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11 Attorneys for Plaintiffs and the Putative Class

12
 13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**

15 HECTOR GARCIA, RICHARD CAHIGAL,
 16 BRIAN HOLLIDAY, and TINA DIEMER, on
 17 behalf of themselves and all others similarly
 situated,

18 Plaintiffs,

19 vs.

20 PPG INDUSTRIES, INC.,

21 Defendant.

Case No.:

CLASS, COLLECTIVE, AND REPRESENTATIVE ACTION

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

1 Plaintiffs Hector Garcia, Robert Cahigal, Brian Holliday, and Tina Diemer state as follows:

2 **NATURE OF THE ACTION**

3 1. This class/collective action case arises out of Defendant PPG Industries, Inc.’s (“PPG”)
4 systemic unlawful treatment of Plaintiffs and other similarly situated current and former hourly non-
5 exempt employees of PPG, including Territory Managers (“TMs”) and Field Service Representatives
6 (“FSRs”), who worked for PPG in either Home Depot stores or Lowe’s stores.

7 2. PPG classifies all TMs as hourly non-exempt employees.

8 3. PPG classified other employees as hourly non-exempt employees, such as FSRs.

9 4. Plaintiffs allege that they, TMs throughout the United States who worked Home Depot
10 stores from April 2, 2013 through the trial, and TMs throughout the United States who worked Lowe’s
11 stores from December 15, 2012 through the trial: (i) were not paid all overtime wages because non-
12 discretionary bonuses were not included in their regular rate of pay calculation for overtime; and,
13 (ii) are entitled to liquidated damages pursuant to the FLSA.

14 5. Additionally, Plaintiffs Garcia, Cahigal, and Diemer (“California Plaintiffs”) bring class
15 claims under California laws on behalf of themselves and all other TMs employed by PPG in
16 California, including those TMs who worked Home Depot stores from April 2, 2013 through the trial
17 and those TMs who worked Lowe’s stores from December 15, 2012 through the trial. During the Class
18 Period, the Plaintiffs allege on behalf of themselves and all other TMs in California that they are
19 (i) entitled to overtime wages because non-discretionary bonuses were not included in the regular rate
20 of pay calculation for overtime; (ii) entitled to waiting time penalties because PPG did not pay all wages
21 due to terminated TMs; (iii) entitled to civil penalties under the Labor Code Private Attorney General
22 Act (“PAGA”), and (iv) entitled to restitution and an injunction under the Unfair Competition Law
23 (“UCL”) Business and Professions Code section 17200 *et seq.*

24 6. California Plaintiffs also bring class claims under California laws for reimbursement of
25 all necessary and reasonable business expenses under Labor of Code Section 2802 on behalf of
26 themselves and all other TMs in California who have worked, are working, or will work for PPG at
27 Home Depot stores at any time from four years prior to the filing of this Complaint through the trial.

28

1 7. California Plaintiffs bring class claims under California laws on behalf of themselves and
2 all other non-exempt PPG employees in California from one year prior to the filing of this Complaint
3 through the trial in this civil action for statutory damages and/or penalties because PPG failed to provide
4 accurate itemized wage statements under Labor Code section 226.

5 8. In sum, Plaintiffs seek to represent three California classes defined as and composed of
6 as follows:

7 “Overtime and Waiting Time Class:” All persons employed by PPG within the
8 State of California as a Territory Manager who either were assigned to Home
9 Depot stores at any time from April 2, 2013 through the trial or were assigned to
10 Lowe’s stores at any time from December 15, 2012 through the trial for overtime
11 wages, waiting time penalties, and restitution and an injunction under the UCL

12 “2802 Class:” All persons employed by PPG within the State of California as a
13 Home Depot Territory Manager from four years prior to the filing of this
14 complaint through trial.

15 “Wage Statement and PAGA Class:” All hourly, non-exempt persons employed
16 by PPG within the State of California within one year prior to the filing of this
17 Complaint through the trial for statutory damages and/or penalties from PPG’s
18 failure to provide accurate itemized wage statements under California Labor
19 Code 226, all civil penalties under PAGA, and restitution and an injunction under
20 the UCL.

21 **THE PARTIES**

22 9. Plaintiff Robert Cahigal is an adult individual residing in Menifee, California. Cahigal
23 worked for PPG as a Home Depot TM from May 2000 until February 2014. When Cahigal was
24 terminated, he covered 12 Home Depot stores for PPG in southern Orange County, California.

