also seek restitution of all benefits Defendants have enjoyed  
3 from their failure to pay for all hours worked, failure to pay overtime wages, failure to provide  
4 accurate statements of hours worked to each Plaintiff and putative class member, failure to keep  
5 required payroll records, and seek injunctive relief under Business and Professions Code §§ 17200-  
6 17208.

7  
8 **II. VENUE AND JURISDICTION**

9 3. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil  
10 Procedure § 395(a). Each Defendant transacts business, maintains an office, and/or has an agent in  
11 Los Angeles County, and each Defendant is otherwise within this Court’s jurisdiction for purposes of  
12 service of process. The unlawful acts alleged herein have a direct effect on Plaintiffs and those  
13 similarly situated within the State of California and Los Angeles County. Defendants do substantial  
14 business in Los Angeles County, California, and have employed and currently employ numerous class  
15 members in Los Angeles County as well as throughout the State of California.

16 4. The Court has jurisdiction over this class action pursuant to Article 6, § 10, of the  
17 California Constitution and California Code of Civil Procedure § 410.10.

18 5. Each named Plaintiff’s monetary claims total less than \$75,000.00 per person.  
19

20 **III. THE PARTIES**

21 **A. Plaintiffs**

22 6. The Named Plaintiffs and the members of the putative class as set forth below, all are  
23 current or former employees of Defendants who are or were employed within the construction field as  
24 installers of building products, such as gutters, fireplaces, firestopping, weather stripping, cabinets,  
25 garage doors, insulation/air filtration, central vacuum, and/or blow-in-blankets, within California and  
26 within the period beginning four years prior to the filing of the Complaint to the present. They are all  
27 “employees” as that term is used in the California Labor Code, and the California Industrial Welfare  
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1 Commission's Wage Orders regulating wages, hours, and working conditions in the State of  
2 California.

3 7. Plaintiff DANIEL A. GUTIERREZ, is a resident of Van Nuys, in Los Angeles County,  
4 California, and was employed by Defendants, from approximately January 2006, and is presently  
5 employed, as a rain gutter installer with experience in fire-place installation, working out of  
6 Defendants' warehouse and offices at or near 24955 Kearney Avenue, Valencia, California, in the  
7 County of Los Angeles.

8 8. Plaintiff ARTURO NAVARRETE, is a resident of Thousand Oaks, in Ventura County,  
9 California, and was employed by Defendants from approximately June 2006 until September 2006 as  
10 an installer working out of Defendants' warehouse and office facilities located at or near 24955  
11 Kearney Avenue, Valencia, California, in the County of Los Angeles.

12  
13 B. Defendants

14 9. Defendant SCHMID INSULATION CONTRACTORS, INC. is a California  
15 corporation doing business as PARAGON SCHMID BUILDING PRODUCTS.

16 10. Defendant MASCO CONTRACTOR SERVICES, INC. is a Delaware corporation  
17 doing business in California as Paragon Schmid Building Products.

18 11. Defendant MASCO CONTRACTOR SERVICES, INC., operates branch offices  
19 throughout the United States, including throughout California and in Los Angeles County. In addition,  
20 Schmid Insulation Contractors, Inc., Masco Contractor Services, Inc., and the other defendants  
21 constitute a "person" as defined in California Labor Code section 18, and an "employer" as that term is  
22 used in the California Labor Code and the IWC Wage Orders regulating wages, hours, and working  
23 conditions.

24 12. The true names and capacities, whether individual, corporate, associate, or otherwise, of  
25 Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiffs, who  
26 therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs are  
27 informed and believe, and based thereon allege, that each of the Defendants designated herein as a  
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1 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek  
2 leave of court to amend this Complaint to reflect the true names and capacities of the Defendants  
3 designated hereinafter as DOES when such identities become known.

4 13. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted  
5 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,  
6 business plan, control, or policy in all respects pertinent hereto, and the acts of each Defendant are  
7 legally attributable to the other Defendants. Plaintiffs are informed and believe, and on that basis  
8 allege that Defendants have joint operational control over Plaintiffs.

