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7 *Attorneys for Defendant*
THE SHERWIN-WILLIAMS COMPANY
8 (erroneously sued as The Sherman-Williams
Company)
9

10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**

12 VERNON FIFE, on behalf of himself
and all others similarly situated,

13 Plaintiff,

14 v.

15 THE SHERMAN-WILLIAMS
COMPANY, and DOES 1 to 50,
16 inclusive,

17 Defendants.
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Case No.: 1:18-at-00514

**NOTICE OF REMOVAL OF
ACTION TO FEDERAL COURT**

[Filed concurrently with Civil Cover
Sheet; Corporate Disclosure Statement]

Action Filed: June 4, 2018

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

2 **PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1332, 1441 and
3 1446, The Sherwin-Williams Company (“Defendant”), erroneously sued as “The
4 Sherman-Williams Company”, removes the action filed by Vernon Fife
5 (“Plaintiff”) in the Superior Court of the State of California, in and for the County
6 of Stanislaus, and captioned Case No. CV-18-000698, to the United States District
7 Court for the Eastern District of California.

8 **JURISDICTION AND VENUE**

9 1. This is a civil action over which this Court has original subject matter
10 jurisdiction under 28 U.S.C. § 1332, and removal is proper under 28 U.S.C. §§
11 1441 and 1446, because it is a civil action that satisfies the requirements stated in
12 the Class Action Fairness Act of 2005 (“CAFA”), codified in part at 28 U.S.C. §
13 1332(d).

14 2. This Court is in the judicial district and division embracing the place
15 where the state court case was brought and is pending. Thus, this Court is the
16 proper district court to which this case should be removed. 28 U.S.C. §§ 1441(a)
17 and 1446(a).

18 **THE ACTION & TIMELINESS OF REMOVAL**

19 **PROCEDURAL BACKGROUND**

20 3. On June 4, 2018, Plaintiff, purportedly on behalf of himself and all
21 others similarly situated, filed a Class Action Complaint against Defendant in the
22 Superior Court of the State of California, in and for the County of Stanislaus, Case
23 No. CV-18-00698 (the “State Court Action”). Plaintiff filed the complaint as a
24 putative class action.

25 4. On June 13, 2018, Defendant was served with a copy of the Summons
26 and Complaint.

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1 5. Pursuant to 28 U.S.C. § 1446(b), this removal is timely because
2 Defendant filed this removal within 30 days of its receipt of a copy of the Summons
3 and Complaint in the State Court Action.

4 6. Exhibit “A” constitutes all process, pleadings, and orders served on
5 Defendant in the State Court Action.

6 7. Defendant filed its Answer in the State Court Action on July 10, 2018.
7 A true and correct copy of Defendant’s Answer is attached as Exhibit “B”.

8 **CAFA JURISDICTION**

9 8. Basis of Original Jurisdiction. This Court has original jurisdiction of
10 this action under CAFA. 28 U.S.C. § 1332(d)(2) and (4) provide that a district
11 court shall have original jurisdiction of a class action with one hundred (100) or
12 more putative class members, in which the matter in controversy, in the aggregate,
13 exceeds the sum or value of \$5 million. Section 1332(d)(2) further provides that
14 any member of the putative class must be a citizen of a state different from any
15 defendant.

16 9. As set forth below, pursuant to 28 U.S.C. § 1441(a), Defendant may
17 remove the State Court Action to federal court under CAFA because: (i) the amount
18 in controversy, in the aggregate, exceeds the sum or value of \$5,000,000, exclusive
19 of interest and costs; (ii) this action is pled as a class action and involves more than
20 one hundred (100) putative class plaintiffs; and (iii) members of the putative class
21 are citizens of a state different from Defendant.

22 **DIVERSITY OF CITIZENSHIP**

23 10. Plaintiff’s Citizenship. As alleged in the Complaint, Plaintiff “is a
24 resident of the State of California.” (Complaint ¶ 2). For diversity purposes, a
25 person is a “citizen” of the state in which he or she is domiciled. *Kantor v.*
26 *Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). Residence is prima
27 facie evidence of domicile. *State Farm Mutual Auto Ins. Co. v. Dyer*, 19 F. 3d 514,
28 520 (10th Cir. 1994). Accordingly, Plaintiff is a citizen of the State of California.

1 11. The Sherwin-Williams Company’s Citizenship. Defendant is a citizen
2 of the State of Ohio. Pursuant to 28 U.S.C. § 1332(c), “a corporation shall be
3 deemed to be a citizen of any State by which it has been incorporated and of the
4 State where it has its principal place of business.” The United States Supreme Court
5 has concluded that a corporation’s “principal place of business” is “where a
6 corporation’s officers direct, control, and coordinate the corporation’s activities,”
7 which the Court referred to as its “nerve center.” *Hertz Corp. v. Friend*, 130 S.Ct.
8 1181, 1192 (2010). “[I]n practice,” a corporation’s “nerve center” should “normally
9 be the place where the corporation maintains its headquarters.” *Id.* “The public
10 often (though not always) considers it the corporation’s main place of business.” *Id.*
11 at 1193.

12 12. At the time the State Court Action commenced, Defendant was, and as
13 of the date of filing of this Notice still is, a corporation formed in and incorporated
14 under the laws of the State of Ohio. Pursuant to the *Hertz* nerve center test,
15 Defendant has its principal place of business in Ohio. Defendant’s headquarters are
16 located at 101 W Prospect Avenue, Cleveland, Ohio 44115. In addition, the
17 majority of Defendant’s officers direct, control, and coordinate the corporation’s
18 activities from that same location – 101 W Prospect Avenue, Cleveland, Ohio
19 44115.

20 13. Doe Defendants. Although Plaintiff has also named fictitious
21 defendants “DOES 1 to 50,” 28 U.S.C. § 1441(a) provides, “[f]or purposes of
22 removal under this chapter, the citizenship of defendants sued under fictitious
23 names shall be disregarded.” *See also Fristos v. Reynolds Metals Co.*, 615 F.2d
24 1209, 1213 (9th Cir. 1980) (unnamed defendants are not required to join in a
25 removal petition). Thus, the existence of “Doe” defendants does not deprive the
26 Court of jurisdiction.

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1 14. Minimal Diversity. Minimal diversity of citizenship is established,
2 pursuant to CAFA, inasmuch as Plaintiff (who is a member of the putative class) is
3 a citizen of the State of California, and Defendant is a citizen of the State of Ohio.
4 *See* 28 U.S.C. § 1332(d)(2).

