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SMURFIT KAPPA NORTH AMERICA  
7 LLC formerly known as and erroneously  
sued as SMURFIT KAPPA ORANGE  
8 COUNTY LLC

9  
10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12 EDUARDO CHAVEZ, individually,  
and on behalf of other members of  
13 the general public similarly situated,

14 Plaintiff,

15 v.

16 SMURFIT KAPPA ORANGE  
COUNTY LLC, an unknown  
17 business entity; SMURFIT KAPPA  
NORTH AMERICA LLC, an  
18 unknown business entity, and DOES  
1 through 100, inclusive,

19 Defendant.  
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Case No.

**DEFENDANT'S NOTICE TO  
FEDERAL COURT OF REMOVAL  
OF CIVIL ACTION FROM STATE  
COURT**

**TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND TO  
PLAINTIFF EDUARDO CHAVEZ AND HIS ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that Defendant Smurfit Kappa North America LLC, formerly known as and erroneously sued as Smurfit Kappa Orange County LLC (“Defendant”) hereby removes the above-entitled action from the Superior Court of the State of California, County of Los Angeles, to the United States District Court for the Central District of California, pursuant to 28 U.S.C. §§ 1332(d) and 1446.

**I. STATEMENT OF JURISDICTION**

1. This Court has original jurisdiction over this action based on federal question jurisdiction and the Class Action Fairness Act of 2005 (“CAFA”), which vests the United States district courts with original jurisdiction of any civil action: (a) that is a class action with a putative class of more than a hundred members; (b) in which any member of a class of plaintiffs is a citizen of a State different from any defendant; and (c) in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs. See 28 U.S.C. §1332(d).

**II. THERE IS ONLY ONE DEFENDANT EMPLOYER NAMED IN THE COMPLAINT**

2. Plaintiff’s complaint names Smurfit Kappa Orange County LLC and Smurfit Kappa North America LLC. However, there is no entity that is currently active named Smurfit Kappa Orange County LLC. Smurfit Kappa Orange County LLC changed its name to Smurfit Kappa North America LLC in 2015. Declaration of F. W. Burnett, Jr., ¶ 2. Since that time, and at the time of this filing, there has been no entity by the name of Smurfit Kappa Orange County LLC. *Id.* Accordingly, the only defendant in this matter is Smurfit Kappa North America LLC.

**III. PLEADINGS, PROCESS, AND ORDERS**

3. On April 19, 2018, Plaintiff Eduardo Chavez (“Plaintiff”) filed a Class Action Complaint against Defendant in Los Angeles County Superior Court: *Eduardo Chavez,; individually, and on behalf of other members of the general public similarly*

1 *situated v. Smurfit Kappa Orange County LLC, an unknown business entity; Smurfit*  
 2 *Kappa North America LLC, an unknown business entity; and Does 1-100, inclusive,*  
 3 Case No. BC702936 (hereinafter, the “Complaint”). The Complaint asserts the  
 4 following causes of action: (1) Violation of California Labor Code sections 510 and  
 5 1198 (Unpaid Overtime); (2) Violation of California Labor Code sections 226.7 and  
 6 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code  
 7 section 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code  
 8 sections 1194, 1197 and 1197.1 (Unpaid Minimum Wages); (5) Violation of  
 9 California Labor Code sections 201 and 202 (Final Wages Not Timely Paid); (6)  
 10 Violation of California Labor Code section 204 (Wages not timely Paid During  
 11 Employment); (7) Violation of California Labor Code section 226(a) (Non-Compliant  
 12 Wage Statements); (8) Violation of California Labor Code section 1174(d) (Failure to  
 13 Keep Requisite Payroll Records); (9) Violation of California Labor Code sections  
 14 2800 and 2802 (Unreimbursed Business Expenses); (10) Violation of California  
 15 Business & Professions Code section 17200, et. seq.

16 4. On May 11, 2018, Plaintiff served the Complaint on Defendant, a copy of  
 17 which is attached hereto as Exhibit “A”.

18 5. On June 7, 2018, Defendant filed its Answer in the Los Angeles County  
 19 Superior Court, a copy of which is attached hereto as Exhibit “B”.

20 6. Pursuant to 28 U.S.C. § 1446(d), attached as Exhibit “C” are all process,  
 21 pleadings, and orders served on Defendant or filed or received by Defendant in this  
 22 action. To Defendant’s knowledge, no further process, pleadings, or orders related to  
 23 this case have been filed in Los Angeles County Superior Court or served by any  
 24 party.

25 7. To Defendant’s knowledge, no proceedings related hereto have been  
 26 heard in Los Angeles Superior Court.

#### 27 **IV. TIMELINESS OF REMOVAL**

28 8. This Notice of Removal is timely filed as it is filed within thirty (30) days

1 of May 11, 2018, the date of service of the Summons and Complaint, and within one  
 2 year from the commencement of this action. See 28 U.S.C. § 1446(b).

### 3 **V. FEDERAL QUESTION**

4 9. This Court has original jurisdiction over this action pursuant to federal  
 5 question jurisdiction. See 28 U.S.C. § 1331. Specifically, the district courts of the  
 6 United States have original jurisdiction over all civil actions that pose a federal  
 7 question, such that these actions arise under the Constitution, laws or treaties of the  
 8 United States. *Id.* Such actions may be removed to federal court “without regard to  
 9 the citizenship or residence of the parties.” 28. U.S.C. 1441 (b).

#### 10 **B. Preemption Under Section 301 Of The Labor Management Relations** 11 **Act**

12 10. As a separate and distinct basis for federal question jurisdiction,  
 13 Plaintiff’s First and Second causes of action, pleaded under California Labor Code  
 14 sections 510, 1198, 226.7, 512(a),<sup>1</sup> are preempted by Section 301(a) of the Labor  
 15 Management Relations Act (“LMRA”), 29 U.S.C. section 185(a), because the  
 16 resolution of each of those two causes of action is substantially dependent on the  
 17 interpretation of disputed provisions of one or more collective bargaining agreements  
 18 (hereinafter referred to as “Section 301” or “Section 301 preemption”).

19 11. At all relevant times, Defendant is and was a company engaged in an  
 20 industry affecting commerce within the meaning of Sections 152(2), (6), (7) and  
 21 301(a) of the LMRA, 29 U.S.C. sections 152 (2), (6), (7), and 185(a).

22 12. Teamsters District Counsel No. 2, Local No. 388M (Union) is a labor  
 23 organization in which certain of Defendant’s employees participate, and which exists  
 24 for the purpose of dealing with employees concerning grievances, labor disputes,  
 25 wages, rates of pay, hours of employment, and conditions of work. Burnett Decl. ¶ 4

26  
 27 <sup>1</sup> To the extent Plaintiff’s derivative claims, including his Fifth Cause of Action for Final Wages not  
 28 Timely Paid, his Sixth Cause of Action for Wages Not Timely Paid During Employment, or his  
 Seventh Cause of Action for Non Compliant Wage Statements refer to his First or Second Causes of  
 Action, these too are preempted.



1 The Union is the labor organization within the meaning of section 152(5) and 301(a)  
2 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. sections 152(5) and  
3 185(a), that serves as the exclusive collective bargaining representative for Plaintiff  
4 and employees of Defendant at the facility in which Plaintiff worked. *Id.*

5 13. At all relevant times, a collective bargaining agreement (CBA) was in  
6 place between Defendant and the Union, which is a contract between an employer and  
7 a labor organization within the meaning of Section 301(a) of the LMRA, 29 U.S.C.  
8 section 185(a). *Id.*

9 14. The CBA provides for the payment of overtime to employees such as  
10 Plaintiff, and the other individuals Plaintiff seeks to represent, at an hourly rate of one  
11 and one-half (1.5) times the employee’s hourly rate for time worked in excess of eight  
12 (8) hours in a day or forty, or ten (10) hours in a day, depending on the employee’s  
13 schedule, and (40) hours in a week. *See, e.g.,* Burnett Decl., ¶ 4 at Exh. 1, §§ 6.14.  
14 The CBA also provides hourly wages to employees equivalent to at least 30% above  
15 the California minimum wage, currently, at least \$ 14.30 (the current minimum wage,  
16 \$11.00, multiplied by 130%<sup>2</sup>). *See, e.g.,* Burnett Decl., 4 ¶ at Exh. 1, Appendix A.  
17 Further, the CBA provides for a wide array of other terms and conditions of  
18 employment, including, but not limited to, hours of work, holiday pay, and a  
19 grievance and arbitration procedure. *See, e.g.,* Burnett Decl., 4 ¶ at Exh. 1.

20 15. Plaintiff alleges that defendant violated Labor Code section 510 by  
21 failing to pay overtime, and Labor Code section 512 by failing to provide meal  
22 periods as provided for in the statute. California Labor Code section 514, however,  
23 renders Labor Code section 510 inapplicable “to an employee covered by a valid  
24 collective bargaining agreement if the agreement expressly provides for the wages,  
25 hours of work, and working condition of the employees, and if the agreement provides  
26 premium wage rates for all overtime hours worked and a regular hourly rate of pay for  
27

28 <sup>2</sup> In 2015, that number was \$11.70, based on the then minimum wage in California of \$9.00.

1 those employees of not less than 30 percent more than the state minimum wage.” Cal.  
2 Lab. Code § 514. Likewise, section 512 exempts and sets different meal break rules  
3 for employees covered by Wage Order 1 for the Manufacturing Industry, and which  
4 are covered by a collective bargaining agreement.

5 16. Defendant contends that the correct interpretation of the CBA, in  
6 combination with Labor Code section 512 and 514 and Wage Order 1, renders the  
7 overtime and meal break obligations in sections 510 and 512 inapplicable to Plaintiff  
8 and the individuals he seeks to represent.

9 17. The need to determine whether Labor Code sections 510 and 512 apply  
10 to Plaintiff and the individuals he seeks to represent thus inheres in Plaintiff’s  
11 Complaint, and the only way to resolve that dispute is for the Court to decide whether  
12 the CBA meets the standards of the respective exemptions in section 512 and 514.

13 18. Plaintiff fails to refer to the CBA in his Complaint. However, Plaintiff’s  
14 First and Second Causes of Action allege that Defendant violated California Labor  
15 Code sections 510 and 512(a). Plaintiff therefore necessarily disagrees with  
16 Defendant that the CBA renders section 510 and section 512 inapplicable. If there  
17 were no dispute over whether the CBA met the standards of section 514 exemption,  
18 Plaintiff would not have included in the Complaint a claim under section 510 or 512  
19 because they are inapplicable by virtue of the CBA.

20 19. Accordingly, this federal Court—not the state court—has exclusive  
21 subject matter jurisdiction over Plaintiff’s Complaint because the resolution of  
22 Plaintiff’s claims depends on the interpretation of one or more disputed provisions of  
23 the CBA. See *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 394 (1987); *Lingle v.*  
24 *Norge Div. of Magic Chef*, 486 U.S. 399, 405-406 (1988).

25 20. In *Firestone v. Southern California Gas Co.*, 219 F.3d 1063, 1067-68  
26 (9th Cir. 2000), aff’d upon rehearing, 281 F. 3d 801 (2002), the Ninth Circuit held an  
27 overtime claim under Labor Code section 510 was preempted because the claim  
28 required interpretation of a collective bargaining agreement to determine whether

1 Labor Code section 514 exemption applied. Firestone is controlling support for the  
 2 proposition that Section 301 preemption applies where a collective bargaining  
 3 agreement must be interpreted to determine whether a state law provides an exemption  
 4 from another state law. See 219 F.3d at 1067 (citing *Lingle, supra*, 486 U.S. at 407)  
 5 (“The parties therefore disagree on the meaning of terms in the collective bargaining  
 6 agreement for purposes of California law. To resolve that dispute, it would be  
 7 necessary to apply California law to determine the overtime rights and obligations of  
 8 the parties to the agreement. The claim is not ‘independent’ of the collective  
 9 bargaining agreement under federal preemption law.”) Accord *Dahl v. Rosenfeld*, 316  
 10 F.3d 1074, 1078 (9th Cir. 2003) (employees’ state court legal malpractice suit held  
 11 preempted because interpretation of labor contract provision regarding transfer of  
 12 work was required to evaluate the propriety of attorney’s actions); *Levy v. Skywalker*  
 13 *Sound*, 108 Cal. App. 4th 753, 763-65, 768-69 (2003) (LMRA section 301 preempted  
 14 claims for wages under Labor Code section 204 because such claims turned upon  
 15 whether employee was a member of the bargaining unit, a question which could be  
 16 resolved only by interpreting disputed labor contract and side letter provisions).

17 21. Further, Plaintiff’s claims are preempted despite his failure or refusal to  
 18 reference the CBAs in his Complaint. *Parrino v. FHP, Inc.*, 146 F.3d 699, 704 (9th  
 19 Cir. 1998) (“Because complete preemption often applies to complaints drawn to evade  
 20 federal jurisdiction, a federal court may look beyond the face of the complaint to  
 21 determine whether the claims alleged as state law causes of action in fact are  
 22 necessarily federal claims”); *Milne Employees Ass’n v. Sun Carriers, Inc.*, 960 F.2d  
 23 1401, 1406 (9th Cir. 1991); *Schroeder v. Trans World Airlines, Inc.*, 702 F.2d 189,  
 24 191 (9th Cir. 1983); *Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1212 (9th Cir.  
 25 1980). The Court may also look to the facts stated in the Notice of Removal “to  
 26 clarify the action a plaintiff presents and to determine if it encompasses an action  
 27 within federal jurisdiction.” *Schroeder, supra*, 702 F.2d at 191.

28 22. The United States Supreme Court has “construed 301 of the [LMRA] as

not only preempting state law but also authorizing removal of actions that sought relief only under state law. *Ben. Nat'l Bank v. Anderson* 539 U.S. 1, 6-7 (2003) (citing *Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557 (1968)). This holding rests “on the unusually ‘powerful’ pre-emptive force of 301.” *Id.* An action that arises under Section 301 of the LMRA may be removed to federal court even if the plaintiff has pleaded a claim for relief and sought a remedy available only under state law. See e.g., *Firestone v. Southern California Gas Co.* 219 F. 3d 1063, 1067-68 (9th Cir. 2000) *aff'd* upon rehearing, 281 F. 3d 801 (2002) (California State overtime claim preempted by Section 301 of the LMRA because it required interpretation of a collective bargaining agreement to determine whether overtime exemption applied); *Dahl v. Rosenfed*, 316 F. 3d 1074, 1078 (9th Cir. 2003) (employees’ state court legal malpractice suit preempted because evaluation of propriety of attorney’s action required interpretation of labor contract provision.”).

23. This Court has jurisdiction over Plaintiff’s other alleged state law claims pursuant to the doctrine of supplemental jurisdiction under 28 U.S.C. section 1367(a) as they are so related to the preempted federal claims as to form part of the same case or controversy under Article III of the U.S. Constitution. *Kuba v. I-A Agric. Ass’n*, 387 F.3d 859, 855 (9th Cir. 2004) (supplemental jurisdiction applies to state law claims derived from “a common nucleus of operative fact” and “are such that a plaintiff would ordinarily be expected to try them in one judicial proceeding”).

## **VI. CAFA JURISDICTION**

24. Additionally, as set forth below, this Court has jurisdiction over this case under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), and this case may be removed pursuant to the provisions of 28 U.S.C. § 1441(a), in that it is a civil class action wherein: (1) the proposed class contains at least 100 members; (2) Defendant is not a state, state official, or other governmental entity; (3) there is diversity between at least one class member and at least one named and served Defendant; and (4) the total amount in controversy for all class members exceeds

1 \$5,000,000.

2 **A. The Proposed Class Contains At Least 100 Members**

3 25. 28 U.S.C. § 1332(d)(5)(B) sets forth that the provisions of CAFA do not  
4 apply to any class action where “the number of members of all proposed plaintiff  
5 classes in the aggregate is less than 100.” This requirement is easily met in this case.

6 26. Plaintiff seeks to represent a class consisting of “[a]ll current and former  
7 hourly-paid or non-exempt employees who worked for any of the Defendant within  
8 the State of California at any time during the period from four years preceding the  
9 filing of this Complaint to final judgment.” Complaint at ¶14. Defendant operates two  
10 facilities in which employees’ employment was or is governed by a CBA. Burnett  
11 Decl., ¶4. The facility in which Plaintiff worked closed in February 2018. In the two  
12 facilities with an operative CBA, there were over 250 putative class members  
13 employed at any given time between April 19, 2014, four years before the filing of the  
14 complaint, and February, 2018. Burnett Decl., ¶5.

15 **B. Defendant Is Not Governmental Entities**

16 27. Under 28 U.S.C. § 1332(d)(5)(B), the CAFA does not apply to class  
17 actions where “primary defendants are States, State officials, or other governmental  
18 entities against whom the district court may be foreclosed from ordering relief.”

19 28. Defendant is a private business entity, not state, state official, or other  
20 government entity exempt from the CAFA.

21 **C. There Is Diversity Between At Least One Class Member And One**  
22 **Defendant**

23 29. CAFA’s minimal diversity requirement is satisfied, inter alia, when “any  
24 member of a class of plaintiffs is a citizen of a State different from any defendant.” 28  
25 U.S.C. §§ 1332(d)(2)(A); 1453(b). In a class action, only the citizenship of the named  
26 parties is considered for diversity purposes and not the citizenship of the class  
27 members. *Snyder v. Harris*, 394 U.S. 332, 339-40 (1969). Minimal diversity of  
28 citizenship exists here because Plaintiff and Defendant are citizens of different states.

1                   **1. Plaintiff is a citizen of California.**

2           30. Allegations of residency in a state court complaint can create a rebuttable  
3 presumption of domicile supporting diversity of citizenship. *Lew v. Moss*, 797 F.2d  
4 747, 751 (9th Cir. 1986); see also *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d  
5 514, 519-20 (10th Cir. 1994) (allegation by party in state court complaint of residency  
6 “created a presumption of continuing residence in [state] and put the burden of  
7 coming forward with contrary evidence on the party seeking to prove otherwise”);  
8 *Smith v. Simmons*, 2008 U.S. Dist. LEXIS 21162, \*22 (E.D. Cal. 2008) (place of  
9 residence provides “prima facie” case of domicile). At the time Plaintiff commenced  
10 this action and, upon information and belief, at the time of removal, Plaintiff resided  
11 in the State of California. (Complaint at ¶ 5.) Therefore, Plaintiff is a citizen of  
12 California.

13                   **2. Defendant is not a citizen of California.**

14           31. Defendant is a Limited Liability Company. For purposes of diversity  
15 jurisdiction, a LLC is a citizen of the state in which its members/managers are  
16 citizens. *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir.  
17 2006); see also Moore’s Federal Practice §102.57[8] (3d ed. 2007). Defendant is  
18 registered in Delaware, and has its principal place of business in Texas. Further, at the  
19 time this action was commenced in state court and at the time this removal is filed, the  
20 members/managers of Smurfit Kappa North America LLC are four individuals, Greg  
21 Hall, Dave Nelson, Brian McDonnel, and Juan Guillermo Castaneda, involved in the  
22 operation of the company from its headquarters in Texas. Burnett Decl., ¶3. Thus,  
23 Defendant is not a citizen of the State of California.

24           32. Accordingly, the named Plaintiff is a citizen of a State different from  
25 Defendant, and diversity exists for purposes of CAFA jurisdiction. See 28 U.S.C. §§  
26 1332(d)(2)(A).

27 ///

28 ///



**D. The Amount In Controversy Exceeds \$5,000,000**

33. This Court has jurisdiction under CAFA, which authorizes the removal of class actions in which, among the other factors mentioned above, the amount in controversy for all class members exceeds \$5,000,000. 28 U.S.C. § 1332(d).

34. The removal statute requires that a defendant seeking to remove a case to federal court must file a notice “containing a short and plain statement of the grounds for removal.” 28 U.S.C. § 1446(a). The Supreme Court, in *Dart Cherokee Basin Operating Co., LLC v. Owens*, 2014 U.S. LEXIS 8435 \*14 (Dec. 15, 2014), recently recognized that “as specified in §1446(a), a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” Only if the plaintiff contests or the court questions the allegations of the notice of removal is supporting evidence required. *Id.* Otherwise “the defendant’s amount-in-controversy allegation should be accepted” just as a plaintiff’s amount-in-controversy allegation is accepted when a plaintiff invokes federal court jurisdiction. *Id.* at \*11.

35. Here, Plaintiff does not allege the amount in controversy in the Complaint, but the face of the Complaint clearly demonstrates that the amount in controversy in this case exceeds \$5,000,000.

36. Plaintiff alleges a cause of action for a violation of the Unfair Competition Law (“UCL”), Business and Professions Code §§ 17200, et seq. Complaint ¶¶ 112-118. Alleging a UCL violation extends the statute of limitations on Plaintiff’s wage and hour claims from three to four years from the filing of the Complaint, or going back to April 19, 2014. See Cal. Bus. & Prof. Code § 17208; *Cortez v. Purolater Air Filtration Products Co.*, 23 Cal. 4th 163, 178-79 (2000) (four-year statute of limitations for restitution of wages under the UCL).

**1. Unpaid Overtime Claim**

37. By way of his first cause of action, Plaintiff and the putative class seek allegedly unpaid wages at overtime wage rates pursuant to California Labor Code §§



510 and 1198. (Complaint ¶¶ 48-56.) Plaintiff alleges that he and the putative class members incurred unpaid overtime compensation, by working in excess of eight hours per day and/or in excess of 40 hours in a week. (Complaint ¶ 53). However, Plaintiff does not state the amount of unpaid overtime he and the putative class worked each week. To determine the monetary amount in controversy for Plaintiff's overtime claim, the total number of hours worked unpaid by Plaintiff and the putative class that would have been considered overtime hours is multiplied by one and one-half times their respective regular rates of pay rate in effect during the time the overtime was allegedly worked.

38. The average hourly rate for non-exempt employees who worked at the facility in which Plaintiff worked between 2014 and 2018 was over \$20 per hour, with an overtime rate of more than \$30 per hour. Burnett Decl., ¶6.

39. As stated above, in each of the years between 2014 and February 2018, more than 250 putative class members worked at Defendant's two unionized facilities in California at any given time. Therefore, putative class members worked at a minimum at least 52,000 workweeks (250 employees x 52 workweeks per year x 4 years).

40. Assuming Plaintiff alleges each class member worked two uncompensated overtime hours per week, the total Plaintiff seeks for uncompensated overtime is \$3,120,000 (52,000 x \$30 per hour [1.5 x \$20 per hour overtime premium] x 2 overtime hours per week).

41. In sum, although Defendant vigorously denies Plaintiff's allegations, including the alleged damages, if Plaintiff were to prevail on his overtime claim with respect to himself and the putative class, the amount in controversy with respect to that claim alone could be **\$3,120,000**.

## 2. Unpaid Meal Period Premiums Claim

42. Plaintiff's second cause of action alleges that Defendant failed to provide Plaintiff and putative class members all compliant meal periods and failed to pay the

1 full meal period premiums due in violation of California Labor Code §§ 226.7 and  
2 512. Complaint ¶¶ 57-65.

3 Assuming Plaintiff and the putative class allege they were not provided  
4 compliant, uninterrupted meal periods two times per week, the amount in controversy  
5 is **\$ 2,080,000** (52,000 workweeks worked by the putative class x \$20 per hour x 2  
6 hours per week).

### 7 **3. Unpaid Rest Period Premium Claim**

8 43. By way of the third cause of action, Plaintiff alleges that “Defendant  
9 required Plaintiff and [putative] class members to work four (4) or more hours without  
10 authorizing or permitting a ten (10) minute rest period for each four (4) hour period of  
11 work.” (Complaint ¶72). Plaintiff further alleges that Defendant “willfully required  
12 Plaintiff and the [putative] class members to work during rest periods and failed to pay  
13 Plaintiff and the [putative] class members the full rest period premium.” (Complaint ¶  
14 73). Indeed, the amount in controversy for this claim, as alleged, would be identical  
15 to the amount in controversy for the missed meal break claims.

16 44. Assuming Plaintiff and the putative class allege they were not provided  
17 compliant, uninterrupted rest breaks two times per week, the amount in controversy is  
18 **\$2,080,000** (52,000 workweeks worked by the putative class x 2 x \$20 per hour).

### 19 **4. Unpaid Minimum Wages Claim**

20 45. Additionally, by way of Plaintiff’s fourth cause of action, Plaintiff and  
21 the putative class seek allegedly unpaid minimum wages and liquidated damages  
22 equal to the amount of unpaid wages pursuant to California Labor Code §§ 1194,  
23 1197, and 1197.1. (Complaint ¶¶ 78-82). Although Plaintiff does not allege any  
24 factual basis for this claim, assuming Plaintiff seeks unpaid wages for off-the-clock  
25 work (since Plaintiff’s hourly rate well exceeds the minimum wage), and assuming  
26 Plaintiff and the putative class seek one hour of wages for off-the-clock work per  
27 week at the California state minimum wage of \$11.00, Plaintiff’s seeks **\$1,144,000**  
28 (52,000 workweeks x \$11.00 per hour x 2 hours per week).

## 5. Claim for Final Wages Not Timely Paid

46. Through his fifth cause of action, Plaintiff alleges a claim for unpaid final wages pursuant to California Labor Code §§ 201 and 202, which provide that if an employer willfully fails to pay wages owed, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid for a maximum of thirty (30) days. Plaintiff claims that Defendant intentionally and willfully failed to pay Plaintiff and the other putative class members their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendant's employ.(Complaint ¶¶ 84-88. The statute of limitations for a wage action is three years. See Cal. Code Civ. Proc. § 338. Here, more than 150 putative class members ceased employment with Defendant within the three-year statute of limitation. Burnett Decl., ¶5. Penalties of continued wages for the maximum of thirty (30) days could exceed \$720,000.00 (150 employees x \$20 per hour x 8 hours per day x 30 days). As such, the amount in controversy for the failure to pay final wages in accordance with California Labor Code §§ 201 and 202, would be \$720,000.