9  
10 **IV. FACTUAL ALLEGATIONS**

11 14. Defendants have employed Plaintiffs and members of the proposed class as installers,  
12 who install and service Defendants' building-contractor products, such as gutters, fireplaces,  
13 firestopping, weather stripping, cabinets, garage doors, insulation/air filtration, central vacuum, and/or  
14 blow-in-blankets. These construction installation personnel are initially paid on an hourly basis, but  
15 then switched to a purported piece-rate basis, and are routinely denied pay for all hours worked. The  
16 installation duties involving construction building products performed by the Plaintiffs and the putative  
17 class members are substantially similar, if not identical.

18 15. For at least four years prior to the filing of this Complaint and continuing hereafter  
19 (hereinafter, "Liability Period"), Defendants have had the policy and practice of failing to compensate  
20 the installer Plaintiffs for all of the time worked and activities completed for the benefit of Defendants.

21 16. Installers regularly perform work for the benefit of Defendants before they arrive at  
22 their first assignment and for which they receive no compensation. In the mornings, Defendants  
23 require their installers to report for work at a central meeting location and at a time specified by  
24 Defendants' branch. When the installers arrive at the central meeting location at the specified time,  
25 they receive their assigned work orders for the day, pick up and load into their company vehicles  
26 equipment necessary for the completion of their orders, and route their orders by address. The  
27 installers then leave the central meeting location and drive in the company vehicles to their first  
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1 assignment. Often the travel time in the company trucks to the assigned work sites take an hour or  
2 more. Upon instruction by their supervisors, installers also do not even begin recording their hours  
3 once they reach the work site of their first order. Again, at the direction of Defendants' supervisors  
4 and management employees, the installers park their vehicle, unload their company supplies and  
5 equipment, measure and prepare to perform their assigned installation or service. All of this  
6 preparation and travel time is not paid for at all by the employer.

7 17. The installers are not compensated by Defendants for the time they spend working at  
8 the central meeting location or the travel time they spend driving from the central meeting location to  
9 their job sites in the company trucks. Additionally, Defendants require their installers to deduct their  
10 compensable time by at least one-half hour each day for "lunch" even when the installers are not  
11 completely relieved of their duties for thirty minutes. Due to the pressure and production quotas,  
12 installers have to perform more work orders than can typically be performed in a 40-hour workweek,  
13 and to meet the Defendants' production quotas, the installers are not completely relieved of their duties  
14 during their meal or rest breaks and cannot abandon or leave their work sites.

15 18. Plaintiff installers are also not paid for all of their time spent in completing the work for  
16 the benefit of Defendants. In the mornings, the Plaintiffs have to meet at a central meeting location or  
17 company warehouse where they receive their assignments. The Plaintiffs are not paid in full for their  
18 meeting time and time spent preparing the company trucks for the benefit of Defendants. Plaintiffs  
19 then are not paid in full for their travel time in the company trucks to the work order sites. Once the  
20 installers finish their last work order of the day, Defendants instruct them to drive back to the central  
21 meeting location to complete various work-related activities. At the central meeting location, installers  
22 return unused equipment, unload the company vehicles, and complete and submit paperwork for the  
23 day's completed orders. Because installers are instructed that their hours worked are calculated only  
24 on a production basis and that they are not to count the time spent unloading their trucks or performing  
25 their paperwork, they are not compensated for either their travel time back to the central meeting  
26 location from their last assignment or their time spent at the central meeting location completing the  
27 abovementioned work on behalf of Defendants.

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1           **All persons who are employed or have been employed by Defendants in the**  
2           **construction field to install building products, such as gutters, fireplaces,**  
3           **firestopping, weather stripping, cabinets, garage doors, insulation/air filtration,**  
4           **central vacuum, and/or blow-in-blankets (“installers”), in California at any time**  
5           **since four years prior to the filing of the Complaint through the final disposition of**  
6           **this action.**

7           25.     This action has been brought and may properly be maintained as a class action under  
8           Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation  
9           and the proposed class is easily ascertainable:

10           a.     Numerosity: The potential members of the Class as defined are so numerous  
11           that joinder of all the members of the Class is impracticable. While the precise number of Class  
12           Members has not been determined at this time, Plaintiffs are informed and believe that Defendants  
13           have employed well over 300 persons as installers in California in the four years prior to the filing of  
14           the Complaint to the present. For example, Plaintiffs are informed and believe that there are more than  
15           60 installers currently working and receiving their installation assignments just out of the warehouse  
16           site located at 24955 Kearney Avenue in the City of Valencia, County of Los Angeles, State of  
17           California. Joinder of all members of the proposed class is not practicable.