5 15. Size of the Class. Plaintiff filed the State Court Action as a class
6 action. While Plaintiff does not allege a specific class size, the relevant period for
7 various claims made by Plaintiff is four years prior to the filing of the State Court
8 Action. Four years prior to Plaintiff's filing of the Complaint is June 4, 2014.
9 Between June 4, 2014 and Plaintiff's filing of his Complaint, Defendant employed
10 approximately 477 individuals in California as assistant store managers (the
11 putative class definition provided in the Complaint). (Complaint ¶ 5.) Therefore,
12 per the allegations of the Complaint, the class size is 477 individuals.

13 **AMOUNT IN CONTROVERSY UNDER CAFA**

14 16. Removal is appropriate when it is more likely than not that the amount
15 is controversy exceeds the jurisdictional requirement, which in this case is
16 \$5,000,000 in the aggregate. *See, e.g., Cohn v. PetsMart, Inc.*, 281 F.3d 837, 839-
17 40 (9th Cir. 2002). The amount in controversy is determined by the complaint
18 operative at the time of removal and encompasses all relief a court may grant if the
19 plaintiff is victorious. *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 414 (9th
20 Cir. 2018).

21 17. This action involves Plaintiff's alleged claims against Defendant for:
22 failure to reimburse for the cost and use of personal cell phones, failure to pay
23 regular wages owed, failure to pay overtime wages owed, failure to provide
24 accurate, itemized wage statements, failure to pay all wages due at the time of
25 termination of employment, and unfair competition. Plaintiff's prayer for relief
26 seeks an award of compensatory damages, statutory damages, penalties, restitution,

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1 treble damages pursuant to Labor Code Section 206, pre-judgment and post-
2 judgment interest, and attorneys’ fees and costs. (See Complaint, Prayer for
3 Relief.)

4 18. Amount in Controversy. Without conceding that Plaintiff or the
5 purported class members are entitled to or could recover damages in any amount,
6 the amount in controversy in this putative class action, in the aggregate, is well in
7 excess of \$5,000,000, exclusive of interest and costs.

8 a. Variables.

- 9 • During the period of June 4, 2014 to the present, applicable to
10 Plaintiff’s straight time, overtime, and reimbursement claims,
11 Defendant employed approximately 477 individuals in California as
12 non-exempt assistant store managers. These 477 individuals worked a
13 total of 67,377 workweeks since June 4, 2014. The average hourly rate
14 of pay among this group is approximately \$19.65.
- 15 • During the period of June 4, 2015 to the present, applicable to
16 Plaintiff’s waiting time penalties claim, approximately 189 putative
17 class members separated from employment with Defendant.
- 18 • During the period of June 4, 2017 to the present, applicable to
19 Plaintiff’s wage statement claim, Defendant employed approximately
20 325 putative class members. These 325 individuals worked a total of
21 7,788 pay periods since June 4, 2017.

22 b. Claim #1: Failure to Reimburse Cell Phone Expenses.

23 Plaintiff alleges that he and other members of the putative class “were
24 required to use their personal cell phones for work-related calls from other
25 Sherwin-Williams employees,” that it was mandatory that the putative class
26 members personal phone numbers be displayed in all stores so that employees
27 could contact them, and that they “regularly received and responded to calls” from
28 employees regarding work-related matters. (Complaint ¶¶ 6-7.) Plaintiff further

1 alleges that Defendant did not reimburse Plaintiff and the putative class members
 2 for the cost of their personal cell phones or for usage charges. (Complaint ¶ 17.)
 3 Plaintiff alleges that Defendant’s conduct is ongoing to this date. (Complaint ¶ 36.)
 4 Although Defendant denies all liability, assuming conservatively, for purposes of
 5 this analysis only, that each putative class member working in California at any
 6 given time during the relevant period was not reimbursed for the cost of their
 7 personal cell phones or for usage charges during each month worked, and assuming
 8 conservatively that each putative class member would reasonably be entitled to
 9 60% of the costs associated with their usage of personal cell phones, the amount in
 10 controversy for this claim would be approximately **\$748,622** (calculated as: average
 11 cost of cell phone service per month¹ x 60% for work-related usage x total number
 12 of months worked by the putative class in between June 4, 2014 and the present).²

13 c. Claim #2: Failure to Pay Straight Time and Overtime Wages.

14 Plaintiff alleges that “[d]uring all relevant periods,” Defendant did not
 15 pay Plaintiff and the putative class members for all hours worked. (Complaint ¶
 16 21.) Specifically, Plaintiff alleges that he and other members of the putative class
 17 “regularly received and responded to phone calls from store employees, when they
 18 were not at work, regarding work-related matters,” and that Defendant did not pay
 19 either regular or overtime compensation to Plaintiff and the putative class members
 20 for the time spent responding to these calls. (Complaint ¶¶ 7, 21.)

21 Although Defendant denies all liability, assuming conservatively, for
 22 purposes of this analysis only, that each putative class member working in
 23 California at any given time during the relevant period worked, but was not
 24 compensated for, 1 hour of straight time and 1.5 hours of overtime per work week,
 25 the amount in controversy for this claim would be approximately **\$4,302,864**
 26 (calculated as: the sum of [average hourly rate of pay x 1 hour of regular

27 ¹ According to the Bureau of Labor Statistics, in 2014 the average annual expenditures for
 28 cellular phone service was \$963 (or \$80.25 per month).

² Based on the above variables and formula, calculated as: \$80.25 x .60 x 15,549.

1 compensation per week x total number of weeks worked by the putative class in
 2 between June 4, 2014 and the present] + [average hourly rate of pay x 1.5 x 1.5
 3 hours of overtime compensation per week x total number of weeks worked by the
 4 putative class in between June 4, 2014 and the present]).³

5 d. Claim #3: Failure to Provide Accurate, Itemized Wage Statements.

6 Plaintiff alleges that the wage statements Defendant provided to
 7 Plaintiff and the putative class members “do not accurately reflect the actual hours
 8 worked, actual gross wages earned, or actual net wages earned.” (Complaint ¶ 26.)
 9 Plaintiff further alleges that he and the putative class members “regularly received
 10 and responded to phone calls from store employees” and that Defendant
 11 “systematically failed to include this time worked in the wage statements.”
 12 (Complaint ¶¶ 7, 26-27.) Additionally, Plaintiff alleges that Defendant “failed to
 13 accurately show Plaintiff’s and putative class members’ regular rates and overtime
 14 rates of pay, in part by not including all remuneration in the regular rate of pay
 15 calculation and by failing to show accurate overtime rates of pay.” (Complaint ¶
 16 26.) Plaintiff alleges that Defendant’s failure to provide accurate itemized wage
 17 statements is ongoing to this date. (Complaint ¶ 36.)