## 6. Claim for Wages Not Timely Paid During Employment

47. Plaintiff's sixth cause of action asserts a claim on behalf of herself and all putative class members for violations of California Labor Code § 204, which states that all wages earned are due and payable twice each calendar month during certain specified time frames. Complaint ¶¶ 90-94. The Complaint seeks to recover "all remedies available for violations of California Labor Code section 204." (Complaint ¶ 94). Further, Plaintiff alleges that Defendant's alleged violation of §204 was "intentional and willful." Complaint ¶ 93. Therefore, assuming for purposes of removal only that California Labor Code section 210(a)(2) applies, Plaintiff seeks a civil penalty of \$200 for the alleged "willful or intentional violation[s]" of section 204. See Cal. Lab. Code § 210(a)(2). Based on the allegations in the Complaint, Plaintiff asserts at least one violation of section 204 for each putative class member. The statutory period for Labor Code § 226(e) penalties is one year, and at least 150

employees were employed by Defendant during one year prior to the filing of the Complaint in this action. Cal. Code Civ. Proc. § 340. As such, the amount in controversy for the failure to pay on designated pay period claim is at least \$50,000.00 (\$200 penalty x 250 employees).

## 7. Non-Compliant Wage Statement Claim

48. By way of the seventh cause of action, Plaintiff and the putative class members allege that Defendant knowingly and intentionally failed to comply with itemized employee wage statement requirements, including by “the failure to include the total number of hours worked by Plaintiff and the [putative] class members.” Complaint ¶97. Plaintiff seeks, on behalf of himself and the putative class, “the greater of their actual damages caused by Defendant’s failure to comply with California Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.” Complaint ¶100. Section 226(e) provides for a statutory penalty for violations of Labor Code § 226(a)’s wage statement requirements of \$50 or actual damages per employee for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate amount of \$4,000. Cal. Lab. Code § 226(a). The statutory period for Labor Code § 226(e) penalties is one year. Cal. Code Civ. Proc. § 340. At least 150 employees were employed by Defendant during the one year prior to the filing of the Complaint in this action. Assuming a maximum penalty of \$4,000 per employee (as Plaintiff alleges) for a class of approximately 150, the amount in controversy for this claim could exceed \$1,000,000 (\$4,000 potential penalty x 250 employees).

## 8. Claim for Failure to Keep Requisite Payroll Records

49. By way of Plaintiff’s eighth cause of action pursuant to California Labor Code § 1174(d), Plaintiff seeks to recover “statutory penalties pursuant to California Labor Code section 1174.5” for the alleged failure by Defendant to “intentionally and willfully [] keep accurate and complete payroll records showing the hours worked

1 daily and the wages paid, to Plaintiff and the other class members.” (Complaint ¶104).  
 2 Labor Code § 1174.5 provides a civil penalty of \$500 for willful failure to maintain  
 3 accurate payroll records. Cal. Lab. Code § 1174.5. The statutory period for Labor  
 4 Code § 226(e) penalties is one year. Cal. Code Civ. Proc. § 340. At least 150  
 5 employees were employed by Defendant during one year prior to the filing of the  
 6 Complaint in this action. Assuming for purposes of removal that Plaintiff can  
 7 maintain a private right of action for such penalties, and that each putative class  
 8 member is entitled to the full \$500 penalty, the amount in controversy for this claim  
 9 could exceed **\$125,000** (\$500 potential penalty x 250 employees).

### 10 **9. Unreimbursed Business Expenses Claim**

11 50. By way of the ninth cause of action, Plaintiff and the putative class seek  
 12 reimbursement for allegedly unpaid business expenses pursuant to California Labor  
 13 Code section 2802. Complaint at ¶¶108-110. The statute of limitations for this claim  
 14 is three years. See Cal. Code Civ. Proc. § 338. Although Plaintiff fails to identify the  
 15 business-related expenses Defendant allegedly failed to reimburse, or the amount of  
 16 any such expenses, this claim would too increase the amount in controversy. For  
 17 example, assuming that Defendant failed to reimburse each putative class member for  
 18 \$100 worth of reasonable business expenses, it is more likely than not that the amount  
 19 in controversy for this claim would be **\$250,000** (250 putative class members x  
 20 \$100.)

### 21 **10. Attorneys’ Fees**

22 51. Finally, Plaintiff seeks reasonable attorneys’ fees for his claims  
 23 Complaint, ¶¶ 56 and 118, which must also be considered in determining whether the  
 24 jurisdictional limit is met. “Where an underlying statute authorizes an award of  
 25 attorneys’ fees, either with mandatory or discretionary language, such fees may be  
 26 included in the amount in controversy.” *Lowdermilk v. U.S. Bank National Ass’n*,  
 27 479 F.3d 994, 1000 (9th Cir. 2007) (citing *Galt G/S v. JSS Scandinavia*, 142 F.3d  
 28 1150, 1155-56 (9th Cir. 1998)).

## 11. Summary of Amount in Controversy

<u>Plaintiff's Claim</u>	<u>Amount in Controversy</u>
Unpaid Overtime	\$ 3,120,000
Unpaid Meal Period Premiums	\$ 2,080,000
Unpaid Rest Period Premiums	\$ 2,080,000
Unpaid Minimum Wages	\$ 1,144,000
Final Wages Not Timely Paid	\$ 720,000
Wages Not Timely Paid During Employment	\$ 50,000
Non-Complaint Wage Statements	\$ 1,000,000
Failure to Keep Required Payroll Records	\$ 125,000
Unreimbursed Business Expenses	\$ 250,000
<b>TOTAL</b>	<b>\$ 10,569,000 + attorneys' fees</b>

52. Defendant provides the foregoing calculations only to demonstrate that the amount in controversy in this case easily exceeds the amount in controversy requirement of the CAFA. Defendant makes no admission of any liability or damages with respect to any aspect of this case, nor do they endorse or concede that the proffered methodology for such calculations passes muster.

## VII. VENUE

53. Venue lies in the Central District of California pursuant to 28 U.S.C. §§ 84(c), 1441(a), and 1446(a). Plaintiff originally brought this action in the Superior Court of the State of California, County of Los Angeles.

## VIII. NOTICE OF REMOVAL

54. Contemporaneously with the filing of this Notice of Removal in the United States District Court for the Central District of California, the undersigned is providing written notice of such filing to Plaintiff's counsel of record. In addition, a

1 copy of this Notice of Removal will be filed with the Clerk of the Superior Court of  
2 the State of California, County of Los Angeles.

3  
4 Dated: June 8, 2018  
5

6  
7 /s/ Michelle Rapoport  
CURTIS A. GRAHAM  
MICHELLE RAPOPORT  
8 LITTLER MENDELSON, P.C.  
Attorneys for Defendant  
9 SMURFIT KAPPA NORTH  
10 AMERICA LLC

11 Firmwide:155132386.3 080118.1014  
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1 CURTIS A. GRAHAM, Bar No. 215745  
cagraham@littler.com  
2 MICHELLE RAPOPORT, Bar No. 247459  
mrapoport@littler.com  
3 LITTLER MENDELSON, P.C.  
633 West 5th Street  
4 63rd Floor  
Los Angeles, CA 90071  
5 Telephone: 213.443.4300

6 Attorneys for Defendant  
SMURFIT KAPPA NORTH AMERICA  
7 LLC formerly known as and erroneously  
sued as SMURFIT KAPPA ORANGE  
8 COUNTY LLC

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11 EDUARDO CHAVEZ, individually,  
12 and on behalf of other members of  
the general public similarly situated,

13 Plaintiff,

14 v.

15 SMURFIT KAPPA ORANGE  
16 COUNTY LLC, an unknown  
business entity; SMURFIT KAPPA  
17 NORTH AMERICA LLC, an  
unknown business entity, and DOES  
18 1 through 100, inclusive,

19 Defendant.

Case No.

**DECLARATION OF MICHELLE  
RAPOPORT IN SUPPORT OF  
REMOVAL**

**DECLARATION OF MICHELLE RAPOPORT**

I, Michelle Rapoport, hereby declare and state as follows:

1. I am an attorney with the law firm of Littler Mendelson, a Professional Corporation, counsel for Defendant Smurfit Kappa North America LLC formerly known as and erroneously sued as Smurfit Kappa Orange County LLC (“Defendant”) in the above-entitled matter. I am duly licensed to practice law in the State of California and before the United States District Court for the Central District and am responsible for representing Defendant in this action. Except where otherwise indicated, all of the information contained herein is based upon my personal knowledge and if called and sworn as a witness, I could and would competently testify thereto.

2. Plaintiff’s proof of service indicates the Complaint was served on May 11, 2018. A true and correct copy of the Service of Process Transmittal is attached hereto as **Exhibit A**.

3. On June 7, 2018, Defendant filed its Answer in the Los Angeles County Superior Court, a true and correct copy of which is attached hereto as **Exhibit B**.

4. Attached hereto as **Exhibit C** are true and correct copies of all documents filed and served by Plaintiff, including the Summons, Civil Case Cover Sheet, Complaint, ADR Information Package, Notice of Hearing, Notice of Case Assignment, and Notice of Unavailability of Counsel.

5. To the best of my knowledge, no further documents from the state court action have been filed by Plaintiff except those included herein.

6. Contemporaneously with the filing of the Notice of Removal in the United States District Court for the Central District of California, written notice of the removal will be given to counsel for Plaintiff, and a copy of the Notice of Removal will be filed with the Clerk of the Superior Court for the State of California for the

1 County of Orange.

2 I hereby declare under penalty of perjury, under the laws of the United States  
3 and the State of California that the foregoing is true and correct, and that this  
4 declaration was executed on June 8, 2018, at Los Angeles, California.

5  
6 /s/ *Michelle Rapoport*

7 Michelle Rapoport  
8

9 Firmwide:155182727.1 080118.1014  
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# **EXHIBIT A**



**Service of Process  
Transmittal**

06/04/2018

CT Log Number 533450689

**TO:** Rick Burnett  
SMURFIT KAPPA NORTH AMERICA LLC  
125 E Carpenter Fwy Ste 1500  
Irving, TX 75062-2726

**RE: Process Served in California**

**FOR:** SMURFIT KAPPA NORTH AMERICA LLC (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** EDUARDO CHAVEZ, individually, and on behalf of other members of the general public similarly situated, Pltfs. vs. Smurfit Kappa North America LLC, etc., et al., Dfts.

**DOCUMENT(S) SERVED:** Proofs

**COURT/AGENCY:** Los Angeles County - Superior Court - Hill Street, CA  
Case # BC702936

**NATURE OF ACTION:** Proof of service of summons

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Los Angeles, CA

**DATE AND HOUR OF SERVICE:** By Regular Mail on 06/04/2018 postmarked on 05/30/2018

**JURISDICTION SERVED :** California

**APPEARANCE OR ANSWER DUE:** None Specified

**ATTORNEY(S) / SENDER(S):** Edwin Alwazian  
Lawyers for Justice, PC  
410 West Arden Avenue,  
Suite 203  
Glendale, CA 91203  
818-265-1020

**REMARKS:** The document(s) received have been modified to reflect the name of the entity being served.

**ACTION ITEMS:** SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780102888934

**SIGNED:** C T Corporation System

**ADDRESS:** 818 West Seventh Street  
Los Angeles, CA 90017

**TELEPHONE:** 213-337-4615



**Service of Process  
Transmittal**

06/04/2018

CT Log Number 533450689

**TO:** Rick Burnett  
SMURFIT KAPPA NORTH AMERICA LLC  
125 E Carpenter Fwy Ste 1500  
Irving, TX 75062-2726

**RE: Process Served in California**

**FOR:** SMURFIT KAPPA NORTH AMERICA LLC (Domestic State: DE)

**DOCKET HISTORY:**

<b>DOCUMENT(S) SERVED:</b>	<b>DATE AND HOUR OF SERVICE:</b>	<b>TO:</b>	<b>CT LOG NUMBER:</b>
Summons, Complaint	By Process Server on 05/11/2018	Rick Burnett SMURFIT KAPPA NORTH AMERICA LLC	533322543

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Edwin Alwazian   SBN: 232943 LAWYERS for JUSTICE, PC 410 Arden Ave 203 Glendale, CA 91203  TELEPHONE NO.: (818) 265-1020   FAX NO. (818) 265-1021   E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff.	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA - COUNTY OF LOS ANGELES  STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Stanley Mosk Courthouse - Central District	
PLAINTIFF: EDUARDO CHAVEZ, et al DEFENDANT: SMURFIT KAPPA ORANGE COUNTY LLC, et al	CASE NUMBER: BC702936 Dept. SS 17
PROOF OF SERVICE OF SUMMONS	Ref. No. or Fdo No: 14135

(Separate proof of service is required for each party served.)

\*\* BY FAX \*\*

1. At the time of service I was at least 18 years of age and not a party to this action.

2. I served copies of:

- a. ☒ Summons
- b. ☒ Complaint
- c. ☒ Alternative Dispute Resolution (ADR) package
- d. ☒ Civil Case Cover Sheet (served in complex cases only)
- e. ☐ Cross-complaint
- f. ☒ other (specify documents): Civil Case Cover Sheet Addendum and Statement of Location; Notice of Case Assignment - Unlimited Civil - Class Action; Voluntary Efficient Litigation Stipulations

3. a. Party served (specify name of party as shown on documents served):

SMURFIT KAPPA NORTH AMERICA LLC, an unknown business entity

- b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made)(specify name and relationship to the party named in item 3a):

ALBERT DAMONTE - c/o CT CORPORATION SYSTEM (Registered Agent)

4. Address where the party was served: 818 WEST 7TH STREET - SUITE 930  
LOS ANGELES, CA 90017

5. I served the party (check proper box)

- a. ☒ by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 5/11/2018 (2) at (time): 12:54 PM

- b. ☐ by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3b):

- (1) ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
- (2) ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
- (3) ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
- (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., §415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
- (5) ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.



PETITIONER: EDUARDO CHAVEZ, et al	CASE NUMBER:
RESPONDENT: SMURFIT KAPPA ORANGE COUNTY LLC, et al	BC702936

- c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgment of Receipt*.) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ by other means (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

5. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☒ On behalf of (specify): **SMURFIT KAPPA NORTH AMERICA LLC, an unknown business entity** under the following Code of Civil Procedure section:
- |   |   |
|---|---|
| <input type="checkbox"/> 416.10 (corporation)                           | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)                   | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association)       | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input checked="" type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                         | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other:                                       |

7. Person who served papers

- a. Name: **Layne Uyeno - ProLegal Reg#: 2017025418**
- b. Address: **P.O. Box 54846 Los Angeles, CA 90054**
- c. Telephone number: **(888) 722-6878**
- d. The fee for service was: **\$ 135.57**
- e. I am:

- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ registered California process server:
- (i) ☐ owner ☒ employee ☐ independent contractor.
- (ii) Registration No.: **201584268**
- (iii) County: **Los Angeles**

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. ☐ I am a California sheriff or marshal and certify that the foregoing is true and correct.

Date: **5/14/2018**

ProLegal Reg#: **2017025418**  
**P.O. Box 54846**  
**Los Angeles, CA 90054**  
**(888) 722-6878**  
**http://www.prolegalnetwork.com**



Layne Uyeno

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

[Signature]

**PROOF OF SERVICE**

*STATE OF CALIFORNIA, COUNTY OF LOS ANGELES*

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 410 West Arden Avenue, Suite 203, Glendale, California 91203.

On May 30, 2018, I served the foregoing document(s) described as: **PROOF OF SERVICE OF SUMMONS – SMURFIT KAPPA NORTH AMERICA LLC** on interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope addressed as follows:

CT Corporation System  
818 West 7th Street, Suite 930  
Los Angeles, CA 90017

*Agent for Service of Process for Smurfit Kappa North America LLC* ✓

**[X] BY U.S. MAIL**

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

**[X] STATE**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 30, 2018 at Glendale, California.

  
Ani Haleblan

# **EXHIBIT B**

**CONFORMED COPY**  
**ORIGINAL FILED**  
 Superior Court of California  
 County of Los Angeles

JUN 07 2018

Sherri N. Carter, Executive Officer/Clerk  
 By: Rita Nazarian, Deputy

COPY

CURTIS A. GRAHAM, Bar No. 215745  
 MICHELLE RAPOPORT, Bar No. 247459  
 LITTLER MENDELSON, P.C.  
 633 West 5th Street  
 63rd Floor  
 Los Angeles, CA 90071  
 Telephone: 213.443.4300  
 Fax No.: 213.443.4299

Attorneys for Defendant  
 SMURFIT KAPPA NORTH AMERICA LLC  
 (Formerly Known As And Erroneously Sued As  
 SMURFIT KAPPA ORANGE COUNTY LLC)

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

EDUARDO CHAVEZ, individually, and  
 on behalf of other members of the general  
 public similarly situated,

Plaintiff,

v.

SMURFIT KAPPA ORANGE COUNTY  
 LLC, an unknown business entity;  
 SMURFIT KAPPA NORTH AMERICA  
 LLC, an unknown business entity; and  
 DOES 1 through 100, inclusive,

Defendants.

Case No. BC702936

ASSIGNED FOR ALL PURPOSES TO  
 JUDGE MAREN NELSON, DEPT 17

**DEFENDANT'S ANSWER TO  
 PLAINTIFF'S UNVERIFIED CLASS  
 ACTION COMPLAINT**

Trial Date: None set  
 Complaint Filed: April 19, 2018

1 Defendant Smurfit Kappa North America LLC, formerly known as and erroneously  
 2 sued as Smurfit Kappa Orange County LLC ("Defendant") answers the First Amended Class and  
 3 Representative Action Complaint ("Complaint") filed by Plaintiff Eduardo Chavez ("Plaintiff") as  
 4 follows:

5 Pursuant to California Code of Civil Procedure section 431.30(d), Defendant  
 6 generally denies each and every allegation contained in Plaintiff's Complaint. Defendant further  
 7 denies that Plaintiff and the putative class have been damaged or have sustained or will sustain any  
 8 loss or damage in any manner or amount whatsoever as a result of any act or omission on the part of  
 9 Defendant.

### 10 **AFFIRMATIVE DEFENSES**

11 Defendant asserts the following affirmative and other defenses, which it has  
 12 designated, collectively, as "Affirmative Defenses." Defendant has not yet completed a thorough  
 13 investigation or completed discovery of all facts and circumstances of the subject matter of the  
 14 Complaint, and accordingly, reserves the right to amend, modify, revise, or supplement its Answer,  
 15 and to plead such further defenses and take such further actions as it may deem proper and necessary  
 16 in its defense upon the completion of said investigation and study. Without waiving or excusing  
 17 Plaintiff's burden of proof or admitting that Defendant has any burden of proof whatsoever,  
 18 Defendant asserts the following separate and distinct defenses and affirmative defenses:

### 19 **FIRST AFFIRMATIVE DEFENSE**

20 1. As a separate and affirmative defense, Defendant alleges the First, Fourth  
 21 through Eighth and Tenth Causes of Action in the Complaint are barred because Plaintiff and the  
 22 putative class were not suffered or permitted to work during any time for which they were not paid  
 23 the appropriate wage rate, including the proper minimum wage and overtime rates.

### 24 **SECOND AFFIRMATIVE DEFENSE**

25 2. As a separate and affirmative defense, Defendant alleges that Plaintiff's First,  
 26 Fourth through Eighth, and Tenth Causes of Action are barred because some or all of the hours for  
 27 which Plaintiff claims compensation are not considered hours worked under California state law.  
 28

**THIRD AFFIRMATIVE DEFENSE**

3. As a separate and affirmative defense, Defendant alleges that the First through Eighth and Tenth Causes of Action in the Complaint fail because the hours for which Plaintiff seeks compensation, including overtime and for meal and rest periods, are barred to the extent that Defendant had no knowledge of or reason to know that Plaintiff or any of the putative class were working for time for which they were not paid, or that they were not taking meal or rest breaks in accordance with the law.

**FOURTH AFFIRMATIVE DEFENSE**

4. As a separate and affirmative defense, Defendant alleges that the Complaint and each purported cause of action alleged therein is barred, in whole or in part, or any recovery should be reduced, pursuant to the avoidable consequences doctrine. Defendant took reasonable steps to prevent and correct alleged violations of wage and hour laws; Plaintiff and/or the putative class unreasonably failed to use the preventative and corrective opportunities provided by Defendant; Defendant communicated those procedures to Plaintiff and/or the putative class during the employment relationship; Plaintiff and/or the putative class was aware of such procedures; and reasonable use of Defendant's procedures would have prevented at least some of the harm that Plaintiff allegedly suffered.

**FIFTH AFFIRMATIVE DEFENSE**

5. As a separate and affirmative defense, Defendant alleges that the Second Cause of Action in the Complaint, and all Causes of Action that are derivative of the Second Cause of Action fail, because Plaintiff and the putative class members voluntarily signed valid meal period waivers. Accordingly, Plaintiff and/or members of the putative classes have no right to a premium payment under California Labor Code section 226.7 because, to the extent, if any, that any putative class action did not take breaks, it was because he/she: (1) failed to take breaks that were provided to him/her in compliance with California law; (2) chose not to take rest breaks that were authorized and permitted; or (3) waived his/her right to meal breaks.

**SIXTH AFFIRMATIVE DEFENSE**

6. As a separate and affirmative defense, Defendant alleges that the Complaint

1 and each purported cause of action alleged therein is barred by the applicable statute of limitations,  
 2 including, but in no way limited to, California Code of Civil Procedure sections 338, 340(a), Labor  
 3 Code sections 203 and 226 and California Business and Professions Code section 17208.

4 **SEVENTH AFFIRMATIVE DEFENSE**

5 7. As a separate and affirmative defense, Defendant alleges that the Fifth Cause  
 6 of Action in the Complaint is barred, because Plaintiff and the putative class members are not  
 7 entitled to recover any “penalties” under California Labor Code section 203 because (among other  
 8 reasons) there is a good faith dispute as to whether said wages were owed, which, in the absence of  
 9 bad faith, precludes a waiting time penalty award.

10 **EIGHTH AFFIRMATIVE DEFENSE**

11 8. As a separate and affirmative defense, Defendant alleges that the Seventh  
 12 Cause of Action in the Complaint is barred because Plaintiff and/or the putative class members did  
 13 not actually “suffer injury” as a result of Defendant’s alleged failure to provide properly itemized  
 14 wage statements and thus are not entitled to the penalties they are seeking under California Labor  
 15 Code section 226.

16 **NINTH AFFIRMATIVE DEFENSE**

17 9. As a separate and affirmative defense, Defendant alleges that the Seventh  
 18 Cause of Action in the Complaint is barred because, even assuming *arguendo* that Plaintiff and/or  
 19 the putative class members were not provided with proper itemized statements of wages, Plaintiff  
 20 and the putative class members are not entitled to recover damages because Defendant’s alleged  
 21 failure to comply with California Labor Code section 226(a) was not a “knowing and intentional  
 22 failure” under California Labor Code section 226(e).

23 **TENTH AFFIRMATIVE DEFENSE**

24 10. As a separate and affirmative defense, Defendant alleges Defendant alleges  
 25 that the Complaint and each purported cause of action alleged therein is barred, because class  
 26 certification is inappropriate as required by law, including but not limited to the requirement that the  
 27 representative be typical of the putative class, and that a putative class be numerous, include  
 28 common questions of law and fact that predominate over individual issues, and be superior to



1 alternative means of resolution.

2 **ELEVENTH AFFIRMATIVE DEFENSE**

3 11. As a separate and affirmative defense, Defendant alleges that the Complaint  
4 and each purported cause of action alleged therein is barred because Plaintiff and/or the putative  
5 class members are not entitled to equitable relief insofar as they have adequate remedies at law and  
6 are not entitled to any relief with respect to any and all alleged violations of California Business and  
7 Professions Code section 17200 *et seq.* that have discontinued, ceased and are not likely to recur.

8 **TWELFTH AFFIRMATIVE DEFENSE**

9 12. As a separate and affirmative defense, Defendant alleges that the Complaint  
10 and each purported cause of action alleged therein is barred, in whole or in part, because Plaintiff  
11 failed to exhaust his administrative remedies with the appropriate state agency, including but not  
12 limited to the Labor Workforce Development Agency.

13 **THIRTEENTH AFFIRMATIVE DEFENSE**

14 13. As a separate and affirmative defense, Defendant alleges that the Complaint  
15 and each purported cause of action alleged therein is barred because Plaintiff's claims cannot be  
16 tried on a representative basis. Determination of Plaintiff's claims would require (1) complex  
17 factual issues, (2) penalties that could not be calculated on a representative basis, (3) penalties that  
18 could potentially not be nominal, (4) penalties that would not be identical for all aggrieved  
19 employees, and (5) trying such a representative action would be unmanageable.

20 **FOURTEENTH AFFIRMATIVE DEFENSE**

21 14. As a separate and affirmative defense, Defendant alleges that the Complaint  
22 and each purported cause of action alleged therein is barred to the extent Plaintiff and/or any relevant  
23 class members signed releases for any claims alleged in this lawsuit, the claims held by such are  
24 barred by the doctrine of consent, waiver and/or accord and satisfaction.

25 **FIFTEENTH AFFIRMATIVE DEFENSE**

26 15. As a separate and affirmative defense, Defendant alleges that the First through  
27 Third Causes of Action, and any claims that are derivative of these Causes of Action, is barred to the  
28 extent Plaintiff seeks to recover for alleged violations concerning overtime or meal and rest periods,

1 such alleged violations, if any are *de minimus* and Plaintiff and the putative class are therefore not  
2 entitled to any additional compensation.