18           b.     Commonality: There are questions of law and fact common to the Plaintiffs and  
19           the Class that predominate over any questions affecting only individual members of the Class. These  
20           common questions of law and fact include, without limitation:

21           i.     Whether the installers are paid for all of their travel time in the company  
22           vehicles to, and from, their job sites.

23           ii.    Whether the installers receive overtime pay for hours worked in excess  
24           of eight (8) hours in a workday, or forty (40) hours in a workweek.

25           iii.   Whether the installers are paid for all of their hours spent in performing  
26           administrative time and preparation time in loading and unloading the company vehicles.

1                   iv.     Whether Defendants have violated the Industrial Welfare Commission  
2 Wage Orders, including specifically Wage Order No. 4-2001 and/or No. 16-2001, and Labor Code §§  
3 510 and 1194 by failing to pay for all hours worked by installers during the Liability Period.

4                   v.     Whether Defendants have violated Business and Professions Code §  
5 17200 by failing to pay for all hours worked by installers during the Liability Period.

6                   vi.    Whether Defendants have violated Wage Order 4-2001 and/or 16-2001,  
7 and Labor Code §§ 226.7, 512, and 1194 by failing to pay for overtime and failing to provide all of the  
8 required completely off-duty meal and break periods to installers during the Liability Period.

9                   vii.   Whether the Plaintiffs and class members have to provide, or are charged  
10 for having to provide, their own equipment to perform the employer's assigned job functions.

11                  viii.   Whether Defendants have violated Labor Code §§ 221 and/or 2802, and  
12 Wage Order No. 4-2001 or 16-2001, by making unlawful deductions from wages earned by or due to  
13 installers, or failing to pay minimum wage for all hours worked, during the Liability Period.

14                  ix.     Whether Defendants have violated Business and Professions Code §  
15 17200 by making unlawful deductions from wages earned by or due to installers during the Liability  
16 Period.

17                  x.     Whether Defendants have violated Labor Code § 226 by failing to timely  
18 furnish each installer with a statement showing accurate total hours the employee worked each pay  
19 period.

20                  xi.    Whether Defendants have violated Business and Professions Code §  
21 17200 by failing to timely furnish each installers with a statement showing accurate total hours the  
22 installers worked each pay period.

23                  xii.   Whether Defendants unlawfully demanded that the employees submit  
24 timesheets that fail to reflect the actual number of hours worked.

25                  c.     Typicality: Plaintiffs' claims are typical of the claims of the Class. Plaintiffs  
26 and all members of the Class sustained injuries and damages arising out of and caused by Defendants'  
27 common course of conduct in violation of law as alleged herein.

28

1 d. Adequacy of Representation: Plaintiffs are members of the Class and will fairly  
2 and adequately represent and protect the interests of the Class Members. Counsel who represent the  
3 Plaintiffs are competent and experienced in litigating wage and hour complaints and other employment  
4 class actions.

5 e. Superiority of Class Action: A class action is superior to other available means  
6 for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is  
7 not practicable, and questions of law and fact common to the Class predominate over any questions  
8 affecting only individual members of the Class. Each Class Member has been damaged and is entitled  
9 to recovery by reason of Defendants' illegal policies and/or practices as alleged herein. Class action  
10 treatment will allow those similarly situated persons to litigate their claims in the manner that is most  
11 efficient and economical for the parties and the judicial system.

12  
13 **FIRST CAUSE OF ACTION**  
14 **FAILURE TO PAY FOR ALL HOURS WORKED**  
**(CALIFORNIA LABOR CODE §§ 223, 510, 1194, IWC WAGE ORDERS)**

15 26. Plaintiffs reallege and incorporate paragraphs 1 through 25 as though fully set forth  
16 herein.