18 Plaintiff, on behalf of himself and the putative class, seeks damages
 19 pursuant to California Labor Code Section 226(e), which permits recovery in the
 20 amount of \$50 per employee for the initial pay period in which a wage statement
 21 violation occurred and \$100 per employee for each violation in a subsequent pay
 22 period, not to exceed a maximum aggregate penalty of \$4,000 per employee.
 23 (Complaint ¶ 28.) Approximately 325 putative class members were employed by
 24 Defendant during the one-year statutory period. Using the total number of pay
 25 periods worked by each of the 325 putative class members, and the statutory
 26 penalty of \$50 for each initial violation and \$100 for each subsequent violation, the
 27

28 ³ Based on the above variables and formula, calculated as: $(\$19.65 \times 1 \times 67,377) +$
 $(\$19.65 \times 1.5 \times 1 \times 67,377)$.

1 amount in controversy is approximately \$762,550 (calculated as: the sum of [\$50
2 penalty for each initial violation x 325 initial pay periods worked by the putative
3 class] + [\$100 penalty for each subsequent violation x 7,463 subsequent pay
4 periods worked by the putative class]).

5 e. Claim #4: Failure to Pay All Wages Upon Termination.

6 Plaintiff alleges that Defendant did not pay all wages due upon
7 termination for Plaintiff and the putative class members for time spent taking and
8 responding to calls from employees on their personal cell phones, and that they
9 “regularly received” these calls. (Complaint ¶¶ 7, 32.) Plaintiff further alleges that
10 Defendant’s conduct violated California Labor Code Sections 203 and 204, and is
11 ongoing to this date. (Complaint ¶¶ 32, 36.) California Labor Code Section 203
12 provides that a former employee shall receive regular daily wages for each day they
13 were not paid, at their hourly rate, for up to thirty days. Approximately 189
14 members of the proposed subclass separated from employment during the three-
15 year statutory period. Using the average hourly rate of pay, and conservatively
16 assuming that the putative class members work only 8 hours per day, the amount in
17 controversy for this claim would be approximately \$891,324 (calculated as: 189
18 separated employees x 8 hours x average hourly rate of pay x 30 days).

19 f. Claims for Labor Code § 558 Penalties.

20 In addition to the claims discussed above, Plaintiff seeks damages
21 pursuant to Labor Code § 558. (Complaint ¶¶ 2, 11(d), 36 and Prayer for Relief.)
22 Labor Code § 558 states that any employer or other person acting on behalf of an
23 employer who violates any provision regulating hours and days of work in any
24 order of the Industrial Welfare Commission shall be subject to a civil penalty as
25 follows: (1) \$50 for initial violation, (2) \$100 for each subsequent violation, and
26 (3) an amount sufficient to recover underpaid wages. Assuming for purposes of
27 this analysis only that, based on Plaintiff’s unpaid straight time and overtime
28 allegations, each putative class member employed during the one-year statutory

1 period was underpaid each pay period, the amount in controversy for this claim
 2 would be approximately **\$762,550** (calculated as: the sum of [\$50 penalty for each
 3 initial violation x 325 initial pay periods worked by the putative class] + [\$100
 4 penalty for each subsequent violation x 7,463 subsequent pay periods worked by
 5 the putative class]).

6 g. Total Amount in Controversy.

7 Based on the claims described above, the class-wide amount in
 8 controversy, conservatively estimated, is at least **\$7,467,910**. “As specified in §
 9 1446(a), a defendant’s notice of removal need include only a plausible allegation
 10 that the amount in controversy exceeds the jurisdictional threshold; the notice need
 11 not contain evidentiary submissions.” *Dart Cherokee Basin Operating Co., LLC v.*
 12 *Owens*, 135 S. Ct. 547, 549 (2014). A summary of the amount in controversy
 13 discussed above is as follows:

Claim	Amount in Controversy
Failure to Reimburse Business Expenses	\$748,622
Failure to Pay All Wages Owed	\$4,302,864
Failure to Provide Accurate Itemized Wage Statement	\$762,550
Failure to Pay All Wages Upon Termination	\$891,324
Labor Code § 558 Penalties	\$762,550
TOTAL:	\$7,467,910

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24 19. Amount in Controversy for Remaining Cause of Action. The above
 25 amounts exceed the \$5 million CAFA minimum before taking into account
 26 Plaintiff’s additional claim for failure to pay overtime wages at the legal overtime
 27 pay rate, which is further evidence that the amount in controversy exceeds
 28 \$5,000,000, as already established.

1 20. Total Amount in Controversy for All Causes of Action. Based on the
2 claims described above, the class-wide amount in controversy, conservatively
3 estimated, is well in excess of \$5,000,000.

4 21. Other Claims. In addition to the damages discussed above, Plaintiff
5 also requests treble damages and restitution (among other forms of relief not
6 calculated above) for the putative class members. (Complaint, Prayer for Relief.)
7 No allegations in the Complaint allow Defendant to calculate the amount of these
8 alleged damages and relief. However, Defendant points out the allegations to the
9 Court as further evidence that the amount in controversy exceeds \$5,000,000, as
10 already established above.

11 **ATTORNEYS' FEES**

12 22. When the underlying substantive law provides for the award of
13 attorneys' fees, a party may include that amount in their calculation of the amount
14 in controversy. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998).
15 Plaintiff has sought attorneys' fees in the Complaint which are permitted by Cal.
16 Labor Code §§ 1194 and 1021.5 for the Labor Code violations alleged in the
17 Complaint. They should therefore be included in analyzing the amount in
18 controversy, if needed. Conservatively, we do not include them in the above
19 calculations.

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NOTICE

23. As required by 28 U.S.C. § 1446(d), Defendant is providing written notice of the filing of this Notice of Removal to Plaintiff, and is filing a copy of this Notice of Removal with the Clerk of the Superior Court of the State of California, in and for the County of Stanislaus.

Dated: July 12, 2018

Respectfully submitted,

BAKER & HOSTETLER, LLP

By: /s/ Shareef S. Farag

Margaret Rosenthal
Shareef S. Farag
Nicholas D. Poper

Attorneys for Defendant
**THE SHERWIN-WILLIAMS
COMPANY** (erroneously sued as The
Sherman-Williams Company)

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

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PROOF OF SERVICE

I, Priscilla Markus, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 11601 Wilshire Boulevard, Suite 1400, Los Angeles, California 90025-7120. On **July 12, 2018**, I served a copy of the within document(s): **NOTICE OF REMOVAL OF ACTION TO FEDERAL COURT**

VIA U.S. MAIL by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid 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 in affidavit.

