

FALAKASSA LAW, P.C.

Joshua S. Falakassa, CA Bar No. 295045
josh@falakassalaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour, Esq., CA Bar No. 285256
mehrdad@bokhourlaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

Attorneys for Plaintiff and the Putative Classes

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF STANISLAUS

ISAAC RAMOS, on behalf of himself and all
other similarly situated,

Plaintiff,

v.

MONSCHEIN INDUSTRIES, INC., a
California Corporation; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: CV-20-004287

**FIRST AMENDED CLASS AND
REPRESENTATIVE PAGA ACTION
COMPLAINT:**

- (1) FAILURE TO PAY ALL MINIMUM WAGES;
- (2) FAILURE TO PAY ALL OVERTIME WAGES;
- (3) MEAL PERIOD VIOLATIONS;
- (4) REST PERIOD VIOLATIONS;
- (5) WAGE STATEMENT VIOLATIONS;
- (6) WAITING TIME PENALTIES;
- (7) UNFAIR COMPETITION; and
- (8) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

DEMAND FOR JURY TRIAL

1 Plaintiff Isaac Ramos (“Plaintiff”) on behalf of himself, and all others similarly situated
2 employees, alleges and complains of defendants Monschein Industries, Inc. and DOES 1 to 50
3 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant MONSCHEIN INDUSTRIES, INC., a California corporation, is a leading
6 manufacturer of affordable custom framed and frameless style cabinetry and fabricate natural stone,
7 solid surface and laminate surface. Plaintiff brings this class and PAGA representative action against
8 Defendants for alleged violations of the California Labor Code and Business and Professions Code.

9 2. As set forth below, Plaintiff alleges that Defendants’ payroll policies and practices
10 failed to issue him and all other similarly situated employees accurate itemized wage statements in
11 violation of Labor Code 226(a). Plaintiff further alleges that Defendants had a uniform payroll
12 practice/policy that unfairly rounded Plaintiff’s and other similarly situated employees’ time entries
13 to the nearest 15 minute and over time resulted in a failure to pay for all hours worked. Additionally,
14 Plaintiff alleges that Defendants failed to pay all overtime compensation at the appropriate legal
15 rate, and that Defendants’ meal and rest period policies and practices failed to provide him and all
16 other similarly situated employees with compliant meal and rest periods, or premium wages in lieu
17 thereof. As a result of the foregoing, Plaintiff alleges that Defendants failed to provide non-exempt
18 employees with accurate written itemized wage statements and failed to timely pay final wages upon
19 separation of employment. Based on these alleged violations, Plaintiff now brings this class and
20 representative action to recover unpaid wages, restitution, penalties, and other related relief on
21 behalf of himself and all others similarly situated.

22 **JURISDICTION AND VENUE**

23 3. Plaintiff, on behalf of himself and all others similarly situated non-exempt employees
24 hereby brings this class and PAGA representative action for recovery of unpaid wages and penalties
25 under California Labor Code §§ 201-203, 204, 210, 226a, 226.7, 510, 516, 512, 1182.12, 1194,
26 1194.2, 1197, 2802, 2804, and applicable Industrial Welfare Commission Wage Orders (“Wage
27 Orders”), in addition to seeking declaratory relief and restitution pursuant to California Business
28 and Professions Code § 17200, *et. seq.* This class action is brought pursuant to California Code of

1 Civil Procedure § 382. This Court has jurisdiction over Defendants' violations of the California
2 Labor Code and applicable Wage Orders because the amount in controversy exceeds this Court's
3 jurisdictional minimum.

4 4. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
5 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the City of
6 Riverbank, County of Stanislaus. Defendants own, maintain offices, transact business, have an agent
7 or agents within the County of Stanislaus, and/or otherwise are found within the County of
8 Stanislaus, and Defendants are within the jurisdiction of this Court for purposes of service of
9 process.

10 **PARTIES**

11 5. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is
12 a California resident residing in the State of California. Defendants employed Plaintiff as a non-
13 exempt employee in Modesto, California in the County of Stanislaus.