25 10. Plaintiff Hector Garcia is an adult individual residing in San Jose, California. Garcia has
26 been employed at PPG and its predecessors as a TM since July 2007. Currently, Garcia covers 10
27 Home Depot stores for PPG between East San Jose, Santa Clara, San Leandro, and Livermore,
28 California.

11. Plaintiff Tina Diemer is an adult individual residing in Temecula, California. Diemer
worked for PPG as a TM from May 2009 to May 2012 covering stores in Palm Springs, Yuma and
surrounding areas in California.

1 12. Plaintiff Brian Holliday is an adult individual residing in Dardenne Prairie, Missouri.
2 Since March 19, 1981, Holliday has been working for PPG as a TM.

3 13. PPG is a Pennsylvania corporation with its principal place of business located in
4 Pittsburgh, Pennsylvania. PPG maintains its Corporate Headquarters at One PPG Place, Pittsburgh,
5 Pennsylvania 15272. At all relevant times, PPG has continuously been an employer engaged in
6 interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29
7 U.S.C. §§ 206(a) and 207(a).

8 **JURISDICTION AND VENUE**

9 14. This Court has subject matter jurisdiction over Plaintiffs' FLSA claims pursuant to 29
10 U.S.C. § 216(b) and 28 U.S.C. § 1331. This Court has diversity jurisdiction over the subject matter of
11 California Plaintiffs' California state law claims under 28 U.S.C. 1332(d) because all class members of
12 the plaintiff class are citizens of a state different from PPG's state of citizenship, and, upon information
13 and belief, the matter in controversy exceeds \$75,000. Additionally, this Court has supplemental
14 jurisdiction over the subject matter of California Plaintiffs' California state law claims, under 28 U.S.C.
15 1367(a), because they are so related to the FLSA claims as to form part of the same case or controversy.

16 15. This Court has jurisdiction over the Defendant because Defendant is a person having
17 sufficient minimum contacts with the Northern District of California so as to render the exercise of
18 jurisdiction over the Defendant by this Court consistent with traditional notions of fair play and
19 substantial justice.

20 16. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

21 17. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201
22 and 2202.

23 **FACTUAL BASIS OF PLAINTIFFS' CLAIMS**

24 18. PPG manufactures paints and stains for consumer use under the registered trade names
25 Glidden Paints, Glidden Stains, Olympic Paints, and Olympic Stains.

26 19. Glidden Paints and Glidden Stains are sold at Home Depot stores throughout the country.

27 20. Olympic Paints and Olympic Stains are sold at Lowe's stores throughout the country.
28

1 21. PPG assigns each TM to a specific geographic region, which includes a specific number
2 of either Lowe's stores or Home Depot stores.

3 22. Among other things, PPG employs TMs to build displays for PPG's paints and stains,
4 maintain displays for PPG's paints and stains, manage inventory, and train Home Depot or Lowe's
5 employees with regards to PPG's products.

6 23. Plaintiffs are informed and believed that there are over 40 hourly non-exempt PPG
7 employees in each of the proposed California classes.

8 24. PPG classifies all TMs as non-exempt hourly employees.

9 25. PPG pays TMs non-discretionary bonuses.

10 26. When PPG calculated TMs' overtime rate of pay it failed to include TMs' non-
11 discretionary bonuses in that calculation.

12 27. In addition to TMs, there are additional hourly, non-exempt PPG employees in
13 California, including FSRs.

14 28. PPG failed to provide its hourly non-exempt California employees with accurate
15 itemized wage statements under Labor Code section 226 showing total hours worked, the name and
16 address of the legal entity that is the employer, and all applicable hourly rates in effect during pay
17 period and the corresponding number of hours worked at each hourly rate by the employee.

18 29. From at least four years prior to the filing of this Complaint, TMs who have worked
19 Home Depot stores have had to use their home internet on a daily basis to review projects and enter data
20 into PPG's Sales Force Automation ("SFA") system and the Human Resources Portal. PPG does not
21 pay any portion of these TMs' internet expenses.

22 30. PPG required all hourly, non-exempt employees in California to receive all wages and
23 bonuses through direct deposit.

24 31. TMs who were terminated did not receive all wages at the time of their termination.

25 **NATIONWIDE COLLECTIVE ACTION ALLEGATIONS**

26 32. Pursuant to 29 U.S.C. § 216, Plaintiffs seek to prosecute their FLSA claims as a
27 collective action on behalf of all persons who are or were formerly employed by PPG as Home Depot
28 TMs in the United States at any time since April 2, 2013 through the trial and all persons who are or

1 were formerly employed by PPG as Lowe's TMs in the United States at any time since December 15,
2 2012 through the trial (the "Collective Action Period") who were not paid the correct overtime rate of
3 pay because non-discretionary bonuses were not included in the overtime rate of pay calculation (the
4 "Collective Action Members").

