

1 Michael A. Strauss, SBN 246718
2 Brian D. Hefelfinger, SBN 253054
3 **PALAY LAW FIRM**
4 121 N. Fir St., Suite F
5 Ventura, CA 93001
6 Telephone: (805) 641-6600
7 Facsimile: (805) 641-6607
8 E-mail: brian@palaylaw.com

9 Attorneys for Plaintiff Leticia Zavala and the Putative Class

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

11 LETICIA ZAVALA, an individual, for
12 herself and those similarly situated,

13 Plaintiffs,

14 vs.

15 RESOURCE STAFFING, INC., an Ohio
16 corporation; PACTIV PACKAGING, INC.,
17 a Delaware corporation; and DOES 1
18 through 100, inclusive,

19 Defendants.

CASE NO: S-1500-CV-278358 LHB

CLASS ACTION

Complaint filed: December 24, 2012

FIRST AMENDED COMPLAINT FOR:

- (1) Failure to Pay Wages Owed;
- (2) Failure to Pay Minimum Wage;
- (3) Violation of *Civil Code* section 1812.500 *et seq.*; and
- (4) Violation of *California Business & Professions Code* § 17200.
- (5) Violation of *California Labor Code* Private Attorney General's Act of 2004 [Cal. Lab. Code Section 2699, *et. seq.*]

26 TO ALL INTERESTED PARTIES AND TO THEIR ATTORNEYS OF
27 RECORD:

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1 Plaintiff LETICIA ZAVALA (“ZAVALA”), on behalf of herself, current and past
2 employees, alleges the following against defendants RESOURCE STAFFING, INC. (“RSI”),
3 PACTIV PACKAGING, INC. (“PACTIV”), and DOES 1 through 100, and each of them:

4 **GENERAL ALLEGATIONS**

5 1. At all times herein mentioned, ZAVALA was and is an individual and is a
6 resident of Bakersfield, County of Kern, State of California.

7 2. At all times herein mentioned, defendant RSI is and has been an Ohio corporation
8 authorized to transact, and actually transacting, business in California. Defendant PACTIV is
9 and has been, at all times herein mentioned, a Delaware corporation authorized to transact, and
10 actually transacting, business in California. PACTIV and RSI are collectively referred to
11 herein as the “DEFENDANTS” or the “EMPLOYERS.”

12 3. EMPLOYERS maintain a facility located in Bakersfield, California, at which
13 location the acts giving rise to this Complaint, with respect to ZAVALA, took place.
14 DEFENDANTS were the employers of the putative class defined herein at various locations
15 throughout California.

16 4. Venue is appropriate in Kern County because ZAVALA and other members of
17 the putative class performed work in Kern County for which they were not paid, the unlawful
18 conduct alleged herein with respect to Plaintiff and members of the putative class took place in
19 Kern County, and DEFENDANTS conducted business in Kern County.

20 5. ZAVALA and the putative class are ignorant of the true names and capacities of
21 defendants DOES 1 through 100, inclusive, and by reason thereof sue said defendants by
22 fictitious names. ZAVALA and the putative class will ask leave of Court to amend this
23 Complaint to allege the true names and capacities of said DOE defendants when the same have
24 been fully and finally ascertained. Use of the term “DEFENDANTS” or “EMPLOYERS”
25 herein shall also be meant to include defendants DOES 1 through 100, inclusive, whenever
26 referenced herein.

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1 **CLASS ALLEGATIONS**

2 6. ZAVALA brings this action on her own behalf, and on behalf of all persons
3 similarly situated. The class represents and consists of four subclasses: the Placement Fee
4 Putative Subclass, the Deduction Putative Subclass, the Minimum Wage Putative Subclass, and
5 the Orientation Putative Subclass (collectively the "Putative Class"). The Putative Class
6 members may fall within any combination or all of the following Putative Subclasses:

- 7 a. Placement Fee Putative Subclass: All current and former employees of
8 RSI and any joint employer(s), including but not limited to Pactiv, during
9 the period of four years from the date of filing this complaint and through
10 the present, who work or worked in California, and paid RSI any money or
11 other valuable consideration for accepting employment with RSI.
- 12 b. Deduction Putative Subclass: All current and former employees of RSI
13 and any joint employer(s), including but not limited to Pactiv, during the
14 period of four years from the date of filing this complaint and through the
15 present, who work or worked in California, and whose wages were
16 reduced to pay RSI any money or other valuable consideration for services
17 rendered or to be rendered by RSI.
- 18 c. Minimum Wage Putative Subclass: All current and former employees of
19 RSI and any joint employer(s), including but not limited to Pactiv, during
20 the period of four years from the date of filing this complaint and through
21 the present, who work or worked in California, and whose wages were
22 reduced to pay RSI any money or other valuable consideration for services
23 rendered or to be rendered by RSI, thereby reducing their pay below the
24 applicable California minimum wage.