17  
18 27. Plaintiffs allege that Defendants have failed to pay for all hours worked, including but  
19 not limited to, for all travel time in the company vehicles, all time preparation spent unloading and  
20 loading company vehicles, and for time spent doing daily set-up, preparation, paperwork, clean-up, as  
21 well as overtime spent for the benefit of Defendants.

22 28. Section 2(H) of the Industrial Welfare Commission Orders defines hours worked for  
23 each of the Plaintiffs as:

24 "Hours worked" means the time during which an employee is subject to the  
25 control of an employer, and includes all the time the employee is suffered or  
26 permitted to work, whether or not required to do so.

1           29.     Labor Code § 223 provides that where a contract requires an employer to maintain the  
2 designated wage scale, it is unlawful to pay a lower wage while purporting to pay the wage designated  
3 by contract. Defendants have purportedly contracted to pay installers at variable piece rates for all of  
4 their hours worked, and have not designated a lower hourly rate for “pre” or “post” shift hours worked  
5 or for working more than eight hours in a day.

6           30.     Section 2 of MW-2001 requires payment of minimum wages for “all hours worked.”  
7 Labor Code sections 1194 and 1197 provide that it is unlawful to pay less than the minimum wage  
8 fixed by the Wage Orders.

9           31.     As of January 1, 2000, Labor Code § 510, Section 3 of IWC Wage Order No. 4-2001  
10 and IWC Wage Order No. 16-2001, have required employers to pay employees one-and-one-half times  
11 their normal hourly rate for hours worked in excess of eight per day and in excess of 40 per week, and  
12 at twice the normal hourly rate for hours worked in excess of 12 per day and eight on the seventh day  
13 worked in a work week.

14           32.     Throughout the relevant time period, Section 2(J) of IWC Wage Order No. 16-2001,  
15 and Section 2(K) of IWC Wage Order No. 4-2001 provide: “‘Hours worked’ means the time during  
16 which an employee is subject to the control of an employer, and includes all the time the employee is  
17 suffered or permitted to work, whether or not required to do so.”

18           33.     By their failure to pay for work the installers performed “pre” and “post” shift,  
19 Defendants have violated and continue to violate the provisions of the applicable Wage Orders and  
20 Labor Code sections which require proper compensation for all hours worked.

21           34.     By failing to keep adequate time records required by Labor Code § 1174(d), Defendants  
22 have made it difficult to calculate the wages due Plaintiffs and putative class members.

23           35.     As a result of Defendants’ unlawful acts, Plaintiffs and putative class members have  
24 been deprived of wages in amounts to be determined at trial, and are entitled to recovery of such  
25 amounts, plus interest thereon, attorneys’ fees, costs, and penalties, under Labor Code §§ 218.5, 218.6,  
26 558, and 1194. Plaintiffs and class members are also entitled to liquidated damages under Labor Code  
27 § 1194.2.

28

1 36. Plaintiffs, on behalf of themselves and the putative class, request relief as described  
2 below.

3  
4 **SECOND CAUSE OF ACTION**  
5 **FAILURE TO PAY MINIMUM WAGE FOR ALL HOURS WORKED**  
6 **(CALIFORNIA LABOR CODE §§ 221, 223, 1194, 1197, IWC WAGE ORDERS)**

7 37. Plaintiffs reallege and incorporate paragraphs 1 through 35 as though fully set forth  
8 herein.

9 38. California Labor Code sections 1194 and 1194.2 provide that any employee receiving  
10 less than the legal minimum wage is entitled to recover the unpaid balance of the full amount of this  
11 minimum wage compensation in a civil action plus an additional equal amount as liquidated damages,  
12 interest thereon, as well as reasonable attorneys' fees and cost of suit.

13 39. Defendants failed to pay the Plaintiffs and the putative class members the minimum  
14 wage for all hours worked as required by the applicable law, including the California Labor Code and  
15 IWC Wage Orders.