### 3 SIXTEENTH AFFIRMATIVE DEFENSE

4 16. Defendant alleges that the First and Second Causes of Action in the  
5 Complaint, and any claims that are derivative of these Causes of Action are barred because by virtue  
6 of a collective bargaining agreement, Plaintiff and the putative class are exempt from certain  
7 overtime and meal break obligations under the provisions of the applicable Wage Orders and the  
8 Labor Code, including but not limited to Wage Order 1, and Labor Code sections 512(e) and 514,  
9 and their claims are, therefore, barred.

### 10 SEVENTEENTH AFFIRMATIVE DEFENSE

11 17. As a separate and affirmative defense, Defendant alleges that the Complaint  
12 and each purported cause of action alleged therein is barred because Plaintiff's complaint is  
13 substantially dependent upon an analysis of the provisions, terms and conditions of a collective  
14 bargaining agreement that existed at all relevant times between Defendant and the union  
15 representing Plaintiff and the putative class, and the complaint is therefore preempted under Section  
16 301 of the Labor Management Relations Act.

### 17 EIGHTEENTH AFFIRMATIVE DEFENSE

18 18. As a separate and affirmative defense, Defendant alleges that the Complaint  
19 and each purported cause of action alleged therein is barred in whole or in part by the equitable  
20 doctrines of waiver, estoppel, and/or unclean hands, including to the extent that Plaintiff worked any  
21 unpaid time and failed to timely report such unpaid time to Defendant and/or to the extent that  
22 Plaintiff failed to timely take any meal or rest break to which he was entitled and provided, Plaintiff  
23 failed to timely report any inability to take a meal or rest break, or reported having taken meal and  
24 rest breaks when, in fact, the meal and rest breaks were not taken.

### 25 ADDITIONAL DEFENSES

26 Defendant reserves the right to amend this Answer should it later discover facts  
27 demonstrating the existence of new and/or additional affirmative defenses, and/or should a change in  
28 the law support the inclusion of new and/or additional affirmative defenses.

**PRAYER FOR RELIEF**

**WHEREFORE**, Defendant prays for relief as follows:

1. That Plaintiff and the putative class members take nothing and that the Complaint be dismissed in its entirety with prejudice;
2. That judgment be entered in Defendant's favor;
3. That Defendant be awarded its attorneys' fees and costs of suit herein to the extent permitted under applicable law; and
4. That Defendant be awarded such other, further relief as the Court deems just and proper.

Dated: June 7, 2018



CURTIS A. GRAHAM  
MICHELLE RAPOPORT  
LITTLER MENDELSON, P.C.  
Attorneys for Defendant  
SMURFIT KAPPA ORANGE COUNTY;  
AND SMURFIT KAPPA NORTH AMERICA  
LLC

Firmwide:154991283.1 080118.1014

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 633 West 5th Street, 63rd Floor, Los Angeles, California 90071. On June 7, 2018, I served the within document(s):

**DEFENDANT'S ANSWER TO PLAINTIFF'S UNVERIFIED CLASS ACTION COMPLAINT**

☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses below and (*specify one*):

☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☒ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at: **Los Angeles, California.**

☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)

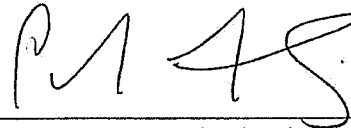
1 ☐ **By fax transmission.** Based on an agreement of the parties to accept service by  
2 fax transmission, I faxed the documents to the persons at the fax numbers listed  
3 below. No error was reported by the fax machine that I used. A copy of the  
4 record of the fax transmission, which I printed out, is attached.

5 ☐ **By electronic service.** Based on a court order or an agreement of the parties to  
6 accept electronic service, I caused the documents to be sent to the persons at the  
7 electronic service addresses listed below.

8 Edwin Aiwarzian  
9 LAWYERS for JUSTICE, PC  
10 410 West Arden Avenue, Suite 203  
11 Glendale, CA 91203  
12 Telephone: 818.265.1020  
13 Facsimile: 818.265.1021

14 *Attorneys for Plaintiff*

15 I declare under penalty of perjury under the laws of the State of California that the above is  
16 true and correct. Executed on June 7, 2018, at Los Angeles, California.

17 

18 Sarah Fleming

# **EXHIBIT C**

1 Edwin Aiwazian (SBN 232943)  
 2 **LAWYERS for JUSTICE, PC**  
 3 410 West Arden Avenue, Suite 203  
 4 Glendale, California 91203  
 5 Tel: (818) 265-1020 / Fax: (818) 265-1021

6 *Attorneys for Plaintiff*

**FILED**  
 Superior Court of California  
 County of Los Angeles

APR 19 2018

Sherri R. Carter, Executive Officer/Clerk  
 By Nancy Alvarez Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 9 **FOR THE COUNTY OF LOS ANGELES**

10 EDUARDO CHAVEZ, individually, and on  
 11 behalf of other members of the general public  
 12 similarly situated;

13 Plaintiff,

14 vs.

15 SMURFIT KAPPA ORANGE COUNTY  
 16 LLC, an unknown business entity; SMURFIT  
 17 KAPPA NORTH AMERICA LLC, an  
 18 unknown business entity; and DOES 1  
 19 through 100, inclusive,

20 Defendants.

Case No.:

**BC 702936**

**CLASS ACTION COMPLAINT FOR  
 DAMAGES**

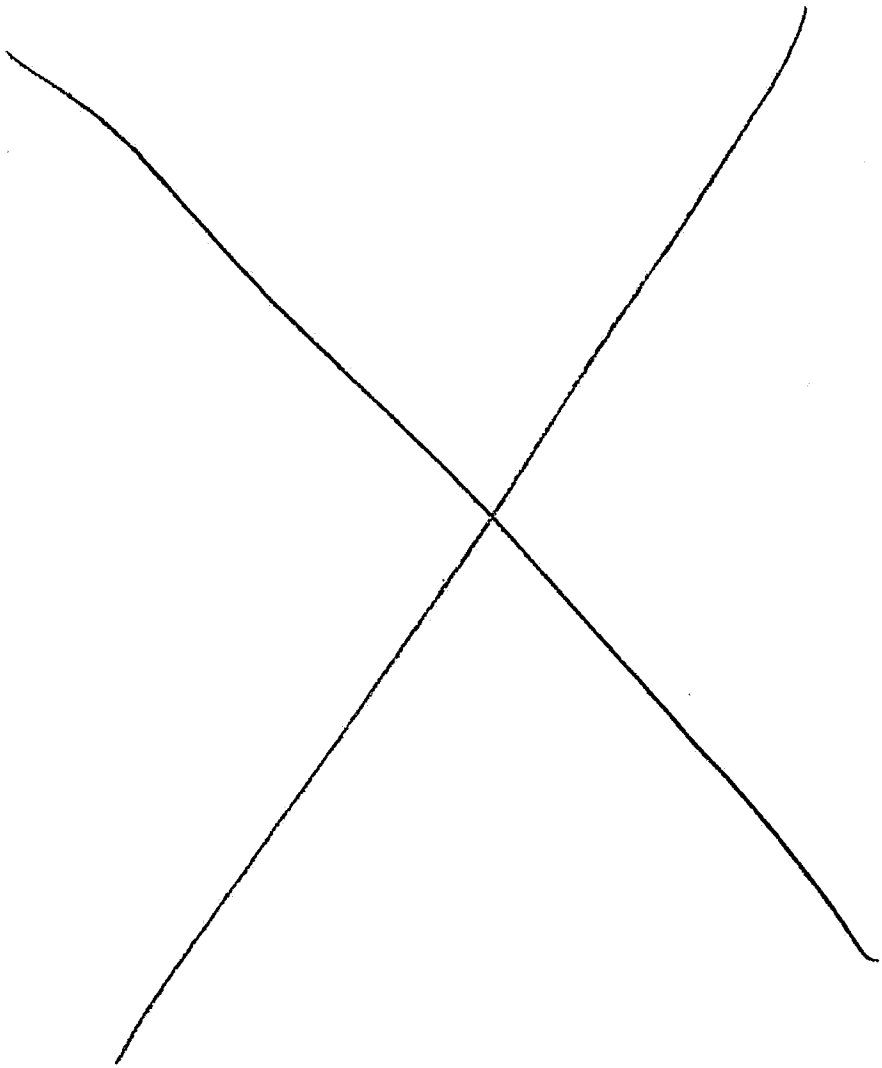
- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (10) Violation of California Business & Professions Code §§ 17200, et seq.

**DEMAND FOR JURY TRIAL**

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

**LAWYERS for JUSTICE, PC**  
 410 West Arden Avenue, Suite 203  
 Glendale, California 91203

**ORIGINAL**



CITY/CASE: 80702936  
LEA/DEF#:

RECEIPT #: CCH451233116  
DATE PAID: 04/19/18 03:58 PM  
PAYMENT: \$1,435.00 310  
RECEIVED:

CHECK: \$1,435.00  
CASH: \$0.00  
CHANGE: \$0.00  
CARD: \$0.00

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Neber



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Glendale, California 91203

04/20/2018

COMES NOW, Plaintiff EDUARDO CHAVEZ ("Plaintiff"), individually, and on behalf of other members of the general public similarly situated, and alleges as follows:

### **JURISDICTION AND VENUE**

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The "amount in controversy" for the named Plaintiff, including but not limited to claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys' fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court "original jurisdiction in all other causes" except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of Los Angeles. The majority of acts and omissions alleged herein relating to Plaintiff and the other class members took place in the State of California, including the County of Los Angeles.

### **PARTIES**

5. Plaintiff EDUARDO CHAVEZ is an individual residing in the State of California.

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6. Defendant SMURFIT KAPPA ORANGE COUNTY LLC, at all times herein mentioned, was and is, upon information and belief, an employer whose employees are engaged throughout the State of California, including the County of Los Angeles.

7. Defendant SMURFIT KAPPA NORTH AMERICA LLC, at all times herein mentioned, was and is, upon information and belief, an employer whose employees are engaged throughout the State of California, including the County of Los Angeles.

8. At all relevant times, Defendant SMURFIT KAPPA ORANGE COUNTY LLC and Defendant SMURFIT KAPPA NORTH AMERICA LLC were the "employer" of Plaintiff within the meaning of all applicable California laws and statutes.

9. At all times herein relevant, Defendants SMURFIT KAPPA ORANGE COUNTY LLC, SMURFIT KAPPA NORTH AMERICA LLC, and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE herein.

10. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sue said defendants by such fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff and the other class members as alleged in this Complaint. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

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11. Defendant SMURFIT KAPPA ORANGE COUNTY LLC, SMURFIT KAPPA NORTH AMERICA LLC, and DOES 1 through 100 will hereinafter collectively be referred to as "Defendants."

12. Plaintiff further alleges that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff and the other class members so as to make each of said Defendants employers liable under the statutory provisions set forth herein.

### CLASS ACTION ALLEGATIONS

13. Plaintiff bring this action on his own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under California Code of Civil Procedure section 382.

14. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from four years preceding the filing of this Complaint to final judgment.

15. Plaintiff reserves the right to establish subclasses as appropriate.

16. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom he has a well-defined community of interest.

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- 1 c. Adequacy: Plaintiff will fairly and adequately protect the interests of
- 2 each class member, with whom he has a well-defined community of
- 3 interest and typicality of claims, as demonstrated herein. Plaintiff has no
- 4 interest that is antagonistic to the other class members. Plaintiff's
- 5 attorneys, the proposed class counsel, are versed in the rules governing
- 6 class action discovery, certification, and settlement. Plaintiff has
- 7 incurred, and during the pendency of this action will continue to incur,
- 8 costs and attorneys' fees, that have been, are, and will be necessarily
- 9 expended for the prosecution of this action for the substantial benefit of
- 10 each class member.
- 11 d. Superiority: A class action is superior to other available methods for the
- 12 fair and efficient adjudication of this litigation because individual joinder
- 13 of all class members is impractical.
- 14 e. Public Policy Considerations: Certification of this lawsuit as a class
- 15 action will advance public policy objectives. Employers of this great
- 16 state violate employment and labor laws every day. Current employees
- 17 are often afraid to assert their rights out of fear of direct or indirect
- 18 retaliation. However, class actions provide the class members who are
- 19 not named in the complaint anonymity that allows for the vindication of
- 20 their rights.
- 21 17. There are common questions of law and fact as to the class members that
- 22 predominate over questions affecting only individual members. The following common
- 23 questions of law or fact, among others, exist as to the members of the class:
- 24 a. Whether Defendants' failure to pay wages, without abatement or
- 25 reduction, in accordance with the California Labor Code, was willful;
- 26 b. Whether Defendants' had a corporate policy and practice of failing to
- 27 pay their hourly-paid or non-exempt employees within the State of
- 28 California for all hours worked and missed (short, late, interrupted,

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- 1 and/or missed altogether) meal periods and rest breaks in violation of
- 2 California law;
- 3 c. Whether Defendants required Plaintiff and the other class members to
- 4 work over eight (8) hours per day and/or over forty (40) hours per week
- 5 and failed to pay the legally required overtime compensation to Plaintiff
- 6 and the other class members;
- 7 d. Whether Defendants deprived Plaintiff and the other class members of
- 8 meal and/or rest periods or required Plaintiff and the other class
- 9 members to work during meal and/or rest periods without compensation;
- 10 e. Whether Defendants failed to pay minimum wages to Plaintiff and the
- 11 other class members for all hours worked;
- 12 f. Whether Defendants failed to pay all wages due to Plaintiff and the other
- 13 class members within the required time upon their discharge or
- 14 resignation;
- 15 g. Whether Defendants failed to timely pay all wages due to Plaintiff and
- 16 the other class members during their employment;
- 17 h. Whether Defendants complied with wage reporting as required by the
- 18 California Labor Code; including, *inter alia*, section 226;
- 19 i. Whether Defendants kept complete and accurate payroll records as
- 20 required by the California Labor Code, including, *inter alia*, section
- 21 1174(d);
- 22 j. Whether Defendants failed to reimburse Plaintiff and the other class
- 23 members for necessary business-related expenses and costs;
- 24 k. Whether Defendants' conduct was willful or reckless;
- 25 l. Whether Defendants engaged in unfair business practices in violation of
- 26 California Business & Professions Code section 17200, et seq.;
- 27 m. The appropriate amount of damages, restitution, and/or monetary
- 28 penalties resulting from Defendants' violation of California law; and

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1 n. Whether Plaintiff and the other class members are entitled to  
2 compensatory damages pursuant to the California Labor Code.

3 **GENERAL ALLEGATIONS**

4 18. At all relevant times set forth herein, Defendants employed Plaintiff and other  
5 persons as hourly-paid or non-exempt employees within the State of California, including the  
6 County of Los Angeles.

7 19. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-  
8 exempt employee, from approximately December 2014 to approximately March 2018, in the  
9 State of California, County of Los Angeles.

10 20. Defendants hired Plaintiff and the other class members, classified them as  
11 hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and  
12 missed meal periods and/or rest breaks.

13 21. Defendants had the authority to hire and terminate Plaintiff and the other class  
14 members, to set work rules and conditions governing Plaintiff's and the other class members'  
15 employment, and to supervise their daily employment activities.

16 22. Defendants exercised sufficient authority over the terms and conditions of  
17 Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff  
18 and the other class members.

19 23. Defendants directly hired and paid wages and benefits to Plaintiff and the other  
20 class members.

21 24. Defendants continue to employ hourly-paid or non-exempt employees within the  
22 State of California.

23 25. Plaintiff and the other class members worked over eight (8) hours in a day,  
24 and/or forty (40) hours in a week during their employment with Defendants.

25 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
26 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt  
27 employees within the State of California. This pattern and practice involved, *inter alia*, failing  
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1 to pay them for all regular and/or overtime wages earned and for missed meal periods and rest  
2 breaks in violation of California law.

3 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
4 knew or should have known that Plaintiff and the other class members were entitled to receive  
5 certain wages for overtime compensation and that they were not receiving accurate overtime  
6 compensation for all overtime hours worked.

7 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
8 failed to provide Plaintiff and the other class members all required rest and meal periods during  
9 the relevant time period as required under the Industrial Welfare Commission Wage Orders  
10 and thus they are entitled to any and all applicable penalties.

11 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
12 knew or should have known that Plaintiff and the other class members were entitled to receive  
13 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class  
14 member's regular rate of pay when a meal period was missed, and they did not receive all meal  
15 periods or payment of one additional hour of pay at Plaintiff's and the other class member's  
16 regular rate of pay when a meal period was missed.

17 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
18 knew or should have known that Plaintiff and the other class members were entitled to receive  
19 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class  
20 member's regular rate of pay when a rest period was missed, and they did not receive all rest  
21 periods or payment of one additional hour of pay at Plaintiff's and the other class members'  
22 regular rate of pay when a rest period was missed.

23 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
24 knew or should have known that Plaintiff and the other class members were entitled to receive  
25 at least minimum wages for compensation and that they were not receiving at least minimum  
26 wages for all hours worked.

27 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
28 knew or should have known that Plaintiff and the other class members were entitled to receive



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1 all wages owed to them upon discharge or resignation, including overtime and minimum wages  
2 and meal and rest period premiums, and they did not, in fact, receive all such wages owed to  
3 them at the time of their discharge or resignation.

4 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
5 knew or should have known that Plaintiff and the other class members were entitled to receive  
6 all wages owed to them during their employment. Plaintiff and the other class members did  
7 not receive payment of all wages, including overtime and minimum wages and meal and rest  
8 period premiums, within any time permissible under California Labor Code section 204.

9 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
10 knew or should have known that Plaintiff and the other class members were entitled to receive  
11 complete and accurate wage statements in accordance with California law, but, in fact, they did  
12 not receive complete and accurate wage statements from Defendants. The deficiencies  
13 included, *inter alia*, the failure to include the total number of hours worked by Plaintiff and the  
14 other class members.

15 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
16 knew or should have known that Defendants had to keep complete and accurate payroll records  
17 for Plaintiff and the other class members in accordance with California law, but, in fact, did  
18 not keep complete and accurate payroll records.

19 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
20 knew or should have known that Plaintiff and the other class members were entitled to  
21 reimbursement for necessary business-related expenses.

22 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
23 knew or should have known that they had a duty to compensate Plaintiff and the other class  
24 members pursuant to California law, and that Defendants had the financial ability to pay such  
25 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely  
26 represented to Plaintiff and the other class members that they were properly denied wages, all  
27 in order to increase Defendants' profits.

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1 38. During the relevant time period, Defendants failed to pay overtime wages to  
2 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other  
3 class members were required to work more than eight (8) hours per day and/or forty (40) hours  
4 per week without overtime compensation for all overtime hours worked.

5 39. During the relevant time period, Defendants failed to provide all requisite  
6 uninterrupted meal and rest periods to Plaintiff and the other class members.

7 40. During the relevant time period, Defendants failed to pay Plaintiff and the other  
8 class members at least minimum wages for all hours worked.

9 41. During the relevant time period, Defendants failed to pay Plaintiff and the other  
10 class members all wages owed to them upon discharge or resignation.

11 42. During the relevant time period, Defendants failed to pay Plaintiff and the other  
12 class members all wages within any time permissible under California law, including, *inter*  
13 *alia*, California Labor Code section 204.

14 43. During the relevant time period, Defendants failed to provide complete or  
15 accurate wage statements to Plaintiff and the other class members.

16 44. During the relevant time period, Defendants failed to keep complete or accurate  
17 payroll records for Plaintiff and the other class members.

18 45. During the relevant time period, Defendants failed to reimburse Plaintiff and the  
19 other class members for all necessary business-related expenses and costs.

20 46. During the relevant time period, Defendants failed to properly compensate  
21 Plaintiff and the other class members pursuant to California law in order to increase  
22 Defendants' profits.

23 47. California Labor Code section 218 states that nothing in Article 1 of the Labor  
24 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty  
25 due to him [or her] under this article."

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04/20/2018

**FIRST CAUSE OF ACTION****(Violation of California Labor Code §§ 510 and 1198)****(Against SMURFIT KAPPA ORANGE COUNTY LLC, SMURFIT KAPPA NORTH  
AMERICA LLC, and DOES 1 through 100)**

48. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 47, and each and every part thereof with the same force and effect as though fully set forth herein.

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

50. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and the other class members employed by Defendants, and 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 for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

51. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and the other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

52. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

53. During the relevant time period, Plaintiff and the other class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

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54. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and the other class members.

55. Defendants' failure to pay Plaintiff and the other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

56. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

### **SECOND CAUSE OF ACTION**

**(Violation of California Labor Code §§ 226.7 and 512(a))**

**(Against SMURFIT KAPPA ORANGE COUNTY LLC, SMURFIT KAPPA NORTH AMERICA LLC, and DOES 1 through 100)**

57. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 56, and each and every part thereof with the same force and effect as though fully set forth herein.

58. At all relevant times, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and the other class members' employment by Defendants.

59. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

60. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

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61. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, 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.

62. During the relevant time period, Plaintiff and the other class members who were scheduled to work for a period of time no longer than six (6) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or rest period.

63. During the relevant time period, Plaintiff and the other class members who were scheduled to work for a period of time in excess of six (6) hours were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or rest period.

64. During the relevant time period, Defendants intentionally and willfully required Plaintiff and the other class members to work during meal periods and failed to compensate Plaintiff and the other class members the full meal period premium for work performed during meal periods.

65. During the relevant time period, Defendants failed to pay Plaintiff and the other class members the full meal period premium due pursuant to California Labor Code section 226.7.

66. Defendants' conduct violates applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

67. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one

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1 additional hour of pay at the employee's regular rate of compensation for each work day that  
2 the meal or rest period is not provided.

3 **THIRD CAUSE OF ACTION**

4 **(Violation of California Labor Code § 226.7)**

5 **(Against SMURFIT KAPPA ORANGE COUNTY LLC, SMURFIT KAPPA NORTH**  
6 **AMERICA LLC, and DOES 1 through 100)**

7 68. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
8 through 67, and each and every part thereof with the same force and effect as though fully set  
9 forth herein.

10 69. At all times herein set forth, the applicable IWC Wage Order and California  
11 Labor Code section 226.7 were applicable to Plaintiff's and the other class members'  
12 employment by Defendants.

13 70. At all relevant times, California Labor Code section 226.7 provides that no  
14 employer shall require an employee to work during any rest period mandated by an applicable  
15 order of the California IWC.

16 71. At all relevant times, the applicable IWC Wage Order provides that "[e]very  
17 employer shall authorize and permit all employees to take rest periods, which insofar as  
18 practicable shall be in the middle of each work period" and that the "rest period time shall be  
19 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)  
20 hours or major fraction thereof" unless the total daily work time is less than three and one-half  
21 (3 ½) hours.

22 72. During the relevant time period, Defendants required Plaintiff and other class  
23 members to work four (4) or more hours without authorizing or permitting a ten (10) minute  
24 rest period per each four (4) hour period worked.

25 73. During the relevant time period, Defendants willfully required Plaintiff and the  
26 other class members to work during rest periods and failed to pay Plaintiff and the other class  
27 members the full rest period premium for work performed during rest periods.

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74. During the relevant time period, Defendants failed to pay Plaintiff and the other class members the full rest period premium due pursuant to California Labor Code section 226.7

75. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

76. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

#### **FOURTH CAUSE OF ACTION**

**(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

**(Against SMURFIT KAPPA ORANGE COUNTY LLC, SMURFIT KAPPA NORTH AMERICA LLC, and DOES 1 through 100)**

77. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 76, and each and every part thereof with the same force and effect as though fully set forth herein.

78. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

79. During the relevant time period, Defendants failed to pay minimum wage to Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1.

80. Defendants' failure to pay Plaintiff and the other class members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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81. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

82. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

### **FIFTH CAUSE OF ACTION**

**(Violation of California Labor Code §§ 201 and 202)**

**(Against SMURFIT KAPPA ORANGE COUNTY LLC, SMURFIT KAPPA NORTH AMERICA LLC, and DOES 1 through 100)**

83. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 82, and each and every part thereof with the same force and effect as though fully set forth herein.

84. At all relevant times herein set forth, 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 if an employee quits 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' 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.

85. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

86. Defendants' failure to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.



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87. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

88. Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

### **SIXTH CAUSE OF ACTION**

**(Violation of California Labor Code § 204)**

**(Against SMURFIT KAPPA ORANGE COUNTY LLC, SMURFIT KAPPA NORTH AMERICA LLC, and DOES 1 through 100)**

89. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 88, and each and every part thereof with the same force and effect as though fully set forth herein.

90. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 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.

91. At all times herein set forth, California Labor Code section 204 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.

92. At all times herein set forth, California Labor Code section 204 provides 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.

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93. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members all wages due to them, within any time period permissible under California Labor Code section 204.

94. Plaintiff and the other class members are entitled to recover all remedies available for violations of California Labor Code section 204.

#### **SEVENTH CAUSE OF ACTION**

**(Violation of California Labor Code § 226(a))**

**(Against SMURFIT KAPPA ORANGE COUNTY LLC, SMURFIT KAPPA NORTH AMERICA LLC, and DOES 1 through 100)**

95. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 94, and each and every part thereof with the same force and effect as though fully set forth herein.

96. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

97. Defendants have intentionally and willfully failed to provide Plaintiff and the other class members with complete and accurate wage statements. The deficiencies include,

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1 but are not limited to: the failure to include the total number of hours worked by Plaintiff and  
2 the other class members.

3 98. As a result of Defendants' violation of California Labor Code section 226(a),  
4 Plaintiff and the other class members have suffered injury and damage to their statutorily-  
5 protected rights.

6 99. More specifically, Plaintiff and the other class members have been injured by  
7 Defendants' intentional and willful violation of California Labor Code section 226(a) because  
8 they were denied both their legal right to receive, and their protected interest in receiving,  
9 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

10 100. Plaintiff and the other class members are entitled to recover from Defendants the  
11 greater of their actual damages caused by Defendants' failure to comply with California Labor  
12 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per  
13 employee.