5 33. There are numerous similarly situated current and former TMs throughout the country
6 who would benefit from the issuance of a Court-supervised notice of the instant lawsuit and the
7 opportunity to join the instant lawsuit. Those similarly situated employees are known to Defendant and
8 are readily identifiable through Defendant's records.

9 34. On December 20, 2014, PPG confirmed that TMs received non-discretionary bonuses
10 during the period 2012-2014 and that PPG failed to include non-discretionary bonuses in its overtime
11 rate of pay calculation for TMs. This confirmation came from an email sent by Michelle Minda, who
12 works in PPG's Human Resources Department. The email was to PPG TMs throughout the United
13 States, and it stated that from 2012 through 2014 PPG did not include incentive compensation when it
14 calculated overtime pay. The email also stated that PPG is in the process of determining the amount of
15 supplemental overtime compensation for each TM based on this miscalculation and that payments will
16 be made by the end of January 2015.

17 35. Plaintiffs and other TMs are similarly situated because they all were classified by PPG as
18 non-exempt; were paid on an hourly basis; received non-discretionary bonuses; were subjected to the
19 same requirements under the FLSA to be paid overtime wages unless specifically and properly
20 exempted thereunder; were subjected to similar pay plans; were required, suffered, or permitted to
21 work, and did work, in excess of forty hours per week; and were not paid at a rate of one and one-half
22 times their respective correct regular rates of pay for all such overtime hours worked.

23 **CALIFORNIA CLASS ACTION ALLEGATIONS**

24 36. Plaintiffs Garcia, Cahigal, and Diemer bring this action on behalf of themselves and all
25 others similarly situated non-exempt employees or former employees of PPG as a class action pursuant
26 to Federal Rule of Civil Procedure 23. Plaintiffs seek to represent the following three classes composed
27 of and defined as follows:

28 "Overtime and Waiting Time Class:" All persons employed by PPG within the
State of California as a Territory Manager who either were assigned to Home

1 Depot stores at any time from April 2, 2013 through the trial or were assigned to
2 Lowe's stores at any time from December 15, 2012 through the trial for overtime
wages, waiting time penalties, and restitution and an injunction under the UCL

3 "2802 Class:" All persons employed by PPG within the State of California as a
4 Home Depot Territory Manager from four years prior to the filing of this
complaint through trial.

5 "Wage Statement and PAGA Class:" All hourly, non-exempt persons employed
6 by PPG within the State of California within one year prior to the filing of this
7 Complaint through the trial for statutory damages and/or penalties from PPG's
8 failure to provide accurate itemized wage statements under California Labor
Code 226, all civil penalties under PAGA, and restitution and an injunction under
the UCL.

9 37. Each putative class is so numerous that joinder of all members is impracticable.

10 Although the precise number of such persons is unknown, and the facts on which the determination of
11 that number would be based are presently within the sole custody and/or control of the Defendant, upon
12 information and belief, PPG has employed at least 40 people in California during each of the class
13 periods.

14 38. Upon information and belief, a number of TMs and other hourly non-exempt employees
15 have left employment with PPG during the Class Period. Most of these PPG employees would not
16 likely file individual suits because they lack adequate financial resources, access to attorneys or
17 knowledge of their claims.

18 39. The California Plaintiffs will fairly and adequately protect the interests of each putative
19 California class and have retained counsel that is experienced and competent in the fields of
20 employment law and class action litigation. California Plaintiffs have no interest that is contrary to or
21 in conflict with the members of any of the California classes.

22 40. A class action is superior to other available methods for the fair and efficient
23 adjudication of this controversy, since joinder of all members is impracticable. Furthermore, inasmuch
24 as the damages suffered by individual California class members may be relatively small, the expense
25 and burden of individual litigation make it virtually impossible for the California class members to
26 individually seek redress for the wrongs done to them.

