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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

ERICK LOPEZ, an individual on behalf of  
himself and others similarly situated,

Plaintiff,

v.

DIAMOND MATTRESS COMPANY, INC.;  
and DOES 1 to 10 inclusive,

Defendants.

Case No.: BC720947

[Assigned for all Purposes to Hon. Carolyn B.  
Kuhl, Dept. 12]

CLASS ACTION

FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:

1. Failure to Pay Overtime and Double Time Wages (Lab. Code §§ 510, 1194)
2. Failure to Pay Minimum Wages (Lab. Code §§ 1194, 1197)
3. Failure to Furnish Complete Itemized Wage Statements (Lab. Code § 226)
4. Unfair Business Practices (Bus. & Prof. Code § 17200, *et seq.*)
5. Waiting Time Penalties (Lab. Code § 203)
6. Civil Penalties (Lab. Code § 2698, *et seq.*)

AND DEMAND FOR JURY TRIAL

1 Plaintiff **ERICK LOPEZ** ("Plaintiff"), on behalf of himself and all others similarly  
2 situated, alleges as follows:

3 **NATURE OF THE ACTION**

4 1. This is a class and representative action lawsuit against **DIAMOND MATTRESS**  
5 **COMPANY, INC.** ("Diamond") for (1) failing to include piece-rate wages in the regular rate of  
6 pay when calculating overtime, double time, and compensation for rest and recovery periods, (2)  
7 failing to furnish complete itemized wage statements, (3) failing to timely pay all wages owing at  
8 the termination of employment, and (4) civil penalties.

9 **PARTIES**

10 2. Plaintiff Erick Lopez is a citizen of California who worked for Diamond in  
11 Compton, California from approximately October 2017 until August 2018.

12 3. Defendant Diamond Mattress Company, Inc. is a California corporation with its  
13 principal place of business in Rancho Dominguez, California.

14 4. Plaintiff is currently unaware of the true names and capacities of the defendants  
15 sued by the fictitious names DOES 1 through 10, inclusive, and, therefore, sue those defendants  
16 by fictitious names. Plaintiff alleges on information and belief that each of the DOE defendants  
17 is responsible or liable in some manner for the conduct alleged in the complaint and that  
18 Plaintiff's damages as herein alleged were proximately caused by those DOE defendants.  
19 Plaintiff will amend this complaint to allege the true names and capacities of such fictitiously  
20 named defendants when they are ascertained.

21 5. Plaintiff alleges on information and belief that, at all times herein mentioned, each  
22 of the defendants was the agent, servant and employee of each of the other defendants, and in  
23 connection with the conduct hereinafter alleged, was acting within the scope of such agency and  
24 employment, and each defendant ratified each and every act, omission and thing done by each  
25 and every other defendant named herein.

26 6. Defendants Diamond Mattress Company, Inc. and DOES 1 through 10 will be  
27 referred to hereafter, collectively, as "Defendants."  
28

1                   **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

2           7.       Defendants manufacture mattresses in Compton, California.

3           8.       Defendants employ numerous non-exempt employees, including but not limited to  
4 line loaders, spring bale openers, assemblers, and quilters.

5           9.       In addition to a base hourly wage, Defendants also pay their employees a piece-  
6 rate wage per mattress manufactured. Defendants label the additional piece-rate wages “Earned  
7 Incentive” on employees’ itemized wage statements. However, the wage statements only show  
8 the total amount of piece-rate wages earned during the pay period and fail to show the number of  
9 piece-rate units earned or the applicable piece rate of pay.

10          10.      In calculating the regular rate of pay for purposes of determining overtime and  
11 double time wages, Defendants fail to include the amount of “Earned Incentive” wages in the  
12 rate, resulting in employees being paid at a rate that is less than the minimum required for  
13 overtime and double time hours worked.

14          11.      In calculating the regular rate of pay for purposes of determining compensation  
15 for rest and recovery periods, Defendants fail to include the amount of “Earned Incentive” wages  
16 in the rate, resulting in employees being paid at a rate that is less than the minimum required for  
17 rest and recovery periods.

18          12.      In addition to a base hourly wage, Defendants paid Plaintiff a piece-rate wage per  
19 mattress manufactured, which Defendants labeled “Earned Incentive” wages.