Robin G. Workman, Esq.
Rachel E. Davey, Esq.
WORKMAN LAW FIRM, PC
177 Post Street, Suite 800
San Francisco, CA 94108
Tel: 415.782.3660
Fax: 415.788.1028
Email: robin@workmanlawpc.com
rachel@workmanlawpc.com

Attorneys for Plaintiff
VERNON FIFE

I hereby certify that I am employed in the office of a member of the Bar of this Court at whose discretion the service as made, and I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **July 12, 2018** at Los Angeles, California.



Priscilla Markus

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

EXHIBIT A

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

THE SHERWIN-WILLIAMS COMPANY and DOES 1 through 50,
inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

VERNON FIFE on behalf of himself and all others similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

2018 JUN -6 PM 2:19

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

CHRISTINE ZULIAN

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS
801 10th Street, 4th Floor, Modesto, CA 95354

CASE NUMBER:
(Número del Caso):
CV 180000698

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Robin G. Workman (Bar # 145810)
Workman Law Firm, PC
177 Post Street, Suite 800, San Francisco, CA 94108
DATE: **6-4-18**
(Fecha)

Fax No.: (415) 788-1028
Phone No.: (415) 782-3660

Clerk, by
(Secretario) **CHRISTINE ZULIAN**, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[REAL]

- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
 - as the person sued under the fictitious name of (specify):
 - on behalf of (specify): **THE SHERWIN-WILLIAMS COMPANY**
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify): **business entity form unknown**
 - by personal delivery on (date):

FILED BY FAX

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME, ADDRESS, PHONE, BAR NUMBER) COURT GENERATED Attorney for:	FOR COURT USE ONLY FILED 2018 JUN -4 PM 2:22 CLERK OF THE SUPERIOR COURT COUNTY OF STANISLAUS CHRISTINE ZULIA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS Street Address: City Towers Bldg., 801 10th St, 4th Floor, Modesto, CA 95354 Civil Clerk's Office: 801 10th Street, 4th Floor, Modesto, CA 95354	
Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER CV180000698
NOTICE OF CASE MANAGEMENT CONFERENCE	

1. NOTICE is given that a Case Management Conference has been scheduled as follows:

Date: 10/15/18 Time: 3:00 AM PM

This case is assigned to Judge MARIE SOVEY SILVERA, Dept. 21, for all purposes, including trial.

*Departments 21 & 22 are located at 801 10th Street, 6th Floor, Modesto, CA 95354

*Departments 23 & 24 are located at 801 10th Street, 4th Floor, Modesto, CA 95354

All filings shall be filed in the Clerk's Office at the City Towers, 4th Floor address.

You have 30 calendar days to file a written response with this court after the legal papers and the summons were served on you. You must also serve a copy of your written response on the plaintiff.

2. You must file and serve a completed *Case Management Conference Statement* at least fifteen (15) calendar days before the case management conference.
3. You must be familiar with the case and be fully prepared to participate effectively in the case management conference.
4. At the case management conference the Court may make pretrial orders, including the following:
 - a. An order establishing a discovery schedule.
 - b. An order referring the case to arbitration.
 - c. An order dismissing fictitious defendants.
 - d. An order scheduling exchange of expert witness information.
 - e. An order setting subsequent conferences and the trial date.
 - f. Other orders to achieve the goals of the Trial Court Delay Reduction Act (Gov. Code, § 68600 et seq.).

Date: 6-4-18 by CHRISTINE ZULIA Deputy Clerk
 Mandatory Form

-SANCTIONS-

If you do not file the *Case Management Statement* required by local rule, or attend the case management conference or participate effectively in the conference, the court may impose sanctions (including dismissal of the case, striking of the answer, and payment of money).

CV003

11/10

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Robin G. Workman (Bar # 145810) Workman Law Firm, PC 177 Post Street, Suite 800 San Francisco, CA 94108 TELEPHONE NO.: (415) 782-3660 FAX NO.: (415) 788-1028 ATTORNEY FOR (Name): Vernon Fife, Plaintiff	FOR COURT USE ONLY FILED 2018 JUN -4 PM 2:20 CLERK OF THE SUPERIOR COURT COUNTY OF STANISLAUS CHRISTINE ZULM
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS STREET ADDRESS: 801 10th Street, 4th Floor MAILING ADDRESS: 801 10th Street, 4th Floor CITY AND ZIP CODE: Modesto 95354 BRANCH NAME:	
CASE NAME: Fife v. Sherwin-Williams	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
CASE NUMBER: CV 18000698 JUDGE: 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:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <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) Non-PI/PD/WD (Other) Tort <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) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <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) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <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)	Provisionally Complex Civil Litigation (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) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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 checked="" type="checkbox"/> Large number of witnesses
b. <input checked="" 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 checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision

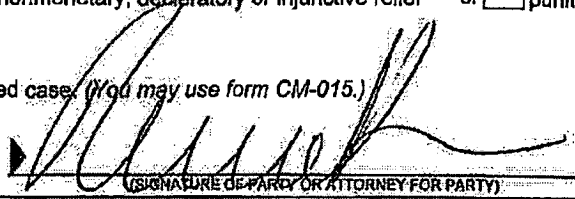
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): **FIVE (5)**

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: June 1, 2018
 Robin G. Workman
 (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.

FILED BY FAX

1 WORKMAN LAW FIRM, PC
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JUN 04 2018

PUBLIC ACCESS COPY
NOT OFFICIAL COURT DOCUMENT

6 *Attorneys for Plaintiff Vernon Fife on behalf of*
7 *himself, and all others similarly situated*

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF STANISLAUS

12 VERNON FIFE on behalf of himself, and all
13 others similarly situated,

No. CV 18000698

COMPLAINT

14 Plaintiffs,

Unlimited Civil Case

15 vs.

The Amount Demanded Exceeds \$25,000

16 THE SHERMAN-WILLIAMS COMPANY,
17 and DOES 1 through 50, inclusive,

18 Defendants.

19
20 Plaintiff Vernon Fife ("Plaintiff"), hereby alleges as follows:

21 GENERAL ALLEGATIONS

22 1. This class action lawsuit arises from ongoing wrongful conduct by Defendant,
23 The Sherwin-Williams Company ("Sherwin-Williams" or "Defendant") for its unlawful failure
24 to (1) compensate Plaintiff and proposed class members for the cost of and use of their personal
25 cell phones for work; (2) pay regular and overtime wages as required by California Labor Code
26 sections 510, 558 and 1194; (3) provide accurate and itemized wage statements pursuant to
27 California Labor Code section 226; (4) pay wages when due in violation of California Labor
28 Code sections 203 and 204.