1 41. Common questions of law and fact predominate in this action because PPG has acted on
2 grounds generally applicable to all members. Among the questions of law and fact common to the
3 California Plaintiffs and California class members are:

4 a. Whether PPG failed to provide accurate itemized wage statements to California
5 Plaintiffs and other non-exempt PPG employees during the Wage Statement and PAGA Class period;

6 b. Whether the bonuses that PPG paid to Plaintiffs and California class members
7 were non-discretionary;

8 c. Whether PPG failed to include non-discretionary bonuses in the calculation of
9 Plaintiffs and California class members' overtime rate;

10 d. Whether PPG failed to pay all wages due to hourly non-exempt former
11 employees in California at the time of their termination during the Overtime and Waiting Time Class
12 period;

13 e. Whether PPG reimbursed TMs who worked Home Depot stores for a reasonable
14 percentage of their home internet expenses during the 2802 Class period;

15 f. Whether PPG's conduct is "unlawful," "unfair," or "fraudulent" under California
16 Business & Professions Code § 17200 *et seq.*;

17 g. Whether injunctive relief, restitution and other equitable remedies, and penalties
18 are warranted;

19 h. Whether PPG is liable for all damages and prejudgment interest claimed
20 hereunder; and,

21 i. Whether PPG is liable for costs and attorneys' fees.

22 42. California Plaintiffs know of no difficulty that might be encountered in the management
23 of this litigation that would preclude its maintenance as a class action.

24 **FIRST CAUSE OF ACTION**
25 **[Fair Labor Standards Act]**

26 43. On behalf of themselves and all Collective Action Members, Plaintiffs re-allege and
27 incorporate by reference the allegations contained in the paragraphs above as if fully set forth herein.
28

1 44. During the Collective Action Period, PPG has been, and continues to be, an employer
2 engaged in interstate commerce and/or the production of goods for commerce, within the meaning of
3 the FLSA.

4 45. During the Collective Action Period, PPG employed, and/or continues to employ,
5 Plaintiffs and each of the Collective Action Members within the meaning of the FLSA.

6 46. During the Collective Action Period, PPG has had annual gross revenues in excess of
7 \$500,000.

8 47. The Plaintiffs expressly consent in writing to be a party to this action, pursuant to
9 29 U.S.C. § 216(b).

10 48. During the Collective Action Period, PPG had a policy and practice of refusing to
11 include Plaintiffs and Collective Action Members' non-discretionary bonuses in the calculation of
12 overtime.

13 49. As a result of PPG's willful failure to compensate its TMs, including Plaintiffs and the
14 Collective Action Members, for all overtime compensation due them, PPG has violated and continues to
15 violate the FLSA, including §§ 207(a)(1) and 215(a).

16 50. As a result of its failure to include non-discretionary bonuses in the overtime calculation,
17 PPG has failed to make, keep and preserve records with respect to each of its employees sufficient to
18 determine the wages, hours, and other conditions and practices of employment in violation of the FLSA,
19 including §§ 211(c) and 215(a).

20 51. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the
21 meaning of the statute, 29 U.S.C. § 255(a).

22 52. Due to PPG's FLSA violations, Plaintiffs, on behalf of themselves and the Collective
23 Action Members, are entitled to recover from Defendant their unpaid wages, as well as overtime
24 compensation, an additional amount – equal to the unpaid wages and overtime – as liquidated damages,
25 reasonable attorneys' fees, and costs and disbursements of this action, pursuant to § 216(b) of the FLSA.

SECOND CAUSE OF ACTION

[Cal. Labor Code §§ 510, 558 and 1194 *et seq.* and Wage Order No. 7-2001]

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3 53. On behalf of themselves and all California Class action members who are either in one
4 or both of the California Overtime and Waiting Time Class and the Wage Statement and PAGA Class,
5 California Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs
6 above as if fully set forth herein.

7 54. PPG required California Plaintiffs and California class members to work in excess of
8 eight (8) hours per workday and forty (40) hours per workweek. However, PPG failed to fully pay all
9 overtime wages that California Plaintiffs and California class members earned.

10 55. California Labor Code § 510 and the applicable Wage Order require that an employer
11 compensate all work performed by an employee in excess of eight (8) hours per workday and forty (40)
12 hours per workweek, at one and one-half times the employee’s regular rate of pay.

13 56. California Labor Code § 1194 states that any employee receiving less than the legal
14 overtime compensation applicable is entitled to recover in a civil action the unpaid balance of the full
15 amount of his overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs
16 of suit.

17 57. During all relevant times, PPG knowingly and willfully failed to pay overtime earned
18 and due to California Plaintiffs and California class members. PPG’s conduct deprived California
19 Plaintiffs and California class members of full and timely payment for all overtime hours worked in
20 violation of the California Labor Code.

21 58. California Plaintiffs, on behalf of themselves and similarly situated California class
22 members, also requests further relief as described below.