20          13.      The itemized wage statements that Defendants furnished to Plaintiff only showed  
21 the total amount of piece-rate wages earned during the pay period and failed to show the number  
22 of piece-rate units earned or the applicable piece rate of pay.

23          14.      When Plaintiff worked more than 8 hours in a day and/or 40 hours in a week,  
24 Defendants did not include the value of his “Earned Incentive” wages in his regular rate of pay  
25 for purposes of calculating his overtime and/or double time wages.

26          15.      For pay periods during which Plaintiff was paid a piece-rate wage, Defendants  
27 did not include the value of his “Earned Incentive” wages in his regular rate of pay for purposes  
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1 of calculating his rate of compensation for rest and recovery periods.

2 16. Since Plaintiff's separation of employment in or about August 2018, Defendants  
3 have willfully failed to pay the overtime, double time, and minimum wages he is owed.

4 **CLASS ACTION ALLEGATIONS**

5 17. Plaintiff brings claims on behalf of himself and all others similarly situated  
6 pursuant to California Code of Civil Procedure section 382. Plaintiff seeks to represent a class  
7 composed of the following:

8 All non-exempt employees employed by Defendants in the State of California from  
9 September 11, 2014 through the date of class certification who were paid "Earned Incentive"  
10 wages.

11 18. Plaintiff reserves the right to amend or modify the class descriptions or establish  
12 additional subclasses as appropriate.

13 19. This action has been brought and may properly be maintained as a class action  
14 under California Code of Civil Procedure section 382 because there is a well-defined community  
15 of interest in the litigation and the proposed classes are easily ascertainable from Defendants'  
16 own records.

17 **A. Numerosity**

18 20. The potential members of the class as defined are so numerous that joinder of all  
19 the members of the class is impracticable. While the precise number of members of the class has  
20 not been determined at this time, Plaintiff is informed and believes that the class contains in  
21 excess of 100 individuals.

22 **B. Commonality**

23 21. There are questions of law and fact common to the class that predominate over  
24 any questions affecting only individual class members. These common questions include,  
25 without limitation, whether Defendants unlawfully excluded "Earned Incentive" wages from  
26 class members' regular rate of pay for purposes of calculating overtime, double time, and  
27 compensation for rest and recovery periods, and whether Defendants unlawfully failed to show  
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1 the number of piece-rate units earned and the applicable piece rate of pay on class members'  
2 itemized wage statements.

3 **C. Typicality**

4 22. The class claims of the proposed class representative are typical of the claims of  
5 each class member. As with other members of the class, Defendants failed to include his  
6 "Earned Incentive" wages in his regular rate of pay when calculating his overtime, double time,  
7 and compensation for rest and recovery periods, and Defendants failed to show the number of  
8 piece-rate units earned and the applicable piece rate of pay on his itemized wage statements.

9 **D. Adequacy of Representation**

10 23. Plaintiff will fairly and adequately represent and protect the interests of the  
11 members of the class. Counsel who represent Plaintiff are competent and experienced in  
12 litigating employment class actions.

13 **E. Superiority of Class Action**

14 24. A class action is superior to other available means for the fair and efficient  
15 adjudication of the class claims. Individual joinder of all class members is not practicable, and  
16 questions of law and fact common to the classes predominate over any questions affecting only  
17 individual members of the class. Each member of the class has been damaged and is entitled to  
18 recover by reason of Defendants' illegal common policies.

19 25. Class action treatment will allow those similarly situated persons to litigate their  
20 claims in the manner that is most efficient and economical for the parties and the judicial system.  
21 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this  
22 action that would preclude its maintenance as a class action.

23 **FIRST CAUSE OF ACTION**

24 **CLASS CLAIM FOR FAILURE TO PAY OVERTIME AND DOUBLE TIME**

25 **(LABOR CODE §§ 510, 1194)**

26 26. Plaintiff realleges and incorporates herein by reference each and every allegation  
27 contained in the preceding paragraphs of this Complaint as though fully set forth herein.  
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1           27. Labor Code section 510 requires an employer to pay premium overtime pay at 1.5  
2 times the employee's regular rate of pay for all work in excess of 8 hours per day and 40 hours  
3 per week.