14 101. Plaintiff and the other class members are also entitled to injunctive relief to  
15 ensure compliance with this section, pursuant to California Labor Code section 226(h).

#### 16 **EIGHTH CAUSE OF ACTION**

17 **(Violation of California Labor Code § 1174(d))**

18 **(Against SMURFIT KAPPA ORANGE COUNTY LLC, SMURFIT KAPPA NORTH**  
19 **AMERICA LLC, and DOES 1 through 100)**

20 102. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
21 through 101, and each and every part thereof with the same force and effect as though fully set  
22 forth herein.

23 103. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a  
24 central location in the state or at the plants or establishments at which employees are  
25 employed, payroll records showing the hours worked daily by and the wages paid to, and the  
26 number of piece-rate units earned by and any applicable piece rate paid to, employees  
27 employed at the respective plants or establishments. These records shall be kept in accordance

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1 with rules established for this purpose by the commission, but in any case shall be kept on file  
2 for not less than two years.

3 104. Defendants have intentionally and willfully failed to keep accurate and complete  
4 payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other  
5 class members.

6 105. As a result of Defendants' violation of California Labor Code section 1174(d),  
7 Plaintiff and the other class members have suffered injury and damage to their statutorily-  
8 protected rights.

9 106. More specifically, Plaintiff and the other class members have been injured by  
10 Defendants' intentional and willful violation of California Labor Code section 1174(d) because  
11 they were denied both their legal right and protected interest, in having available, accurate and  
12 complete payroll records pursuant to California Labor Code section 1174(d).

### 13 NINTH CAUSE OF ACTION

14 (Violation of California Labor Code §§ 2800 and 2802)

15 (Against SMURFIT KAPPA ORANGE COUNTY LLC, SMURFIT KAPPA NORTH  
16 AMERICA LLC, and DOES 1 through 100)

17 107. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
18 through 106, and each and every part thereof with the same force and effect as though fully set  
19 forth herein.

20 108. Pursuant to California Labor Code sections 2800 and 2802, an employer must  
21 reimburse its employee for all necessary expenditures incurred by the employee in direct  
22 consequence of the discharge of his or her job duties or in direct consequence of his or her  
23 obedience to the directions of the employer.

24 109. Plaintiff and the other class members incurred necessary business-related  
25 expenses and costs that were not fully reimbursed by Defendants.

26 110. Defendants have intentionally and willfully failed to reimburse Plaintiff and the  
27 other class members for all necessary business-related expenses and costs.

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111. Plaintiff and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

#### **TENTH CAUSE OF ACTION**

**(Violation of California Business & Professions Code §§ 17200, et seq.)**

**(Against SMURFIT KAPPA ORANGE COUNTY LLC, SMURFIT KAPPA NORTH AMERICA LLC, and DOES 1 through 100)**

112. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 111, and each and every part thereof with the same force and effect as though fully set forth herein.

113. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

114. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code section 17200, et seq.

115. A violation of California Business & Professions Code section 17200, et seq. may be predicated on the violation of any state or federal law. In this instant case, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work overtime without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Defendants' policies and practices of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff and the other class members violate

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1 California Labor Code sections 201, 202 and 204. Defendants also violated California Labor  
2 Code sections 226(a), 1174(d), 2800 and 2802.

3 116. As a result of the herein described violations of California law, Defendants  
4 unlawfully gained an unfair advantage over other businesses.

5 117. Plaintiff and the other class members have been personally injured by  
6 Defendants' unlawful business acts and practices as alleged herein, including but not  
7 necessarily limited to the loss of money and/or property.

8 118. Pursuant to California Business & Professions Code sections 17200, et seq.,  
9 Plaintiff and the other class members are entitled to restitution of the wages withheld and  
10 retained by Defendants during a period that commences four years preceding the filing of this  
11 Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section  
12 1021.5 and other applicable laws; and an award of costs.

### 13 DEMAND FOR JURY TRIAL

14 Plaintiff, individually, and on behalf of other members of the general public similarly  
15 situated, requests a trial by jury.

### 16 PRAAYER FOR RELIEF

17 WHEREFORE, Plaintiff, individually, and on behalf of other members of the general  
18 public similarly situated, prays for relief and judgment against Defendants, jointly and  
19 severally, as follows:

### 20 Class Certification

- 21 1. That this action be certified as a class action;
- 22 2. That Plaintiff be appointed as the representative of the Class;
- 23 3. That counsel for Plaintiff be appointed as Class Counsel; and
- 24 4. That Defendants provide to Class Counsel immediately the names and most  
25 current/last known contact information (address, e-mail and telephone numbers) of all class  
26 members.

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**As to the First Cause of Action**

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

9. For such other and further relief as the Court may deem just and proper.

**As to the Second Cause of Action**

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(b);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the Court may deem just and proper.

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**As to the Third Cause of Action**

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(b);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

**As to the Fourth Cause of Action**

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

29. For such other and further relief as the Court may deem just and proper.



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**As to the Fifth Cause of Action**

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other class members no longer employed by Defendants;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employ;

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

34. For such other and further relief as the Court may deem just and proper.

**As to the Sixth Cause of Action**

35. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the other class members;

36. For all actual, consequential, and incidental losses and damages, according to proof;

37. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

38. For such other and further relief as the Court may deem just and proper.

**As to the Seventh Cause of Action**

39. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

40. For actual, consequential and incidental losses and damages, according to proof;

41. For statutory penalties pursuant to California Labor Code section 226(e);



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42. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h); and

43. For such other and further relief as the Court may deem just and proper.

**As to the Eighth Cause of Action**

44. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records for Plaintiff and the other class members as required by California Labor Code section 1174(d);

45. For actual, consequential and incidental losses and damages, according to proof;

46. For statutory penalties pursuant to California Labor Code section 1174.5; and

47. For such other and further relief as the Court may deem just and proper.

**As to the Ninth Cause of Action**

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

49. For actual, consequential and incidental losses and damages, according to proof;

50. For the imposition of civil penalties and/or statutory penalties;

51. For reasonable attorneys' fees and costs of suit incurred herein; and

52. For such other and further relief as the Court may deem just and proper.

**As to the Tenth Cause of Action**

53. That the Court decree, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members, failing to pay Plaintiff's and the other class members' wages timely as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800 and 2802.

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1 54. For restitution of unpaid wages to Plaintiff and all the other class members and  
2 all pre-judgment interest from the day such amounts were due and payable;

3 55. For the appointment of a receiver to receive, manage and distribute any and all  
4 funds disgorged from Defendants and determined to have been wrongfully acquired by  
5 Defendants as a result of violation of California Business and Professions Code sections  
6 17200, et seq.;

7 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
8 California Code of Civil Procedure section 1021.5;

9 57. For injunctive relief to ensure compliance with this section, pursuant to  
10 California Business and Professions Code sections 17200, et seq.; and

11 58. For such other and further relief as the Court may deem just and proper.

12 Dated: April 19, 2018

LAWYERS for JUSTICE, PC

13  
14 By: 

Edwin Aiwanian

Attorneys for Plaintiff

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Edwin Aiwarzian (State Bar No. 232943)</b> <b>LAWYERS FOR JUSTICE, PC</b> 410 West Arden Avenue, Suite 203 Glendale, California 91203 TELEPHONE NO.: (818) 265-1020 FAX NO.: (818) 265-1021 ATTORNEY FOR (Name): <b>Plaintiff Eduardo Chavez</b>		<b>FOR COURT USE ONLY</b>  <b>FILED</b> Superior Court of California County of Los Angeles  <b>APR 19 2018</b>  Sherri R. Carter, Executive Officer/Clerk By <u>Nancy Alvarez</u> Deputy
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b> STREET ADDRESS: <b>111 North Hill Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Los Angeles, 90012</b> BRANCH NAME: <b>Stanley Mosk Courthouse</b>		
CASE NAME: <b>Chavez vs. Smurfit Kappa Orange County LLC, et al.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	
<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER:  JUDGE: <b>BC 702936</b> DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 10
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 19, 2018

Edwin Aiwarzian

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

 Form Adopted for Mandatory Use  
 Judicial Council of California  
 CM-010 [Rev. July 1, 2007]

## CIVIL CASE COVER SHEET

 Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;  
 Cal. Standards of Judicial Administration, std. 3.10  
 www.courtinfo.ca.gov

SHORT TITLE: Chavez vs. Smurfit Kappa Orange County LLC, et al.

CASE NUMBER

**CIVIL CASE COVER SHEET ADDENDUM AND  
STATEMENT OF LOCATION**

**BC 7 0 2 9 3 6**

**(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES ☒ CLASS ACTION? YES LIMITED CASE? YES TIME ESTIMATED FOR TRIAL 10-15 HOURS/☒ DAYS

Item II. Indicate the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

**Step 1:** After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column B below which best describes the nature of this case.

**Step 3:** In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.3.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

1. Class actions must be filed in the Stanley Mosk Courthouse, central district.
2. May be filed in central (other county, or no bodily injury/property damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office
11. Mandatory Filing Location (Hub Case)

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4. 1., 4.
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 4. 1., 4. 1., 3. 1., 4.

LACIV 109 (Rev 3/15)  
LASC Approved 03-04

**CIVIL CASE COVER SHEET ADDENDUM  
AND STATEMENT OF LOCATION**

Local Rule 2.3  
Page 1 of 4

SHORT TITLE: <b>Chavez vs. Smurfit Kappa Orange County LLC, et al.</b>	CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
<b>Non-Personal Injury/ Property Damage/ Wrongful Death Tort</b>	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
<b>Employment</b>	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
	Other Employment (15)	<input checked="" type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
<b>Contract</b>	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case <input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	2., 5., 6, 11 2., 5, 11 5, 6, 11
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation      Number of parcels _____	2.
	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
<b>Real Property</b>	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
<b>Unlawful Detainer</b>	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

04/29/2018

SHORT TITLE: Chavez vs. Smurfit Kappa Orange County LLC, et al.		CASE NUMBER
	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case
Miscellaneous Civil Complaints	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition

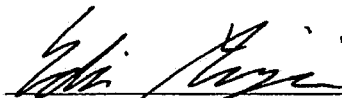
SHORT TITLE: Chavez vs. Smurfit Kappa Orange County LLC, et al.	CASE NUMBER
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**Item III. Statement of Location:** Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

<b>REASON:</b> Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case.  <input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.		ADDRESS: 13400 Nelson Avenue E
CITY: City of Industry	STATE: CA	ZIP CODE: 91746

**Item IV. Declaration of Assignment:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.3, subd.(a)].

Dated: April 18, 2018

  
 (SIGNATURE OF ATTORNEY/FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/15).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

04/20/2018



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 05/07/18

DEPT. SS17

HONORABLE MAREN E. NELSON

JUDGE

P. MARTINEZ

DEPUTY CLERK

HONORABLE  
ADD-ON

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NOT REPORTED

Reporter

BC702936

Plaintiff

Counsel

EDUARDO CHAVEZ

NO APPEARANCES

VS

Defendant

SMURFIT KAPPA ORANGE COUNTY LLC

Counsel

AL

**NATURE OF PROCEEDINGS:****COURT ORDER REGARDING NEWLY FILED CLASS ACTION**

48 By this order, the Court determines this case to be Complex according to Rule 3.400 of the California Rules of Court. The Clerk's Office has randomly assigned this case to this department for all purposes.

By this order, the Court stays the case, except for service of the Summons and Complaint. The stay continues at least until the Initial Status Conference. Initial Status Conference is set for July 24, 2018, at 9:00 a.m., in this department. At least 10 days prior to the Initial Status Conference, counsel for all parties must discuss the issues set forth in the Initial Status Conference Order issued this date. The Initial Status Conference Order is to help the Court and the parties manage this complex case by developing an orderly schedule for briefing, discovery, and court hearings. The parties are informally encouraged to exchange documents and information as may be useful for case evaluation.

Responsive pleadings shall not be filed until further Order of the Court. Parties must file a Notice of Appearance in lieu of an Answer or other responsive pleading. The filing of a Notice of Appearance shall not constitute a waiver of any substantive or procedural challenge to the Complaint. Nothing in this order stays the time for filing an Affidavit of



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/07/18

DEPT. SS17

HONORABLE MAREN E. NELSON

JUDGE

P. MARTINEZ

DEPUTY CLERK

HONORABLE  
ADD-ON

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NOT REPORTED

Reporter

BC702936

Plaintiff

Counsel

EDUARDO CHAVEZ

NO APPEARANCES

VS

Defendant

SMURFIT KAPPA ORANGE COUNTY LLC

Counsel

AL

## NATURE OF PROCEEDINGS:

Prejudice pursuant to Code of Civil Procedure Section 170.6.

Counsel are directed to access the following link for information on procedures in the Complex Litigation Program courtrooms:

<http://www.lacourt.org/division/civil/CI0037.aspx>

According to Government Code Section 70616 subdivisions (a) and (b), each party shall pay a fee of \$1,000.00 to the Los Angeles Superior Court within 10 calendar days from this date.

The plaintiff must serve a copy of this minute order and the attached Initial Status Conference Order on all parties forthwith and file a Proof of Service in this department within seven days of service.

## CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the 5/7/18 Minute Order upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/07/18

DEPT. SS17

HONORABLE MAREN E. NELSON

JUDGE

P. MARTINEZ

DEPUTY CLERK

HONORABLE  
ADD-ON

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NOT REPORTED

Reporter

BC702936

Plaintiff

Counsel

EDUARDO CHAVEZ

NO APPEARANCES

VS

Defendant

SMURFIT KAPPA ORANGE COUNTY LLC

Counsel

AL

## NATURE OF PROCEEDINGS:

at the courthouse in Los Angeles,  
California, one copy of the original filed/entered  
herein in a separate sealed envelope to each address  
as shown below with the postage thereon fully prepaid,  
in accordance with standard court practices.

Dated: May 7, 2018

Sherri R. Carter, Executive Officer/Clerk

Pedro Martinez

By:

P. Martinez, Judicial Assistant

Aiwazian, Edwin, Esq.  
Lawyers for Justice, PC  
410 West Arden Avenue, Suite 203  
Glendale, CA 91203

**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

Edwin Aiwazian (SBN 232943)  
Arby Aiwazian (SBN 269827)  
**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203  
Telephone (818) 265-1020  
Facsimile (818) 265-1021

*Attorneys for Plaintiff*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES – SPRING STREET**

EDUARDO CHAVEZ, individually, and  
on behalf of other members of the general  
public similarly situated and on behalf of  
other aggrieved employees pursuant to the  
California Private Attorneys General Act;

Plaintiff,

vs.

SMURFIT KAPPA ORANGE COUNTY  
LLC, an unknown business entity;  
SMURFIT KAPPA NORTH AMERICA  
LLC, an unknown business entity; and  
DOES 1 through 100, inclusive,

Defendants.

Case No.: BC702936

Honorable Maren E. Nelson  
Department SSC-17

**CLASS ACTION**

**PROOF OF SERVICE RE: COURT  
ORDER REGARDING NEWLY  
FILED CLASS ACTION AND  
INITIAL STATUS CONFERENCE  
ORDER**

Complaint Filed: April 19, 2018  
Jury Trial Date: None Set

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

**PROOF OF SERVICE RE: COURT ORDER REGARDING NEWLY FILED  
CLASS ACTION AND INITIAL STATUS CONFERENCE ORDER**

*STATE OF CALIFORNIA, COUNTY OF LOS ANGELES*

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 410 West Arden Avenue, Suite 203, Glendale, California 91203.

On May 30, 2018, I served the foregoing document(s) described as:

- **COURT ORDER REGARDING NEWLY FILED CLASS ACTION**
- **INITIAL STATUS CONFERENCE ORDER (COMPLEX CASES AND CLASS ACTIONS)**

on interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope addressed as follows:

**CT CORPORATION SYSTEM**

818 West 7<sup>th</sup> Street, Suite 930  
Los Angeles, California 90017

*Agent for Service of Process for Smurfit Kappa North America, LLC*

**[X] BY U.S. MAIL**

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

**[X] STATE**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 30, 2018, at Glendale, California.



Suzana Solis

CONFIRMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

MAY 07 2018

Sherri R. Carter, Executive Officer/Clerk  
By: Pedro Martinez, Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

Eduardo Chavez,

Plaintiff,

vs.

Smurfit Kappa Orange County LLC., et al.,

Defendant

) Case No.: BC702936

)  
) INITIAL STATUS CONFERENCE ORDER  
) (COMPLEX CASES AND CLASS  
) ACTIONS)

)  
)  
) Dept. SSC-17  
) Spring Street Courthouse  
) Hon. Maren E. Nelson

This case has been assigned, for all purposes, to the Complex Litigation  
Program, Department SSC-17, Spring Street Courthouse (312 N. Spring Street, Los  
Angeles, CA 90012), Hon. Maren E. Nelson.

Pending further order, the following is ordered:

//

//

1 **I. Immediate Stay in Proceedings to Facilitate Case Management**

2 All proceedings, including motions and discovery, are stayed. The stay  
3 precludes defendants from filing answers, demurrers, motions to strike, and motions  
4 challenging jurisdiction. It also stays all parties' obligations to respond to any discovery  
5 promulgated in the case to date.

6 Future stays imposed in this action for purposes of managing the case, including  
7 stays of discovery, do not affect the five year period in which cases shall be brought to  
8 trial under Code of Civil Procedure Section 583.310 unless the parties otherwise so  
9 stipulate in accordance with Section 583.330.

10 This stay is issued to assist in managing this "complex" case and to reduce  
11 litigation costs through the development of an orderly schedule for briefing and hearings  
12 on procedural and substantive challenges to the complaint and other issues that may  
13 assist in the orderly management of this case. This stay shall not preclude the parties  
14 from continuing to informally exchange documents that may assist in their initial  
15 evaluation of the issues presented in this case; however, all outstanding discovery  
16 requests are stayed.

17  
18 **II. Initial Status Conference**

19 Counsel for all parties shall appear in Department SSC-17 **in person** for an Initial  
20 Status Conference ("ISC") on July 24, 2018, at 9:00 a.m. Counsel attending the ISC or  
21 any other status conference should be familiar with the facts as then understood and be  
22 able to make binding agreements respecting case management.

23 Parties presently engaged in mediation or who have secured a date with a  
24 mediator for mediation may stipulate to one continuance of the ISC, provided they also  
25

1 agree upon an e-service provider, as set forth in Item 5, below, and include the name of  
2 the provider in their Stipulation for Continuance.

3 At the ISC, the Court will discuss case management and invite the parties to  
4 propose procedures to enhance efficiency and avoid duplicative or unnecessary  
5 expenditures of time. The Court is particularly interested in making early decisions on  
6 any threshold or potentially dispositive issues as a means of enhancing the parties'  
7 ability to assess the case.

8 At least 15 days prior to the ISC, all counsel shall meet together, in person, to  
9 discuss case management.<sup>1</sup> Plaintiff's counsel shall take the lead in preparing a joint  
10 ISC Statement and ensuring that it is filed at least **five COURT** days prior to the ISC.  
11 To the extent the parties are unable to agree on a joint submission, each party may  
12 separately present a brief statement of its position.

13 The ISC Statement shall contain the following:

14  
15 1. A succinct description of key factual and legal issues in the case to  
16 alert the Court to likely proceedings and disputes, e.g., important contractual  
17 provisions, statutes, regulations, and affirmative defenses, and pending appellate  
18 cases that may impact the action. This discussion should include any issues of  
19 jurisdiction, venue, contractual arbitration/judicial reference that any party intends  
20 to raise and the meet and confer efforts to date on these issues. In class  
21 actions, counsel should address issues such as an agreement to share the cost  
22 of class notice/opt out procedures, the adequacy of class representatives,  
23  
24

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25 <sup>1</sup> If the travel time for an in-person meeting exceeds 90 minutes, counsel may participate by  
telephone provided that they use technology allowing face-to-face communication.



1 conflicts of interest among class representatives, and contractual arbitration  
2 provisions affecting jurisdiction.

3 2. Whether the action incorrectly identifies the name of any party and whether any  
4 party intends to add parties by way of amendment, cross-complaint, or the like.

5 3. The names, addresses, telephone, email, and facsimile numbers of all counsel  
6 and the parties they represent.

7 4. Any basis for the Court's recusal or disqualification.

8 5. A joint recommendation for an e-service provider for inclusion in the Court's  
9 order for initiation of e-service. The parties must employ an agreed e-service  
10 provider. The parties shall identify the appointed e-service provider in the  
11 caption of each filing.

12 6. A brief description of any related cases pending in other courts or anticipated for  
13 future filing.

14 7. Whether or not there is insurance coverage for this dispute and the extent of  
15 coverage for liability and/or defense costs, as well as the names of the carriers.

16 8. A plan to preserve evidence, to deploy a uniform system for identification of  
17 documents, and to protect confidentiality by, for example, executing a protective  
18 order.

19 9. A discovery plan reflecting the parties' consideration of phased discovery, e.g.,  
20 limiting initial discovery to a significant or dispositive issue as a predicate to an  
21 important early ruling or meaningful participation in an early mediation. In class  
22 actions, the parties should address whether discovery should initially be limited to  
23 class certification issues.  
24  
25



1 10. Where appropriate, the parties should outline a process for managing discovery  
2 of electronically stored information (ESI) by, for example, scheduling a meeting  
3 among counsel and the parties' information technology consultants in order to  
4 address (1) the information management systems employed by the parties; (2)  
5 the location and custodian(s) of information likely to be subject to production  
6 (including the identification of network and email servers and hard drives  
7 maintained by target custodians); (3) the format in which electronically stored  
8 information will be produced; (4) the type of ESI that will be produced, i.e., data  
9 files, emails, etc.; and (5) appropriate search criteria for focused requests.

10 11. All discovery disputes shall be resolved by reference to the Code of Civil  
11 Procedure, unless otherwise stipulated. Counsel shall advise whether they wish  
12 to enter into stipulations to resolve discovery disputes such as:

- 13
- 14 i. Agreeing to meet and confer in person (after exchanging  
15 correspondence articulating each side's position) in an effort to  
16 narrow the issues in dispute;
  - 17 ii. Extending deadlines for filing motions to compel in favor of jointly  
18 scheduling an informal discovery conference in an effort to achieve  
19 a mediated solution;
  - 20 iii. Structuring discovery motions as joint statements presenting each  
21 side's position on jointly identified issues.
- 22

23 12. Any proposed mechanism and the timing of mediation and/or mandatory  
24 settlement conferences to assist in resolution of the case.

25 13. Any issues regarding publicity which the Court should consider.

1 14. Recommended dates and times for trial, filing of motions for class certification,  
2 alternative dispute resolution, and deadlines (and proposed briefing schedules)  
3 for filing other anticipated motions.

4 15. A recommended date for the next Status Conference.

5 **III. Reminders And Other Information**

6 (1) Counsel may secure date for motions by calling the calendar clerk at 213-  
7 310-7017.

8 (2) Counsel may appear by CourtCall for status conferences other than the ISC.  
9 Please use this device in a quiet place and note that a party speaking on CourtCall may  
10 not hear simultaneous speech in the courtroom. Please speak slowly and pause  
11 frequently.

12 (3) Court reporters are not provided for hearings or trials. The parties should  
13 make their own arrangements in this regard for any hearing where a transcript is  
14 desired.

15 (4) It is the responsibility of all counsel to notify the Court promptly of any related  
16 case and to secure a ruling thereon. See Cal. Rules of Court, Rule 3.300 et. seq. This  
17 responsibility is on-going.

18 (5) In the ordinary course discovery motions will not be heard without an Informal  
19 Discovery Conference pursuant to Cal. Code of Civ. Pro. § 2016.080. Counsel may  
20 arrange for an IDC by filing LACIV094.

21 (6) Posting documents to the e-service provider does not constitute filing a  
22 document. The parties must physically deliver a copy to be filed at the filing window,  
23 courtroom, or file by facsimile. All filings shall be at the Mosk Courthouse, 111 N. Hill  
24 Street, Los Angeles CA. Counsel must deliver a courtesy copy to the courtroom at  
25 Spring Street on the day of filing. Filings will not be received at the Spring Street

1 Courthouse except for same day ex parte applications and documents filed for trials in  
2 progress. Further details are available on the Court's website at:

3 <http://www.lacourt.org/newsmedia/notices/attorneynotice>.

4 (7) If the e-service provider maintains a message board any message for the  
5 Court should be joint and neutral in tone.

6 (8) Counsel desiring a protective order should consult the model on the court's  
7 website and provide a redlined copy if deviations are made from same.

8 (9) The dismissal of a class action requires court approval. Cal. Rules of Court,  
9 Rule 3.770(a). Counsel must submit a declaration setting forth, among other things,  
10 the reasons why a party seeks a dismissal in a class action and any and all  
11 consideration given in exchange for the dismissal.

12 (10) Settlement of claims filed under the Private Attorney General Act (PAGA)  
13 (whether or not filed as part of a class action) require notice to the Labor and Workforce  
14 Development Agency. Labor Code § 2699 (I)(2). Department SSC-17 requires a  
15 noticed hearing, with proof of service to LWDA and a proposed Order, to secure  
16 approval of the settlement of a PAGA claim. If properly noticed and no timely opposition  
17 is filed, the matter ordinarily will be treated as an unopposed motion which will be  
18 reviewed in chambers and without the need for an appearance at the hearing by  
19 counsel. If the matter is opposed, or counsel are otherwise notified by the Clerk, an  
20 appearance is required.