14 6. Plaintiff is informed and believes and thereon alleges that defendant Monschein
15 Industries, Inc. is a California corporation authorized to and doing business in Stanislaus County,
16 California, and is and/or was the legal employer of Plaintiff and the Class Members during the
17 applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices
18 complained of herein and has been deprived of the rights guaranteed to him by California Labor
19 Code §§ 201-203, 204, 210, 226a, 226.7, 510, 512, 516, 1182.12, 1194, 1194.2, 1197, and California
20 Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

21 7. Plaintiff is informed and believes, and based thereon alleges, that during the four years
22 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue
23 to do) business in the State of California, County of Stanislaus. Defendants operate/manage their
24 135,000 square foot manufacturing facility in Riverbank, California.

25 8. Plaintiff does not know the true names or capacities, whether individual, partner, or
26 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
27 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
28 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,

1 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
2 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
3 and proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
4 alleged herein.

5 9. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned
6 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
7 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
8 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
9 them, were the agents, servants, and employees of each and every one of the other Defendants, as
10 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
11 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
12 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

13 10. At all times mentioned herein, Defendants, and each of them, were members of and
14 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
15 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
16 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
17 members of the Classes.

18 **COMMON FACTUAL ALLEGATIONS**

19 11. With a state of the art 135,000 sq. ft manufacturing facility, Defendants are a leading
20 manufacturer of affordable custom framed and frameless style cabinetry and fabricate natural stone,
21 solid surface and laminate surface. Plaintiff worked for Defendants as a non-exempt assembly
22 employee from on or about December 2014 until his termination in July 2020. Plaintiff and other
23 non-exempt employees were responsible for all aspects of manufacturing and other services
24 provided by Defendants.

25 12. At all relevant times, Defendants failed and continues to fail to provide Plaintiff and
26 other employees with accurate itemized wage statements in accordance with Labor Code § 226(a).
27 Labor Code § 226(a) obligates employers, semi-monthly or at the time of each payment to furnish
28 an itemized wage statement in writing showing the following:

- 1 (1) gross wages earned;
- 2 (2) total hours worked by the employee;
- 3 (3) the number of piece-rate units earned and any applicable piece rate if the
- 4 employee is paid on a piece rate;
- 5 (4) all deductions, provided that all deductions made on written orders of the
- 6 employee may be aggregated and shown as one item;
- 7 (5) net wages earned;
- 8 (6) the inclusive dates of the period for which the employee is paid;
- 9 (7) the name of the employee and only the last four digits of his or her social security
- 10 number or an employee identification number other than a social security number;
- 11 **(8) the name and address of the legal entity that is the employer.; and**
- 12 (9) all applicable hourly rates in effect during the pay period and the corresponding
- 13 number of hours worked at each hourly rate by the employee.

14 13. The wage statements provided to Plaintiff and other employees failed to include the
15 name and address of the legal entity that is the employer in violation of Labor Code § 226(a)(8).
16 Attached hereto as **Exhibit A** is Plaintiff's wage statement for the pay period 08/02/2020-
17 08/15/2020. The detachable part of the wage statements fails to include the name and address of the
18 legal entity that is the employer. There is no way to otherwise ascertain this missing information
19 from the four corners of the wage statement itself. See *Noori v. Countrywide Payroll & HR*
20 *Solutions, Inc.* (2019) 43 Cal. App. 5th 957, 966 [the fact that the full name appears on the checks
21 attached to wage statements does not satisfy Labor Code 226(a)(8). "The paycheck is not 'part of'
22 the wage statement. Section 226, subdivision (a) directs employers to furnish 'as a detachable part
23 of the check ... an accurate itemized statement in writing showing [the statutorily required
24 information]; *Willner v. Manpower Inc.* (N.D.Cal. 2014) 35 F.Supp.3d 1116, 1129 [rejecting
25 argument that address on a detachable check attached to wage statements satisfied Labor Code §
26 226(a)(8)].)Therefore, the wage statements Defendants issued to Plaintiff and other employees are
27 in direct violation of Labor Code § 226(a)(8).

1 14. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
2 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
3 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
4 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
5 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

6 15. As explained above, Defendants failed to provide Plaintiff and other employees with
7 accurate itemized wage statements. Accordingly, Plaintiff and other non-exempt employees may
8 also recover Labor Code § 226.3 penalties from Defendants for violations of Labor Code § 226(a).