4           28. Labor Code section 510 further requires an employer to pay premium double time  
5 pay at 2 times the employee's regular rate of pay for all work in excess of 12 hours per day.

6           29. Labor Code section 1194 entitles an employee receiving less than the legal  
7 overtime rates to recover, in a civil action, the unpaid balance of overtime wages owing, plus  
8 interest thereon, reasonable attorneys' fees, and costs of suit.

9           30. As a result of Defendants' failure to include "Earned Incentive" wages in their  
10 regular rate of pay for purposes of calculating overtime and/or double time pay, Plaintiff and  
11 other members of the class were not paid the correct premium overtime and/or double time rates  
12 for all overtime and/or double time hours worked.

13           31. Pursuant to Labor Code section 1194, Plaintiff seeks to recover, on behalf of  
14 himself and other members of the class, payment of the overtime and double time wages owing  
15 to them, plus penalties and interest, attorneys' fees and costs, in an amount to be proven at trial.

16                                   **SECOND CAUSE OF ACTION**

17                                   **CLASS CLAIM FOR FAILURE TO PAY MINIMUM WAGES**

18                                   **(LABOR CODE §§ 1194, 1197)**

19           32. Plaintiff realleges and incorporates herein by reference each and every allegation  
20 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

21           33. Labor Code section 1197 makes it unlawful to pay an employee less than the  
22 minimum wage fixed by any applicable state or local law.

23           34. Labor Code section 226.2 fixes the minimum wage for rest and recovery periods  
24 as the higher of the employee's average weekly hourly rate or the applicable minimum wage.

25           35. Labor Code section 1194 entitles an employee receiving less than the legal  
26 minimum wage to recover, in a civil action, the unpaid balance of minimum wages owing, plus  
27 interest thereon, reasonable attorneys' fees, and costs of suit.  
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1           36. Labor Code section 1194.2 entitles an employee receiving less than the minimum  
2 wage fixed by statute to recover liquidated damages in an amount equal to the unpaid minimum  
3 wages and interest thereon.

4           37. As a result of Defendants' failure to include "Earned Incentive" wages in their  
5 regular rate of pay for purposes of calculating compensation for rest and recovery periods,  
6 Plaintiff and other members of the class were not paid their average weekly hourly rate for such  
7 periods in violation of Labor Code section 226.2.

8           38. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiff seeks to recover, on  
9 behalf of himself and other members of the class, the unpaid minimum wages owing to them,  
10 interest thereon, liquidated damages, reasonable attorneys' fees, and costs, in an amount to be  
11 proven at trial.

12                                   **THIRD CAUSE OF ACTION**

13                   **CLASS CLAIM FOR FAILURE TO FURNISH COMPLETE WAGE STATEMENTS**  
14                                   **(LABOR CODE § 226)**

15           39. Plaintiff realleges and incorporates herein by reference each and every allegation  
16 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

17           40. Labor Code section 226 requires Defendants to furnish employees with an  
18 itemized wage statement in writing showing the number of piece-rate units earned and any  
19 applicable piece rate of pay.

20           41. The itemized wage statements that Defendants furnished to Plaintiff and other  
21 members of the class fail to show the number of piece-rate units earned and the applicable piece  
22 rate of pay.

23           42. Defendants' failure to comply with the requirements of Labor Code section 226  
24 was knowing and intentional and resulted in injury to Plaintiff and other members of the class.

25           43. Pursuant to Labor Code section 226(e), Plaintiff seeks to recover, on behalf of  
26 himself and other class members employed by Defendants on or after September 11, 2017,  
27 statutory penalties, reasonable attorneys' fees, and costs, in an amount to be proven at trial.  
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1 **FOURTH CAUSE OF ACTION**

2 **CLASS CLAIM FOR UNFAIR BUSINESS PRACTICES**

3 **(BUSINESS & PROFESSIONS CODE § 17200, *et seq.*)**

4 44. Plaintiff realleges and incorporates herein by reference each and every allegation  
5 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

6 45. Defendants' failure to pay Plaintiff and other members of the class the correct  
7 minimum and overtime wage rates violates Business & Professions Code section 17200, *et seq.*  
8 by virtue of violating Labor Code sections 201, 202, 226.2, 510, and 1197.1.