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1 2. Plaintiff Vernon Fife, a resident of the State of California, brings this action
2 pursuant to California Labor Code Sections 203, 204, 226, 510, 558, 1194, 2802 and California
3 Business and Professions Code § 17200 et. seq.; and applicable Industrial Welfare and
4 Commission Wage Orders made pursuant to California Labor Code §§ 2699, 2699.3 and
5 2699.5.

6 3. Defendant, Sherwin-Williams is in the business of the sale of paints, coatings
7 and related products to professional, industrial, commercial and retail customers. Sherwin-
8 Williams engages in this business throughout California.

9 4. Plaintiff is ignorant of the true names and capacities of Doe Defendants 1-50,
10 inclusive. Plaintiff sues these Defendants by such fictitious names pursuant to California Code
11 of Civil Procedure §474. Plaintiff will seek leave of Court to amend this Complaint to identify
12 these Defendants when their identities are ascertained. Plaintiff is informed and believe, and on
13 that basis alleges, that each of the fictitiously named Defendants was in some manner liable and
14 legally responsible for the damages and injuries set forth herein.

15 5. Plaintiff was employed by Defendant for approximately ten years from
16 November 2006 to August 2016. After about two years with the company, Plaintiff was
17 promoted to an assistant manager position. Plaintiff worked at multiple locations in California.
18 As an assistant manager, Plaintiff was paid on an hourly basis and was classified as a non-
19 exempt employee. Plaintiff sues on behalf of himself and all other assistant managers, who
20 worked for Defendant in California for the four years preceding the filing of this complaint
21 (“the class”). Given Plaintiff worked as an assistant manager within four years of filing this
22 complaint, and was subject to the actions/inaction of Defendant of which he complains, Plaintiff
23 is an adequate and proper class representative. Plaintiff brings this action in his individual
24 capacity, on behalf of all others similarly situated, as an aggrieved employee, and pursuant to
25 California Business & Professions Code section 17204, on behalf of the general public.
26 Defendant employed Plaintiff as an assistant manager in California within four years of the
27 filing of this complaint.

28

1 6. As an assistant manager, Plaintiff and other similarly situated employees were
2 required to use their personal cell phones for work-related calls from other Sherwin-Williams
3 employees. It was also mandatory that assistant managers' personal phone numbers be
4 displayed on a contact list in all of the stores, so that employees could contact the assistant
5 managers if questions arose. Defendant did not reimburse Plaintiff, or other similarly situated
6 employees, for the costs incurred to use their personal cellular phones to take and/or respond to
7 work-related calls.

8 7. Plaintiff and other members of the proposed class regularly received and
9 responded to phone calls from store employees, when they were not at work, regarding work-
10 related matters. Plaintiff, and those similarly situated, were not compensated for the time spent
11 responding to these calls. Because Defendant did not compensate Plaintiff, and those similarly
12 situated, for the time spent responding to these calls, Defendant did not pay Plaintiff, and those
13 similarly situated, for all time worked and overtime compensation owed. As such, Defendant
14 did not provide accurate wage statements as required by California Labor Code section 226.

15 8. Defendant also failed to pay Plaintiff and similarly situated employees all
16 compensation owed and failed to accurately calculate the regular rate and overtime rates of pay.
17 Plaintiff and similarly situated employees were paid a combination of regular wages and
18 bonuses. Although Defendant provided wage statements, it incorrectly listed the wages earned
19 by Plaintiff and similarly situated employees due to its improper calculation of the overtime rate
20 by failing to include all remuneration in the regular rate of pay calculation. In so doing,
21 Defendant failed to pay all overtime compensation due in that the wrong regular rate of pay was
22 used when determining the overtime rate in violation of Labor Code section 510. Because of
23 Defendant's failure to pay the correct overtime rate and its failure to pay all wages owed, it
24 failed to provide Plaintiff and those similarly situated employees with accurate wage statements
25 in violation of Labor Code section 226. Because of these violations, Defendant also violated
26 Labor Code section 203 and 204, in that Defendants failed to pay all wages owned at
27 termination for Plaintiff and those similarly situated employees.

28

1 9. Plaintiff is informed and believes that the damages, back-wages, restitution,
2 penalties, interest and attorneys' fees do not exceed an aggregate of \$4,999,999.99 and that
3 Plaintiff's individual claims do not exceed \$74,999.99.

4 10. The proposed class is sufficiently numerous and the proposed class members are
5 geographically dispersed throughout California, the joinder of whom in one action is
6 impracticable, such that the disposition of whose claims in a class action will provide
7 substantial benefits to both the parties and the Court.

8 11. There is a well-defined community of interest in the questions of law and fact
9 involved affecting the parties to be represented. The questions of law and fact common to the
10 class predominate over questions that may affect individual class members, include but are not
11 limited to the following:

12 (a) Whether Defendant implemented and engaged in a practice whereby it
13 unlawfully failed to reimburse Plaintiff and class members for work-related expenses as
14 required by law;

15 (b) Whether Defendant implemented and engaged in a practice whereby it
16 unlawfully failed to pay all earned regular and overtime pay to employees;

17 (c) Whether Defendant implemented and engaged in a practice whereby it failed to
18 provide accurate and compliant wage statements to employees;

19 (d) Whether the acts and practices of Defendant as alleged herein violated, inter alia,
20 applicable provisions of the California Labor Code, including but not limited to sections
21 201, 202, 203, 204, 226, 510, 558, 1194 and 2802, and applicable Industrial Welfare
22 Commission Orders, and California Business & Professions Code section 17200, et seq.

23 12. Because Defendant required Plaintiff to work regular and overtime hours for
24 which he did not receive compensation, to incur work-related expenses without reimbursement,
25 and failed to provide Plaintiff accurate wage statements as required by the Labor Code, Plaintiff
26 asserts claims in accord with the claims of the class.

27 13. Plaintiff will fairly and adequately represent and protect the interests of the class
28 in that he has no disabling conflict of interest that would be antagonistic to those of the other

1 members of the class. Plaintiff has retained counsel who are competent and experienced in the
2 prosecution of class action wage and hour violations.

3 14. Because Plaintiff and the members of the class all similarly suffered irreparable
4 harm and damages as a result of Defendant's unlawful and wrongful conduct, class treatment is
5 especially appropriate and this action will provide substantial benefits to both. Absent this
6 action, Defendant's unlawful conduct will continue unremedied and uncorrected.