21 (11) To obtain approval of a class action settlement, the parties should adhere to  
22 the Guidelines for Motions for Preliminary and Final Approval posted on the court's  
23 website under Tools for Litigators. The Court requires counsel to address any fee  
24 splitting arrangement(s) and to demonstrate compliance with California Rules of Court,  
25

1 Rule 3.769 and the Rules of Professional Conduct 2-200(a). *Mark v. Spencer* (2008)  
2 166 Cal.App.4<sup>th</sup> 219.

3  
4 **IV. Notice of the ISC Order**

5 Plaintiff's counsel shall serve this Initial Status Conference Order on all defense  
6 counsel, or if counsel is not known, on each defendant within five (5) days of the date of  
7 this Order. If the Complaint has not been served as of the date of this Order, plaintiff(s)  
8 must serve the Complaint, along with a copy of this Order, within five (5) days of the  
9 date of this Order.

10 Each as yet non-appearing defendant shall file a Notice of Appearance  
11 (identifying counsel by name, firm name, address, email address, telephone number  
12 and fax number). The filing of a Notice of Appearance is without prejudice to (a) any  
13 jurisdictional, substantive or procedural challenge to the Complaint, (b) any affirmative  
14 defense, and (c) the filing of any cross-complaint in this action.

15 Date: May 7, 2018

16 MAREN E. NELSON

17  
18 

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Maren E. Nelson  
19 Judge of the Superior Court  
20  
21  
22  
23  
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7 LLC formerly known as and erroneously  
sued as SMURFIT KAPPA ORANGE  
8 COUNTY LLC

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11 EDUARDO CHAVEZ, individually,  
12 and on behalf of other members of  
the general public similarly situated,

13 Plaintiff,

14 v.

15 SMURFIT KAPPA ORANGE  
16 COUNTY LLC, an unknown  
business entity; SMURFIT KAPPA  
17 NORTH AMERICA LLC, an  
unknown business entity, and DOES  
18 1 through 100, inclusive,

19 Defendant.

Case No.

**DECLARATION OF F.W.  
BURNETT, JR. IN SUPPORT OF  
DEFENDANT'S REMOVAL**

**DECLARATION OF F.W. BURNETT, JR.**

I, F. W. Burnett, Jr., hereby declare as follows:

1. I am the North America Legal Counsel for Smurfit Kappa North America LLC (“Defendant”) and have been employed in this capacity since August 2017. In my capacity as Legal Counsel, I am authorized to make this declaration on behalf of and regarding Defendant.

2. There is no entity that is currently active named Smurfit Kappa Orange County LLC. Smurfit Kappa Orange County LLC changed its name to Smurfit Kappa North America LLC in 2015. Since that time, and at the time of this filing, there has been no entity known as Smurfit Kappa Orange County LLC.

3. Defendant is registered in Delaware, and has its principal place of business in Texas. Further, at the time this action was commenced in state court and at the time this removal is filed, the members/managers of Smurfit Kappa North America LLC are four individuals, Greg Hall, Dave Nelson, Brian McDonnel, and Juan Guillermo Castaneda, involved in the operation of the company from its headquarters in Texas. The majority, if not all, of Defendant’s executive and administrative functions are performed in Texas. Officers’ meetings generally take place in Texas, and Defendant’s financial records are maintained in Texas. Defendant’s principal place of business is not California.

4. Teamsters District Counsel No. 2, Local No. 388M (Union) is a labor organization in which certain of Defendant’s employees participate, and which exists for the purpose of dealing with employees concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work. Defendant operates two facilities in which employees’ employment was or is governed by a CBA, including the facility in which Plaintiff worked. The Union serves as the exclusive collective bargaining representative for Plaintiff and other employees at these facilities. At all relevant times, a collective bargaining agreement (CBA) was in place between

1 Defendant and the Union. Attached hereto as **Exhibit 1** is a true and correct copy of  
2 the CBA applicable to the facility in which Plaintiff worked.

3 5. The facility in which Plaintiff worked closed in February 2018. In the two  
4 facilities with an operative CBA, there were over 250 putative class members employed  
5 at any given time between April 19, 2014, four years before the filing of the complaint,  
6 and February, 2018. More than 150 putative class members ceased employment with  
7 Defendant in the three-year period preceding the filing of Plaintiff's lawsuit.

8 6. I have access to and am familiar with current and former employee records.  
9 These employment records are prepared and maintained in the ordinary course of  
10 business, and are accurate to the best of my knowledge and belief. I am also familiar  
11 with the manner in which these records are routinely maintained for business purposes.  
12 The average hourly rate for non-exempt employees who worked at Defendant's  
13 unionized facilities in California between 2014 and 2018 was over \$20 per hour.

14 I declare under penalty of perjury under the laws of the United States of America  
15 that the foregoing is true and correct.

16 Executed this 7th day of June, 2018 at Irving, Texas.

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19 F. W. Burnett, Jr.  
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# **EXHIBIT 1**



**COLLECTIVE BARGAINING AGREEMENT**

**between**

**SMURFIT KAPPA NORTH AMERICA LLC  
dba  
COI GRAPHICS**

**and**

**TEAMSTERS DISTRICT COUNCIL NO. 2**

**Affiliated with the Graphic Communications Conference ~ International  
Brotherhood Of Teamsters**

**EFFECTIVE DATES**

**December 25, 2015 through December 24, 2018**

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## AGREEMENT

THIS AGREEMENT is made and entered into this 19<sup>th</sup> day of February, 2016, by and between SMURFIT KAPPA NORTH AMERICA LLC dba COI GRAPHICS, hereinafter designated as the "Company" or "Employer" and TEAMSTERS DISTRICT COUNCIL NO. 2, LOCAL NO. 388M, hereinafter referred to as the "Union", and constitutes the sole agreement between the parties.

### SECTION 1 RECOGNITION

1.1 The Company hereby recognizes the Union as the exclusive representative of its bargaining unit employees as follows:

Included: All production and maintenance employees, warehousemen, and truck drivers employed by the Employer in the City of Industry, California.

Excluded: All other employees, including office clerical employees, professional employees, salesmen, watchmen, guards, and supervisors as defined in the Act.

1.2 Except in case of emergency, in order to instruct members of the bargaining unit, or when legitimate safety concerns demand that a supervisor correct a dangerous situation without waiting for a bargaining unit employee to become available, supervisors (within the meaning of the Act) shall not be allowed to perform bargaining unit work.

### SECTION 2 REPRESENTATION

2.1 The Union shall select, from among the regular full time employees, one (1) chief shop steward and up to one (1) additional shop steward on each shift and in each location (other than the shift and location where the chief shop steward is assigned) where bargaining unit work is being performed. The Company shall recognize such stewards as representatives of the Union for purposes of representing employees during the discussion of complaints and the processing of grievances.

2.2 The Union agrees to furnish the Company with a written list naming the steward and Business Representative of the Union; and the Union shall notify the Company promptly in writing of any changes of names during the term of this Agreement.

2.3 Except as provided for in this Agreement, no Union business or activity will be conducted during working hours without the specific permission of management.

2.4 It is understood and agreed that employees acting as Union Stewards have full-time production work to perform and that they shall not leave their work during working hours except as set forth herein. To facilitate the handling of grievances, a union steward may, from time to time as need arises, after obtaining permission from his foreman or supervisor, and after informing his foreman or supervisor of the department he wishes to visit, leave his work station to investigate or assist in the settlement of

grievances arising within his jurisdiction. The parties hereto agree that each will cooperate with the other in reducing to a minimum the actual time spent by a steward in investigating, presenting, and adjusting grievances and disputes.

2.5 The business agent or other duly authorized representative of the Union shall be permitted to visit the plant during operating hours provided he first notifies management before entering the plant. The business agent or other duly authorized representative of the Union shall not interfere with the progress of the work without specific permission from management.

### **SECTION 3 UNION SECURITY**

3.1 All present employees who are members of the Union on the effective date of this Agreement or the date of execution, whichever occurs later, shall, as a condition of employment, remain members of the Union, as defined by the National Labor Relations Act.

3.2 All present employees who are not members of the Union on the effective date of this Agreement, or the date of execution, whichever occurs later, shall, as a condition of employment, on or after the thirtieth (30th) day following the effective date of this Agreement, or the date of execution, whichever occurs later, become and remain members of the Union, as defined by the National Labor Relations Act.

3.3 All new employees hired on or after the effective date of this Agreement, or the date of execution, whichever occurs later, shall, as a condition of employment, on or after the thirtieth (30) day following the beginning of such employment, become and remain members of the Union, as defined by the National Labor Relations Act.

3.4 It is understood that the Employer will not be asked to act upon any question regarding jurisdiction which may arise between the Union and any other union, and should a jurisdiction question arise, there shall be no strike, work stoppage, or work interruption by the signatory Union pending settlement of the jurisdictional question by the unions involved.

#### **3.5 - Dues Checkoff:**

1. The Employer agrees to deduct, on a weekly basis, the appropriate portion of monthly Union dues owing from the earnings of each employee from whom the Employer has received proper authorization. Such authorization shall be irrevocable for the period of one (1) year from the date of delivery thereof to the Employer or until the termination of this Agreement, whichever occurs sooner, and such authorization shall be automatically renewed and irrevocable for successive periods of one (1) year each, or for each successive collective bargaining agreement between the Employer and the Union, whichever is the shorter, unless written notice (in timely compliance with the revocation provision shown on the signed authorization) is given by the employee to the Employer and the Union prior to the expiration of each one (1) year period, or each applicable collective bargaining agreement between the Employer and the Union, whichever occurs sooner.

2. The Employer also agrees to deduct the regular initiation fees for new employees from whom a written authorization has been received.

3. All monies deducted by the Employer from earnings of employees shall be transmitted to the Union monthly.

4. The Union accepts full responsibility for the authenticity of each and every authorization submitted to the Employer and shall indemnify and save the Employer harmless from any claims, suits, judgments, or attachments, in accordance with any such authorizations. The Union agrees to refund promptly to the Employer or employee any such dues or fees found to have been erroneously or improperly deducted.

5. The former paragraph notwithstanding, the Employer shall not be indemnified nor saved and held harmless by the Union for any claim, suit, judgment, or attachment arising out of or involving the Employer's payroll deduction of core union dues.

3.6 Each January, April, July, and October, the Company shall provide the Union with a complete list of all employees covered by the terms of this Agreement. Such list shall include the following information for each employee:

Name  
Social Security Number  
Shift Assignment  
Straight time hourly wage rate  
Classification  
Date of Hire  
Date of Birth  
Termination date, if applicable

#### **SECTION 4 MANAGEMENT PREROGATIVE**

4.1 The rights of management in the operations of its business are limited solely by the provisions of this Agreement and, except as specifically abridged, delegated, granted and modified by this Agreement, all of the rights, powers and authority of the Company shall remain exclusively and without limits within the rights of management.

4.2 It is recognized and agreed that the rights of management include, but are not limited to, the type of products to be sold or distributed, schedules of production, process and means of doing business and locations of doing business are solely Company prerogatives. The Company may at its sole discretion contract out for work elsewhere to any person, firm or corporation for any operation or function and the use of contract, temporary, or part-time labor to meet production schedules, without any liability under this Agreement on the part of either of the parties hereto.



4.3 The Company reserves the right at all times during this Agreement to sell or assign, or transfer, or merge, or consolidate, or expand, or contract, or suspend, or dissolve, or liquidate any or all of the business, or otherwise, or to make any change or arrangements or transfer, or sub-contract with regard to any of its processes or functions, all without any liability of the Company under this Agreement.

4.4 The right of the Employer to make such reasonable rules and regulations, not in conflict with the Agreement, as it may from time to time deem best for the purpose of maintaining order, safety and/or the effective operation of its plant and, after advance notice thereof to the Union and the employees, to require compliance therewith by employees, is recognized.

## **SECTION 5 HOURS OF WORK**

5.1 The normal work day shall consist of not more than eight (8) hours or ten (10) hours.

5.2 The normal work week shall consist of not more than forty (40) hours. The work week starts on Monday and ends on Sunday.

5.3 The normal working hours in effect will be posted on the bulletin boards. Employees will be notified of any changes in advance.

5.4 If an employee reports for work, having been scheduled to report for such work, and there is no work provided he shall receive a minimum of four (4) hours work or four (4) hours pay at his straight-time hourly rate of pay. If assigned to a position working 4-10 hour days, he shall be provided with five (5) hours work or five (5) hours pay. However, the foregoing shall not apply if any of the following situations occur:

1. When the Company makes an effort to so notify an employee prior to his scheduled starting time, and he cannot be reached at the telephone number on the records of the Company. It is the employee's responsibility to provide the Company with a telephone number where he can be reached and any changes thereof.

2. When work is not available because of emergencies, such as flood, fire, storm, disaster, power failure, or other such causes beyond the control of the Company.

3. In the event an employee leaves his job of his own volition, he will be paid only for the actual hours worked.

5.5 Employees shall be considered scheduled to work, unless told or instructed otherwise. At the Company's discretion, the employees scheduled or notified to report to work may be assigned to other work for which they may be qualified in lieu of their being released. Should employees refuse such assignment, they shall not receive the reporting pay.

5.6 Nothing in this Agreement shall be construed as a guarantee of any minimum number of hours work.

5.7 Employees shall be at their respective posts ready to begin work at the time their pay starts, and shall not quit work in advance of the time their pay stops. For example, if an employee's pay time is from 8:00 A.M. to 12:00 Noon, and from 1:00 P.M. to 5:00 P.M., he shall be at his post ready to work at 8:00 A.M. and 1:00 P.M., and shall not quit work until 12:00 Noon and 5:00 P.M. If an employee is unable to report for work, at his regular time, he will so notify the foreman on the preceding day, except in case of real emergency, when he shall notify the foreman prior to his regular starting time, of his inability to report for work.

5.8 1. Generally, there shall be a thirty (30) minute uninterrupted meal period without pay that commences after no more than six (6) hours of work in each eight (8) hour shift, and two (2) ten (10) minute rest periods with pay on each eight (8) hour shift, except where the nature of the work prevents an employee from being relieved of all duty and the Company and employee have executed an appropriate written agreement providing for an on-the-job paid meal period. Employees who work no more than six hours in a day may agree to waive their meal period for that day if their supervisor also agrees to such waiver. Additionally, employees who work more than ten (10) hours in a day are provided a second unpaid, uninterrupted duty-free meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employee and the supervisor, provided the first meal period was not waived. The second meal period must begin no later than the end of the employee's tenth hour of work.

2. Although it is the desire of the parties that employees performing the duties of commercial truck drivers receive a meal period in accordance with the above, it is recognized that safety and other considerations may not allow for the taking of a meal period that commences after no more than six (6) hours of work. Commercial truck drivers will, therefore, exercise their own good judgment in the taking of their breaks and meal periods. It is the intent of the parties to meet the "exemption" requirements of AB 569 in agreeing to this particular provision. Company commercial truck drivers shall receive a regular hourly rate of pay of not less than thirty percent (30%) more than the state minimum wage.

3. Employees must accurately record their meal periods on their time records. Failure to properly record meal periods or failure to take a meal period or rest break that is provided violates company policy and may result in disciplinary action up to and including discharge.

4. Any disputes concerning the application of this Section 5.8 shall be subject to final and binding arbitration pursuant to the procedures set forth in Section 7 of this Agreement.

5.9 It is agreed that the time for the start of the employee's shift may be changed at any time by the Employer upon notification to the employee before the end of his last

preceding regular shift, provided that, unless waived in special instances by the Shop Committee, there shall be a rest period of not less than twelve (12) hours between the end of one (1) shift and the beginning of the next shift; otherwise, the overtime rate shall be paid.

5.10 If a shift worker does not report for his regular shift, his job-mate shall notify the foreman. The job-mate shall then remain at his post until a substitute is secured, and if necessary, he shall work an extra shift at the overtime rate.

5.11 If an employee is called back to work after working his regular shift, and before his next shift starts, but not consecutive with his shift, he will be paid a minimum of two (2) hours' pay at the straight-time rate.

5.12 Individuals scheduled for inventory shall be scheduled for not less than 8 hours.

5.13 **24 Hour Per Day, 7 Day per Week (24-7) Work Schedule**

The Company may institute a 24 hour per day, 7 day per week ("24-7") work schedule in accordance with the following provisions.

Where such schedule requires modification of this Collective Bargaining Agreement ("CBA"), these provisions are intended as such modification. If other specific terms of this CBA are impacted, the parties recognize the need for good faith discussion to coordinate mutuality of agreement on those issues within the intent and spirit of this Section 5.13 and this CBA; failing mutual agreement, this CBA shall apply.

During the course of the 2012-2013 negotiations, the parties discussed the current 24-7 language. The Union requested the creation of a committee of Union and Management representatives to discuss, and possibly agree, on additional 24/7 schedule alternatives. The Company has agreed to participate in this process in good faith. The parties agreed that such a Committee and deliberations may not delay the implementation of a 24/7 schedule already contained in this agreement or as approved by the Parties as described below.

Should the parties agree to an additional alternative 24/7 schedule(s), and should the Company choose to move to a 24/7 schedule for any department or operation in the future, employees affected will be allowed to collectively choose which of the approved 24/7 plans they desire.

**Terms and Conditions of the 24-7 Work Schedule**

Terms and conditions of wages, hours or work, overtime and working conditions for employees assigned to work twelve (12) hour shifts in a 24-7 work schedule are set forth below.

**A. Workweek and Workday:**

1. The "workweek" or payroll week shall be the period of time from the beginning of the "first" shift commencing on Monday to the beginning of the same shift the following week.



2. The first "workday" in the payroll week shall be the twenty-four (24) hour period from the beginning of the "first" shift commencing on Monday to the beginning of the "first" shift commencing on the following day, Tuesday, and each subsequent workday in the payroll week shall be a similar twenty-four (24) hour period.
3. There shall be four (4) crews, two daytime crews (reflected herein below as A and B) and two nighttime crews (reflected herein below as C and D). The specific starting times and quitting times, as well as the requirement for posting notice of schedules shall be agreed to locally by joint committee action.

**B. Wages and Overtime:**

1. Employees shall receive a regular hourly rate of pay of not less than 30% more than the state minimum wage.
2. Time and one-half (1-1/2 x) shall be paid:
  - a. For time worked in excess of twelve (12) hours in any twenty-four (24) hour workday or for time worked in excess of forty (40) hours in any workweek, whichever is the greater amount of time.
  - b. For time worked outside the regular schedule, but not including the four hour guarantee of work during the short week referred to in paragraph M. below.
  - c. For time worked on Sundays.
  - d. For time worked on holidays.

**C. Meal and Break Periods:**

A total of seventy (70) minutes shall be allowed for meal and break time during each twelve (12) hour shift. Thirty (30) minutes shall be a paid meal period and forty (40) minutes shall be allocated as four (4) paid ten (10) minute rest breaks.

**D. Shift Premiums:**

The night shift shall receive a premium of fifteen cents (\$.15) per hour.

**E. Holiday Pay:**

Holiday pay for employees on a twelve (12) hour schedule shall be:

1. Twelve (12) hours for holidays falling on an employee's scheduled workday, and,
2. Eight (8) hours for holidays falling on an employee's scheduled day off.

F. Vacation Pay and Time Off:

1. Amount of pay - The amount of vacation pay will be forty (40) times the employee's regular hourly rate of pay, including shift differential, for each week of vacation benefit.
2. Time off - Employees working a four day on, four day off schedule will have a vacation week defined as an eight day period starting the first day of their regularly scheduled four day work period.

G. Funeral Leave:

Employees shall be entitled to twenty-four (24) hours funeral leave consistent with the provisions of this CBA.

H. Jury Duty:

Employees serving Jury Duty shall receive the difference between their jury duty pay and pay for time missed from regularly scheduled work in accordance with Section 16.1 of this CBA. The provisions of Section 16.2 of this CBA shall not apply to employees assigned to a 24-7 work schedule.

I. Industrial Injury:

For employees on a twelve (12) hour regular schedule an injured employee shall be paid for the difference between time actually worked and 12 hours on the date of injury.

J. Job Posting:

The provisions of Section 9.12 of this CBA shall include posting of vacancies for a period sufficient to notify employees on all crews on a 24-7 schedule.

K. Discipline:

In the event of disciplinary time off, such time off shall correlate to the equivalent time off on a conventional schedule.

L. Daylight Saving Time:

Crews working at the time there is a time change due to Daylight Saving Time will gain or lose an hour under the applicable circumstances.

M. Work Availability:

For employees on a four day on, four day off schedule it is recognized that during one week in the eight week cycle an employee's schedule will only provide 36 hours of pay. In recognition of this the Company agrees to make available four (4) hours work at straight time during the balance of that week. The exact nature and scheduling of this work is to be agreed to locally.

**N. Work Schedules:**

**I. 3-3.** Three days on, three days off. A work cycle is completed every six (6) weeks (42 days). The workweek shall begin with the start of the shift at 7:00 a.m. on Monday.

**Week # 1**

7:00 a.m. – 7:00 p.m.	MON	TUE	WED	THU	FRI	SAT	SUN
7:00 a.m. – 7:00 p.m.	A	A	A	B	B	B	A
7:00 p.m. – 7:00 a.m.	C	C	C	D	D	D	C

**Week # 2**

7:00 a.m. – 7:00 p.m.	MON	TUE	WED	THU	FRI	SAT	SUN
7:00 a.m. – 7:00 p.m.	A	A	B	B	B	A	A
7:00 p.m. – 7:00 a.m.	C	C	D	D	D	C	C

**Week # 3**

7:00 a.m. – 7:00 p.m.	MON	TUE	WED	THU	FRI	SAT	SUN
7:00 a.m. – 7:00 p.m.	A	B	B	B	A	A	A
7:00 p.m. – 7:00 a.m.	C	D	D	D	C	C	C

**Week # 4**

7:00 a.m. – 7:00 p.m.	MON	TUE	WED	THU	FRI	SAT	SUN
7:00 a.m. – 7:00 p.m.	B	B	B	A	A	A	B
7:00 p.m. – 7:00 a.m.	D	D	D	C	C	C	D

**Week # 5**

7:00 a.m. – 7:00 p.m.	MON	TUE	WED	THU	FRI	SAT	SUN
7:00 a.m. – 7:00 p.m.	B	B	A	A	A	B	B
7:00 p.m. – 7:00 a.m.	D	D	C	C	C	D	D

**Week # 6**

7:00 a.m. – 7:00 p.m.	MON	TUE	WED	THU	FRI	SAT	SUN
7:00 a.m. – 7:00 p.m.	B	A	A	A	B	B	B
7:00 p.m. – 7:00 a.m.	D	C	C	C	D	D	D

**II. 4-4.** Four days on, four days off. A work cycle is completed every eight (8) weeks (56 days). The workweek shall begin with the start of the shift at 7:00 a.m. on Monday.

**Week # 1**

7:00 a.m. – 7:00 p.m.	MON	TUE	WED	THU	FRI	SAT	SUN
7:00 a.m. – 7:00 p.m.	A	A	A	A	B	B	B
7:00 p.m. – 7:00 a.m.	C	C	C	C	D	D	D

**Week # 2**

7:00 a.m. – 7:00 p.m.	MON	TUE	WED	THU	FRI	SAT	SUN
7:00 a.m. – 7:00 p.m.	B	A	A	A	A	B	B
7:00 p.m. – 7:00 a.m.	D	C	C	C	C	D	D

## Week # 3

7:00 a.m. – 7:00 p.m.	MON	TUE	WED	THU	FRI	SAT	SUN
7:00 a.m. – 7:00 p.m.	B	B	A	A	A	A	B
7:00 p.m. – 7:00 a.m.	D	D	C	C	C	C	D

## Week # 4

7:00 a.m. – 7:00 p.m.	MON	TUE	WED	THU	FRI	SAT	SUN
7:00 a.m. – 7:00 p.m.	B	B	B	A	A	A	A
7:00 p.m. – 7:00 a.m.	D	D	D	C	C	C	C

## Week # 5

7:00 a.m. – 7:00 p.m.	MON	TUE	WED	THU	FRI	SAT	SUN
7:00 a.m. – 7:00 p.m.	B	B	B	B	A	A	A
7:00 p.m. – 7:00 a.m.	D	D	D	D	C	C	C

## Week # 6

7:00 a.m. – 7:00 p.m.	MON	TUE	WED	THU	FRI	SAT	SUN
7:00 a.m. – 7:00 p.m.	A	B	B	B	B	A	A
7:00 p.m. – 7:00 a.m.	C	D	D	D	D	C	C

## Week # 7

7:00 a.m. – 7:00 p.m.	MON	TUE	WED	THU	FRI	SAT	SUN
7:00 a.m. – 7:00 p.m.	A	A	B	B	B	B	A
7:00 p.m. – 7:00 a.m.	C	C	D	D	D	D	C

## Week # 8

7:00 a.m. – 7:00 p.m.	MON	TUE	WED	THU	FRI	SAT	SUN
7:00 a.m. – 7:00 p.m.	A	A	A	B	B	B	B
7:00 p.m. – 7:00 a.m.	C	C	C	D	D	D	D

5.14 During the course of the 2012-2013 negotiations, the parties addressed the issues of Holiday Pay and other paid time issues as they relate to the various shifts that may be scheduled. The parties have agreed that where necessary in the Agreement, language will be modified, subject to the parties' approval, to reflect that hours paid shall be based upon the shift to which the individual is assigned (eight hour, ten hour, or twelve hour shift).

## SECTION 6 OVERTIME

6.1 An employee will be paid time and one-half (1-1/2) his regular straight-time hourly rate of pay for all hours worked in excess of eight (8) hours in any one day if assigned to a position working 5-8 hour days and time and one-half his hourly rate of pay for all hours worked in excess of ten (10) hours in any one day if assigned to a position working 4-10 hour days. Time and one-half (1-1/2) the employee's straight-time hourly rate of pay will be paid for all hours worked in excess of forty (40) straight-time hours in one (1) week.