9 16. Further, at all relevant times, Defendants had a uniform payroll policy/practice of
10 rounding Plaintiff’s and other non-exempt employees time entries to the nearest 15 minutes. As a
11 result of this rounding policy/practice, Plaintiff and non-exempt employees were and are not
12 compensated for all the hours that they work and all of the overtime hours they work in violation of
13 Labor Code §§ 204, 510, 1194, 1197.1, 1199, and applicable Wage Orders. (*See’s Candy Shops v.*
14 *Superior Court* (2012) 210 Cal. App. 4th 889, 907 [rounding time policies can be lawful, “if the
15 rounding policy is fair and neutral on its face and ‘it is used in such a manner that it will not result,
16 over a period of time, in failure to compensate the employees properly for all the time they have
17 actually worked,’ (29 C.F.R. § 785.48; see DLSE Manual, *supra*, §§ 47.1, 47.2.)”].)

18 17. Defendants’ rounding policy/practice is not neutral and aggrieved employees were
19 subject to discipline, including termination, for being tardy in reporting to work. Moreover, because
20 Defendants are capable of tracking the time worked by aggrieved employees to the minute, the
21 rounding policy/practice itself exists not for the convenience or benefit of the employees who are
22 trying to report their time on timecards or computer log, but for Defendants’ benefit. As a result of
23 the rounding policy, Plaintiff and other non-exempt employees were uniformly underpaid for all
24 hours worked in violation of Labor Code §§ 204, 510, 1194.2, 1197.1, 1199, and Wage Order 1-
25 2001.

26 18. Moreover, at all relevant times, Plaintiff and other non-exempt employees were not
27 properly paid at the correct overtime rate for all hours worked in excess of eight hours per workday
28 or 40 hours per workweek. When Plaintiff and the other non-exempt employees worked overtime

1 hours, Defendants failed to include all compensation, including but not limited to all non-
2 discretionary bonus payments, when calculating the regular rate of pay used in overtime
3 calculations. For instance, although Defendants consistently and regularly paid non-exempt
4 employee's non-discretionary bonuses, Defendants omitted the bonus payments when calculating
5 the regular rate of pay used in overtime calculations and when paying overtime to Plaintiff and the
6 other non-exempt employees.

7 19. Labor Code § 510 requires an employer to compensate an employee who works more
8 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
9 worked on the seventh consecutive day no less than one and one-half times the regular rate of pay
10 for an employee. In addition, Labor Code § 510 obligates employers to compensate employees at
11 no less than twice the regular rate of pay when an employee works more than twelve (12) hours in
12 a day or more than eight (8) hours on the seventh consecutive day of work.

13 20. Pursuant to Section 3 of the applicable Wage Orders, employees shall not be
14 employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless
15 the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all
16 hours worked over 40 hours in the workweek. By their policy of requiring Mr. \Ramos and the other
17 non-exempt employees to work in excess of eight (8) hours in a workday and/or forty (40) hours in
18 a workweek without compensating them at the rate of one-half (1 1/2) their regular rate of pay,
19 Defendants willfully violated the provisions of Labor Code §§ 510 and applicable Wage Orders.

20 21. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
21 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of
22 wages, and liquidated damages as follows: (1) for any initial violation that is intentionally
23 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which
24 the employee is underpaid. . . [and] (2) [f]or each subsequent violation for the same specific offense,
25 two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the
26 employee is underpaid regardless of whether the initial violation is intentionally committed.

27 22. As set forth above, Defendants failed to compensate Plaintiff and other non-exempt
28 employees for all overtime wages or at the proper rates. Accordingly, through PAGA and to the

1 extent permitted by law Plaintiff and other non-exempt employees are entitled to recover liquidated
2 damages for violations of Labor Code § 1197.1.

3 23. Moreover, at all relevant times, Plaintiff and other non-exempt employees were
4 denied legally complaint and timely off-duty meal periods of at least thirty (30) minutes due to
5 Defendants' unlawful meal period policy/practices or lack thereof. As a result of Defendants'
6 uniform meal period policies and practices, Plaintiff and other non-exempt employees routinely
7 were not permitted to take complaint first meal periods before the end of the fifth hour of work, and
8 second meal periods before the end of the tenth hour of work.

9 24. Plaintiff and other non-exempt employees were also not permitted to take second meal
10 periods for shifts in excess of ten (10) hours. Defendants' meal period policy fails to state that
11 employees are entitled to a second meal period for shifts in excess of ten (10) hours. Additionally,
12 Defendants has no mechanism for the payment of meal period premiums for non-complaint meal
13 periods. Based on the foregoing, Plaintiff seeks to recover on behalf of himself and other non-
14 exempt employees' meal and rest period premiums and penalties. Consequently, Defendants has
15 violated Labor Code §§ 226.7, 512, 516 and applicable Wage Orders.