7 **FIRST CAUSE OF ACTION**
8 **Violation of California Labor Code § 2802**

9 15. Plaintiff, and members of the proposed class, reallege and incorporate by
10 reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

11 16. California Labor Code section 2802 provides that an employer "shall indemnify
12 his or her employee for all necessary expenditures or losses incurred by the employee in direct
13 consequence of the discharge of his or her duties, . . ."

14 17. Defendant required Plaintiff, and proposed class members, to post their personal
15 cell phone numbers in the stores so that employees could call if questions arose. Defendant did
16 not reimburse Plaintiff, or similarly situated class members, for the cost of their personal cell
17 phones or for usage charges.

18 18. Plaintiff, and proposed class members, have suffered damages as a direct
19 consequence of Defendant's failure to comply with Labor Code section 2802 and they seek
20 reimbursement for the expenditures they incurred in direct consequence of the discharge of their
21 duties in an amount according to proof at time of trial with interest thereon, costs, applicable
22 civil penalties and attorney's fees as set forth below.

23 19. Plaintiff and proposed members of the class members are therefore entitled to
24 the relief requested below.

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SECOND CAUSE OF ACTION

**Failure to Pay Regular and Overtime Wages Pursuant to
Labor Code Sections 510, 558, and 1194**

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2
3 20. Plaintiff, and members of the proposed class, reallege and incorporate by
4 reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

5 21. During all relevant periods, Defendant did not pay Plaintiff, and other similarly
6 situated employees, for all hours worked. Defendant required Plaintiff, and those similarly
7 situated, to post their cellular phone numbers at the stores so that employees could call if
8 questions arose. Defendant did not compensate Plaintiff, and those similarly situated, for the
9 time spent taking and/or responding to the calls. By failing to compensate Plaintiff, and those
10 similarly situated, for this time, Defendant required Plaintiff and class members to work in
11 excess of 8 hours per day and 40 hours per week by requiring them to respond to calls from
12 other store employees when they were not at work. Defendant did not pay either regular or
13 overtime compensation for the work performed.

14 22. During all relevant periods, both the California Labor Code and the pertinent
15 Industrial Welfare Commission Wage Orders required that employers pay employees for all
16 hours worked and that all work performed by an employee in excess of 8 hours per day and 40
17 hours per week be compensated at no less than one and one-half times the employee's regular
18 rate of pay. Defendant failed to pay for all hours worked and failed to pay overtime wages for
19 overtime hours worked and failed to include all compensation when calculating the regular rate
20 of pay and overtime rates of pay, and therefore failed to compensate Plaintiff, and other
21 similarly situated employees, for all hours they worked. As a result, Defendant failed to pay
22 Plaintiff, and similarly situated employees, earned overtime wages, failed to properly calculate
23 overtime compensation, and failed to provide Plaintiff and class members accurate wage
24 statements as required by California Labor Code sections 226 and keep records as required by
25 section 1174. Plaintiff and Class members are entitled to recover their unpaid regular and
26 overtime compensation and penalties arising therefrom.

27 23. Plaintiff, and similarly situated employees, are therefore entitled to the relief
28 requested below.

THIRD CAUSE OF ACTION
Failure to Provide Accurate, Itemized Wage Statements
Labor Code Section 226(a)

1
2
3 24. Plaintiff and members of the proposed class reallege and incorporate by
4 reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

5 25. Labor Code section 226(a) provides that employers shall provide accurate
6 itemized statements showing, among other things, “gross wages earned,” “total hours worked
7 by the employee,” “net wages earned,” and “all applicable hourly rates in effect during the pay
8 period and the corresponding hours worked at each hourly rate by the employee.”

9 26. Defendant failed to provide timely, accurate, itemized wage statements to
10 Plaintiff, and those similarly situated, in accordance with Labor Code § 226(a) and the
11 Industrial Welfare Commission Wage Orders. In particular, the wage statements Defendant
12 provided Plaintiff, and those similarly situated, do not accurately reflect the actual hours
13 worked, actual gross wages earned, or actual net wages earned. This is because, in part,
14 Defendant did not include all “hours worked,” particularly the time spent by Plaintiff, and those
15 similarly situated, taking and/or responding to, work-related telephone calls when they were not
16 present at their work locations. Additionally, Defendant failed to accurately show Plaintiff’s
17 and putative class members’ regular rates and overtime rates of pay, in part by not including all
18 remuneration in the regular rate of pay calculation and by failing to show accurate overtime
19 rates of pay.

20 27. Defendant’s failure to comply with Labor Code § 226(a) was, and continues to
21 be, knowing and intentional. Although, as alleged herein, Defendant was aware that Plaintiff,
22 and those similarly situated, performed work for which they receive no compensation,
23 Defendant systematically failed to include this time worked in the wage statements. Defendant
24 also intentionally and knowingly failed to set forth the accurate rates of pay on the wage
25 statements and failed to properly calculate the regular rate of pay, which lead to incorrect
26 overtime calculations. As a result, Plaintiff, and those similarly situated, suffered actual
27 damages.

28

1 28. Defendant is liable to Plaintiff, and those similarly situated, for all recovery
2 allowed pursuant to Labor Code sections 226(e) and 226.3, with interest thereon. Furthermore,
3 Plaintiffs and the class are entitled to an award of attorneys' fees and costs as set forth below.

4 29. Plaintiff and class members are therefore entitled to the relief requested below.

5 **FOURTH CAUSE OF ACTION**
6 **Failure to Pay Wages When Due Pursuant to**
7 **California Labor Code §§ 203, 204**

8 30. Plaintiff and the members of the proposed class incorporate by reference the
9 allegations contained in the foregoing paragraphs of this complaint as if fully set forth herein.

10 31. During all relevant periods, both the California Labor Code section 204, and the
11 pertinent Wage Orders, required that: "labor" performed by a semi-monthly paid employee shall
12 be paid for no later than between the 16th and the 26th of the month for labor performed between
13 the 1st and the 15th of the month or between the 1st and the 10th day of the following month for
14 labor performed between the 16th and the last day of the month. Labor Code section 200 states
15 that "'wages' includes all amounts for labor performed by employees of every description..."
16 and "'labor' includes labor, work, or service whether rendered or performed under contract...or
17 other agreement if the labor to be paid for is performed personally by the person demanding
18 payment."