16 40. In addition, under Section 8(B) of IWC Wage Order No. 16-2001, "When the employer  
17 requires the use of tools or equipment or they are necessary for the performance of a job, such tools  
18 and equipment shall be provided and maintained by the employer, except that an employee whose  
19 wages are at least two (2) times the minimum wage may provide and maintain hand tools and  
20 equipment customarily required by the particular trade or craft in conformity with Labor Code Section  
21 2802." Similarly, Section 9(B) of the IWC Wage Order No. 4-2001 also prohibits an employer from  
22 requiring that an employee who makes less than two (2) times the minimum wage to purchase his or  
23 her equipment to perform the Defendants job.

24 41. Defendants failed to pay Plaintiffs two (2) times the minimum wage required under  
25 applicable California law for all hours worked. Defendants nevertheless required the installers to  
26 provide the tools and equipment to perform the work assigned by Defendants, and if the Plaintiffs did  
27 not have the tools then the Defendants deducted the cost of the tools from the Plaintiffs' paychecks.  
28

1 For example, for Gutter Installers, Defendants required that each gutter installer provide equipment  
2 and tools such as screw-guns, work belts, and hammers; and if the installer did not possess a screw-  
3 gun, the employer would deduct the cost of the screw-gun from the installer's paycheck.

4 42. Plaintiffs allege that Defendants have failed to pay the minimum wage required under  
5 California statute and IWC Wage Orders for all hours worked, including but not limited to, for all  
6 travel time in the company vehicles, all time spent in preparation, set-up, and clean-up, for the benefit  
7 of Defendants.

8 43. As a result of Defendants' unlawful acts, Plaintiffs and putative class members have  
9 been deprived of wages in amounts to be determined at trial, and are entitled to recovery of such  
10 amounts, plus interest thereon, attorneys' fees, costs, and penalties, under Labor Code §§ 218.5, 218.6,  
11 558, and 1194.2, 1194.5, and 1197.1.

12 44. Plaintiffs, on behalf of themselves and the putative class, request relief as described  
13 below.

14  
15 **THIRD CAUSE OF ACTION**  
16 **UNLAWFUL DEDUCTIONS FROM WAGES**  
17 **(LABOR CODE §§ 221, 2802, IWC WAGE ORDERS)**

18 45. Plaintiffs reallege and incorporate paragraphs 1 through 43 as though fully set forth  
19 herein.

20 46. Defendants have charged the installers fees for using supplies and equipment necessary  
21 to perform their job duties. Defendants have illegally deducted these costs from Plaintiffs' and  
22 putative class members' wages in violation of Labor Code section 221 and/or 2802.

23 47. Defendants failed to pay Plaintiffs two (2) times the minimum wage required under  
24 applicable California law for each hour worked. Defendants nevertheless required the installers to  
25 provide the tools and equipment to perform the work assigned by Defendants, and if the Plaintiffs did  
26 not have the tools then the Defendants deducted the cost of the tools from the Plaintiffs' paychecks.  
27 For example, for Gutter Installers, Defendants required that each gutter installer provide such  
28

1 equipment and tools as screw-guns, work belts, and hammers; and if the installer did not possess a  
2 screw-gun then the employer would deduct the cost of the screw-gun from the installer's paycheck.

3 48. Defendants' failure to pay for installers' tool costs and other necessary work-related  
4 expenses violates the IWC Wage Orders and the California Labor Code including, but not limited to,  
5 Labor Code section 2802, Section 9(B) Wage Order No. 4-2001, and Section 8(B) of Wage Order No.  
6 16-2001.

7 49. Defendants also have illegally deducted monies from wages earned by the Plaintiffs  
8 based on Defendants' practice and policy of using a production formula to apply a "negative bonus"  
9 deduction. Defendants have illegally deducted from Plaintiffs' and putative class members' wages in  
10 violation of Labor Code section 221, 558, and 2802.

11 50. Plaintiffs, on behalf of themselves and the putative class, request relief as described  
12 below.

13  
14 **FOURTH CAUSE OF ACTION**  
15 **UNLAWFUL FAILURE TO PAY FOR OVERTIME AND PROVIDE**  
16 **COMPLETELY OFF-DUTY MEAL AND REST PERIODS**  
**(LABOR CODE §§ 226.7, 512; IWC WAGE ORDERS)**

17 51. Plaintiffs reallege and incorporate paragraphs 1 through 49 as though fully set forth  
18 herein.