THIRD CAUSE OF ACTION

Failure to Furnish Accurate Itemized Wage Statements

[Cal. Labor Code §§ 226 and 226.3, and Wage Order Nos. 7-2001]

23
24
25 59. On behalf of themselves and all hourly, non-exempt PPG employees in California in the
26 Wage Statement and PAGA Class, Plaintiffs re-allege and incorporate by reference the allegations
27 contained in the paragraphs above as if fully set forth herein.
28

1 60. California Labor Code § 226 provides, in relevant part, that every employer must furnish
2 each employee with an itemized wage statement that shows the total number of hours worked each pay
3 period, gross wages, net wages, all deductions, all applicable hourly rates of pay, the name and address
4 of the legal entity that is the employer, and other information.

5 61. During the Class Period, PPG willfully failed to furnish California Plaintiffs and
6 California class members, upon each payment of compensation, itemized wage statements accurately
7 showing, at a minimum: gross wages earned, the name and address of the legal entity that is the
8 employer, total hours worked, net wages earned, all applicable hourly rates in effect during pay period,
9 and the corresponding number of hours worked at each hourly rate by the employee.

10 62. During all relevant times, California Plaintiffs and California class members were
11 injured by these failures because, among other things, they were confused about whether they were paid
12 properly and/or they were misinformed about how many total hours they worked in each pay period.

13 63. California Labor Code § 226(e) provides that an employee suffering injury as a result of
14 not being provided with an accurate itemized wage statement is entitled to recover the greater of all
15 actual damages suffered or fifty (\$50) dollars for the initial violation and one-hundred (\$100) dollars for
16 each subsequent violation, up to \$4,000. Pursuant to Labor Code § 226(g), California Plaintiffs and
17 California class members are entitled to injunctive relief to ensure PPG’s compliance with Labor Code
18 § 226.

19 64. California Plaintiffs and California class members are entitled to an award of costs and
20 reasonable attorneys’ fees under Labor Code § 226(h).

21 65. California Plaintiffs, on behalf of themselves and similarly situated California members,
22 also requests further relief as described below.

23 **FOURTH CAUSE OF ACTION**
24 **Failure to Pay All Wages Upon Termination**
25 **[Cal. Labor Code §§ 201, 202, 203, and 256, and Wage Order No. 7-2001]**

26 66. On behalf of themselves and all California class action members who are either in one or
27 both of the Overtime and Waiting Time Class and the Wage Statement and PAGA Class, California
28 Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above as if
fully set forth herein.

1 67. California Labor Code § 201 provides that any discharged employee is entitled to all
2 wages due at the time of discharge.

3 68. Where an employer willfully fails to pay discharged or quitting employees all wages due
4 as required under the California Labor Code, the employer is liable to such employees under California
5 Labor Code § 203 for waiting time penalties in the amount of one (1) day’s compensation at the
6 employees’ regular rate of pay for each day the wages are withheld, up to thirty (30) days.

7 69. During all relevant times, PPG knowingly and willful violated California Labor Code
8 §§ 201 and 202 by failing to pay California Plaintiffs and California class members who are no longer
9 employed by PPG all wages owed as alleged herein. PPG is therefore liable to California Plaintiffs and
10 California class members who are no longer employed by PPG for waiting time penalties as required by
11 California Labor Code § 203.

12 70. California Plaintiffs, on behalf of themselves and similarly situated California members,
13 also requests further relief as described below.

14
15 **FIFTH CAUSE OF ACTION**
16 **Failure to Reimburse for Business Expenses**
17 **[California Labor Code § 2802]**

18 71. On behalf of themselves and all TMs who worked Home Depot stores in California who
19 are in the 2802 Class, Plaintiffs re-allege and incorporate by reference the allegations contained in the
20 paragraphs above as if fully set forth herein.

21 72. California Labor Code § 2802 provides that “[a]n employer shall indemnify his or her
22 employee for all necessary expenditures or losses incurred by the employee in direct consequence of the
23 discharge of his or her duties.”

24 73. In order to discharge their duties related to PPG’s SFA and Human Resources systems,
25 TMs who worked Home Depot stores have incurred necessary and reasonable expenses, which were not
26 reimbursed by PPG.

27 74. These expenses were incurred because TMs had to use their home internet to fulfill their
28 duties related to the SFA and Human Resources systems. PPG did not pay any portion of these costs.

1 75. From at least four years prior to the filing of this Complaint, PPG has violated and
2 continues to violate Wage Order No. 7, Labor Code § 2802, and *Cochran v. Schwan’s Home Service,*
3 *Inc.*, 228 Cal.App.4th 1137 (Cal. App. 2014) because TMs must use their home internet to perform their
4 job duties and PPG fails to reimburse the TMs a reasonable percentage of their internet bill. PPG’s
5 conduct deprived California Plaintiffs and California class members of reimbursements.