16 25. Moreover, at all relevant times, Plaintiff and other non-exempt employees were not
17 also provided with rest periods of at least ten (10) ten minutes for each four (4) hour work period,
18 or major fraction thereof due to Defendants' invalid rest period policies and practices. Specifically,
19 Defendants failed and continues to fail to authorize and permit Plaintiff and other non-exempt
20 employees from taking legally complaint rest periods as a result of its unlawful rest period policy
21 that requires aggrieved employees to remain on premises during breaks. \

22 26. As stated in Defendants' Employee Handbook,

23 **"Employees cannot leave Company premises during breaks.** If for any reason the need
24 arises for you to leave the premises, first get permission from your supervisor, and then you
25 MUST clock out and clock back in when you return."

26 27. As a result, Plaintiff and other non-exempt employees are routinely unable to take
27 (10) minute duty free rest periods for every major fraction of four hours worked. This includes a
28 second rest period for shifts in excess of six hours, and a third rest period for shifts in excess of 10.0

1 hours in a workday. By requiring non-exempt employees to remain on the Company premises during
2 breaks, aggrieved employees are not relieved of all duties during rest periods. (See *Augustus v. ABM*
3 *Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest periods employers
4 must relieve employees of all duties and relinquish control over how employees spend their time.”])

5 28. Plaintiff and other non-exempt employees were also often unable to take
6 uninterrupted, duty-free rest periods due to the operating requirements of the job, including but not
7 limited to, time limits imposed to complete certain tasks. Further, although Plaintiff and other non-
8 exempt employees regularly worked shifts in excess of 10.5 hours, Defendants often failed to
9 provide non-exempt employees with a third 10-minute uninterrupted rest period. When Plaintiff and
10 other non-exempt employees were unable to take a complaint rest periods, Defendants failed and
11 continue to fail to pay rest period premium payments as required by Labor Code § 226.7.

12 29. Under the applicable Wage Order, an employer must authorize and permit all
13 employees to take ten (10) minute duty free rest periods for every major fraction of four hours
14 worked. This includes a third rest period for shifts in excess of 10.0 hours in a workday. See
15 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest
16 periods employers must relieve employees of all duties and relinquish control over how employees
17 spend their time.”]. In *Augustus*, the court expressly rejected the employers assertion that it could
18 provide an on-duty rest period to employees who worked as security guards and further explained
19 “that employers [must] relinquish any control over how employees spend their break time, and
20 relieve their employees of all duties.” (*Id.* at 273.)

21 30. As a result, Plaintiff and other non-exempt employees would remain working through
22 their third rest periods and could not take their third rest periods “relinquished from all duties” as
23 required by Labor Code § 226.7. Additionally, Defendants also failed to maintain any mechanism
24 for the payment of rest period premium payments as required by Labor Code § 226.7. As a result of
25 Defendants’ unlawful rest period policies and practices, Plaintiff seeks to recover on behalf of
26 himself and all aggrieved employees rest period premiums and penalties. Consequently, Defendants
27 has violated Labor Code §§ 204, 226.7, 512.

31. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees for all hours worked, all overtime wages at the appropriate rate, and failure to provide all statutorily-mandated meal and rest periods, or compensation in lieu thereof, Defendants also intentionally failed and continues to fail to furnish Plaintiff and other non-exempt employees with accurate itemized wage statements that reflect the correct amount of gross wages earned, net wages earned and premium wages due for missed meal and rest periods as required by Labor Code § 226(a). Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants has violated Labor Code §226(a) with respect to Plaintiff and other non-exempt employees.

32. As a further result of Defendants' Labor Code violations stated herein, Defendants also failed to pay Plaintiff and other non-exempt employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203. Pursuant to Labor Code §§ 201-202, an employer must provide an employee wages at the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides "if an employer willfully fails to pay ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty ..." for up to 30 days.

