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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By _____ CHERYL CLARK Deputy

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9 SUPERIOR COURT OF CALIFORNIA

10 ALAMEDA COUNTY – NORTHERN DIVISION

11 DENNIS K. YAMASHIRO, individually and
12 on behalf of other members of the general
13 public similarly situated,

14 Plaintiff,

15 vs.

16 EWING IRRIGATION PRODUCTS, INC.,
17 and DOES 1 through 50, inclusive,

18 Defendant.

Case No.:

COMPLAINT

[CLASS ACTION]

- 1. Labor Code § 1194
- 2. B&P § 17200 - Overtime
- 3. B&P 17200 – Injunction/Dec. Relief
- 4. Labor Code § 203

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21 GENERAL ALLEGATIONS

22
23 1. Plaintiff Dennis Yamashiro was a Branch Manager for defendant Ewing
24 Irrigation Products, Inc., in the state of California within the last four years of the filing of the
25 original complaint in this action.

26
27 2. Defendant, Ewing Irrigation Products, Inc. is Nevada registered corporation,
28 licensed to do business in California and registered with the Secretary of the State of California.

1 Plaintiff is informed and believes and thereon alleges that Defendant operates, manages and
2 controls salaried manager employees who operate in assisting in the sale of irrigation materials
3 and assorted supplies in the state of California, during the applicable time period.
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5 3. Venue is proper in Alameda County as at least some of the acts complained of
6 herein occurred in Alameda County as Defendant owns and operates stores in Alameda County.
7 Venue is also proper in Alameda County as Defendant maintained its principal place of
8 business in Alameda County and has not registered any other principal place of business in the
9 State of California with the Secretary of State.
10

11 4. At all times herein mentioned, Plaintiff and the class identified herein worked as
12 employees for Defendant in salaried positions in Defendant's branch locations under the
13 business name "Ewing Irrigation Products." At all times herein mentioned, Plaintiff and the
14 class have been, and continue to be, domiciled in the state of California. The amount in
15 controversy, inclusive of damages, restitution, attorney fees, penalties and the value of
16 injunctive and declaratory relief and exclusive of interest and costs, does not exceed
17 \$5,000,000. The amount in controversy for the named Plaintiff, including damages, restitution,
18 penalties and pro rata share of statutory attorney fees and pro rata share of value of injunctive
19 and declaratory relief for the named Plaintiff does not exceed \$75,000.
20

21 5. At all times herein mentioned Defendant and Does 1 through 50 are and were
22 corporations, business entities, individuals and partnerships, licensed to do business and
23 actually doing business in the State of California, Alameda County. Defendant owns and
24 operates an industry, business and establishment in a number of separate geographic locations
25 within the State of California, including within Alameda County, for the purpose of selling
26 irrigation products. As such, and based upon all the facts and circumstances incident to
27
28

1 Defendant's business in California, Defendant is subject to California Labor Code §§ 1194 *et*
2 *seq.*, California Business and Professions Code § 17200 *et seq.*, (Unfair Practices Act) and the
3 applicable Industrial Welfare Commission Wage Orders.
4

5 6. Plaintiff does not know the true names or capacities, whether individual, partner
6 or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that
7 reason, said Defendants are sued under such fictitious names, and Plaintiff prays leave to
8 amend this complaint when the true names and capacities are known. Each of said fictitious
9 Defendants was responsible in some way for the matters alleged herein and proximately caused
10 Plaintiff and members of the class to be subject to the illegal employment practices, wrongs and
11 injuries complained of herein.
12

13 7. At all times herein mentioned, each of said Defendants participated in the doing
14 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
15 Defendants, and each of them, were the agents, servants and employees of each of the other
16 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
17 acting within the course and scope of said agency and employment.
18

19 8. At all times herein mentioned, Defendants, and each of them, were members of,
20 and engaged in, a joint venture, partnership and common enterprise, and acting within the
21 course and scope of, and in pursuance of, said joint venture, partnership and common
22 enterprise.
23

24 9. At all times herein mentioned, the acts and omissions of various Defendants, and
25 each of them, concurred and contributed to the various acts and omissions of each and all of the
26 other Defendants in proximately causing the injuries and damages as herein alleged.
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1 Defendant or Defendant's customers, (f) did perform nonexempt production and/or sales work
2 a majority of their time (i.e., in excess of 50%) consistent with Defendant's realistic
3 expectations, (g) did not customarily and regularly spend more than 50% of their time away
4 from the Defendant's places of business selling or obtaining orders or contracts, and (h) did not
5 earn more than 50% of their compensation in a bona fide commission plan. Thus, Plaintiff and
6 the class members were not exempt from the overtime requirements of California law for these
7 reasons.
8

9
10 CLASS ALLEGATIONS

11 13. This complaint is brought by Plaintiff pursuant to California Code of Civil
12 Procedure § 382 on behalf of a class. All claims alleged herein arise under California law for
13 which Plaintiff seeks relief authorized under California law. The class is comprised of, and
14 defined as:

15 All current and former California based employees of Ewing Irrigation
16 Products, Inc., with the title "Manager" or "Branch Manager" at any time
17 during the period commencing on the date that is four years preceding the
18 filing of the original complaint up to the time the case is certified as a class
19 action.