6.2 One and one-half (1-1/2) times an employee's basic straight-time hourly rate of pay will be paid for all hours worked on the sixth (6th) consecutive workday of the workweek, provided he has been available for forty (40) hours of work on the first five (5) consecutive eight (8) hour days of his workweek.

6.3 Two (2) times an employee's basic straight-time hourly rate of pay will be paid for all hours worked on the seventh (7th) consecutive workday of the workweek, provided he has been available for forty-eight (48) hours of work on the first six (6) consecutive eight (8) hour days of his workweek, and for all hours worked in excess of twelve (12) hours in any one (1) day.

6.4 The allowance of an overtime premium on any hour excludes that hour from consideration for overtime payment on any other basis, thus eliminating any double overtime payments.

6.5 All overtime work must be approved in writing by Management.

6.6 The Employer agrees that preference on overtime work will be given to the regular employees regularly working on the machine or operation involved, by shift, when these employees are available; provided, however, that such employees shall be notified as soon as possible before the end of the shift preceding the overtime to be worked. When such employees are not available for overtime, the employee with the most hours on the machine or operation on the same day and same shift that the overtime occurs shall be given preference.

6.7 When it is necessary to call in an employee prior to his regular shift, the most senior classified and qualified employee in that respective department shall have preference for the call-in.

6.8 It is recognized that the nature of the Company's business requires that overtime be worked when necessary, therefore, it is understood and agreed that employees shall work overtime as required.

6.9 The Company shall make every reasonable effort to notify of weekend overtime before second break on Thursday and daily overtime two (2) hours before the end of the shift.

## **SECTION 7 GRIEVANCE PROCEDURE**

7.1 Any individual employee or group of employees, in accordance with the Labor-Management Relations Act of 1947, as amended, shall have the right at any time to present grievances to the Employer notwithstanding any other provisions of this Agreement. Any disputes which arise as to the meaning, application or interpretation of the Agreement (including all amendments to it, Addendum, Letters of Understanding and verbal agreements) shall be adjusted in the following manner:

**Step 1** The grievant shall orally present an alleged grievance to the Foreman within five (5) days from the date of occurrence. He shall be accompanied by a shop steward. (Nothing in this paragraph shall prevent an

employee from discussing complaints with a supervisor without a shop steward so long as those complaints have not ripened into a grievance).

**Step 2** If a grievance is not settled in Step 1, and is carried to Step 2, it shall be reduced to writing, signed and dated by the grievant, and presented by the steward to the Plant Manager and/or his representatives within five (5) working days after receiving an answer at Step 1. The written grievances shall state the act or acts complained of; when they occurred and the remedies sought. The Company shall provide a written answer to the grievance within five (5) days after the end of the Step 2 meeting.

**Step 3** If the written answer of the Plant Manager or his designated representative is not acceptable, within five (5) working days after the answer is received by the Shop Steward, the grievance may be advanced to Step 3. The grievance shall be discussed by the designated representative(s) of Management and the Union's Chief Shop Steward and Business Representative as soon as practicable after it has been advanced to Step 3.

**Step 4** If the above steps fail to adjust said grievance, either party may, within fifteen (15) working days after the completion of Step 3, request in writing that the matter be submitted to arbitration. Within an additional fifteen (15) working days, the party originating the grievance shall request Federal Mediation and Conciliation Service to submit a panel of five (5) local arbitrators. If the panel is acceptable to both parties, the Employer and the Union shall in turn strike a name from the list until only one (1) remains. The remaining name shall be accepted by both parties as the impartial arbitrator. The privilege of striking the first name shall be decided by lot. The impartial arbitrator shall, as soon as possible thereafter, hear said grievance and render his decision in writing. The arbitrator shall submit his decision in writing within sixty (60) days after he has heard the case and the decision of the arbitrator shall be final and binding upon both the Employer and the Union, subject to all provisions of this Article.

7.2 A grievance arising under Section 8 - Discipline and Discharge, shall be reduced to writing and presented directly to Step 2, within five (5) working days from the date of occurrence.

7.3 Before submission of a grievance or dispute to arbitration, the Employer and the Union must promptly agree and set forth in writing specifically the issue or issues to be submitted to arbitration.

7.4 No grievance or dispute shall be presented for arbitration until the Union and the Employer have availed themselves of the full grievance procedure as set forth in this Article.

7.5 The arbitrator shall not have the right to add to, or subtract from, or modify any of the terms of this Agreement, and all decisions must be within the scope and terms of this Agreement.

7.6 Fees and expenses of the impartial arbitrator shall be paid in equal shares by the Employer and the Union. If a court reporter is used, such expense shall also be equally shared by the parties.

7.7 During the term of this Agreement, all disputes, grievances, complaints and adjustments pursuant to this Agreement shall be settled in accordance with the grievance and arbitration procedure outlined herein. During the term of this Agreement, the Local Union and the International Union, or either of them, shall not authorize, cause, engage in, sanction or assist in any slowdown, work stoppage or strike of any kind against the Company. In the event that any employee shall call, engage in, sanction, or assist in any slowdown, work stoppage, or strike of any kind, the Employer may forthwith take whatever disciplinary action it deems appropriate, including discharge. The Company agrees there shall be no lockout for the duration of this Agreement.

7.8 In the event the Employer or the Union believes it has been aggrieved by any action on the part of the other, it shall have the right to file a written General Policy grievance against the other party at the Step 3 level and shall have the right to use the full grievance procedure as provided in Step 3 and beyond in this Article.

7.9 A grievance that is not processed within the time limits set forth hereinabove shall be deemed withdrawn by the Union. However, the parties may mutually agree to extend the time limits at any step of the grievance procedure; and each party hereby pledges to agree to all reasonable extensions of such time limits when requested for good reason by the other party. Furthermore, the Company shall waive the applicable time limits set forth above whenever a grievance is resolved or withdrawn over the objections of the grievant, the grievant appeals, and the Union notifies the Company of the appeal. The waiver of time limits shall be for no longer than thirty (30) calendar days unless the Union requests a thirty (30) day extension. In the event that such an appeal is sustained, processing of the grievance shall be resumed at the next step of the grievance procedure.

## **SECTION 8 DISCIPLINE AND DISCHARGE**

8.1 The Company shall have the right to discharge or discipline an employee for just cause.

8.2 Just cause for discharge or discipline shall include, but not be limited to, incompetency, inefficiency, dishonesty, refusal to fulfill reasonable instruction of a superior, negligence, damage of equipment, poor attendance, violation of this Agreement, or failure to comply with established Company rules.

8.3 In the event an employee is discharged and he believes he has been discharged without just cause, his complaint shall be adjusted pursuant to the method herein provided for the adjustment of grievances. He shall have the right to present his grievance to his supervisor before leaving the Company premises. His complaint must be taken up with the Company within five (5) days from the date of such discharge or layoff.



8.4 In the event a grievance proceeds to Step 4 of the Grievance Procedure, the Arbitrator shall be limited in his scope, pursuant to the following two (2) paragraphs as well as the provisions of Section 7.

8.5 If it is decided under the provisions of this Agreement that an injustice has been dealt the employee with regard to his discharge without any fault on the part of the employee, then the Company shall reinstate the employee with full seniority rights and back pay.

8.6 If it is decided that an injustice has been dealt the employee, but the employee was not without fault, the Company may be required to reinstate the discharged or laid off employee with full seniority rights, but without any back pay for the time lost.

8.7 It is recognized and understood that management's right to discipline for just cause shall include the right to warn an employee verbally or in writing. A grievance protesting the issuance of a verbal or written warning may be submitted to the grievance procedure and processed through Steps 1, 2, and 3 of the grievance procedure, but such grievance shall not be subject to Step 4 or binding arbitration.

## **SECTION 9 SENIORITY**

9.1 Probationary Period. New employees shall be considered probationary employees until they have worked at least sixty (60) days, and during such probationary period the employee shall have no seniority rights and may be discharged at the will of the Company. After completion of the probationary period, the employee shall be classed as a regular employee with his or her seniority adjusted to reflect the individual's most recent date of hire in the bargaining unit.

9.2 Seniority defined. "Plant seniority" shall be defined as the employee's total length of service in the bargaining unit since his or her most recent date of hire. "Classification seniority" shall be the employee's total length of service in the classification since his most recent date of hire. "Line-of-progression seniority" shall be the employee's total length of service in a line-of-progression since his most recent date of hire, calculated by adding the classification seniority of the employee's current classification together with any classification seniority earned in a higher paid classification within the same line-of-progression. The Employer shall keep posted a seniority list of employees arranged by job classifications in the relative order of seniority. Not less frequently than monthly, the Employer shall review and revise the posted list as necessary to make the list current.

9.3 The principles of seniority shall be applied in promotions, demotions, filling vacancies, transfers, and shift preference so long as the employee exercising his or her seniority has the current skill and ability to perform the work available.

9.4 Curtailment of force. When a layoff of more than one (1) week becomes necessary, seniority shall be applied in the following manner:

1. In the event of a curtailment of the work force, probationary employees in the affected job classifications shall be laid off first.



2. In the event further reductions in force are necessary, employees in affected non-line-of progression classifications, other than the Helper Classification, shall be displaced in the inverse order of their classification seniority. Employees in affected line-of-progression jobs shall be displaced from the highest paid classification downward based on their line-of-progression seniority. Employees shall be displaced from the Helper Classification by operation of plant seniority.

3. Employees displaced completely from a line-of-progression or from any non-line-of-progression job classification shall have the right to displace junior employees in any other equally paid or lower paid non-line-of-progression job classification by application of plant seniority, provided in each case the senior employee is able to perform the work available in accordance with existing production standards.

\*Note: When layoffs of one week and less occur, the relevant seniority within the classification on the shift shall still be applicable, but no bumping by displaced employees shall be allowed.

9.5 Recall. Employees laid off for lack of work shall be recalled in the order of their plant seniority, provided in each case the senior employee is able to perform the work available in accordance with existing production standards. Displaced employees shall be restored to their former positions based on the applicable plant, classification or line-of-progression seniority.

9.6 An employee transferred from a position in the bargaining unit to a position outside the bargaining unit shall continue to accumulate seniority in the last bargaining unit job classification in which he worked for up to six (6) months; and, he shall be allowed to return to the bargaining unit with his accumulated seniority, provided he returns to the bargaining unit within one (1) year and provided he secures a withdrawal card from the Union.

9.7 If a regular employee is temporarily assigned to a higher rated classification, he shall not receive the higher rate of pay for such classification until such time as he shall have been temporarily assigned to the higher rated classification for a period in excess of four (4) hours in one (1) day, in which case he shall be paid the regular rate as described in Appendix "A" for the work performed in the new classification. "Higher rate of pay" shall mean at least the minimum of the rate range of the higher rated classification. Exception to this section shall be in the case of an employee being trained on a higher rated classification. In such an event, an employee in training shall receive his regular basic rate of pay until such time as he has been permanently assigned to the higher rated classification.

9.8 If a regular employee is permanently assigned or promoted to a higher rated classification, he shall not receive the higher rate of pay for such classification until such time as he shall have been permanently assigned to the higher rated classification and so notified, for a period in excess of sixty (60) consecutive full-time days in which case he shall thereafter be paid in accordance with the provisions of the Appendices herein; whichever is applicable.

9.9 A regular employee's classification rate of pay shall not be reduced if temporarily transferred to a lower rated classification for the Employer's convenience.

9.10 If temporarily transferred to a lower rated classification for the employee's convenience or to make work, the lower rate will become effective at the time of the transfer.

9.11 If permanently transferred to a lower rated classification at an employee's request, or due to a production cut back causing a crew reduction, he shall receive the lower rate immediately.

9.12 Promotions and Lines of Progressions.

1. Permanent openings in non-line-of-progression jobs and in entry level line-of-progression jobs shall be posted on the bulletin board for a period of at least five (5) consecutive working days during the regular workweek; and, any employee with seniority may make application for openings in higher rated jobs or entry level jobs in higher rated lines-of-progression. Employees with seniority may also apply for permanent transfer to a higher rated classification by filling out a Job Preference Form and submitting same to the plant foreman. When openings occur and are posted for bid, employees with Job Preference Forms on file will be considered as having submitted a valid bid. The opening shall be awarded to the individual who has the most plant seniority, provided he has the necessary current fitness and ability to perform the work. It is the intent of the parties that the bidding process and award of position occur normally within two week. Should there be extenuating circumstances the process may take longer.

Once awarded a bid, the employee's job preference card or bid for an open position will not be considered for a period of six months.

2. Upon receipt of the Job Preference Form, both the employee and the plant foreman shall date and initial the form, certifying the date submitted/received. The Job Preference Form shall be a four part form. The original shall be kept by the employee, the first copy shall be placed in the job preference file, which shall be organized by classification. The third copy shall be given to the chief shop steward. The fourth copy shall be for Company files. The chief steward will be provided access to the job preference file upon request. An employee shall have no more than four (4) Job Preference Forms on file at any time. However, should an employee's preference change, the employee may fill out a new Job Preference Form at any time to replace a Job Preference Form currently on file.

3. Employees who enter a line-of-progression must progress when the opportunity arises or be transferred out of the line of progression. In operations where there is a "line of Progression", the employee who has been an Assistant Operator the longest shall automatically advance to operator. However, should an Assistant Operator decline to advance to a vacant Operator position and there are no other Assistant Operators in the line-of-progression to fill the open Operator position, the open Operator position shall be posted for three (3)

consecutive workdays, and the job shall be filled in accordance with the first paragraph of this Section.

An individual in a line of progression who declines to move to the open position will be removed from the line of progression and re-classified to the position of Production Worker and paid a rate in the Production Worker Progression consistent with the employees' length of service with the Company. The date of transfer shall be used as the employee's classification seniority date for Production Worker.

4. The following are the current lines of progression:

\*\* Indicates the position is the Entry Level to the Line of Progression.

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9.13 The Company agrees consideration will be given to plant seniority, by classification, for employees who desire to change shifts, provided there is an opening on the shift desired by the employee and provided such transfer will not unreasonably deplete the number of necessary experienced employees on the shift and in the classification in question. It is understood that an employee shall not exercise his seniority for shift selection more often than once in a six (6) month period.

9.14 "Regular" employees, as mentioned in this Agreement, shall mean those employees who have successfully completed their probationary period.

9.15 The Company shall have the right to fill vacancies with qualified personnel.

9.16 Included in the reasons for which an employee shall lose his seniority and be terminated are the following:

1. Resignation;
2. Discharge for just cause;
3. Absence of two (2) working days without notice;
4. Failure to report for work within three (3) working days after notification has been sent by the Company for recall from layoff;
5. Exceeding a leave of absence (unless excused in writing);
6. Giving a false reason for obtaining a leave of absence;
7. Accepting employment while on leave of absence unless agreed to in writing by the Company;
8. Failure to be recalled from layoff within six (6) months if the individual's total length of service is six (6) months or less; and within one (1) year if the individual's length of service is more than six months.
9. Death.

9.17 Individuals who are designated as Lead Persons, and who while acting as a Lead Person do not regularly perform work of the classification to which they were assigned immediately before being designated as a Lead Person, will not continue to accumulate seniority in any classification, or Line-of-Progression while designated as a Lead Person.

## **SECTION 10 WAGES**

10.1 Effective as of the dates indicated, all employees in the bargaining unit shall receive not less than the minimum wage rates set forth in Appendix "A," Job Classifications and Wage Rates, and Appendix "B" Maintenance Progression, attached hereto and made a part of this Agreement. It is understood and agreed that the wages contained herein are minimum wages only.

10.2 Effective upon signing and retroactive to December 25, 2015, all employees' straight time rates shall be increased by forty cents (40¢) per hour. These rates are reflected in Appendix "A and "B", attached hereto and made a part of this Agreement.

10.3 Effective December 26, 2016, the wage rates in Appendix "A" and "B" and all employees' straight time rates shall be increased by two percent (2.0%).

10.4 Effective December 25, 2017, the wage rates in Appendix "A" and "B" and all employees' straight time rates shall be increased by two percent (2.0%).

10.5 Employees in the bargaining unit, assigned to the job classification of Maintenance Journeyman or under maintenance progression training, shall be advanced in and/or paid wages in accordance with the wage schedule and provisions of Appendix "B" Maintenance Progression.

10.6 The Company retains the right to recognize exceptional skill and ability of any applicant or employee, and therefore retains the right to give or remove, on an individual basis, merit increases above the rates set forth for the specified job classifications. Merit increases, or the removal of such increases, shall not be subject to the grievance and/or arbitration procedure as set forth herein.

10.7 Employees performing the duties of Leadperson, and so designated by the Company, shall receive a bonus of not less than twenty-five cents (.25) per hour above the highest classification schedule rate led for time so spent performing such duties. The Employer reserves the sole right to establish or eliminate the designation of any or all Leadpersons.

## **SECTION 11 SHIFT DIFFERENTIAL**

11.1 The first or "day" shift shall start between 4:00 A.M. and 7:00 A.M.

11.2 The second or "swing" shift shall start between 12:00 P.M. and 3:00 P.M.

11.3 The third or "graveyard" shift shall start between 8:00 P.M. and 11:00 P.M. for those employees in a position working 5-8 hour days.

11.4 The starting time of the various shifts shall not be changed except upon one (1) week's written notice or by mutual consent of the parties to this Agreement.

11.5 Employees regularly scheduled and working the second (swing) shift shall be paid thirty cents (\$.30) over their basic straight-time rate of pay for all hours worked on the second shift. Employees hired prior to December 1, 2012 and working on the third or "graveyard" shift shall work seven and one-half (7-1/2) hours and shall receive eight (8) hours' pay and be considered grandfathered with the Third Shift Differential for the future. Individuals hired after December 1, 2012 assigned to the Third Shift shall be paid a shift differential of forty cents (\$.40) over their basic straight time rate of pay for all hours worked on the third Shift.

11.6 An employee whose workday overlaps two (2) shifts shall be paid for all of his working time at the rate of the shift in which the major portion of his time is worked during the particular day.

## **SECTION 12 NEW JOB CLASSIFICATIONS**

12.1 If the Company establishes a new classification, or materially revises an existing classification, or introduces a new type of machine or operation, or materially revises an existing type of machine or operation, the Company shall establish a tentative wage rate therefore and shall notify the Union in writing thereof. Not later than thirty (30) days after

normal production has been attained the Union shall, upon request, be afforded a reasonable opportunity to observe the work of such new or revised classification, machine or operation, and may thereupon notify the Company in writing of its demand for revision of such tentative rate. Upon any such demand, representatives of the Company and the Union shall meet and attempt to agree upon a final rate structure under this Agreement. If the Company and the Union are unable to so agree, the Union may submit the issue to arbitration in accordance with Section 7; provided, however, that it shall be the sole function of the arbitrator to determine whether or not a classification has been newly established or materially revised or whether a type of machine or operation has been newly introduced or materially revised and, if so, to fix a wage rate in balance with the existing wage rate structure under this Agreement. Any revision in the tentative rate by agreement of the parties or in arbitration shall be made retroactive to the date on which the demand for revision was made.

### **SECTION 13 HOLIDAYS**

13.1 The following holidays, regardless of the day on which they occur, will be observed and paid for at an employee's basic straight-time hourly rate of pay for eight (8) hours for those on a 5-8 schedule and ten (10) hours for those on a 4-10 schedule, when not worked. The actual day of observance of a holiday listed below may be changed upon mutual agreement between the Company and a simple majority of the shop committee.

New Year's Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving Day
Fourth of July	Christmas Eve Day
Labor Day	Christmas Day
New Year's Eve Day	Personal Floater 1
	Personal Floater 2(Effective August 12, 2003)

#### 13.2 Personal Floater.

1. The employee may observe his Birthday Holiday (Personal Floater 1) on the actual date of his birth.
2. If his date of birth falls on a Saturday, the employee may observe the Birthday Holiday on the preceding Friday; if it falls on Sunday, he may observe it on the following Monday.
3. Otherwise, the Birthday Holiday (Personal Floater 1) may be observed on any workday in the calendar month in which the employee's date of birth falls, provided the employee gives the supervisor two (2) weeks' notice of the date he wishes to observe his Birthday Holiday.
4. The Personal Floater 2 (effective August 12, 2003) shall be observed 6 months from the eligible individuals Birthday, in accordance with 1, 2, 3 above.
5. Exceptions to the above scheduling principles may be made with prior Management approval.



13.3 It is the intent of this Article to pay holiday pay only to employees who are on the active, current payroll, who have successfully completed their probationary period.

13.4 To be eligible for holiday pay, an employee must have worked the full regularly scheduled work day of the plant before and after such holiday.

13.5 An employee who works on any of the above holidays shall be paid for the holiday at his basic straight-time hourly rate of pay for the holiday plus one and one-half (1-1/2) times his basic straight-time hourly rate of pay for the actual hours worked on the holiday.

13.6 An employee who is scheduled by Management to perform work on a holiday, who agrees to report for work but fails to do so, shall not receive pay for the un-worked holiday.

13.7 If any of the above-enumerated holidays fall during the regularly scheduled vacation period of an employee, he shall receive an additional day off with pay, or an additional days' pay at his regular straight-time hourly rate of pay, at the option of the Company, based upon the schedule assigned at the time of the holiday observance.

13.8 With the exception of the Personal Floater 1 and Personal Floater 2 Holidays, holidays not worked, but paid for, shall be considered as time worked for the purpose of computing overtime pay.

## **SECTION 14 VACATIONS**

14.1 Each employee shall receive a one (1) week vacation with pay upon the completion of one (1) year of continuous service with the Company, a two (2) week vacation with pay upon the completion of two (2) or more years of continuous service, a three (3) week vacation with pay upon the completion of six (6) or more years of continuous service with the Company, and a four (4) week vacation with pay upon the completion of thirteen (13) or more years of continuous service with the Company, subject to all conditions set forth herein.

14.2 Vacation pay will be computed by multiplying each employee's basic straight-time hourly rate of pay as of the time such vacation is granted by forty (40), by eighty (80), by one hundred twenty (120) or by one hundred sixty (160), as the case may be. Vacation pay will be paid to the eligible employee on the last regular payroll period prior to his scheduled vacation.

14.3 An employee's period of service shall be determined by the employee's first employment in the Company, and shall be presumed to have been continuous unless interrupted by resignation or discharge for just cause, as defined herein.

14.4 In case of re-employment after an interruption of service continuity, such employee's period of service shall begin as of the date of last re-employment.

14.5 1. Vacations, so far as possible, will be granted at times most desired by employees. However, the final right to allotment of vacation periods is exclusively reserved to the Company, in order to insure the orderly operation of the plant. At the discretion of management, vacations may be scheduled individually or by partial or total plant shutdown.

2. An employee who is scheduled and approved to take an entire week off for vacation (Monday through Sunday) will not be required to work the weekend before or following his/her scheduled vacation. An employee who is scheduled and approved to take a Friday, Friday and the following Monday, or Monday will not be required to work the weekend contiguous with those days.

14.6 Eligibility for vacation pay is based on two (2) factors, neither of which is severable:

1. Twelve (12) months' continuous employment since the employee's last anniversary date; and

2. Sixteen hundred (1600) hours worked (including overtime) during such twelve (12) months' continuous employment since the employee's last anniversary date. Up to three hundred (300) hours shall be counted as hours worked for the purpose of vacation eligibility for hours lost from work as a result of work related injury or accident.

14.7 When circumstances prevent the scheduling of a vacation, with Management approval, earned vacation may be carried from one year to another.

14.8. With prior Management approval, those employees eligible for three (3) or more weeks of vacation may take up to five (5) days of earned vacation each calendar year, one (1) day at a time.

14.9 Employees who have completed their probationary period from their last date of hire, but less than sixteen hundred (1600) hours worked between anniversary dates and who are terminated, shall receive prorated vacation on the basis of 1/12th of forty (40) hours, eighty (80) hours, one-hundred twenty (120) hours, one-hundred sixty (160) hours, calculated from an employee's last anniversary date or from the date of hire, if less than one (1) year's continuous service, in accordance with the schedule specified in Section 1 of this Article, for each month wherein the employee has worked at least one-hundred thirty-three (133) hours.

14.10 Effective upon signing of the 2015 Agreement, employees who have accumulated three (3) or more weeks of vacation (120 or more hours) may request to "cash out" up to two (2) weeks (80 hours) of vacation. Such a request may be made not more than once per Calendar year by filling out the proper form available through payroll.

14.11 Effective upon signing of the 2015 Agreement, employees who have completed six (6) months of service may utilize accumulated vacation.



## **SECTION 15 FUNERAL LEAVE PAY**

15.1 All employees who have completed their probationary period shall be entitled to three (3) days' paid funeral leave on the following basis:

1. Should a death occur in the immediate family, upon request, a regular employee who attends a funeral shall be granted a leave of absence of three (3) consecutive days, consisting of the funeral and either the two (2) days preceding, the day preceding and the day following, or the two (2) days following the day of the funeral. The employee shall be compensated for the scheduled days in his normal week he would have worked within the applicable period, had such death not occurred, at eight (8) times his regular straight-time hourly rate for those on a 5-8 schedule and ten (10) times his regular straight-time hourly rate for those on a 4-10 schedule.

Should attendance at the funeral require travel by the employee of more than 500 miles, or travel outside the U.S. an additional three (3) days without pay will be granted. The employee will be allowed to utilize accumulated vacation, if any, to make up for the additional three (3) granted days.

2. Immediate family, for the purpose of this Section, shall be defined as the employee's spouse, mother, father, brother, sisters, sons, daughters, mother-in-law, father-in-law, and the employee's grandparents. A step-parent may be substituted for a natural parent.

15.2 To be eligible for funeral leave pay referred to above, the Company may require that the employee furnish reasonable proof of the death and attendance at the funeral.