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- (1) All non-exempt employees who work or worked for Defendants in California, during the four years immediately preceding the filing of the Complaint through the date of trial. (“Class”)
- (2) All employees who work or worked for Defendants in California and who received at least one wage statement, during the one year immediately preceding the filing of the Complaint through the date of trial (“Wage Statement Subclass”)
- (3) All non-exempt employees who worked for Defendants in California and who worked overtime hours during at least one shift and earned a non-

discretionary bonus payment, during the four years immediately preceding the filing of the Complaint through the date of trial. (“Overtime Subclass”)

- (4) All non-exempt employees who worked for Defendants in California, and who have separated their employment with Defendants during one year immediately preceding the filing of the Complaint through the date of trial. (“Waiting Time Subclass”)
- (collectively “the Classes”)

34. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants’ employment and payroll records.

35. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

1. Whether Defendants’ rounding timekeeping policies/practices resulted in a failure to pay for all hours worked to the members of the Class;
2. Whether Defendants’ payroll policies/practices resulted in a failure to pay overtime at the appropriate premium rate resulted to members of the Overtime Subclass;
3. Whether Defendants provided legally compliant meal and rest periods or compensation in lieu thereof to members of the Class;
4. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Subclass pursuant to Labor Code § 226; and
5. Whether the timing and amount of payment of final wages to members of the Waiting Time Subclass at the time of separation from employment were unlawful.

1 36. **Predominance of Common Questions:** Common questions of law and fact
2 predominate over questions that affect only individual members of the Classes. The common
3 questions of law set forth above are numerous and substantial and stem from Defendants' policies
4 and/or practices applicable to each individual class member, such as Defendants' uniform rounding
5 policy/practice, policy/practice of failing to account for non-discretionary bonus payments in
6 calculating employees' regular rate for overtime purposes, Defendants' uniform policy of failing to
7 provide complaint meal and rest periods, and Defendants' resulting failure to provide accurate
8 itemized wage statements, and to pay for all wages due upon separation of employment. As such,
9 the common questions predominate over individual questions concerning each individual class
10 member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

11 37. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
12 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
13 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged
14 herein, Plaintiff, like the members of the Classes was deprived of minimum and overtime wages,
15 was deprived of meal and rest period premium wages, was subject to Defendants' uniform meal and
16 rest period policies/practices, was not provided accurate itemized wage statements, and was not paid
17 all wages owed at the time of his separation of employment.

18 38. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
19 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
20 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
21 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
22 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
23 members of the Classes.

24 39. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
25 important public interest in establishing minimum working conditions and standards in California.
26 These laws and labor standards protect the average working employee from exploitation by
27 employers who have the responsibility to follow the laws and who may seek to take advantage of
28 superior economic and bargaining power in setting onerous terms and conditions of employment.

1 The nature of this action and the format of laws available to Plaintiff and members of the Classes
2 make the class action format a particularly efficient and appropriate procedure to redress the
3 violations alleged herein. If each employee were required to file an individual lawsuit, Defendants
4 would necessarily gain an unconscionable advantage since they would be able to exploit and
5 overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
6 legal resources.

7 40. Moreover, requiring each member of the Classes to pursue an individual remedy
8 would also discourage the assertion of lawful claims by employees who would be disinclined to file
9 an action against their former and/or current employer for real and justifiable fear of retaliation and
10 permanent damages to their careers at subsequent employment. Further, the prosecution of separate
11 actions by the individual class members, even if possible, would create a substantial risk of
12 inconsistent or varying verdicts or adjudications with respect to the individual class members against
13 Defendants herein; and which would establish potentially incompatible standards of conduct for
14 Defendants; and/or legal determinations with respect to individual class members which would, as
15 a practical matter, be dispositive of the interest of the other class members not parties to
16 adjudications or which would substantially impair or impede the ability of the class members to
17 protect their interests. Further, the claims of the individual members of the class are not sufficiently
18 large to warrant vigorous individual prosecution considering all of the concomitant costs and
19 expenses attending thereto. As such, the Class identified in Paragraph 31 are maintainable as Classes
20 under § 382 of the Code of Civil Procedure.

21 **FIRST CAUSE OF ACTION**

22 **MINIMUM WAGE VIOLATIONS**

23 **(AGAINST ALL DEFENDANTS)**

24 41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 42. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
26 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in
27 amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has
28 not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid

1 balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount
2 equal to the unpaid wages and interest accrued thereon.

3 43. At all relevant times herein, Defendants failed to conform their pay practices to the
4 requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform
5 and unlawful practice of failing to pay for all off-the clock work and rounding/altering Plaintiff's
6 and members of the Classes' time entries, which resulted in these individuals not being paid for all
7 hours actually worked.