19 52. Defendants have a practice or policy of requiring the Plaintiffs to arrive at the  
20 Defendants' warehouse and office at or near 6:00 a.m. to receive their work assignments and to prepare  
21 their company trucks with the necessary supplies for the assigned job sites. Defendants have a practice  
22 or policy requiring that the Plaintiffs return to the warehouse and office to return the company vehicles  
23 and the unused products, and to perform the required paperwork related to Defendants' work orders, in  
24 the evening, which usually results in the Plaintiffs not leaving the company facility until and around  
25 4:30 p.m. Defendants, however, have failed to pay for all hours worked, including but not limited to,  
26 for all travel time in the company vehicles, all time preparation spent unloading and loading company  
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1 vehicles, and for time spent doing daily set-up, preparation, paperwork, clean-up, as well as overtime  
2 spent for the benefit of Defendants.

3 53. Section 3 of the IWC Wage Order Nos. 4-2001 and 16-2001 require that employees  
4 working more than eight (8) hours in any workday or more than forty (40) hours in any work week  
5 shall be paid one and one-half (1 ½) times the employee's regular rate of pay. In addition, for all hours  
6 worked in excess of twelve (12) hours worked in any workday or for all hours worked in excess of  
7 eight (8) hours on the seventh (7<sup>th</sup>) consecutive day of work in a workweek, shall result in two times or  
8 double pay for all such hours worked. Defendants have failed to pay for all overtime hours worked by  
9 the Plaintiffs, including the time spent traveling in the company vehicle and performing preparation  
10 duties at the company warehouse and assigned job sites. Plaintiffs and similarly situated installers  
11 have been deprived of their rightfully earned overtime compensation as a direct and proximate result of  
12 Defendants' corporate policies and failure and refusal to pay said compensation. Consequently,  
13 Plaintiffs and the similarly situated installers are entitled to recover such amounts, plus interest and  
14 penalties thereon, as well as attorneys' fees and costs.  
15

16  
17 54. In addition, Plaintiffs and similarly situated installers regularly work in excess of five  
18 (5) and ten (10) hours a day without being provided at least half-hour meal periods in which they were  
19 relieved of all duties, as required by Labor Code §§ 226.7, 512, and Section 11 of Wage Order No. 4-  
20 2001, and Section 10 of Wage Order No. 16-2001.

21 55. Because Defendants failed to provide proper meal periods, they are liable to Plaintiffs  
22 and Class Members for one hour of additional pay at the regular rate of compensation for each  
23 workday that the proper meal periods were not provided, pursuant to Labor Code § 226.7, 558, and the  
24 IWC Wage Order Nos. 4-2001, and 16-2001.

25 56. Plaintiffs and the similarly situated installers request relief as described below.  
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1 **FIFTH CAUSE OF ACTION**  
2 **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE**  
3 **STATEMENTS**  
4 **(LABOR CODE §§ 226, 226.3, 1174, 1174.5)**

5 57. Plaintiffs reallege and incorporate paragraphs 1 through 35 as though fully set forth  
6 herein.

7 58. Labor Code § 226 (a) requires employers semi-monthly or at the time of each payment  
8 of wages to furnish each employee with a statement itemizing, *inter alia*, the total hours worked by the  
9 employee. Labor Code § 226, including subsection (e), provides that if an employer knowingly and  
10 intentionally fails to provide a statement itemizing, *inter alia*, the total hours worked by the employee,  
11 then the employee is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the  
12 initial violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand  
13 dollars (\$4,000). Plaintiffs also allege upon information and belief that Defendants failed to maintain  
14 complete and accurate payroll records for each Plaintiff and the similarly situated installers showing  
15 gross wages earned, total hours worked, all deductions made, net wages earned, and all applicable  
16 hourly rates in effect during each pay period and the corresponding number of hours worked at the  
17 hourly rate.