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1 d. Orientation Putative Subclass: All current and former employees of Pactiv
2 and any joint employer(s), including but not limited to RSI, during the
3 period of four years from the date of filing this complaint and through the
4 present, who work or worked in California, and who attended employment
5 orientation programs without receiving pay therefor;

6 7. Plaintiff is a member of each of the Putative Subclasses.

7 8. On information and belief, the class represents over 30 persons and is so
8 numerous that the joinder of each member of the class is impracticable.

9 9. There is a well-defined community of interest in the questions of law and fact
10 affecting the class (and subclasses) ZAVALA represents. The Placement Fee, Deduction, and
11 Minimum Wage Subclasses members' claims against Defendants involve questions or common
12 or general interest in that each (1) was employed by Defendants in California, (2) performed or
13 suffered work for Defendants, and (3) did not receive full and correct pay therefor; importantly,
14 there have existed common policies of Defendants to improperly deduct or otherwise charge
15 'placement fees' from the wages earned by class members and (2) to not pay for all working
16 time, including training time. In other words, these current and former employees of RSI and
17 any joint employer(s), including but not limited to Pactiv, during the period of four years from
18 the date of filing this complaint and through the present, work or worked in California, but their
19 wages were in some fashion unlawfully reduced (e.g., to pay RSI consideration). The
20 Orientation Putative Subclass members' claims against Defendants involve questions or
21 common or general interest in that each (1) was employed by defendant Pactiv (or another joint
22 employer) in California, and (2) was required to attend employment orientation programs
23 without receiving pay therefor. These questions are such that proof of a state of facts common
24 to the members of the class will entitle each member of the class to the relief requested in this
25 Complaint.

26 10. The members of the class ZAVALA represents have no plain, speedy, or
27 adequate remedy at law against EMPLOYERS, other than by maintenance of this class action,
28 because ZAVALA is informed and believes, and on such information and belief alleges, that

1 the damage to each member of the class is relatively small such that it would economically
2 infeasible to seek recovery against DFA other than by a class action.

3 11. ZAVALA will fairly and adequately represent the interest of the class, because
4 ZAVALA is a member of the class and ZAVALA's claims are typical of those in the class.

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6 **FIRST CAUSE OF ACTION**

7 **(Action Brought By ZAVALA And All Others Similarly Situated**
8 **For Failure To Pay All Wages Owed Against EMPLOYERS**
9 **And DOES 1 Through 100)**

10 12. ZAVALA refers to paragraphs 1 through 11 and incorporates same by reference
11 as though fully set forth at length.

12 13. ZAVALA and the aforementioned putative class are employees who have worked
13 for DEFENDANTS within the four years prior to the date of filing the original Complaint in
14 this matter (together, the "PLAINTIFFS" herein). ZAVALA and the class worked as non-
15 exempt employees for DEFENDANTS.

16 14. Unfortunately, during their employment with DEFENDANTS, PLAINTIFFS
17 were not paid all wages owed as required by law. Specifically, PLAINTIFFS have not received
18 full and correct pay for all hours worked, have not received the legal minimum wage, and have
19 been subject to improper deductions from and/or assignments of their wages.

20 15. Defendant RSI is an employment agency, staffing service and recruitment
21 company which, among other things, is in the business of placing persons seeking employment
22 into positions with various companies located throughout California. Upon placing a
23 prospective employee into a position of employment, defendant RSI maintains a practice of
24 deducting a "placement fee" from said employees wages earned. These deductions are taken
25 from the initial pay periods of the successfully-placed employee.