8 44. Accordingly, Plaintiff and members of the Classes were not compensated for all
9 hours worked including, but not limited to, all hours they were subject to the control of Defendants
10 and/or suffered or permitted to work under the California Labor Code and applicable Wage Orders.

11 45. Labor Code § 1198 makes unlawful the employment of an employee under
12 conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an
13 employer who has failed to pay its employees the legal minimum wage is liable to pay those
14 employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal
15 to the wages due and interest thereon.

16 46. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
17 Plaintiff and the Classes have sustained economic damages, including but not limited to unpaid
18 wages and lost interest, in an amount to be established at trial, and they are entitled to recover
19 economic and statutory damages and penalties and other appropriate relief as a result of Defendants'
20 violations of the California Labor Code and applicable Wage Orders.

21 47. Defendants' practice and uniform administration of corporate policy regarding
22 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
23 members of the Classes in a civil action for the unpaid amount of minimum wages, liquidated
24 damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according
25 to Labor Code §§ 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **(AGAINST ALL DEFENDANTS)**

4 48. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 49. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and
6 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime
7 hours worked and provide a private right of action for the failure to pay all overtime compensation
8 for overtime work performed.

9 50. At all times relevant herein, Defendants were required to properly pay Plaintiff and
10 members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code
11 § 1194 and the applicable Wage Orders.

12 51. Section 3 of the applicable Wage Order requires an employer to pay an employee “one
13 and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per
14 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
15 employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve
16 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
17 the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate
18 Plaintiff or members of the Classes at one and one-half times their regular rate of pay for such hours.

19 52. Defendants failed to conform their pay practices to the requirements of the law. This
20 unlawful conduct includes but is not limited to Defendants’ uniform and unlawful policy/practice
21 of failing to account for non-discretionary bonuses in calculating the regular rate for calculating
22 Overtime Subclass Members’ overtime rate which resulted in these individuals not being paid for
23 all hours actually worked.

24 53. The foregoing policies and practices are unlawful and create entitlement to recovery
25 by Plaintiff and the members of the Overtime Subclass in a civil action for the unpaid amount of
26 overtime wages, including interest thereon, statutory penalties, attorney’s fees, and costs of suit
27 according to Labor Code §§ 204, 210. 510, 1194, and 1198, the applicable Wage Orders, and Code
28 of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

55. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff and members of the Classes, with all required meal periods in accordance with the mandates of the California Labor Code and applicable Wage Orders, for the reasons set forth in the Common Allegations section of this Complaint.

56. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

57. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

58. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

59. Due to their unlawful rest period policy and practices, Defendants did not authorize and permit Plaintiffs and members of the Classes to take any rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiffs and members of the Classes at their respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

60. The foregoing violations create an entitlement to recovery by Plaintiffs and members of the Classes in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **(AGAINST ALL DEFENDANTS)**

4 61. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 62. Labor Code 226(a) states in pertinent part the following:

6 “(a) An employer, semimonthly or at the time of each payment of wages,
7 shall furnish to his or her employee, either as a detachable part of the check,
8 draft, or voucher paying the employee’s wages, or separately if wages are
9 paid by personal check or cash, an accurate itemized statement in writing
10 showing (1) gross wages earned, (2) total hours worked by the employee,
11 except as provided in subdivision (j), (3) the number of piece-rate units
12 earned and any applicable piece rate if the employee is paid on a piece-rate
13 basis, (4) all deductions, provided that all deductions made on written orders
14 of the employee may be aggregated and shown as one item, (5) net wages
15 earned, (6) the inclusive dates of the period for which the employee is paid,
16 (7) the name of the employee and only the last four digits of his or her social
17 security number or an employee identification number other than a social
18 security number, (8) the name and address of the legal entity that is the
19 employer and, if the employer is a farm labor contractor, as defined in
20 subdivision (b) of Section 1682, the name and address of the legal entity that
21 secured the services of the employer, and (9) all applicable hourly rates in
22 effect during the pay period and the corresponding number of hours worked
23 at each hourly rate by the employee. . .”

24 63. As set forth above, during the Class Period, Defendants issued and continues to issue
25 wage statements to its employees including Plaintiff and members of the Wage Statement Penalty
26 Subclass, which are inadequate under Labor Code Section 226(a).

