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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

CRAIG AYOTTE, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

FRANK, RIMERMAN + Co., LLP, a California
Limited Liability Partnership; FRANK,
RIMERMAN ADVISORS, LLC, a California
Limited Liability Company; FRANK,
RIMERMAN INFORMATION SECURITY,
LLC, a California Limited Liability Company;;
and DOES 1-50, inclusive.

Defendants.

CASE NO.: 21CV386288

Assigned to Hon. Patricia M. Lucas, Dept. 3

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

- (1) FAILURE TO PAY MINIMUM WAGES;
- (2) FAILURE TO PAY OVERTIME WAGES;
- (3) MEAL PERIOD VIOLATIONS;
- (4) REST PERIOD VIOLATIONS;
- (5) FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES;
- (6) WAGE STATEMENT VIOLATIONS;
- (7) WAITING TIME PENALTIES; and
- (8) UNFAIR COMPETITION
- (9) PAGA PENALTIES

DEMAND FOR JURY TRIAL

Complaint Filed: August 27, 2021

1 Plaintiff Craig Ayotte (“Plaintiff”) on behalf of himself, and all other similarly situated
2 employees, alleges and complains of defendants Frank Rimerman + Co., LLP; Frank, Rimerman
3 Advisors, LLC; Frank, Rimerman Information Security, LLC; and DOES 1 to 50 (collectively,
4 “Defendants”) and each of them, as follows:

5 **INTRODUCTION**

6 1. Defendants are a large accounting firm providing a variety of professional services to
7 businesses and individuals ranging from tax services, audits, valuations, risk management, financial
8 reporting, accounting and other financial services throughout California.

9 2. Plaintiff brings this class action against Defendants for alleged violations of the
10 California Labor Code and Business and Professions Code.

11 3. As set forth below, Plaintiff alleges that Defendants had a uniform payroll practice
12 and/or policy that failed to account for time spent undergoing screening for COVID-19 via an app-
13 based questionnaire prior to clocking in for shifts. As a result, Plaintiff and other similarly situated
14 employees were not paid wages for all hours worked. Plaintiff further alleges that Defendants failed
15 to pay all compensation.

16 4. Furthermore, Defendants’ meal and rest period policies and practices failed to provide
17 him and all other similarly situated employees with compliant meal and rest periods, or pay premium
18 wages in lieu thereof. Additionally, Plaintiff alleges that Defendants failed to provide non-exempt
19 employees with accurate written itemized wage statements and failed to timely pay all final wages
20 upon separation of employment. Finally, Plaintiff alleges that Defendants failed to reimburse him
21 and other non-exempt employees for necessary business expenditures.

22 5. Based on these alleged Labor Code violations, Plaintiff now brings this class action
23 and PAGA representative action to recover unpaid wages, restitution, penalties, and other related
24 relief on behalf of himself and all others similarly situated.

25 **JURISDICTION AND VENUE**

26 6. Plaintiff, on behalf of himself and all others similarly situated employees hereby
27 brings this class action for recovery of unpaid wages and penalties under California Labor Code §§
28 200, 201-203, 204, 210, 226a, 226(e), 226.3, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199, 2802,

1 2698, et seq., and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in
2 addition to seeking declaratory relief and restitution pursuant to California Business and Professions
3 Code § 17200, *et. seq.* This class action is brought pursuant to California Code of Civil Procedure
4 § 382.

5 7. This Court has jurisdiction over Defendants’ violations of the California Labor Code
6 and applicable Wage Orders because the amount in controversy exceeds this Court’s jurisdictional
7 minimum.

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

13 **PARTIES**

14 9. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is
15 a California resident residing in the State of California. Defendants employed Plaintiff as a non-
16 exempt employee in San Jose, California in the County of Santa Clara.

17 10. Plaintiff is informed and believes and thereon alleges that defendant Frank, Rimerman
18 + Co., LLP, is a Limited Liability Partnership authorized and doing business in Santa Clara County,
19 California; and is and/or was the legal employer of Plaintiff and the Class Members during the
20 applicable statutory periods.

21 11. Plaintiff is informed and believes and thereon alleges that defendant Frank, Rimerman
22 Advisors, LLC, and is a Limited Liability Company authorized to and doing business in Santa Clara
23 County, California; and is and/or was the legal employer of Plaintiff and the Class Members during
24 the applicable statutory periods.

25 12. Plaintiff is informed and believes and thereon alleges that defendant Frank, Rimerman
26 Information Security, LLC, is a Limited Liability Company authorized to and doing business in
27 Santa Clara County, California and is and/or was the legal employer of Plaintiff and the Class
28 Members during the applicable statutory periods..

1 13. Further, Plaintiff is informed, and believes, and thereon alleges, that all Defendants
2 were joint employers for all purposes of Plaintiff and the other Class Members.

3 14. Defendants' policies and/or practices outlined herein has deprived Plaintiff and other
4 similarly situated employees of the rights afforded to them by California Labor Code §§ 201-203,
5 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 1194, 1197.1, 1199, 2802, 2698, et seq., and
6 California Business and Professions Code § 17200 *et seq.*, and applicable Wage Order(s).

7 15. Plaintiff is informed and believes, and based thereon alleges, that during the four years
8 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue
9 to do) business in the State of California, County of Santa Clara. Defendants, each of them, own
10 and/or operate a firm in a large office on 60 S Market St, in San Jose, California.

11 16. Plaintiff does not know the true names or capacities, whether individual, partner, or
12 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
13 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
14 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
15 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
16 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
17 and proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
18 alleged herein.

19 17. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned
20 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
21 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
22 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
23 them, were the agents, servants, and employees of each and every one of the other Defendants, as
24 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
25 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
26 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

27 18. At all times mentioned herein, Defendants, and each of them, were members of and
28 engaged in a joint venture, partnership, and common enterprise, and acting within the course and

1 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
2 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
3 members of the Classes.