## **SECTION 16 JURY DUTY**

16.1 Regular employees who lose hours of work because of response to a summons for, or actual service on, a jury shall, upon presentation of a statement signed by an officer of the court involved signifying the time he responded to summons or served on the jury, be reimbursed at his current hourly regular rate for the hours lost from work, less the amount of jury pay received, if any, up to a maximum of thirty (30) working days in any one calendar year.

16.2 For the purpose of this Section, regular pay will be computed on the employee's regularly scheduled straight-time hours and at his regular straight-time rate, but in no event will regular pay be computed for more than forty (40) hours in any one (1) calendar week.

## **SECTION 17 PAID SICK LEAVE**

17.1 All regular full-time employees who complete 30 days of employment with the company are eligible to accrue paid sick leave beginning with their first day of employment or July 1, 2015, whichever is later. Employees will accrue paid sick leave

at the rate of 1 hour for every 30 hours worked (approximately .033 hours for one hour worked) subject to the maximum limitations contained in this Section.

17.2 After the 90th day of continuous employment, employees may begin using paid sick leave as it accrues in increments of two (2) or more hours up to a maximum of 3 days (24 hours) in a calendar year. Paid sick leave may be used above the maximum of 3 days per calendar year only in conjunction with an approved leave of absence, ex. FMLA, CFRA, Pregnancy Disability Leave.

17.3 An employee may use paid sick leave for the employee's own injury or illness. In addition, an employee may submit a request to receive paid sick leave for any of the following purposes:

- (a) the diagnosis, care, or treatment of an existing health condition of, or preventive care for, the employee or a family member, or
- (b) for an employee who is a victim of domestic violence, sexual assault, or stalking, to take time off (i) to obtain or attempt to obtain any relief to help ensure the health, safety, or welfare of the employee or the employee's child, such as a temporary restraining order, restraining order or other injunctive relief, (ii) to seek medical attention, obtain services from a shelter, program or rape crisis center, (iii) to obtain psychological counseling, (iv) to participate in safety planning, or (v) to take other actions to increase safety from future incidents.
- (c) for a parent of a child of the age to attend kindergarten or grades 1 through 12 or a licensed child care provider to find, enroll or re-enroll a child, or participate in child-related activities, or address an emergency, of the school or licensed child care provider of his or her child, provided timely notification is provided to the employer. Time off for this purpose shall not exceed eight (8) hours in any calendar month or 40 hours in a calendar year.

The employee may be requested to submit reasonable proof from the school or licensed child care provider as to the date and time the parent participated in an activity as authorized above.

The company will provide paid sick leave, if accrued, for any of the above stated purposes, within the stated maximum.

The term "family member" means (a) a child, (b) a biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child, (c) a spouse, (d) a registered domestic partner, (e) a grandparent, (f) a grandchild, or (g) a sibling. A "child" includes a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis.

17.4 Paid sick leave will be compensated at the employee's regularly hourly rate, exclusive of shift differential. If an employee, during the 90-day period described in

17.2 above, had different hourly rates, the rate of pay will be calculated by dividing the employee's total earnings (not including overtime premium pay) by the employee's total hours worked in the full pay periods of the 90-day period. Paid sick leave will be paid by the next regular payroll period after the sick leave is taken assuming an employee has completed a Sick Leave Request Form and sent it in to the Payroll Department.

17.5 Unused, accrued paid sick leave will carry over from one year to the next. However, an employee's accrued paid sick leave balance may not exceed 60 hours (7.5 days) as the maximum accrual amount. If an employee reaches the maximum accrual amount of 60 hours (7.5 days), no further paid sick leave will accrue until the employee's accrued balance falls below the maximum accrual amount. An employee's sick leave balance will be reflected on the employee's earnings statement or pay stub. If an employee believes an error exists on the earnings statement or pay stub, he should notify the Payroll or Human Resources Department promptly so that such error can be investigated and, if appropriate, fixed before the next pay period.

17.6 Employees with one year or more of continuous service who have accrued more than 48 hours of paid sick leave may "sell" the excess paid sick leave at 50% of their base hourly rate, provided that they shall not "sell" any excess more often than once every six months.

17.7 The employee must provide reasonable advance notice, if the need for sick leave is foreseeable. Where the need for sick leave is unforeseeable, the employee must provide notice as soon practicable. However, notwithstanding the foregoing, failure to provide reasonable advance notice will be investigated and may result in disciplinary action. Whether prior notice is given or not, where an employee appears late for work the lateness will be investigated and may result in disciplinary action. The failure to provide reasonable advance notice as stated above, or as may be determined under other circumstances shall be a basis for discipline, up to and including discharge.

17.8 Employees will be required to complete a Sick Leave Request Form for any absence for which they wish to be paid from their paid sick leave balance.

17.9 A written notification from a doctor or other healthcare provider that an employee is able to return to work shall be required for any sick leave absence (paid or unpaid) of longer than three consecutive days.

17.10 Paid sick leave is intended to assist employees who miss work due to the reasons set forth in 17.3 above. Any accrued paid sick leave that is not used prior to the last day of employment will not be paid out at the time of resignation, discharge, retirement, layoff, or other separation from employment. However, if an employee is rehired within one year of the date of separation, any unpaid sick leave will be reinstated and available for the employee to use.

17.11 Any dispute concerning the application of these paid sick leave provisions shall be subject to the provisions of the Grievance Procedure set forth in this Agreement and any arbitration of such disputes shall be final and binding on the parties thereto.

## **SECTION 18 LEAVES OF ABSENCE**

18.1 It is recognized that circumstances can arise that necessitate absence from work for an extended period. In such cases, a leave of absence without pay may be granted without loss of seniority.

18.2 As soon as an employee becomes aware of a current or expected disability that will require absence from work for any medical reason, prompt notification must be given by the employee to supervision, and shall state, if asked, the commencement date of the absence, and anticipated duration of the disability and the nature and extent of work restrictions caused by the disability. If the disability requires absence from work for a period of five (5) or more working days, a leave of absence must be requested in writing, and must be accompanied by a written statement from the treating physician stating the estimated time for recovery. Revised estimates by the treating physician of the employee's recovery time shall be given in writing to the Company as they become available. Failure to properly notify of the need for a leave of absence of any kind, provide written request for the leave, being away from work without an approved leave, failure to provide required medical documentation, or failure to return to work upon expiration of the medical certification will result in termination of employment. Any such termination is subject to Section 7.

18.3 An employee returning from a medical leave of absence must provide the Company with a written medical release from the treating physician certifying that the employee has recovered sufficiently to be able to return to the job.

18.4 Industrial Medical Leave. An industrial medical leave will normally be granted for periods not to exceed increments of thirty (30) days duration. The total length of leave shall in no case exceed the length of the temporary industrial disability. During such leave:

1. Earned vacation benefits may be used, at the option of the employee, during the industrial medical leave period.
2. By requesting an industrial medical leave, the employee shall be deemed to have requested and to be consuming any leave available to the employee under the federal Family and Medical Leave Act, the parallel state statute, and any other applicable law.
3. Group medical, dental and vision benefits for employees and their dependents will be continued for a period of six (6) months during the industrial medical leave, provided the employee pays the portion of the premiums, that the employee would pay while actually working. Thereafter, such insurance coverage will continue only if the employee makes arrangements with the Company to pay the entire cost of the premium.

18.5 Non-Industrial Medical Leave. A disability due to a non-work related injury or illness will normally be granted for periods not to exceed increments of thirty (30) days duration. Total length of continuous leave shall in no case exceed the length of the

temporary non-industrial disability, or six (6) months, whichever is less. During such leave:

1. Earned vacation benefits may be used, at the option of the employee, during the non-industrial medical leave period.
2. By requesting a medical leave, the employee shall be deemed to have requested and to be consuming any leave available to the employee.
3. Group medical, dental and life insurance benefits for employees and their dependents will be continued during the six (6) months of medical leave, provided the employee pays the portion of the premiums, that the employee would pay while actually working. Thereafter, such insurance coverage will continue only if the employee makes arrangements with the Company to pay the entire cost of the premium.

18.6 Pregnancy Leave. An individual disabled due to pregnancy will be granted a medical leave of absence under the same terms and conditions as non-industrial medical leave described above, unless applicable changes to the law(s) mandates more liberal benefits to the employee.

18.7 Family Leave. Family leave may be used for rearing a minor dependent child, to care for a newly born or adopted child, to care for a child requiring continuing medical treatment or confinement for at least a month, or to care for a parent, parent-in-law, grandparent, spouse or adult child with serious health condition, or for an employee's own serious health condition. When verification of the necessity and the relation of the individual as a family member is complete, a leave may be granted for a period not to exceed twelve (12) weeks in any twelve (12) month period. To be eligible for family leave, individuals must have completed one or more years of service and must have worked or been paid for at least 1250 hours during the most recent twelve months. While on family leave, all health related insurance benefits will be continued, provided the employee pays the portion of the premiums that the employee would pay while actually working. Earned vacation benefits may be used, at the option of the employee, during the family medical leave period.

18.8 Personal Leave. Upon written request by an employee with at least one (1) year of continuous service, such employee may be granted a personal leave of absence without pay for good reason for up to thirty (30) consecutive work days, provided: (1) the individual utilizes all paid time off to which he or she is entitled, (2) business conditions permit, and (3) the individual does not work for another employer during the leave of absence.

18.9 Nothing herein prevents the Company from extending existing leaves of absence in appropriate circumstances, nor an employee from requesting unused family medical leaves for reasons other than personal illness when otherwise consistent with the relevant federal and state statutes.

18.10 Other types of leave. There are many other types of leave that employees should be aware of. These include: Military Leave; Leave to care for an ill or injured family member returning from the Armed Services; Parent, Grandparent or Guardian of



a Child in School, Witness, Victim of domestic violence, and emergency leave for voluntary firefighters, reserve police officers, and emergency rescue workers.

Should you believe that you need such a leave, please contact Human Resources as quickly as possible.

18.11 Regardless of which type of leave is involved, leaves must be applied for and granted in writing on forms supplied by the Company. If an employee fails to return to work at the expiration of a leave of absence without applying for an extension in writing on forms supplied by the Company, such employee shall be considered to have voluntarily resigned his or her position.

## **SECTION 19 GROUP INSURANCE**

19.1 The group health insurance provided by the Company shall be as agreed by the parties to this Agreement and shall include a medical plan, dental plan, and vision plan. The Company and the Union agree that the insurance plans may be changed at any time during the course of the Agreement so long as the new plans provide comparable benefits and both parties agree to the change. The parties agree that the group health, dental, vision and life benefits between Plant 1 and Plant 2 are intrinsically associated and intertwined in benefit design, availability and cost. The parties agree that the health, dental, vision and life benefit plans must be the same between the two bargaining units of Plant 1 and Plant 2.

19.2 Effective upon signing of the Agreement, employees become eligible for group health, dental, vision insurance and FSA following the 91<sup>st</sup> day of continuous service.

19.3 The Company will pay the entire monthly premium for desired coverage (employee plus desired dependent coverage) for the five most senior employees.

Medical Plan. The Primary HMO and Enhanced HMO plans shall be made available to all Bargaining Unit personnel upon meeting length of service requirements. The Company will pay eighty-five percent (85%) of the required premium of the Primary HMO and eighty (80%) of the required premium for the Enhanced HMO desired coverage as of June 1, 2013, provided the employee agrees to pay the balance by way of payroll deduction.

Effective February 1, 2014 and February 1, 2015, the Company contribution will be increased by an amount not to exceed seven percent (7%) of the then Company contribution, or such lesser amount as is required to meet the increased premium amount. Should the premium increase exceed seven percent (7%) the amount above seven percent (7%) shall be borne by employees by way of payroll deduction.

Effective February 1, 2016 and February 1, 2017 and February 1, 2018, the Company contribution will be increased by an amount not to exceed seven percent (7%) of the then Company contribution, or such lesser amount as is required to meet the increased premium amount. Should the premium increase exceed seven percent (7%) the amount above seven percent (7%) shall be borne by employees by way of payroll deduction.

Should the increase in total premium for February 1, 2018 be more than twelve percent (12%), the parties agree, that upon proper notification of the increase in premium, the Union may request to re-open the Agreement with regard to Health Insurance only. If the Union exercises this right the parties shall promptly meet (within two weeks) to address both benefit design and provider and should they agree, implement changes.

19.4 Dental Plan. The Company shall pay one hundred percent (100%) of the monthly premium for "Employee Only" coverage and ninety percent (90%) of the monthly premium for "Dependent" coverage for all employees participating in the plan.

19.5 Vision Plan. The Company shall pay one hundred percent (100%) of the monthly premium for "Employee Only" coverage and ninety percent (90%) of the monthly premium for "Dependent" coverage for all employees participating in the plan.

19.6 During the course of Negotiations, the Parties discussed the potential implications of the Affordable Care Act upon the health insurance provisions of this agreement, availability and costs of health insurance, including the availability of the current chosen plans, to the Company and employees. Should the ACA result in additional cost, taxes, or fees, it is the intent of the Parties that these costs be shared in the same percentage. The Parties have agreed that should the ACA, or implementation regulations, or rules provide for relatively significant changes in availability of, or costs of Health insurance benefits to either party to this Agreement, the Contract may be reopened upon the giving of written notice by one party to the other of thirty (30) days of a desire to re-negotiate the provisions of this Section 19. Upon the receipt of such notice, in accordance with the terms of this Agreement, the Parties shall immediately engage in good-faith negotiations in an effort to address the health insurance issues.

19.7 Wellness Program. During the course of the 2015 negotiations, the Parties discussed Health Premiums and how introduction of a Wellness Program might help impact the amount of health insurance premiums.

It was agreed that a committee will be formed to evaluate the desirability of implementing a Wellness program for Bargaining Unit Personnel.

The Committee shall be co-chaired by the Director of Human Resources and the IBT District Council No. 2 Service Representative who will determine both size and composition of the Wellness Committee. The Committee's purpose shall be to evaluate available Wellness Programs and determine the appropriateness of implementation.

## **SECTION 20 LIFE INSURANCE**

20.1 The Company agrees to provide \$35,000.00 Term Life Insurance with AD&D for employees who have completed thirty (30) days of service. The parties understand that this insurance may be purchased from a carrier that provides the best price.

Effective 2/1/2017, the Company agrees to provide \$50,000.00 Term Life Insurance with AD&D for employees who have completed thirty (30) days of service. The Company also agrees to provide \$10,000.00 Life Insurance for the spouse and \$5,000.00 for dependent children.

In addition, Effective 2/1/2017, the employee may purchase insurance up to five (5) times their annualized salary (max of \$500,000.00) at the employee's expense and paid by way of payroll deduction.

## **SECTION 21 RETIREMENT**

21.1 The Company shall establish and maintain a 401(k) Retirement Savings Program ("Program") for employees covered by the terms of this Agreement. Such Program shall be fully qualified under the applicable federal tax and retirement laws and shall allow the maximum employee contribution permitted by those laws.

21.2 The Company shall contribute to each participating employee's 401(k) account provided the employee makes a contribution. Effective as soon as possible following signing of this Agreement, the amount of the Company's contribution shall be fifty percent (50%) percent of the first six (6%) percent of the employee's wages that the employee elects to divert to his or her 401(k) account each Plan Year. That is, the Company shall contribute \$.50 for each dollar of annual employee contribution, except that in no case will the Company's total contribution for an employee exceed six percent (6%) of his gross annual wages.

## **SECTION 22 GENERAL CONDITIONS**

22.1 Savings Clause. Should any part of this Agreement or any provisions herein contained be rendered or declared invalid by reason of any existing or subsequently enacted legislation, or by decree of any court of competent jurisdiction, such invalidation of such part or portion of this Agreement shall not invalidate the remaining portions hereof. Remaining parts or provisions shall remain in full force and effect.

22.2 Binding Agreement.

1. The parties hereto acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

2. Therefore, the Company and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.



3. It is understood that nothing in this Section shall be construed as limiting or prohibiting a normal discussion of grievances in accordance with and as provided for in this Agreement.

22.3 Medical Examination. As a condition of entering and continuing employment, the Company reserves the right to require a medical examination and a certificate from a qualified and acceptable medical doctor as to the employee's fitness and physical ability.

22.4 Purpose of Agreement. One of the basic purposes of this Agreement is to obtain through cooperation between the parties, the greatest possible individual and collective yearly production, and the Union agrees that it will not directly or indirectly oppose or interfere with the legitimate and reasonable efforts of the Company to maintain and improve the skill, efficiency, ability and production of the workers, the quality of its products, or the installation of improved methods and facilities of production, subject to the provisions of this Agreement.

22.5 Bulletin Board. The Company shall provide one (1) bulletin board exclusively for the use of the Union, for the posting of non-controversial notices, all of which must be approved by the Union and the Company, and which shall be restricted to:

1. Notices of Union recreational and social affairs;
2. Notices of Union elections;
3. Notices of Union appointments and results of Union elections;
4. Notices of Union meetings.

There shall be no other distribution or posting by employees or the Union of notices, pamphlets, advertising or political matter, or any other kind of literature on Company property.

22.6 Notices. All notices, demands or communications required or permitted by the terms of this Agreement, shall be given by either party hereto to the other as follows:

1. To the Company: By mailing, by certified mail, or by delivering to the Company at 13400 E. Nelson Ave., Industry, California 91744, with a copy to The REA Company, (Suite 201, 239 East Alameda Avenue, Burbank, CA 91503) P. O. Box 869, Burbank, CA 91503.
2. To the Union: By mailing, by certified mail, or by delivering to the Union at 710 E. Commonwealth Ave., Fullerton, California 92361-4540.

22.7 Inventory Work. The Company, in its sole discretion, may assign whomever it deems necessary to perform inventory work.

22.8 Non-Discrimination. There shall be no discrimination by the Union or the Company of any kind against any employee on account of race, creed, sex, age, national origin, color, religion, Veteran status of the Vietnam War Era, handicap, or

Union affiliation, as provided under the several Federal and State statutes concerning the foregoing. The use of all nouns, pronouns and adjectives contained in this Agreement are used in their generic sense and are not intended to indicate any distinctions based upon sex.

22.9 The Company may utilize cameras (both moving and still) inside and/or outside the plant. Cameras shall not be concealed and shall not be placed so as to view dressing rooms or bathrooms.

### **SECTION 23 INTER-LOCAL PENSION FUND**

**23.1 Inter-local Pension Fund** - The Employer shall withhold a fixed dollar amount during each month of earned wages (to be determined following ratification of this agreement) submitted monthly to the Trustees of Local 388-M Inter-Local Pension Fund, upon receipt of an assignment from the employee, along with an appropriate report form to permit proper crediting to the employee's account in the fund.

- a) Wages withheld shall be forwarded within ten working days following the month for which they are withheld. If the Employer is in default in forwarding such funds as provided in this Article, it shall be liable for and agrees to pay such legal, court and/or other costs incurred in collection proceedings.
- b) It is understood that from time to time unit employees may elect to increase the withholding amounts in accordance with the rules governing such elections. Upon notice to the Employer that such an election occurred, the Employer shall then withhold the amounts authorized by the election.
- c) The amount withheld must be limited to not more than three (3) Tiers which must be the same for employees of Plant 1 and Plant 2.
- d) The Company must be informed by the Union of the amount to be withheld and forwarded to the Inter-Local Pension Fund. Notification from individual employees will not be acceptable.
- e) Changes to the amount withheld and forwarded may not occur more than once during a 12 month period.
- f) An employee must participate once employees vote to participate in the plan.
- g) Deductions for new personnel shall not start until the first week following completion of the probationary period.

**SECTION 24**  
**DURATION AND TERMINATION**

24.1 THIS AGREEMENT shall become effective on the 19<sup>th</sup> day of February, 2016, unless otherwise specifically stated herein, and shall remain in full force and effect through December 24, 2018, and shall automatically renew itself for an additional year unless either party notifies the other by giving at least sixty (60) days but not more than seventy-five (75) days written notice in advance of the expiration date of this desire to modify, amend or terminate this Agreement.

24.2 The giving of notice, provided above, shall constitute an obligation upon both parties to negotiate in good faith all questions of issue with the intent of reaching written agreement prior to the anniversary date.

24.3 If the parties have not reached an agreement on or before the anniversary date, all provisions of this Agreement shall remain in effect, unless the Agreement is specifically terminated in accordance with the provisions listed below.

24.4 At any time after the anniversary date, if no agreement on the question or questions at issue has been reached, either party may give written notice to the other of intent to terminate the Agreement in not less than ten (10) days. All provisions of the Agreement shall remain in full force and effect until the specified time has elapsed. During this period, attempts to reach an agreement shall be continued.

24.5 If the parties have failed to resolve their differences when the specified time has elapsed, all obligations under this Agreement are automatically canceled.

**IN WITNESS WHEREOF**, the duly chosen representatives of the parties hereby affirm that they have the authority to enter into this Agreement on behalf of themselves and their principals, and hereto affix their hands and seals.

For: The Union

  
\_\_\_\_\_  
Tony Correll, Special Representative

  
\_\_\_\_\_  
Jose Brambila, Special Representative

For: Smurfit Kappa North America LLC  
dba COI Graphics

\_\_\_\_\_  
Kristi Schmidlap, Director of Human Resources

  
\_\_\_\_\_  
Christian Eder, Regional H.R. Manager

  
\_\_\_\_\_  
Dennis Hegedus, General Counsel

  
\_\_\_\_\_  
Patrick M. Rea  
THE REA COMPANY  
Consultants to Smurfit Kappa North America LLC

**APPENDIX "A"**  
**Job Classification & Wage Rates**

<b>CLASSIFICATION</b>	<b>Effective</b>	<b>Effective</b>	<b>Effective</b>
	<b>12/25/2015</b>	<b>12/26/2016</b>	<b>12/25/2017</b>
<b>Flexo Folder Gluer</b>			
After 15 months	\$21.14	\$21.56	\$21.99
After 12 months	\$19.61	\$20.00	\$20.40
After 9 months	\$19.06	\$19.44	\$19.83
After 6 months	\$18.53	\$18.90	\$19.28
After 3 months	\$18.05	\$18.41	\$18.78
Start	\$17.52	\$17.87	\$18.23
<b>Flexo Folder Gluer Assistant</b>			
After 15 months	\$15.56	\$15.88	\$16.20
After 12 months	\$15.23	\$15.53	\$15.84
After 9 months	\$14.93	\$15.23	\$15.53
After 6 months	\$14.51	\$14.80	\$15.10
After 3 months	\$14.12	\$14.40	\$14.69
Start	\$13.70	\$13.97	\$14.25
<b>Flexo Folder Gluer Stacker</b>			
After 15 months	\$12.52	\$12.77	\$13.03
After 12 months	\$12.25	\$12.50	\$12.75
After 9 months	\$11.95	\$12.18	\$12.42
After 6 months	\$11.64	\$11.87	\$12.11
After 3 months	\$11.38	\$11.61	\$11.84
Start	\$11.05	\$11.28	\$11.51
<b>Rotary Die Cut Printer Operator</b>			
After 15 months	\$21.14	\$21.56	\$21.99
After 12 months	\$19.61	\$20.00	\$20.40
After 9 months	\$19.06	\$19.44	\$19.83
After 6 months	\$18.53	\$18.90	\$19.28
After 3 months	\$18.05	\$18.41	\$18.78
Start	\$17.52	\$17.87	\$18.23
<b>CLASSIFICATION</b>	<b>Effective</b>	<b>Effective</b>	<b>Effective</b>

	12/25/2015	12/26/2016	12/25/2017
<b>Rotary Die Cut Assistant</b>			
After 15 months	\$15.56	\$15.88	\$16.20
After 12 months	\$15.26	\$15.53	\$15.84
After 9 months	\$14.93	\$15.23	\$15.53
After 6 months	\$14.51	\$14.80	\$15.10
After 3 months	\$14.12	\$14.40	\$14.69
Start	\$13.70	\$13.97	\$14.25
<b>Rotary Die Cut Printer Stacker</b>			
After 15 months	\$12.52	\$12.77	\$13.03
After 12 months	\$12.25	\$12.50	\$12.75
After 9 months	\$11.95	\$12.18	\$12.42
After 6 months	\$11.64	\$11.87	\$12.11
After 3 months	\$11.38	\$11.61	\$11.84
Start	\$11.05	\$11.28	\$11.51
<b>Asitrade Dry End Operator</b>			
After 15 months	\$22.67	\$23.12	\$23.58
After 12 months	\$21.10	\$21.52	\$21.95
After 9 months	\$20.46	\$20.87	\$21.29
After 6 months	\$19.77	\$20.17	\$20.57
After 3 months	\$19.08	\$19.46	\$19.85
Start	\$18.43	\$18.80	\$19.18
<b>Asitrade Wet End Operator</b>			
After 15 months	\$21.14	\$21.56	\$21.99
After 12 months	\$19.57	\$19.96	\$20.36
After 9 months	\$18.93	\$19.31	\$19.70
After 6 months	\$18.24	\$18.60	\$18.97
After 3 months	\$17.55	\$17.90	\$18.26
Start	\$16.90	\$17.24	\$17.58