27 64. Notably, Defendants wage statements issued failed to state the name and address of the
28

1 legal entity that is the employer in violation Labor Code Section 226(a)(8).

2 65. Further, as a result of Defendants failure to pay Plaintiff and the Classes for all overtime
3 wages at the appropriate legal rate, and missed meal and rest period premiums, Defendants failed to
4 include required information on Plaintiff and the Classes' wage statements, including, but not limited
5 to, the gross wages earned, the net wages earned in violation of Labor Code section 226a.

6 66. Defendants' failure to comply with section 226(a) of the Labor Code was knowing and
7 intentional.

8 67. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff
9 and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor
10 Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an initial
11 penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty
12 of \$4,000 per Plaintiff and per every member of the Wage Statement Subclass from Defendants
13 pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

14 **SIXTH CAUSE OF ACTION**

15 **WAITING TIME PENALTIES**

16 **(AGAINST ALL DEFENDANTS)**

17 68. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 69. The actionable period for this cause of action is three years prior to the filing of this
19 Complaint through the present, and on-going until the violations are corrected or the class is
20 certified.

21 70. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and
22 owing to Plaintiff and the Waiting Time Class during the actionable period for this cause of action
23 at or around the time that their employment is or was terminated or ended.

24 71. Labor Code § 203 provides that if an employer willfully fails to pay compensation
25 promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the
26 employer is liable for penalties in the form of continued compensation up to thirty (30) work days.

27 72. Defendants willfully failed to pay Plaintiff and the Waiting Time Subclass for all
28 hours worked, including all overtime wages, and their meal and rest period premiums, prior to or

1 upon termination or separation from employment with Defendants as required by Labor Code §§
2 201 and 202.

3 73. As a result, Defendants are liable to Plaintiff and the Waiting Time Subclass for waiting
4 time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Time Subclass
5 pursuant to Labor Code § 203. *See, e.g.* DLSE Manual, 4.3.4 (Failure to pay any sort of wages due
6 upon termination entitles an employee to recover waiting time penalties).

7 **SEVENTH CAUSE OF ACTION**

8 **UNFAIR COMPETITION**

9 **(AGAINST ALL DEFENDANTS)**

10 74. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

11 75. Defendants have engaged and continue to engage in unfair and/or unlawful business
12 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
13 failing to pay all overtime wages at the legal rate, by failing to provide all legally required meal and
14 rest periods or pay premium payments in lieu thereof, by failing to provide accurate wage statements,
15 and by failing to pay all earned wages at the time of separation from employment.

16 76. Defendants' utilization of these unfair and/or unlawful business practices deprived
17 Plaintiff and continues to deprive members of the Classes of compensation to which they are legally
18 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over
19 Defendants' competitors who have been and/or are currently employing workers and attempting to
20 do so in honest compliance with applicable wage and hour laws.

21 77. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
22 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
23 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
24 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

25 78. The acts complained of herein occurred within the last four years immediately
26 preceding the filing of the Complaint in this action.

27 79. Plaintiff was compelled to retain the services of counsel to file this court action to
28 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of

1 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
2 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
3 he is entitled to recover under Code of Civil Procedure § 1021.5.

4 **EIGHTH CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACT**

6 **(AGAINST ALL DEFENDANTS)**

7 80. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 81. Defendants have committed several Labor Code violations against Plaintiff and other
9 non-exempt employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698
10 *et seq.*, acting on behalf of himself and other similarly aggrieved employees, brings this representative
11 action against Defendants on behalf of the following group of "aggrieved employees": All current
12 and former non-exempt employees who worked for Defendants in California, during the one year
13 immediately preceding the filing of the PAGA Notice through the date of trial.

14 82. Plaintiff brings this representative action to recover the civil penalties due to Plaintiff,
15 other non-exempt employees, and the State of California according to proof pursuant to Labor Code
16 § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and \$200 for each
17 subsequent violation per employee per pay period for those violations of the Labor Code for which
18 no civil penalty is specifically provided based on the following Labor Code violations:

19 a. Failing to Pay Plaintiff and other non-exempt employees all earned minimum wages
20 in violation of Labor Code §§ 204, 210, 510, and 1194, *et seq.*;

21 b. Failing to Pay Plaintiff and other non-exempt employees all earned overtime
22 compensation in violation of Labor Code §§ 204, 210, 510, 1194, and 1198 *et seq.*;

23 c. Failing to provide Plaintiff and other non-exempt employees with all of their
24 statutorily mandated meal periods in violation of Labor Code §§ 204, 510, 1194 and 1198;

25 d. Failing to authorize and permit Plaintiff and other non-exempt employees with all of
26 their statutorily mandated rest periods in violation of Labor Code §§ 226.7 and 516.