19 32. Plaintiff, and those similarly situated, were required to work when not at
20 Defendant's store locations as they were required to take and respond to calls from store
21 employees on their personal cell phones. Defendant did not compensate Plaintiff, and those
22 similarly situated, for the time spent performing this work for Defendant. As Defendant did not
23 compensate Plaintiff, and those similarly situated, for this time, Defendant also did not pay all
24 wages due upon termination for Plaintiff, and those similarly situated employees, in violation of
25 California Labor Code sections 203 and 204.

26 33. Plaintiff and the members of the class are therefore entitled to the relief
27 requested below.
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FIFTH CAUSE OF ACTION
Unlawful, Unfair and Fraudulent Business Practices Pursuant
To Business & Professions Code Section 17200, et seq.

34. Plaintiff, and other members of the proposed class, reallege and incorporate by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

35. California Business & Professions Code section 17200, et seq. prohibits acts of unfair competition, which shall mean and include any “unlawful business act or practice.”

36. The policies, acts and practices heretofore described were and are unlawful business acts or practices because Defendant’s failure to pay overtime and double time wages at the lawful rate, failure to pay wages for regular and overtime hours worked, failure to provide accurate and timely wage statements, and failure to reimburse employees for costs associated with performing their jobs in violation of applicable Labor Code sections, including but not limited to California Labor Code sections 201-204, 226, 510, 558, 1174, 1194, 2802, applicable Industrial Welfare Commission Wage Orders, the Labor Code Private Attorney General Act of 2004 (“PAGA”), California Labor Code section 2698, et seq., and other provisions of California common and/or statutory law. Plaintiff reserves the right to allege additional statutory and common law violations by Defendant. Such conduct is ongoing to this date.

37. The policies, acts or practices described herein were and are an unfair business act or practice because any justifications for Defendant’s illegal and wrongful conduct were and are vastly outweighed by the harm such conduct caused Plaintiff, the proposed class members, and the members of the general public. Such conduct is ongoing to this date.

38. Plaintiff, and those similarly situated, are therefore entitled to the relief requested below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. An order certifying that the action may be maintained as a class action;
2. Compensatory and statutory damages, penalties and restitution, as appropriate and available under each cause of action in an amount to be proven at trial;

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3. Reasonable attorneys' fees pursuant to Labor Code sections 226, 1194, 2802 and 2699;
4. Treble damages if Defendant fails to pay the determined amount pursuant to Labor Code section 206;
5. Costs of this suit;
6. Pre- and post-judgment interest.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Date: June 4, 2018

WORKMAN LAW FIRM/PC

By: _____

Robin G. Workman
Attorneys for Plaintiff, Vernon Fife, and all
others similarly situated

EXHIBIT B

FILED BY FAX

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

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FILED
2018 JUL 11 PM 1:42
CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY IVETTE HORTA DEPUTY

12 *Attorneys for Defendant*
13 THE SHERWIN-WILLIAMS COMPANY,
14 improperly sued as THE SHERMAN-WILLIAMS
15 COMPANY

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF STANISLAUS**

18 VERNON FIFE, on behalf of himself and all
19 others similarly situated,

20 Plaintiff,

21 v.

22 THE SHERMAN-WILLIAMS COMPANY,
23 and DOES 1 to 50, inclusive,

24 Defendants.

Case No.: CV-18-000698

[Honorable Marie S. Silveira, Dept. 21]

**ANSWER TO PLAINTIFF'S UNVERIFIED
COMPLAINT**

Action Filed: June 4, 2018

25 The Sherwin-Williams Company ("Defendant"), erroneously sued as "The-Sherman
26 Williams Company", hereby answers the Complaint of Vernon Fife ("Plaintiff") as follows:

27 **GENERAL DENIAL**

28 By virtue of the provisions of Section 431.30(d) of the California Code of Civil
Procedure, Defendant denies each and every allegation contained in the Complaint and further
denies that Plaintiff, any putative class members, and/or any allegedly aggrieved employees have
been damaged or injured in the amount or manner alleged, or at all. Defendant also denies that it

1 is liable to Plaintiff, any putative class members, and/or any allegedly aggrieved employees in
2 any amount or manner whatsoever.

3 **AFFIRMATIVE DEFENSES**

4 Defendant asserts and alleges each of the following affirmative defenses set forth below.

5 **FIRST AFFIRMATIVE DEFENSE**

6 **(Failure to State a Claim)**

7 1. The purported causes of action in the Complaint fail to include facts sufficient to
8 state a cause of action upon which relief may be granted.

9 **SECOND AFFIRMATIVE DEFENSE**

10 **(Not a Proper Class Action)**

11 2. Any recovery on the class allegations of the Complaint is barred because Plaintiff
12 has failed to identify a proper and ascertainable class of plaintiffs. Additionally, Plaintiff is not
13 an adequate representative of any putative class of plaintiffs; his claims are not typical; common
14 questions of law or fact affecting the individual members of the class do not predominate; and/or
15 a class action is neither manageable nor superior.

16 **THIRD AFFIRMATIVE DEFENSE**

17 **(Arbitration Agreement)**

18 3. Plaintiff is limited in representing putative class members and from pursuing this
19 action in court because Plaintiff and/or the putative class members entered into agreements to
20 arbitrate any claims, disputes or disagreements with Defendant on an individual basis only.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 **(Consent)**

23 4. The purported causes of action in the Complaint are barred, in whole or in part,
24 because Plaintiff and/or the putative class members consented to the alleged improper conduct.

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FIFTH AFFIRMATIVE DEFENSE

(Offset)

5. Defendant is entitled to setoff against any amount awarded to Plaintiff and/or the putative class members in this action for: (1) all overpayments of compensation, if any, to Plaintiff and/or the putative class members; (2) other sums that Plaintiff and/or the putative class members received during the course of their respective employment with Defendant to which they were not entitled, if any; and (3) all other amounts that may lawfully be deducted from any amount awarded to Plaintiff and/or the putative class members.

SIXTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

6. The purported causes of action alleged in the Complaint are barred, in whole or in part, by the applicable limitations periods provided by law, including, but not limited to, those set forth in California Code of Civil Procedure §§ 338 and/or 340 and in California Business and Professions Code § 17208.

SEVENTH AFFIRMATIVE DEFENSE

(Laches)

7. The purported causes of action alleged in the Complaint are barred, in whole or in part, by the equitable doctrine of laches inasmuch as Plaintiff has inexcusably and unreasonably delayed the filing of this action causing prejudice to Defendant.

EIGHTH AFFIRMATIVE DEFENSE

(Limitation on Damages)

8. Although Defendant denies that Plaintiff and/or the putative class members are entitled to any recovery under the Third Cause of Action in the Complaint and/or under Labor Code § 558, to the extent recovery is awarded, Plaintiff and/or the putative class members are limited to statutory penalties of \$50 per violation.