26 16. In the case of ZAVALA, as a result of the deduction of "placement fees,"
27 ZAVALA did not received full and correct pay for all hours she worked. Similarly, it is
28 alleged that all PLAINTIFFS herein who have been placed into a position of non-exempt

1 employment by defendant RSI also have not received full and correct pay for all hours worked,
2 by virtue of the deduction of said "placement fees."

3 17. In committing the acts alleged herein, DEFENDANTS have violated California
4 law by unlawfully collecting or receiving from their employees, including ZAVALA, part of
5 the wages theretofore earned by and/or paid to said employees.

6 18. Labor Code § 200 defines "wages" as including all amounts for labor performed
7 by employees of every description, whether the amount is fixed or ascertained by the standard
8 of time, task, piece, commission basis, or other method of calculation.

9 19. California Labor Code § 202 provides that all wages shall become due and
10 payable not later than 72 hours after the employee provides notice of his intention to quit. In
11 this case, on information and belief it is alleged that DEFENDANTS, and each of them, have
12 refused and continue to refuse certain of the PLAINTIFFS' wages in accordance with section
13 202.

14 20. Thus, pursuant to California Labor Code § 203, it is alleged that DEFENDANTS
15 have willfully failed to pay without abatement or reduction, in accordance with Labor Code §§
16 201, 201.5, 202, all of the wages owed to each of the PLAINTIFFS. DEFENDANTS are aware
17 that they owe the wages claimed, yet have willfully failed to make payment. As a result,
18 PLAINTIFFS seek wages and penalties pursuant to Labor Code § 203.

19 21. PLAINTIFFS have each been available, and ready, to receive wages owed to
20 them.

21 22. PLAINTIFFS have never refused to receive any payment, nor have PLAINTIFFS
22 been absent from their regular place of residence.

23 23. DEFENDANTS' failure to pay the wages due and owing PLAINTIFFS, as
24 indicated in prior paragraphs, was willful in that DEFENDANTS have knowingly refused to
25 pay any portion of the amount due and owing PLAINTIFFS.

26 24. Pursuant to Labor Code § 1194 and § 218.5, PLAINTIFFS request the court to
27 award PLAINTIFFS' reasonable attorney fees and costs incurred in this action. PLAINTIFFS
28 also request all unpaid wages, waiting time penalties and interest.

- 1 1. For minimum wages owed according to proof;
- 2 2. For liquidated damages pursuant to California Labor Code section 1194.2;
- 3 3. For attorney's fees and costs pursuant to California Labor Code section
- 4 1194;
- 5 4. For interest on all wages owed; and
- 6 5. For any other and further relief that the Court considers proper.

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8 **THIRD CAUSE OF ACTION**

9 **(Action Brought By ZAVALA And All Others Similarly Situated**
10 **For Violation of *Civil Code* section 1812.500 *et seq.* Against Defendant**
11 **RSI And DOES 1 Through 100)**

12 28. ZAVALA refers to paragraphs 1 through 27 and incorporates same by reference
13 as though fully set forth at length.

14 29. The California Employment Agency, Employment Counseling, and Job Listing
15 Services Act, codified at *Civil Code* § 1812.500, provides that “[n]o employment agency may
16 take from a jobseeker a confession of judgment, a promissory note or notes, or an assignment
17 of wages to cover its fees.” *Cal. Civ. Code* § 1812.505(d).

18 30. Defendant RSI is an employment agency within the ambit of *Civil Code* section
19 1812.500 *et seq.*

20 31. As alleged hereinabove, defendant RSI unlawfully took from plaintiff ZAVALA,
21 and those similarly situated, a “placement fee” as an assignment of the wages earned by the
22 employee, in violation of *Cal. Civ. Code* § 1812.505.

23 32. *Civil Code* section 1812.523 also relates, in pertinent part:

24 (d) Any person who is injured by any violation of this title ... may
25 bring an action for the recovery of damages, an equity proceeding to
26 restrain and enjoin those violations, or both. The amount awarded
27 may be up to three times the damages actually incurred, but in no
28 event less than the amount paid by the jobseeker, customer, or nurse
to the person subject to this title. If the person subject to this title

1 refuses or is unwilling to pay the damages awarded, the amount
2 awarded may be satisfied out of the security required by this title. If
3 the plaintiff prevails, the plaintiff shall be awarded a reasonable
4 attorney's fee and costs. If the court determines that the breach or
5 violation was willful, by clear and convincing evidence, the court, in
6 its discretion, may award punitive damages in addition to the
7 amounts set forth above.