18 59. Defendants knowingly and intentionally failed to furnish and continue to knowingly and  
19 intentionally fail to furnish each Plaintiff and similarly situated installers with timely, itemized  
20 statements showing the actual total hours worked by each of them, as required by Labor Code §  
21 226(a). As a result, Defendants are liable to Plaintiffs and the similarly situated installers for the  
22 amounts provided by Labor Code § 226, 226.3, 558, 1174, and 1174.5.

23 60. Plaintiffs and the similarly situated installers request relief as described below.

24 **SIXTH CAUSE OF ACTION**  
25 **UNFAIR BUSINESS PRACTICE**  
26 **(BUS. & PROF. CODE §§ 17200-17208)**

27 61. Plaintiffs reallege and incorporate paragraphs 1 through 35, 58, and 59, as though fully  
28 set forth herein.

1           62.     California Business and Professions Code section 17200, *et seq.*, prohibits unfair  
2 competition, that is, any unlawful, unfair or fraudulent business practice. A representative action  
3 pursuant to California Business & Professions Code sections 17200, 17203, and 17204 on behalf of the  
4 Plaintiffs and general public is appropriate and necessary because as a general business practice,  
5 Defendants have not, and are not, paying for all hours worked by the installers contrary to the laws of  
6 the State of California.

7           63.     California Labor Code section 90.5(a) states that it is the public policy of California to  
8 vigorously enforce minimum labor standards to ensure employees are not required to work under  
9 substandard and unlawful conditions, and to protect employers who comply with the law from those  
10 who attempt to gain competitive advantage at the expense of their workers by failing to comply with  
11 minimum labor standards.

12           64.     Defendants' failure to pay legally required compensation under the Wage Orders and  
13 Labor Code, failure to provide legally required breaks, failure to keep proper time records under Labor  
14 Code § 1174, practice of making unlawful deductions from the Plaintiffs' wages and/or failing to  
15 reimburse for necessary expenditures, in violation of Labor Code §§ 221, 1197, 1199, 2802 and Wage  
16 Order No. 16-2001, Wage Order No. 4-2001, and failing to pay for travel and job preparation time in  
17 violation of 29 CFR §§ 785.24-25, requiring that the installers sign a time record that did not  
18 accurately reflect all hours worked with a purported release of wages owed in violation of Labor Code  
19 § 206.5, and the failure to timely furnish installers with statements accurately showing hours worked,  
20 as alleged above, constitute unlawful and/or unfair activity prohibited by Business and Professions  
21 Code § 17200.

22           65.     Defendants have committed acts of unfair competition as defined by Business &  
23 Professions Code section 17200, *et seq.*, by engaging in the unlawful practices described in this  
24 Complaint, including, but not limited to:

- 25                   a.     violations of Labor Code section 510;
- 26                   b.     violations of Labor Code section 1194;
- 27                   c.     violations of Labor Code section 2802; and

1 d. violations of IWC Wage Order Nos. 4 and/or 16.

2 66. As a result of their unlawful and/or unfair acts, Defendants have reaped and continue to  
3 reap unfair benefits and illegal profits at the expense of Plaintiffs and the similarly situated installers.  
4 Defendants should be enjoined from this activity and made to disgorge these ill-gotten gains and  
5 restore to Plaintiffs and Class Members the wrongfully withheld wages, related penalties and double  
6 the amount of overtime due to compensate class members for delay in receiving wages due, pursuant  
7 to Business and Professions Code §§ 17202 and 17203.

8 67. As a direct and proximate result of the aforementioned acts, Plaintiffs and the class have  
9 suffered a loss of wages in an amount to be proven at trial. The acts and practices described above  
10 constitute an unfair, unlawful or fraudulent business practice, and unfair competition, within the  
11 meaning of Business & Professions Code section 17200, *et seq.*, because they force Plaintiffs and the  
12 other similarly situated workers to work under substandard conditions, while enabling Defendants to  
13 gain an unfair competitive advantage over law-abiding employers and competitors.