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1 **NINTH AFFIRMATIVE DEFENSE**

2 **(Waiver and Estoppel as to All Causes of Action)**

3 9. Plaintiff, by his own actions, has waived, in whole or in part, each purported cause
4 of action alleged in the Complaint and is now estopped from bringing such causes of action.

5 **TENTH AFFIRMATIVE DEFENSE**

6 **(Doctrine of Avoidable Consequences)**

7 10. Any potential recovery by Plaintiff and/or the putative class members is barred or,
8 at a minimum, limited by the doctrine of avoidable consequences.

9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 **(No Violation)**

11 11. The purported causes of action alleged in the Complaint for violations of Labor
12 Code § 226 are barred, in whole or in part, because the wage statements Plaintiff and/or the
13 putative class members received included sufficient information to calculate the number of total
14 hours worked, the number of overtime hours worked, and the applicable rates of pay, using
15 simple arithmetic.

16 **TWELFTH AFFIRMATIVE DEFENSE**

17 **(De Minimis)**

18 12. The claims of Plaintiff and/or the putative class members fail in whole or in part
19 under the *de minimis* doctrine. In addition, the damages (if any) associated with such claims are
20 too speculative to be permitted.

21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 **(Due Process)**

23 13. Plaintiff, and/or the putative class members are precluded from recovering
24 penalties from Defendant to the extent such remedies would violate Defendant's due process
25 under the California and United States Constitutions.

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1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 **(Good Faith Dispute)**

3 14. The purported Fourth Cause of Action in the Complaint, and any claims derivative
4 of the Fourth Cause of Action, are barred because at all relevant times in this matter Defendant
5 had a good-faith belief that it had fully and properly paid Plaintiff and/or the putative class
6 members all wages legally owed and therefore disputes any allegation that wages are owed and
7 unpaid.

8 **FIFTEENTH AFFIRMATIVE DEFENSE**

9 **(Duplicative Recovery)**

10 15. Recovery of penalties under the Fourth and Fifth Causes of Action in the
11 Complaint and/or under Labor Code § 558 are barred, in whole or in part, to the extent they are
12 derivative of other allegations contained in the Complaint and would lead to impermissible,
13 duplicative recovery.

14 **SIXTEENTH AFFIRMATIVE DEFENSE**

15 **(Failure to Exhaust Administrative Remedies)**

16 16. Recovery of penalties in the Company, including under Labor Code § 558, are
17 barred to the extent Plaintiff and/or the putative class members failed to satisfy the notice and
18 exhaustion requirements under Labor Code § 2699 *et seq.*, and to the extent that they otherwise
19 have failed to exhaust administrative remedies.

20 **SEVENTEENTH AFFIRMATIVE DEFENSE**

21 **(Unclean Hands)**

22 17. The purported causes of action alleged in the Complaint are barred, in whole or in
23 part, on the ground that Plaintiff entered into this litigation with unclean hands.

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EIGHTEENTH AFFIRMATIVE DEFENSE

(Reservation of Future Defenses)

18. Defendant reserves the right to amend this pleading to include further affirmative defenses.

WHEREFORE, Defendant prays for judgment against Plaintiff as follows:

(a) For an Order dismissing Plaintiff's claims with prejudice, and entering judgment in favor of Defendant;

(b) For all reasonable costs and attorneys' fees incurred by Defendant in connection with the defense of this matter as available under the law; and

(c) For such other relief as the Court deems just and proper.

Dated: July 11, 2018

Respectfully submitted,

BAKER & HOSTETLER LLP

By: 

Margaret Rosenthal
Shareef S. Farag
Nicholas D. Poper

Attorneys for Defendant
THE SHERWIN-WILLIAMS COMPANY

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

PROOF OF SERVICE

I, Priscilla Markus, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 11601 Wilshire Boulevard, Suite 1400, Los Angeles, California 90025-7120. On **July 11, 2018**, I served a copy of the within document(s): **ANSWER TO PLAINTIFF'S COMPLAINT**

VIA U.S. MAIL by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid 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 in affidavit.

Robin G. Workman, Esq.
Rachel E. Davey, Esq.
WORKMAN LAW FIRM, PC
177 Post Street, Suite 800
San Francisco, CA 94108
Tel: 415.782.3660
Fax: 415.788.1028
Email: robin@workmanlawpc.com
rachel@workmanlawpc.com

Attorneys for Plaintiff
VERNON FIFE

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

Executed on **July 11, 2018** at Los Angeles, California.


Priscilla Markus

4839-3813-2583.2

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Vernon Fife, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Robin G. Workman, SBN 145810; Rachel E. Davey, SBN 316096 WORKMAN LAW FIRM, PC, 177 Post Street, Suite 800, San Francisco, CA 94108 / Tel: 415.782.3660 / Fax: 415.788.1028 Emails: robin@workmanlawpc.com; rachel@workmanlawpc.com

DEFENDANTS

The Sherman-Williams Company, and DOES 1-50, inclusive,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Margaret Rosenthal, SBN 147501; Shareef S. Farag, SBN 251650; Nicholas D. Poper, SBN 293900 BAKER & HOSTETLER LLP, 11601 Wilshire Boulevard, Suite 1400, Los Angeles, CA 90025-0509 / Tel: 310.820.8800 / Fax: 310.820.8859 Emails: mrosenthal@bakerlaw.com; sfarag@bakerlaw.com; npoper@bakerlaw.com

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and categories.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation-Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §§ 1332(d), 1441, 1446.

Brief description of cause:

Wage and hour class action subject to removal under the Class Action Fairness Act (CAFA).

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

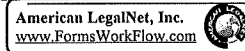
VIII. RELATED CASE(S) IF ANY

(See instructions): Hon. Fernando M. Olguin JUDGE Hon. Ruben B. Brooks DOCKET NUMBER 5:17-cv-02459 3:18-cv-01279

DATE July 12, 2018 FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD /s/ Shareef S. Farag

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



Case 1:18-cv-00950-DAD-BAM Document 1-3 Filed 07/12/18 Page 2 of 3
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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Email: robin@workmanlawpc.com
rachel@workmanlawpc.com

Attorneys for Plaintiff
VERNON FIFE

I hereby certify that I am employed in the office of a member of the Bar of this Court at whose discretion the service as made, and I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **July 12, 2018** at Los Angeles, California.



Priscilla Markus

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Sherwin-Williams Assistant Manager Claims Employees are Underpaid](#)