6 76. California Plaintiffs, on behalf of themselves and similarly situated California Class
7 members, also request further relief as described below.

8 **SIXTH CAUSE OF ACTION**
9 **Unfair Competition Law Violations**
10 **[Cal. Business & Professions Code § 17200 *et seq.*]**

11 77. On behalf of themselves and all California class action members who are in any one of
12 the three California classes, Plaintiffs re-allege and incorporate by reference the allegations contained in
13 the paragraphs above as if fully set forth herein.

14 78. California Business & Professions Code § 17200 *et seq.* prohibits unfair competition in
15 the form of any unlawful, unfair, deceptive, or fraudulent business practices.

16 79. California Plaintiffs bring this cause of action individually and as representatives of all
17 others subject to PPG’s unlawful acts and practices.

18 80. During the Class Period, PPG committed unlawful, unfair, deceptive, and/or fraudulent
19 acts as defined by California Business & Professions Code § 17200. PPG’s unlawful, unfair, deceptive,
20 and/or fraudulent business practices include, without limitation, failing to pay overtime wages, failing to
21 timely pay all wages earned, failing to furnish accurate itemized wage statements, failing to keep
22 required payroll records, failure to reimburse for business expenses, requiring that wages be paid
23 through direct deposit, and failing to pay all wages upon termination in violation of California law
24 and/or the FLSA.

25 81. As a result of this unlawful and/or unfair and/or fraudulent business practice, PPG reaped
26 unfair benefits and illegal profits at the expense of California Plaintiffs and California class members.
27 PPG must disgorge these ill-gotten gains and restore California Plaintiffs and California class members
28 all wrongfully withheld wages, including, but not limited to overtime compensation.

1 82. California Plaintiffs, on behalf of themselves and similarly situated California class
2 members, also requests further relief as described below.

3 **SEVENTH CAUSE OF ACTION**
4 **Violation of the Private Attorney General Act (“PAGA”)**
5 **[Cal. Labor Code § 2698 et seq.]**

6 83. On behalf of themselves and all California class action members in the Wage Statement
7 and PAGA Class, Plaintiffs re-allege and incorporate by reference the allegations contained in the
8 paragraphs above as if fully set forth herein.

9 84. California Plaintiffs (“PAGA Plaintiffs”) are “aggrieved employees” under PAGA as
10 they were employed by Defendant during the applicable statutory period and suffered one or more of
11 the Labor Code violations alleged herein. As such, they seek to recover, on behalf of themselves and all
12 other current and former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus
13 reasonable attorney’s fees and costs.

14 85. PAGA Plaintiffs seek to recover the PAGA civil penalties through a representative
15 action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th
16 969 (2009). Therefore, class certification of the PAGA claims is not required, but PAGA Plaintiffs may
17 choose to seek certification of the PAGA claims.

18 86. PAGA Plaintiffs are also entitled to recover for themselves, other aggrieved employees,
19 and the State of California, civil penalties pursuant to California Labor Code § 210 in the amount of
20 \$100 per employee per initial violation of the timely payment requirements of California Labor Code
21 § 204 and \$200 per employee for each subsequent violation, plus 25% of the amount unlawfully
22 withheld.

23 87. PAGA Plaintiffs seek to pursue remedies pursuant to PAGA for the following violations.

24 88. Labor Code § 226.3 imposes a civil penalty in addition to any other penalty provided by
25 law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand
26 dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code § 226(a).

27 89. Pursuant to Labor Code § 203, for an employer who willfully fails to pay any wages of
28 an employee who is discharged or quits, that employee’s wages shall continue as a penalty from the due
date at the same rate until paid, but shall not continue for more than thirty (30) days. Labor Code § 256

1 imposes a civil penalty in an amount not exceeding thirty (30) days pay as waiting time under the terms
2 of Labor Code § 203.

3 90. California Labor Code § 558 provides:

4 (a) Any employer or other person acting on behalf of an employer who
5 violates, or causes to be violated, a section of this chapter or any
6 provision regulating hours and days of work in any order of the Industrial
7 Welfare Commission shall be subject to a civil penalty as follows: (1)
8 For any initial violation, fifty dollars (\$50) for each underpaid employee
9 for each pay period for which the employee was underpaid in addition to
an amount sufficient to recover underpaid wages. (2) For each
subsequent violation, one hundred dollars (\$100) for each underpaid
employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages. (3) Wages
recovered pursuant to this section shall be paid to the affected employee.

10 91. Under Labor Code § 1174.5, PPG is subject to a civil penalty of five hundred dollars
11 (\$500) for failing to keep records as required by section 1174(d).