20 14. The members of the class are so numerous that joinder of all members is
21 impracticable. The exact number of the members of the class can be determined by reviewing
22 Defendant's records.

23 15. Plaintiff will fairly and adequately protect the interests of the Class and has
24 retained counsel that is experienced and competent in class action and employment litigation.
25 Plaintiff has no interests that are contrary to, or in conflict with, members of the Class.
26

27 16. A class action suit, such as the instant one, is superior to other available means
28 for fair and efficient adjudication of this lawsuit. The damages suffered by individual members

1 of the Class may be relatively small when compared to the expense and burden of litigation,
2 making it virtually impossible for members of the Class to individually seek redress for the
3 wrongs done to them.

4
5 17. A class action is, therefore, superior to other available methods for the fair and
6 efficient adjudication of the controversy. Absent these actions, the members of the Class likely
7 will not obtain redress of their injuries and Defendant will retain the proceeds of its violations
8 of California law.

9
10 18. Even if any member of the Class could afford individual litigation against
11 Defendant, it would be unduly burdensome to the judicial system. Concentrating this litigation
12 in one forum will promote judicial economy and parity among the claims of individual
13 members of the Class and provide for judicial consistency.

14
15 19. There is a well-defined community of interest in the questions of law and fact
16 affecting the Class as a whole. Questions of law and fact common to each of the Class
17 predominate over any questions affecting solely individual members of the action. Among the
18 common questions of law and fact are:

19 a. Whether the class was properly classified as exempt by Defendant from
20 overtime compensation;

21
22 b. Whether the class was expected to, and/or did as a matter of corporate
23 policy and practice, regularly work hours in excess of forty per week and/or in excess of eight
24 hours per day;

25 c. How the class was compensated;

26
27 d. Whether Defendants have or had a uniform and consistent policy and
28 practice concerning duties and responsibilities of the class members which required that the

1 class members both work overtime without pay and regularly spend a majority of their time
2 performing non-exempt tasks;

3 e. Whether Defendants have a uniform and consistent policy and practice
4 concerning duties and responsibilities of the class members such that members do not regularly
5 and customarily exercise discretion and independent judgment on matters directly related to
6 Defendants' management policies or general business operations or those of Defendants'
7 customers;

8 f. Whether Defendants have or had a uniform and consistent policy and
9 practice regarding vacation time applicable to their salaried employees;

10 g. Whether Defendants have or had a uniform and consistent policy and
11 practice for the payment of wages at time of termination;

12 h. Whether the duties, responsibilities, activities and compensation
13 structure of the Branch Managers or Managers have changed in a material way during the
14 statutory coverage of this action;

15 i. Whether the class has sustained damages and, if so, what is the proper
16 measure of damages.
17

18 FIRST CAUSE OF ACTION

19 (Labor Code § 1194)

20 20. Plaintiff incorporates the allegations contained in the previous paragraphs of this
21 Complaint as if fully set forth herein.
22

23 21. California Wage Order 7-2001, 8 C.C.R. § 11040, and Labor Code § 510 state
24 that an employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay,
25 for all hours worked in excess of 40 per week and/or 8 per day.

26 22. California Labor Code § 510 further states that any work in excess of twelve in
27 one day or in excess of eight hours on the seventh day in one workweek shall be compensated
28 at a rate of no less than twice the employee's regular rate of pay.

1 has no other adequate remedy at law to insure future compliance with the California labor laws
2 and wage orders alleged to have been violated herein.

3
4 **FOURTH CAUSE OF ACTION**

5 (Labor Code § 203)

6 33. Plaintiff incorporates the allegations contained in the previous paragraphs of this
7 Complaint as if fully set forth herein.

8 34. Plaintiff and the class were discharged by Defendant or voluntarily quit, and did
9 not have a written contract for employment. The Defendant, in violation of California Labor
10 Code §§ 201 and 202 *et seq.* had a consistent and uniform policy, practice and procedure of
11 willfully failing to pay the earned and unpaid wages of all such former employees. The
12 Defendant has willfully failed to pay the earned and unpaid wages of such individuals,
13 including, but not limited to, straight time, overtime, vacation time and other wages earned and
14 remaining uncompensated according to amendment or proof. Plaintiff and the class did not
15 secret or absent themselves from Defendant nor refuse to accept the earned and unpaid wages
16 from Defendant. Accordingly, Defendant is liable for waiting time penalties for the unpaid
17 wages pursuant to California Labor Code § 203.

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20 **PRAYER FOR RELIEF**

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22 WHEREFORE, representative Plaintiff, on his own behalf and on behalf of the
23 members of the class, prays for judgment as follows:

- 24 1. For an order certifying the proposed class;
- 25 2. For compensatory damages, restitution, attorneys' fees pursuant to Labor Code
26 § 1194 and Code of Civil Procedure § 1021.5, penalties, injunction and declaratory relief all in
27 an amount and value less than \$5,000,000;
- 28 3. For prejudgment interest;

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- 4. For costs; and,
- 5. For all other relief as the Court deems just.

Dated: May 11, 2011

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