9 46. Defendants' failure to furnish Plaintiff and other members of the class with  
10 complete itemized wage statements violates Business & Professions Code section 17200, *et seq.*  
11 by virtue of violating Labor Code section 226.

12 47. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,  
13 unlawful, and harmful to Plaintiff, the members of the class, and the general public in violation  
14 of California Business & Professions Code section 17200, *et seq.*

15 48. Plaintiff seeks to enforce important rights affecting the public interest within the  
16 meaning of Code of Civil Procedure section 1021.5.

17 49. Pursuant to California Business & Professions Code section 17200, *et seq.*,  
18 Plaintiff and the members of the class are entitled to an accounting for and restitution of the  
19 wages unlawfully withheld and retained by Defendants during a period that commences four (4)  
20 years prior to the filing of this Complaint, an award of attorneys' fees pursuant to California  
21 Code of Civil Procedure section 1021.5 and other applicable laws, and an award of costs.

22 **FIFTH CAUSE OF ACTION**

23 **CLASS CLAIM FOR WAITING TIME PENALTIES**

24 **(LABOR CODE §§ 201, 202, 203)**

25 50. Plaintiff realleges and incorporates herein by reference each and every allegation  
26 contained in the preceding paragraphs of this Complaint as though fully set forth herein.  
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51. Labor Code sections 201 and 202 require an employer to promptly pay all wages owing to an employee at the conclusion of employment.

52. Plaintiff and certain other members of the class who are no longer employed by Defendants were not timely paid all wages owing at the time of termination of employment.

53. Defendants' failure to pay Plaintiff and other formerly employed class members all wages owing, as alleged above, was willful as Defendants intentionally failed to include "Earned Incentive" wages in their regular rate of pay when calculating their overtime, double time, and compensation for rest and recovery periods.

54. Plaintiff seeks to recover, on behalf of himself and all other class members whose employment with Defendants ended on or after September 11, 2015, waiting time penalties pursuant to Labor Code section 203 in an amount to be determined at trial.

## SIXTH CAUSE OF ACTION

## REPRESENTATIVE CLAIM FOR CIVIL PENALTIES

**(LABOR CODE § 2698, *et seq.*)**

55. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

56. As alleged above, in violation of Labor Code section 510, Defendants did not include the value of Plaintiff's and other aggrieved employees' "Earned Incentive" wages in their regular rate of pay when calculating their overtime, double time, and compensation for rest and recovery periods.

57. As alleged above, in violation of Labor Code sections 201, 202, and 203, Defendants did not timely pay all wages owing to Plaintiff and other aggrieved employees at the time of their termination of employment because they never paid them the correct premium overtime and double time rates of pay or the correct minimum wage rate for rest and recovery periods.

58. Pursuant to California Labor Code section 2698, *et seq.*, Plaintiff seeks to assess and collect the civil penalties owing for the above-referenced Labor Code violations against

1 Plaintiff and all other aggrieved employees, as well as the unpaid wages recoverable for all  
2 aggrieved employees as a civil penalty under Labor Code section 558 and the additional  
3 minimum wages and Labor Code section 203 waiting time penalties owing all aggrieved  
4 employees under Labor Code section 1197.1.

5 58. In accordance with California Labor Code section 2699.3, on September 13,  
6 2018, Plaintiff's counsel electronically filed a letter with the California Labor & Workforce  
7 Development Agency ("LWDA"), paid the \$75 filing fee to the LWDA, and sent a copy of the  
8 letter to Defendants via certified mail, setting forth the provisions of the Labor Code alleged to  
9 have been violated and the facts and theories supporting the alleged violations ("PAGA Notice").

10 59. The LWDA did not provide any notice of an intention to investigate the alleged  
11 Labor Code violations and more than 65 days have passed since the mailing of the PAGA  
12 Notice, authorizing Plaintiff to commence a civil action pursuant to Labor Code section 2699.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for the following relief:

15 **Class Certification**

- 16 1. That this case be certified as a class action;  
17 2. That Plaintiff be appointed as the representative of the class; and  
18 3. That counsel for Plaintiff be appointed as class counsel.