14 68. Under California Business and Professions Code sections 17203 and 17535, Plaintiffs  
15 seek on their own behalf, on behalf of the class, and on behalf of the general public, preliminary and  
16 permanent injunctive relief, including but not limited to an order that Defendants account for, disgorge,  
17 and restore to the class members the unlawfully withheld wages, and for a court order enjoining  
18 Defendants from continuing to refuse to pay its installers in accordance with California law and from  
19 continuing to engage in the aforesaid unlawful and unfair practices. Injunctive relief is appropriate to  
20 avoid a multiplicity of suits for continuing violations of the California Business and Professions Code  
21 section 17200.

22 69. Plaintiffs' success in this action will enforce important rights affecting the public  
23 interest and in that regard Plaintiffs sue on behalf of the public as well as themselves and others  
24 similarly situated. Plaintiffs seek and are entitled to unpaid wages, unpaid overtime, unpaid work-  
25 related expenses, penalties, an injunction, an equitable accounting, and all other equitable relief due to  
26 Defendants' failure to pay all of the wages owed.

27 70. Plaintiffs and the Class request relief as described below.  
28

1 **IV. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs on behalf of themselves and the class members they seek to represent  
3 in this action request the following relief:

4 A. That the Court determine that this action may be maintained as a class action under  
5 Code of Civil Procedure § 382;

6 B. That the Court find that Defendants have violated the Labor Code §§ 510, 1194, 1194.2,  
7 1194.5, 1197, and 1197.1, and Wage Orders MW-2001, and 16-2001 or 4-2001 as to the Plaintiffs and  
8 the Class for failure to pay for all hours worked;

9 C. That the Court find that Defendants have violated the record-keeping provisions of  
10 Labor Code § 1174(d) and the IWC Wage Orders as to Plaintiffs and the Class;

11 D. That the Court find that Defendants have failed to pay the minimum wage for all hours  
12 worked by the Plaintiffs and the class members;

13 E. That the Court find that Defendants have violated Labor Code §§ 226.7, 512 and IWC  
14 Wage Orders by failing to afford Plaintiffs and Class Members overtime and completely off-duty meal  
15 and rest periods;

16 F. That the Court find that Defendants have violated Labor Code §§ 221, and 2802 and  
17 IWC Wage Orders by making unlawful deductions from wages earned by or due to the Plaintiffs and  
18 Class Members and/or for failing to reimburse for necessary expenses;

19 G. That the Court find that Defendants have violated Labor Code § 226 by failing to timely  
20 furnish Plaintiffs and Class Members itemized statements accurately showing the total hours worked  
21 by each of them;

22 H. That the Court find that Defendants have violated Business and Professions Code  
23 § 17200 by its violations of the Labor Code and Wage Orders as described above;

24 I. That the Court find that Defendants' violations as described have been willful within  
25 the meaning of the California Labor Code and applicable wage and hour laws;

26 J. That the Court award to Plaintiffs and the Class, damages for the amount of unpaid  
27 compensation and expenses, and unauthorized wage deductions, including interest thereon, damages  
28

1 for failure to timely furnish statements accurately showing total hours worked, liquidated damages on  
2 unpaid minimum wages, including but not limited to liquidated damages under Labor Code section  
3 1194.2, and any permitted penalties, including but not limited to civil penalties under Labor Code  
4 section 558, subject to proof at trial;

5 K. That Defendants be ordered and enjoined to pay restitution and penalties to Plaintiffs  
6 and the Class due to Defendants' unlawful and/or unfair activities, pursuant to Business and  
7 Professions Code §§ 17200-05;

8 L. That Defendants further be enjoined to cease and desist from unlawful and/or unfair  
9 activities in violation of Business and Professions Code § 17200, et seq.;

10 M. That Plaintiffs and the Class be awarded reasonable attorneys' fees and costs pursuant  
11 to Labor Code §§ 218.5, 218.6, 226, 1194, and Code of Civil Procedure § 1021.5 and/or other  
12 applicable law; and

13 N. That the Court award such other and further relief as this Court may deem appropriate.  
14

15 **DEMAND FOR JURY TRIAL**

16 Plaintiffs and the Class hereby demand a jury trial on all causes of action and claims with  
17 respect to which they have a right to jury trial.  
18

19 DATED: October 13, 2006

20 Respectfully submitted  
SULLIVAN TAKETA LLP

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By: Donn S. Taketa  
Attorneys for Plaintiffs  
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