27 e. Failing to furnish Plaintiff and other non-exempt employees with complete, accurate,
28 itemized wage statements in violations of Labor Code § 226(a);

1 f. Failing to compensate Plaintiff and other non-exempt employees with all earnings at
2 their separation of employment in violation of Labor Code §§ 201-203;

3 83. Plaintiff is currently complying with the procedures for bringing suit specified in
4 California Labor Code § 2699.3. On or about September 4, 2020, Plaintiff notified defendant
5 Monschein Industries, Inc. via certified mail, and the California Labor and Workforce Development
6 Agency of Defendants' violations of the California Labor Code § 2698 *et. seq.* with respect to facts
7 and theories alleged herein and set forth in Plaintiff's PAGA Notice. Thereafter, on October 12, 2020,
8 Plaintiff submitted an amendment to his PAGA Notice that detailed additional theories/facts and
9 Labor Code violations. ("PAGA Amendment") This Complaint will be deemed amended when more
10 than sixty-five (65) days have passed since the PAGA Notice and PAGA Amendment were mailed
11 to Defendants and the LWDA and the LWDA chooses not to investigate the allegations herein.

12 84. Plaintiff was compelled to retain the services of counsel to file this court action to protect
13 his interests and the interests of other non-exempt employees, and to assess and collect the civil
14 penalties owed by Defendants. Plaintiff has therefore incurred attorneys' fees and costs, which he is
15 entitled to receive under Labor Code § 2699.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiff prays for judgment for himself and for all others on whose behalf
18 this suit is brought against Defendants, as follows:

- 19 1. For an order certifying the proposed Classes;
- 20 2. For an order appointing Plaintiff as representative of the Classes;
- 21 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 22 4. Upon the First Cause of Action, for compensatory, consequential, general and special
23 damages according to proof pursuant to Labor Code §§ 204, 210, 510, and 1194;
- 24 5. Upon the Second Cause of Action, for compensatory, consequential, general and
25 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 26 6. Upon the Third Cause of Action, for compensatory, consequential, general and
27 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;

1 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

3 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and
4 reasonable costs and attorneys' fees;

5 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
6 Labor Code §§ 201-203.

7 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
8 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
9 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

10 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other non-
11 exempt employees, and the State of California according to proof pursuant to Labor Code § 2699
12 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
13 subsequent violation per employee per pay period for those violations of the Labor Code for which
14 no civil penalty is specifically provided under the Labor Code;

15 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
16 § 218.6 and Civil Code §§ 3287 and 3289;

17 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
18 218.5, 226, and Code of Civil Procedure § 1021.5; and

19 14. For such other relief that the Court may deem just and proper.

20 Dated: October 12, 2020

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

21
22
23 By: _____

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff and the Putative Classes

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

On October 12, 2020, I served the following document(s) described as **FIRST AMENDED CLASS AND REPRESENTATIVE PAGA ACTION COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Melody S. Bahai, Esq.
Kimberly Shields, Esq.
MURPHY PEARSON BRADLEY &
FEENY
580 California Street, Suite 1100
San Francisco, California 94104

**Counsel for defendant
Monschein Industries, Inc.**

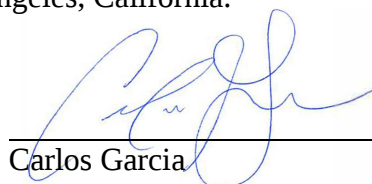
Joshua Falakassa, Esq.
FALAKASSA LAW, P.C.
1901 Avenue of Stars, Suite 450
Los Angeles, California 90067

**Co-counsel for Plaintiff on behalf of himself
and all others similarly situated**

BY MAIL: I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully pre-paid. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, the correspondence is deposited with the U.S. Postal Service on that same day in the ordinary course of business.

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

Executed on October 12, 2020, at Los Angeles, California.



Carlos Garcia