19 **First Cause of Action**

20 4. That the Court declare, adjudge and decree that Defendants violated Labor Code  
21 section 510 by failing to pay Plaintiff and other members of the class the correct overtime and/or  
22 double time rates for all overtime and/or double time hours worked;

23 5. For unpaid overtime and/or double time wages owing and such general and  
24 special damages as may be appropriate;

25 6. For pre-judgment interest on any unpaid overtime and/or double time wages  
26 owing commencing from the date such amounts were due;

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

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

3 **Second Cause of Action**

4 9. That the Court declare, adjudge and decree that Defendants violated Labor Code  
5 section 1197 by failing to pay Plaintiff and other members of the class their average weekly  
6 hourly rate for rest and recovery periods in accordance with Labor Code section 226.2;

7 10. For unpaid minimum wages and such general and special damages as may be  
8 appropriate;

9 11. For pre-judgment interest on any unpaid minimum wages commencing from the  
10 date such amounts were due;

11 12. For liquidated damages pursuant to Labor Code section 1194.2;

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

14 14. For such other and further relief as the Court may deem equitable and appropriate.

15 **Third Cause of Action**

16 15. That the Court declare, adjudge and decree that Defendants violated Labor Code  
17 section 226 by failing to furnish Plaintiff and other class members with complete itemized wage  
18 statements in compliance with Labor Code section 226(a);

19 16. For statutory penalties, reasonable attorneys' fees, and costs of suit pursuant to  
20 Labor Code section 226(e); and

21 17. For such other and further relief as the Court may deem equitable and appropriate.

22 **Fourth Cause of Action**

23 18. That the Court declare, adjudge and decree that Defendants violated Business &  
24 Professions Code section 17200, *et. seq.* by violating Labor Code sections 201, 202, 226, 226.2,  
25 510, and 1197;

26 19. For an accounting for and restitution of the wages unlawfully withheld and  
27 retained by Defendants during a period that commences four (4) years prior to the filing of this  
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1 Complaint;

2 20. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Code  
3 of Civil Procedure section 1021.5; and

4 21. For such other and further relief as the Court may deem equitable and appropriate.

5 **Fifth Cause of Action**

6 22. That the Court declare, adjudge and decree that Defendants violated Labor Code  
7 sections 201 and/or 202 by failing to timely pay all wages owing to Plaintiff and other formerly  
8 employed class members;

9 23. For waiting time penalties pursuant to Labor Code section 203; and

10 24. For such other and further relief as the Court may deem equitable and appropriate.

11 **Sixth Cause of Action**

12 25. That the Court declare, adjudge, and decree that Defendants violated Labor Code  
13 sections 201, 202, 226, 226.2, 510, and 1197;

14 26. For civil penalties arising from these Labor Code violations, including the amount  
15 sufficient to recover unpaid overtime and double time wages for all aggrieved employees under  
16 Labor Code section 558 and the additional minimum wages and Labor Code section 203 waiting  
17 time penalties owing under Labor Code section 1197.1;

18 27. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to  
19 Labor Code section 2699; and

20 28. For such other and further relief as the Court may deem equitable and appropriate.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands trial of these claims by jury to the extent authorized by law.  
23

24 DATED: December 21, 2018

**HAYES PAWLENKO LLP**

25  
26 By: /s/Kye D. Pawlenko  
27 Kye D. Pawlenko  
28 Attorneys for Plaintiff

FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My business address is 595 E. Colorado Blvd., Ste. 303, Pasadena, CA 91101.
3. I served copies of the following documents (specify the exact title of each document served):  
**FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**
4. I served the documents listed above in item 3 on the following persons at the addresses listed:

D. Chad Anderton (CAnderton@littler.com)  
Kimberly M. Shappley (KShappley@littler.com)

5. ☒ **By electronic transmission via CASE ANYWHERE.** Based on a Court order to serve documents by electronic transmission, I caused the documents to be served through CASE ANYWHERE on all parties appearing on the electronic service list in this case.

6. I served the documents by the means described in item 5 on *(date)*: December 21, 2018

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

12/21/18

Kye D. Pawlenko

/s/Kye D. Pawlenko

DATE

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)