8 33. ZAVALA alleges that the unlawful practices of defendant RSI, as alleged herein,
9 violate California law and that, as a result, she has suffered actual damages in an amount to
10 proven at trial, but in no event less than the "placement fees" actually paid from her wages.

11 34. WHEREFORE, PLAINTIFFS demand judgment against the DEFENDANTS,
12 and each of them, as follows:

- 13 1. For actual damages, according to proof;
- 14 2. For treble damages, pursuant to law;
- 15 3. For an equitable order, ordering defendant RSI to pay all former and
16 current non-exempt employees all damages, interest, and penalties they are
17 owed, as well as ordering any and all injunctive relief this Court deems
18 necessary pursuant to Civil Code section 1812.523;
- 19 4. For reasonable attorneys' fees pursuant to Civil Code §1812.523;
- 20 5. For costs of suit; and
- 21 6. For any other and further relief that the Court considers just and proper.

22 **FOURTH CAUSE OF ACTION**

23 **(Action Brought By ZAVALA And All Others Similarly Situated**
24 **For Unfair Competition/Violation Of Business And Professions Code § 17200**
25 **Against EMPLOYER And DOES 1 Through 100)**

26 35. ZAVALA refers to paragraphs 1 through 34 above, and incorporates same by
27 reference as though fully set forth at length.

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1 36. This cause of action is being brought pursuant to Business and Professions Code
2 § 17200 and the California case law including *Cortez v. Purolator Air Filtration Products Co.*
3 (2000) 23 Cal.4th 163.

4 37. It is alleged that DEFENDANTS have willfully failed to pay PLAINTIFFS wages
5 owed. The actions alleged aforesaid – specifically, the failure to pay both current employees
6 and past employees wages which are owed and the unlawful deduction of “placement fees”
7 from wages – constitute unfair business practices under California Business and Professions
8 Code § 17200.

9 38. As a result of the unlawful conduct of DEFENDANTS alleged heretofore,
10 DEFENDANTS profited. PLAINTIFFS seek disgorgement of these unlawfully obtained
11 benefits.

12 39. *California Business & Professions Code* section 17203, under the authority of
13 which a restitutionary order may be made, provides:

14 “Any person who engages, has engaged, or proposes to engage in
15 unfair competition may be enjoined in any court of competent
16 jurisdiction. The court may make such orders or judgments,
17 including the appointment of a receiver, as may be necessary to
18 prevent the use of employment by any person of any practice which
19 constitutes unfair competition, as defined in this chapter, or as may
20 be necessary to restore to any person in interest any money or
21 property, real or personal, which may have been acquired by means
22 of such unfair competition. Any person may pursue representative
23 claims or relief on behalf of others only if the claimant meets the
standing requirements of Section 17204 and complies with Section
282 of the Code of Civil Procedure, but these limitations do not
apply to claims brought under his chapter by the Attorney General,
or any district attorney, county counsel, city attorney, or city
prosecutor in this state.”

24 40. As a result of the alleged aforesaid actions, PLAINTIFFS have suffered injury in
25 fact and have lost money as a result of such unfair competition.

26 41. In this case, it is requested that this Court order such restitution.

27 42. WHEREFORE, PLAINTIFFS demand judgment against DEFENDANTS, and
28 each of them, as follows:

1 this case, DEFENDANTS, and each of them, have refused and continue to refuse to pay
2 PLAINTIFFS' and its non-exempt employees' wages owed.

3 48. In the case at bar, the DEFENDANTS have failed to pay Plaintiff and the class
4 wages to which they are entitled, including the legal minimum wage. Accordingly, the class of
5 workers is owed for wages earned, but unpaid. Further, DEFENDANTS violated numerous
6 other California Labor Codes, including, but not limited to sections 201, 202, 203, 204, 210,
7 219, 221, 225.5, 226, 226.3, 510, 558, 1194, 1197, 1197.1; and the applicable IWC Wage
8 Order [4-2001]. DEFENDANTS, and each of them, are subject to civil penalties for such
9 conduct pursuant to California Labor Code section 2699.