12 92. Labor Code § 2698 et seq. imposes a civil penalty of one hundred dollars (\$100) per pay
13 period, per aggrieved employee for the initial violation of Labor Code §§ 204, 213, 510, 1174, 1194,
14 1198, 2802 and two hundred dollars (\$200) for each aggrieved employee per pay period for each
15 subsequent violation.

16 93. PAGA Plaintiffs have fully complied with the procedural requirements specified in
17 California Labor Code § 2699.3 as to each of the alleged violations. A true and correct copy of the
18 notice sent via certified mail to the Defendant and California’s Labor and Workforce Development
19 Agency (LWDA) is attached as Exhibit 1. The LWDA has provided no notice to Plaintiffs within 33
20 calendar days of the postmark date of that notice regarding its intentions to investigate or not investigate
21 Plaintiffs’ claims. Accordingly, Plaintiffs may commence this action pursuant to Labor Code section
22 2699.

23 94. Enforcement of statutory provisions to protect workers and to ensure proper and prompt
24 payment of wages is a fundamental public interest. PAGA Plaintiffs’ successful enforcement of
25 important rights affecting the public interest will confer a significant benefit upon the general public.
26 Private enforcement of these rights is necessary, as no public agency has pursued enforcement. PAGA
27 Plaintiffs are incurring a financial burden in pursuing this action, and it would be against the interests of
28

1 justice to require the payment of attorneys’ fees and costs from any recovery obtained, pursuant to, inter
2 alia, California Labor Code § 2699.

3 95. As a result of the violations alleged, PAGA Plaintiffs, as aggrieved employees on behalf
4 of themselves and other aggrieved employees employed by Defendant, seek all civil penalties available
5 pursuant to California Labor Code § 2699, including all civil penalties, attorneys’ fees, expenses, and
6 costs of suit.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs, on behalf of themselves and all other similarly situated employees,
9 respectfully request that this Court grant the following relief:

10 1. Designation of this action as a collective action on behalf of the Collective Action
11 Members and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all Collective Action
12 members, apprising them of the pendency of this action, permitting them to assert timely FLSA claims
13 in this action by filing individual consents to opt into this proceeding and appointing Plaintiffs and their
14 counsel to represent the Collective Action Members;

15 2. Certification of the three California classes as a class action pursuant to Rule 23 for the
16 California class members, and appointing California Plaintiffs as Class Representatives and their
17 attorneys as Class Counsel;

18 3. Issuance of a declaratory judgment that the practices complained of herein are unlawful
19 under the FLSA and California law;

20 4. Award of overtime compensation due under the FLSA and California law to Plaintiffs,
21 the Collective Action Members, and the California class members;

22 5. Award of unpaid wages due under California law to Plaintiffs and the California class;

23 6. Award of liquidated damages to Plaintiffs and Collective Action Members as a result of
24 PPG’s willful failure to pay for all wages dues as well as overtime compensation pursuant to the FLSA;

25 7. Award of damages under California Labor Code section 226 for PPG’s failure to provide
26 accurate itemized wage statements;

27 8. Award of waiting time penalties under California Labor Code section 203 for PPG’s
28 failure to pay former employees all wages due at the time of termination of employment;

EXHIBIT 1



Shareholders
David Borgen
Linda M. Dardarian
Laura L. Ho

Goldstein, Borgen,
Dardarian & Ho

Of Counsel
Barry Goldstein
Morris J. Baller

December 3, 2014

Certified Mail, Return Receipt Requested

Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Re: Labor Code Private Attorney General Act Notice

Dear Sir or Madam:

This firm, along with the law firm Obermayer Rebmann Maxwell & Hoppel, represents aggrieved employees Augustin Acosta and Robert Cahigal, who has worked for PPG Industries, Inc. ("PPG") in California within the last year. On April 1, 2013, Mr. Acosta and similarly situated Business Development Representatives became employees of PPG and their job titles were changed to Territory Manager ("TM"). TMs work for PPG at either Home Depot stores or Lowes stores, and this letter provides notice on behalf of all aggrieved employees. Mr. Acosta is currently a TM at PPG. Mr. Cahigal was a TM at PPG until February 2014.

PPG has violated, and/or caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under California Labor Code § 2698 *et seq.* We request that your agency investigate the claims alleged below against PPG. This letter is to provide notice of claims for penalties under the Labor Code Private Attorneys General Act, as amended, Labor Code § 2699.3 ("PAGA") for violations of California Labor Code §§ 201, 202, 203, 213, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1194, and 2802.