<b>CLASSIFICATION</b>	<b>Effective</b>	<b>Effective</b>	<b>Effective</b>
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	12/25/2015	12/26/2016	12/25/2017
<b>Asitrade Doublebacker</b>			
After 15 months	\$17.77	\$18.13	\$18.49
After 12 months	\$16.43	\$16.76	\$17.10
After 9 months	\$15.95	\$16.27	\$16.60
After 6 months	\$15.33	\$15.64	\$15.95
After 3 months	\$14.76	\$15.05	\$15.35
Start	\$14.25	\$14.53	\$14.82
<b>Asitrade Utility</b>			
After 15 months	\$16.20	\$16.53	\$16.86
After 12 months	\$14.98	\$15.28	\$15.59
After 9 months	\$14.51	\$14.80	\$15.10
After 6 months	\$13.99	\$14.27	\$14.56
After 3 months	\$13.46	\$13.73	\$14.00
Start	\$13.00	\$13.26	\$13.53
<b>Asitrade Stacker</b>			
After 15 months	\$12.52	\$12.77	\$13.03
After 12 months	\$12.25	\$12.50	\$12.75
After 9 months	\$11.95	\$12.18	\$12.42
After 6 months	\$11.64	\$11.87	\$12.11
After 3 months	\$11.38	\$11.61	\$11.84
Start	\$11.05	\$11.28	\$11.51
<b>Die Cut Operator</b>			
After 15 months	\$17.77	\$18.13	\$18.49
After 12 months	\$16.82	\$17.15	\$17.49
After 9 months	\$15.93	\$16.24	\$16.56
After 6 months	\$15.47	\$15.78	\$16.10
After 3 months	\$14.84	\$15.14	\$15.44
Start	\$14.64	\$14.93	\$15.23
<b>Die Cut Assistant</b>			
After 15 months	\$14.29	\$14.58	\$14.87
After 12 months	\$13.31	\$13.58	\$13.85
After 9 months	\$12.73	\$12.99	\$13.25
After 6 months	\$12.16	\$12.40	\$12.65
After 3 months	\$11.74	\$11.98	\$12.22
Start	\$11.04	\$11.26	\$11.49

CLASSIFICATION	Effective	Effective	Effective
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	12/25/2015	12/26/2016	12/25/2017
<b>Slitter Operator</b>			
After 15 months	\$14.11	\$14.39	\$14.68
After 12 months	\$13.43	\$13.70	\$13.97
After 9 months	\$12.90	\$13.16	\$13.42
After 6 months	\$12.39	\$12.64	\$12.89
After 3 months	\$11.86	\$12.10	\$12.34
Start	\$11.34	\$11.57	\$11.80
<b>Slitter Helper</b>			
After 12 months	\$11.34	\$11.57	\$11.80
After 9 months	\$11.02	\$11.24	\$11.46
After 6 months	\$10.75	\$10.96	\$11.18
After 3 months	\$10.41	\$10.62	\$10.83
Start	\$10.10	\$10.30	\$10.51
<b>Stitcher/Taper/Gluer Operator</b>			
After 15 months	\$13.43	\$13.70	\$13.97
After 12 months	\$12.47	\$12.72	\$12.97
After 9 months	\$12.07	\$12.31	\$12.56
After 6 months	\$11.64	\$11.87	\$12.11
After 3 months	\$11.22	\$11.45	\$11.68
Start	\$10.82	\$11.04	\$11.26
<b>Taper Operator (Machines 156 and 157), Window Machine Operator</b>			
After 15 months	\$14.27	\$14.56	\$14.85
After 12 months	\$13.31	\$13.58	\$13.85
After 9 months	\$12.90	\$13.16	\$13.42
After 6 months	\$12.48	\$12.73	\$12.98
After 3 months	\$12.06	\$12.30	\$12.55
Start	\$11.67	\$11.90	\$12.14
<b>Miscellaneous Machine Operator</b>			
After 15 months	\$13.43	\$13.70	\$13.97
After 12 months	\$12.47	\$12.72	\$12.97
After 9 months	\$12.07	\$12.31	\$12.56
After 6 months	\$11.64	\$11.87	\$12.11
After 3 months	\$11.22	\$11.45	\$11.68
Start	\$10.82	\$11.04	\$11.26



CLASSIFICATION	Effective	Effective	Effective
	12/25/2015	12/26/2016	12/25/2017
<b>Semi Truck Driver</b>			
After 15 months	\$19.45	\$19.84	\$20.24
After 12 months	\$18.91	\$19.29	\$19.68
After 9 months	\$18.42	\$18.79	\$19.17
After 6 months	\$17.90	\$18.26	\$18.63
After 3 months	\$17.40	\$17.75	\$18.11
Start	\$16.84	\$17.17	\$17.51
<b>Bobtail Truck Driver</b>			
After 15 months	\$14.93	\$15.23	\$15.53
After 12 months	\$14.68	\$14.98	\$15.28
After 9 months	\$14.12	\$14.40	\$14.69
After 6 months	\$13.70	\$13.97	\$14.25
After 3 months	\$13.27	\$13.54	\$13.81
Start	\$12.89	\$13.15	\$13.41
<b>Warehouse Person</b>			
After 15 months	\$17.03	\$17.37	\$17.72
After 12 months	\$15.23	\$15.53	\$15.84
After 9 months	\$14.41	\$14.70	\$14.99
After 6 months	\$13.43	\$13.70	\$13.97
After 3 months	\$12.40	\$12.65	\$12.90
Start	\$12.13	\$12.37	\$12.62
<b>Clamp Driver</b>			
After 15 months	\$17.00	\$17.34	\$17.69
After 12 months	\$15.24	\$15.54	\$15.85
After 9 months	\$14.40	\$14.69	\$14.98
After 6 months	\$13.79	\$14.07	\$14.35
After 3 months	\$12.96	\$13.22	\$13.48
Start	\$12.14	\$12.38	\$12.63
<b>Forklift Driver</b>			
After 15 months	\$16.20	\$16.53	\$16.86
After 12 months	\$14.44	\$14.73	\$15.02
After 9 months	\$13.60	\$13.87	\$14.15
After 6 months	\$13.00	\$13.26	\$13.53
After 3 months	\$12.17	\$12.41	\$12.66
Start	\$11.34	\$11.57	\$11.80

<b>CLASSIFICATION</b>	<b>Effective</b>	<b>Effective</b>	<b>Effective</b>
	<b>12/25/2015</b>	<b>12/26/2016</b>	<b>12/25/2017</b>
<b>Auto Strapper Operator</b>			
After 15 months	\$12.71	\$12.96	\$13.22
After 12 months	\$12.50	\$12.75	\$13.01
After 9 months	\$12.33	\$12.57	\$12.82
After 6 months	\$12.17	\$12.41	\$12.66
After 3 months	\$12.02	\$12.26	\$12.51
Start	\$11.08	\$11.30	\$11.53
<b>Baler Operator</b>			
After 15 months	\$12.33	\$12.57	\$12.82
After 12 months	\$12.11	\$12.35	\$12.60
After 9 months	\$11.94	\$12.17	\$12.41
After 6 months	\$11.78	\$12.01	\$12.25
After 3 months	\$11.62	\$11.85	\$12.09
Start	\$10.70	\$10.92	\$11.14
<b>Labeler Operator</b>			
After 15 months	\$17.54	\$17.89	\$18.25
After 12 months	\$16.12	\$16.44	\$16.77
After 9 months	\$15.49	\$15.80	\$16.12
After 6 months	\$15.06	\$15.36	\$15.67
After 3 months	\$14.58	\$14.87	\$15.17
Start	\$14.47	\$14.76	\$15.06
<b>Labeler Assistant Operator</b>			
After 15 months	\$14.24	\$14.52	\$14.81
After 12 months	\$13.52	\$13.79	\$14.07
After 9 months	\$13.03	\$13.29	\$13.56
After 6 months	\$12.65	\$12.90	\$13.16
After 3 months	\$12.25	\$12.50	\$12.75
Start	\$12.01	\$12.25	\$12.50
<b>Post Gluer Operator</b>			
After 15 months	\$19.45	\$19.84	\$20.24
After 12 months	\$18.26	\$18.63	\$19.00
After 9 months	\$17.49	\$17.84	\$18.20
After 6 months	\$17.07	\$17.41	\$17.76
After 3 months	\$16.53	\$16.86	\$17.20
Start	\$15.83	\$16.15	\$16.47

CLASSIFICATION	Effective	Effective	Effective
	12/25/2015	12/26/2016	12/25/2017
<b>Post Gluer Assistant Operator</b>			
After 15 months	\$15.23	\$15.53	\$15.84
After 12 months	\$14.84	\$15.14	\$15.44
After 9 months	\$14.47	\$14.76	\$15.06
After 6 months	\$14.08	\$14.36	\$14.65
After 3 months	\$13.69	\$13.96	\$14.24
Start	\$13.46	\$13.73	\$14.00
<b>Post Gluer Stacker</b>			
After 15 months	\$11.90	\$12.14	\$12.38
After 12 months	\$11.63	\$11.86	\$12.10
After 9 months	\$11.31	\$11.54	\$11.77
After 6 months	\$11.02	\$11.24	\$11.46
After 3 months	\$10.75	\$10.96	\$11.18
Start	\$10.41	\$10.62	\$10.83
<b>Ink Mixer</b>			
After 15 months	\$16.36	\$16.69	\$17.02
After 12 months	\$15.39	\$15.70	\$16.01
After 9 months	\$14.79	\$15.09	\$15.39
After 6 months	\$14.40	\$14.69	\$14.98
After 3 months	\$13.93	\$14.21	\$14.49
Start	\$13.78	\$14.06	\$14.34
<b>Waste Water</b>			
After 15 months	\$14.84	\$15.14	\$15.44
After 12 months	\$13.94	\$14.22	\$14.50
After 9 months	\$13.39	\$13.66	\$13.93
After 6 months	\$13.05	\$13.31	\$13.58
After 3 months	\$12.64	\$12.89	\$13.15
Start	\$12.52	\$12.77	\$13.03
<b>Die Mounter</b>			
After 15 months	\$20.11	\$20.51	\$20.92
After 12 months	\$18.85	\$19.23	\$19.61
After 9 months	\$18.14	\$18.51	\$18.88
After 6 months	\$17.63	\$17.99	\$18.35
After 3 months	\$17.06	\$17.40	\$17.75
Start	\$16.84	\$17.17	\$17.51

CLASSIFICATION	Effective	Effective	Effective
	12/25/2015	12/26/2016	12/25/2017
<b>Post Gluer Stacker</b>			
After 15 months	\$11.90	\$12.14	\$12.38
After 12 months	\$11.63	\$11.86	\$12.10
After 9 months	\$11.31	\$11.54	\$11.77
After 6 months	\$11.02	\$11.24	\$11.46
After 3 months	\$10.75	\$10.96	\$11.18
Start	\$10.41	\$10.62	\$10.83
<b>Ink Mixer</b>			
After 15 months	\$16.36	\$16.69	\$17.02
After 12 months	\$15.39	\$15.70	\$16.01
After 9 months	\$14.79	\$15.09	\$15.39
After 6 months	\$14.40	\$14.69	\$14.98
After 3 months	\$13.93	\$14.21	\$14.49
Start	\$13.78	\$14.06	\$14.34
<b>Waste Water</b>			
After 15 months	\$14.84	\$15.14	\$15.44
After 12 months	\$13.94	\$14.22	\$14.50
After 9 months	\$13.39	\$13.66	\$13.93
After 6 months	\$13.05	\$13.31	\$13.58
After 3 months	\$12.64	\$12.89	\$13.15
Start	\$12.52	\$12.77	\$13.03
<b>Die Mounter</b>			
After 15 months	\$20.11	\$20.51	\$20.92
After 12 months	\$18.85	\$19.23	\$19.61
After 9 months	\$18.14	\$18.51	\$18.88
After 6 months	\$17.63	\$17.99	\$18.35
After 3 months	\$17.06	\$17.40	\$17.75
Start	\$16.84	\$17.17	\$17.51
<b>Die Maker</b>			
After 15 months	\$20.98	\$21.40	\$21.83
After 12 months	\$19.69	\$20.09	\$20.49
After 9 months	\$18.92	\$19.30	\$19.69
After 6 months	\$18.39	\$18.76	\$19.14
After 3 months	\$17.78	\$18.14	\$18.50
Start	\$17.60	\$17.95	\$18.31

<b>CLASSIFICATION</b>	<b>Effective</b>	<b>Effective</b>	<b>Effective</b>
	<b>12/25/2015</b>	<b>12/26/2016</b>	<b>12/25/2017</b>
<b>Martin Operator (137)</b>			
After 15 months	\$22.66	\$23.12	\$23.58
After 12 months	\$22.23	\$22.67	\$23.12
After 9 months	\$21.37	\$21.79	\$22.23
After 6 months	\$20.72	\$21.13	\$21.55
After 3 months	\$20.07	\$20.47	\$20.88
Start	\$19.42	\$19.81	\$20.21
<b>Martin Assistant Operator (137)</b>			
After 15 months	\$17.07	\$17.41	\$17.76
After 12 months	\$16.75	\$17.08	\$17.42
After 9 months	\$16.11	\$16.43	\$16.76
After 6 months	\$15.63	\$15.94	\$16.26
After 3 months	\$15.15	\$15.45	\$15.76
Start	\$14.67	\$14.96	\$15.26
<b>Martin Stacker (137)</b>			
After 15 months	\$12.89	\$13.15	\$13.41
After 12 months	\$12.52	\$12.77	\$13.03
After 9 months	\$11.83	\$12.06	\$12.30
After 6 months	\$11.49	\$11.72	\$11.95
After 3 months	\$11.15	\$11.37	\$11.60
Start	\$10.40	\$10.60	\$10.81
<b>Production Worker</b>			
After 9 months	\$11.84	\$12.08	\$12.32
After 6 months	\$11.00	\$11.22	\$11.44
After 3 months	\$10.65	\$10.86	\$11.08
Start	\$10.27	\$10.47	\$10.68

## FOLDING CARTON

CLASSIFICATION	Effective	Effective	Effective
	12/25/2015	12/26/2016	12/25/2017
<b>Hand Stripper</b>			
After 15 months	\$15.58	\$15.89	\$16.21
After 12 months	\$15.28	\$15.58	\$15.89
After 9 months	\$14.71	\$15.00	\$15.30
After 6 months	\$14.27	\$14.56	\$14.85
After 3 months	\$13.83	\$14.11	\$14.39
Start	\$13.40	\$13.67	\$13.94
<b>Sheetter Operator</b>			
After 15 months	\$18.93	\$19.31	\$19.70
After 12 months	\$18.57	\$18.94	\$19.32
After 9 months	\$17.86	\$18.21	\$18.57
After 6 months	\$17.32	\$17.66	\$18.01
After 3 months	\$16.79	\$17.12	\$17.46
Start	\$16.24	\$16.57	\$16.90
<b>Ream Cutter</b>			
After 15 months	\$16.69	\$17.02	\$17.36
After 12 months	\$16.38	\$16.71	\$17.04
After 9 months	\$15.75	\$16.06	\$16.38
After 6 months	\$15.28	\$15.58	\$15.89
After 3 months	\$14.81	\$15.11	\$15.41
Start	\$14.34	\$14.63	\$14.92
<b>Q. C. Inspector</b>			
After 15 months	\$17.25	\$17.60	\$17.95
After 12 months	\$16.92	\$17.26	\$17.61
After 9 months	\$16.28	\$16.60	\$16.93
After 3 months	\$15.30	\$15.61	\$15.92
Start	\$14.82	\$15.12	\$15.42
<b>Pre-Press</b>			
After 15 months	\$18.81	\$19.19	\$19.57
After 12 months	\$18.46	\$18.83	\$19.21
After 9 months	\$17.75	\$18.11	\$18.47
After 6 months	\$17.22	\$17.56	\$17.91
After 3 months	\$16.68	\$17.01	\$17.35
Start	\$16.15	\$16.47	\$16.80
CLASSIFICATION	Effective	Effective	Effective

	12/25/2015	12/26/2016	12/25/2017
<b>Pre-Press Assistant</b>			
After 15 months	\$14.45	\$14.74	\$15.03
After 12 months	\$14.20	\$14.48	\$14.77
After 9 months	\$13.64	\$13.92	\$14.20
After 6 months	\$13.24	\$13.51	\$13.78
After 3 months	\$12.84	\$13.09	\$13.35
Start	\$12.44	\$12.69	\$12.94
<b>Gluer Operator</b>			
After 15 months	\$22.84	\$23.30	\$23.77
After 12 months	\$22.41	\$22.86	\$23.32
After 9 months	\$21.54	\$21.97	\$22.41
After 6 months	\$20.88	\$21.30	\$21.73
After 3 months	\$20.23	\$20.64	\$21.05
Start	\$19.58	\$19.97	\$20.37
<b>FDR PKR</b>			
After 15 months	\$12.25	\$12.50	\$12.75
After 12 months	\$12.03	\$12.27	\$12.52
After 9 months	\$11.59	\$11.82	\$12.06
After 6 months	\$11.25	\$11.47	\$11.70
After 3 months	\$10.91	\$11.12	\$11.34
Start	\$10.58	\$10.79	\$11.01
<b>Pre-Make Ready</b>			
After 15 months	\$17.81	\$18.17	\$18.53
After 12 months	\$17.47	\$17.82	\$18.18
After 9 months	\$16.81	\$17.14	\$17.48
After 6 months	\$16.30	\$16.62	\$16.95
After 3 months	\$15.80	\$16.11	\$16.43
Start	\$15.29	\$15.59	\$15.90
<b>DC Operator</b>			
After 15 months	\$21.17	\$21.59	\$22.02
After 12 months	\$20.76	\$21.18	\$21.60
After 9 months	\$19.96	\$20.36	\$20.77
After 6 months	\$19.35	\$19.74	\$20.13
After 3 months	\$18.75	\$19.12	\$19.50
Start	\$18.13	\$18.50	\$18.87

<b>CLASSIFICATION</b>	<b>Effective</b>	<b>Effective</b>	<b>Effective</b>
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	12/25/2015	12/26/2016	12/25/2017
<b>First Pressman (Heidelberg)</b>			
After 24 months	\$32.32	\$32.97	\$33.63
After 19 months	\$31.68	\$32.32	\$32.97
After 15 months	\$30.46	\$31.07	\$31.69
After 12 months	\$29.84	\$30.43	\$31.04
After 9 months	\$29.22	\$29.81	\$30.41
After 6 months	\$28.59	\$29.16	\$29.74
After 3 months	\$27.65	\$28.20	\$28.76
Start	\$26.08	\$26.60	\$27.13
<b>Second Pressman (Heildeberg)</b>			
After 24 months	\$24.50	\$24.99	\$25.49
After 19 months	\$24.03	\$24.51	\$25.00
After 15 months	\$23.11	\$23.57	\$24.04
After 12 months	\$22.64	\$23.10	\$23.56
After 9 months	\$22.17	\$22.61	\$23.06
After 6 months	\$21.70	\$22.13	\$22.57
After 3 months	\$20.99	\$21.41	\$21.84
Start	\$19.83	\$20.23	\$20.63
<b>First Pressman (Mitsubishi)</b>			
After 24 months	\$34.55	\$35.24	\$35.94
After 19 months	\$33.87	\$34.55	\$35.24
After 15 months	\$32.57	\$33.22	\$33.88
After 12 months	\$31.90	\$32.53	\$33.18
After 9 months	\$31.23	\$31.85	\$32.49
After 6 months	\$30.56	\$31.17	\$31.79
After 3 months	\$29.55	\$30.14	\$30.74
Start	\$27.86	\$28.42	\$28.99
<b>Second Pressman (Mitsubishi)</b>			
After 24 months	\$26.73	\$27.26	\$27.81
After 19 months	\$26.22	\$26.74	\$27.27
After 15 months	\$25.21	\$25.72	\$26.23
After 12 months	\$24.70	\$25.20	\$25.70
After 9 months	\$24.18	\$24.67	\$25.16
After 6 months	\$23.67	\$24.15	\$24.63
After 3 months	\$22.90	\$23.36	\$23.83
Start	\$21.61	\$22.05	\$22.49
<b>CLASSIFICATION</b>	<b>Effective</b>	<b>Effective</b>	<b>Effective</b>

	12/25/2015	12/26/2016	12/25/2017
<b>Press Feeder</b>			
After 15 months	\$18.93	\$19.31	\$19.70
After 12 months	\$18.57	\$18.94	\$19.32
After 9 months	\$17.86	\$18.21	\$18.57
After 6 months	\$17.32	\$17.66	\$18.01
After 3 months	\$16.79	\$17.12	\$17.46
Start	\$16.22	\$16.55	\$16.88

## DISPLAY DIVISION

CLASSIFICATION	Effective	Effective	Effective
	12/25/2015	12/26/2016	12/25/2017
<b>BP Die Cut Operator</b>			
After 15 months	\$16.65	\$16.98	\$17.32
After 12 months	\$15.66	\$15.98	\$16.30
After 9 months	\$15.05	\$15.35	\$15.66
After 6 months	\$14.65	\$14.95	\$15.25
After 3 months	\$14.17	\$14.46	\$14.75
Start	\$14.02	\$14.30	\$14.59
<b>BP Pot Devin Operator</b>			
After 15 months	\$14.55	\$14.84	\$15.14
After 12 months	\$13.70	\$13.97	\$14.25
After 9 months	\$12.90	\$13.15	\$13.41
After 6 months	\$12.15	\$12.39	\$12.64
After 3 months	\$11.45	\$11.68	\$11.91
Start	\$10.79	\$11.01	\$11.23

**APPENDIX "B"****MAINTENANCE PROGRESSION****ADVANCEMENT FOR EMPLOYEES UNDER  
PROGRESSION TRAINING – MAINTENANCE**

<b>Classification</b>	<b>Effective 12/25/2015</b>	<b>Effective 12/26/2016</b>	<b>Effective 12/25/2017</b>
<b>Maintenance Electrician</b>			
After 4 years	\$30.43	\$31.04	\$31.66
After 3 years	\$28.32	\$28.89	\$29.47
After 2 years	\$26.23	\$26.75	\$27.29
After 1 year	\$24.09	\$24.57	\$25.06
Start	\$21.91	\$22.35	\$22.80
<b>Maintenance Journeyman</b>			
After 4 years	\$22.66	\$23.12	\$23.58
After 3 years	\$21.14	\$21.56	\$21.99
After 2 years	\$19.61	\$20.00	\$20.40
After 1 year	\$18.05	\$18.41	\$18.78
Start	\$16.47	\$16.80	\$17.14
<b>Maintenance Helper</b>			
After 1 Year	\$12.89	\$13.15	\$13.41
After 6 months	\$12.39	\$12.64	\$12.89
Start	\$11.82	\$12.05	\$12.29

It is the intent of both the Employer and the Union that employees in progression shall, during the progression period, receive as much experience in their trade as it is practical for the Employer to give them without making extra work. To this end there shall be no restrictions on the maintenance work assignments.

If an employee in progression does not make satisfactory progress during his progression period, he may be dismissed or transferred to other work commensurate with his seniority and ability. Such dismissal, if considered unjustified by the Union, shall be subject to the normal provisions of the grievance procedure.

It is the intent of the parties that employees in progression shall work during the entire progression period, and, if such period is unduly affected by absence from work, compensating changes may be made in the progression period.

It is the desire of both parties to move helpers into progression to provide for vacancies as they may occur in the ranks of Journeymen, but the Employer is not precluded from hiring Journeymen from the outside.

# The Rea Company

Human Resources and Safety Consulting  
Unemployment and COBRA Administration Services

Consultants Exclusively to  
Management Since 1958

January 16, 2006

Ryan Sherard (Clark Ritchey) (and Tony Correll 2015)  
District Council No. 2, Local No. 388M  
710 East Commonwealth Avenue  
Fullerton, CA 92831-3842

RE: Shift Preference and Seniority

## LETTER OF UNDERSTANDING

Dear Ryan:

Section 9, Seniority, 9.13 currently provides that seniority for shift preference may only be exercised when there is an opening.

During the course of negotiations, the Union discussed their concern that some with seniority may have a significant obligation that would give rise to possible consideration of allowing the employee to change the shift assignment at a time other than when there is a shift opening. Should an employee request a transfer to a shift where there is no opening, the Chief Shop Steward shall be notified.

The Company advised that it would provide such consideration and included in the factors considered will be the following:

The cause for the desired change;

The effect on the person who would be displaced from their shift;

The effect such change might have on overall Company operations and skill levels on each shift.

Sincerely,


The Rea Company

  
Patrick M. Rea  
President

Labor Relations Consultants  
for Orange County Container

\_\_\_\_\_  
Tony Correll

\_\_\_\_\_  
Date

  
Christian Eder  
Regional H.R. Manager  
02/19/2016  
\_\_\_\_\_  
Date

# The Rea Company

Human Resources and Safety Consulting  
Unemployment and COBRA Administration Services

Consultants Exclusively to  
Management Since 1958

March 14, 2013

Clark Ritchey (and Tony Correll 2015)  
Teamsters District Council No. 2, Local No. 388M  
710 East Commonwealth Avenue  
Fullerton, CA 92831-3842

RE: Utilization of Maintenance Personnel from Plant 1 at Plant 2

## LETTER OF UNDERSTANDING

Dear Clark:

During the course of the 2012-2013 Negotiations, the parties had lengthy discussion concerning the utilization of Maintenance Personnel from Plant 1 at Plant 2.

The Parties discussed and agreed that maintenance personnel from Plant 1 could be utilized at Plant 2 if circumstances required, provided the general principles stated below are met.

1. Personnel utilized from Plant 1 are paid the minimum rate of the Plant 2 Classification in which work is performed or their then existing rate of pay at Plant 1, whichever is higher.
2. Plant 2 personnel are not displaced by the presence of Plant 1 personnel.
3. The hours and overtime, if any, for "general maintenance" duties normally performed by Plant 2 maintenance personnel will not be reduced by virtue of the presence of Plant 1 personnel for the particular project.

Should the above accurately reflect your understanding of the Parties' agreements, please so indicate your agreement by signing in the space provided below.

Sincerely,

The Rea Company

  
Patrick M. Rea  
President

Labor Relations Consultants  
for Smurfit Kappa North America LLC

\_\_\_\_\_  
Tony Correll  
Special Representative  
Teamster District Council No. 2  
Local 338M

\_\_\_\_\_  
Date

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Smurfit Kappa Accused of Multiple Labor Law Infractions](#)

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