10 49. Plaintiffs have fully complied with the statutory requirements of California Labor
11 Code section 2699.3. Correspondence was sent as required on or about January 23, 2013,
12 which gave written notice by certified mail to the California Labor and Workforce
13 Development Agency and the employers of the specific provisions of the Labor Codes alleged
14 to have been violated, including the facts and theories to support the alleged violations. More
15 than 33 days have passed since PLAINTIFFS gave written notice, yet PLAINTIFFS have not
16 yet received notice that the Labor and Workforce Development Agency intends to pursue an
17 action for penalties against DEFENDANTS.

18 50. DEFENDANTS' failure to pay PLAINTIFFS' wages due and owing
19 PLAINTIFFS as indicated in prior paragraphs was willful. DEFENDANTS have knowingly
20 refused to pay any portion of the amount due and owing PLAINTIFFS. Further,
21 DEFENDANTS have not taken action to "cure" the Labor Code violations pursuant to and
22 consistent with *California Labor Code* section 2699 *et seq.*

23 51. By failing to pay PLAINTIFFS and the current and past aggrieved employees,
24 DEFENDANTS have violated numerous California Labor Code Sections, including, but not
25 limited to California Labor Code sections 201, 202, 203, 204, 210, 219, 221, 225.5, 226, 226.3,
26 510, 558, 1194, 1197, 1197.1; and the applicable IWC Wage Order [4-2001]. Civil penalties
27 are appropriate.

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1 52. WHEREFORE, PLAINTIFFS demand judgment against DEFENDANTS, and
2 each of them, as follows:

3 1. For civil penalties of one hundred dollars (\$100) for each aggrieved
4 employee per pay period for each initial violation and two hundred dollars (\$200) for
5 each aggrieved employee per pay period for each subsequent violation [pursuant to
6 California Labor Code section 2699 and related provisions providing for civil penalty
7 amounts] to be distributed in accordance with California Labor Code section 2699.

8 2. For attorneys' fees and costs pursuant to California Labor Code section
9 2699(g); and,

10 3. For any other and further relief that the Court considers proper.
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14 Dated: February 28, 2013

PALAY LAW FIRM
A Professional Corporation

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17 By: 

BRIAN D. HEFELFINGER
Attorneys for Plaintiff and the Putative Class

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to
3 the within action. My business address is PALAY LAW FIRM, 121 N. Fir Street, Suite F,
4 Ventura, California 93001. On March 4, 2013, I served the within documents:

5 **FIRST AMENDED COMPLAINT**

6 _____ by transmitting via facsimile the document(s) listed above to the fax number(s)
7 set forth below on this date before 5:00 p.m.

8 X by placing the document(s) listed above in a sealed envelope with postage
9 thereon fully prepaid, in the United States mail at Ventura, California addressed
10 as set forth below.

11 _____ by placing the document(s) listed above in a sealed envelope and depositing for
12 pick-up in a designated FedEx box via **FedEx Overnight** delivery at Ventura,
13 California addressed as set forth below.

14 **SEE ATTACHED MAILING LIST**

15 _____ by personally delivering the document(s) listed above to the person(s) at the
16 address(es) set forth below.

17 I am readily familiar with the firm's practice of collection and processing correspondence
18 for mailing. Under that practice it would be deposited with U.S. postal service on that same day
19 with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion
20 of the party served, service is presumed invalid if postal cancellation date or postage meter date is
21 more than one day after date of deposit for mailing in affidavit.

22 X (State) I declare under penalty of perjury under the laws of the State of
23 California that the above is true and correct.

24 _____ (Federal) I declare that I am employed in the office of a member of the bar of
25 this court at whose direction the service was made.

26 Executed on March 4, 2013, at Ventura, California.

27 
28 **MONIQUE MARTINEZ**

1 **Re: Zavala v. Resource Staffing, Inc. et al**
2 **Kern County Superior Court**
3 **Case No. S-1500-CV-278358 LHB**

4 **MAILING LIST**

5 Diana M. Estrada
6 Wilson Elser Moskowitz Edelman & Dicker LLP
7 555 S. Flower Street - Suite 2900
8 Los Angeles, CA 90071-2407
9 213.330.8848 (Direct)
10 818.635.3552 (Cell)
11 213.443.5100 (Main)
12 213.443.5101 (Fax)
13 diana.estrada@wilsonelser.com

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