Unlawful Failure to Furnish Wage Statements

PPG has violated and continues to violate Labor Code §§ 226(a)(2), (8), and (9) because it willfully fails to furnish wage statements to its employees, including but not limited to TMs, that show the total and actual hours worked, list the correct name and address of the legal entity that is the employer, and list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. As a result of violations of California Labor Code § 226(a), PPG is liable for civil penalties pursuant to California Labor Code §§ 226.3 and 2698 *et seq.*

Unlawful Failure to Pay Overtime

PPG has violated and continues to violate Wage Order No. 7 and Labor Code §§ 510, 558, and 1194 because it fails to pay the entire amount of overtime that is due its employees.



Attn. PAGA Administrator

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December 3, 2014

Specifically, PPG has not and does not include non-discretionary bonuses in the regular rate of pay that it uses to calculate the overtime rates for its TMs. As a result, PPG is liable for civil penalties pursuant to §§ 558 and 2698 *et seq.*

PPG has also violated and continues to violate Wage Order No. 7 and Labor Code §§ 510, 558, and 1194 because it fails to compensate TMs for all hours worked, including overtime. First, TMs were not compensated for the numerous hours each week spent on PPG's Sales Force Automation System. Second, TMs were not compensated for time that they worked on a weekend. Third, TMs were not compensated for overtime in excess of fifty hours. Fourth, TMs must work from home in either the morning before they visit any store or in the evening after their last visit to a store for the day. PPG does not pay the TMs for the time spent working at home and for either the time spent commuting to the store from home or the time spent commuting from the store to home. As a result of violations of California Labor Code §§ 510, 1194, and Industrial Welfare Commission Wage Order 7 for failure to pay overtime, PPG is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Pay Premiums for Missed Rest Periods and Missed Meal Periods

PPG has violated and continues to violate Wage Order No. 7 and Labor Code §§ 226.7 and 512 because it has failed to pay the entire amount of premium compensation due its employees for missed meal periods. Specifically, PPG does not include non-discretionary bonuses in its regular rate of pay that it uses to calculate premium payment for missed meal periods. As a result, PPG is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

PPG has violated and continues to violate Wage Order No. 7 and Labor Code §§ 226.7 and 512 because it has failed to pay the entire amount of premium compensation due its employees for missed rest periods. Specifically, PPG does not include non-discretionary bonuses in its regular rate of pay determination that it uses to calculate premium payment for missed rest periods. As a result, PPG is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Reimburse

PPG has violated and continues to violate Wage Order No. 7, Labor Code § 2802, and *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal. App. 2014) because TMs must use their home internet and PPG fails to reimburse the TMs a reasonable percentage of their internet bill. As a result of violations of California Labor Code § 2802, PPG is liable for civil penalties pursuant to California Labor Code Labor Code §§ 558, 2802 and 2698 *et seq.*

Unlawful Requirement That Wages are Paid Through Direct Deposit

PPG has violated and continues to violate Wage Order No. 7, Labor Code § 213 because it requires all employees to use direct deposit for payment of all wages. As a result of violations of Labor Code § 213, PPG is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Attn. PAGA Administrator

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December 3, 2014

Unlawful Failure to Pay Wages Due Upon Termination

PPG has violated Wage Order No. 7 and California Labor Code §§ 201 and 202 by willfully failing to pay all compensation due and owing to all former Territory Managers at the time employment was terminated. PPG willfully failed to pay Territory Managers who are no longer employed by it all compensation due upon termination of employment as required under California Labor Code §§ 201 and 202. Pursuant to §§ 203 and 256 of the Labor Code, Plaintiffs and similarly situated individuals are now also entitled to recover up to thirty (30) days of wages due to Defendant's "willful" failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code. Additionally, because PPG violated California Labor Code §§ 201, 201 and 203 of the Labor Code, PPG is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Unlawful Failure to Pay Vacation Time Due Upon Termination

PPG has violated and continues to violate Wage Order No. 7, Labor Code § 227.3 because it fails to pay TMs all their vested vacation time as wages upon termination. Specifically, PPG has and continues to eliminate TMs' vested vacation time each calendar year. Thus, when TMs leaves PPG's employment they are not compensated for all vacation that has been vested. As a result, PPG is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

The aggrieved employees hereby invite the Labor and Workforce Development Agency to take any action it deems appropriate.

Very truly yours,



Byron Goldstein

BG/slw

cc: Glen Bost, II (Certified Mail, Return Receipt Requested)
Senior VP and General Counsel
PPG Industries, Inc.
One PPG Place
Pittsburgh, PA 15272

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Street, Apt. No., or PO Box No. PPG Industries, Inc. one PPG Place	
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