4 **COMMON FACTUAL ALLEGATIONS**

5 19. Defendants are a provider of a variety of professional services to businesses and
6 individuals ranging from tax services, audits, valuations, risk management, financial reporting,
7 accounting and other financial services throughout California.

8 20. Defendants have over 500 employees. Defendants employed Plaintiff as a non-exempt
9 employee from approximately November 18, 2016, until his termination on or about May 7, 2021,
10 to work out of their San Jose office. Plaintiff and other similarly situated non-exempt employees
11 were responsible for all aspects administrative support and other services provided by Defendants
12 in all their California locations.

13 21. At all relevant times, Defendants have had a uniform payroll policy/practice of not
14 crediting Plaintiff and other non-exempt employees' time entries with the time spent answering a
15 series of questions designed to screen for symptoms associated with COVID-19. To do so, Plaintiff
16 and non-exempt employees were required to download an application to their personal cellular
17 phones and answer this questionnaire before each shift. As a result of Defendants' COVID-19
18 screening policy/practices, Plaintiff and other non-exempt employees were not fully compensated
19 for all hours worked, including minimum and overtime wages as required by the California Labor
20 Code and applicable Wage Orders. *See Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038, which held that
21 employees "must be paid" during security checks since "it is clear that [employees] are subject to
22 [the employer's] control while awaiting, and during, [the] exit searches." *Troester v. Starbucks*
23 *Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require employees
24 to routinely work for minutes off the clock without compensation"). Here, the requirement to
25 undergo routine screenings via an app-based questionnaire, prior to shifts and off the clock, is
26 analogous to a physical security check.

27 22. Consequently, Plaintiff and other non-exempt employees were not properly paid for
28 all hours worked, including overtime hours, in violation of Cal. Labor Code §204, 210, 510, 1194,

1 1197.1, 1199, and applicable Wage Orders. Additionally, Plaintiff and other non-exempt employees
2 similarly situated were not properly paid at the correct overtime rate for hours worked in excess of
3 eight hours per shift.

4 23. As a result of the security and COVID-19 screening policy, Plaintiff and other non-
5 exempt employees were uniformly underpaid for all hours worked, including all minimum and
6 overtime wages, in violation of Labor Code §§ 204, 510, 1194.2, 1197.1, 1199, and applicable Wage
7 Orders. Accordingly, Plaintiff and other non-exempt employees are entitled to recover liquidated
8 damages for violations of Labor Code § 1197.1 and penalties under Labor Code § 1199.

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

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

22 26. Next, at all relevant times, Plaintiff and other non-exempt employees were denied
23 legally complaint and timely off-duty meal periods of at least thirty (30) minutes due to Defendants'
24 unlawful policies/practices (including, but not limited to, rough demands of the job, staffing
25 shortages, and interruption of meal periods by Defendants) that often prevented Plaintiff and other
26 non-exempt employees from taking complaint 30-minute first meal periods before the end of the
27 fifth hour of work, and second meal periods before the end of the tenth hour of work as required by
28 California law.

1 27. Based on the foregoing, Plaintiff seeks to recover on behalf of himself and other non-
2 exempt employees' meal period premiums and penalties. Consequently, Defendants has violated
3 Labor Code §§ 226.7, 512, 516 and applicable Wage Orders.

4 28. Further, Plaintiff and other non-exempt employees were also often unable to take
5 legally complaint rest periods due to the demands of the job, staffing shortages, and job
6 responsibilities, especially during the "busy season". As a result, Plaintiff and other non-exempt
7 employees were and are routinely unable to take (10) minute duty free rest periods for every major
8 fraction of four hours worked. This includes a second rest period for shifts in excess of six hours,
9 and a third rest period for shifts in excess of 10 hours in a workday.

10 29. By interrupting non-exempt employees, or otherwise causing them to work, during
11 breaks, non-exempt employees are not relieved of all duties during rest periods. See *Augustus v.*
12 *ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods
13 employers must relieve employees of all duties and relinquish control over how employees spend
14 their time."]. In *Augustus*, the court expressly rejected the employers' assertion that it could provide
15 an on-duty rest period to employees who worked as security guards and further explained "that
16 employers [must] relinquish any control over how employees spend their break time and relieve
17 their employees of all duties." *Id.* at 273.

18 30. Each time Plaintiff and other non-exempt employees were unable to take a complaint
19 rest periods, Defendants failed and continues to fail to adequately pay rest period premiums.

20 31. As a result of Defendants' unlawful rest period policies and practices, Plaintiff seeks
21 to recover on behalf of himself and all non-exempt employees rest period premiums and penalties.
22 Consequently, Defendants has violated Labor Code §§ 204, 210, 226.7, 510, 512 and applicable
23 Wage Orders.

24 32. Moreover, at all relevant times, Plaintiff and other non-exempt employees, at the
25 direction of Defendants and/or with Defendants' knowledge and acquiescence, have used their
26 personal cell phones to download applications, communicate with their supervisors, managers, and
27 co-workers in the discharge of their duties for Defendants. Defendants require Plaintiff and other
28 non-exempt employees to submit to a COVID-19 screening questionnaire on their personal

1 cellphones, which uses data to both download and operate the application. Defendants require that
2 Plaintiff and other non-exempt employees respond to phone calls and text messages and expect these
3 employees to initiate calls and texts to meet business needs. Defendants required Plaintiff and all
4 other non-exempt employees to incur the costs associated with business use of their personal cell
5 phones and did not provide any reimbursement of these costs.

6 33. Defendants do not maintain an expense reimbursement policy and/or practice stating
7 that Defendants will affirmatively reimburse Plaintiff and the other non-exempt employees for a
8 reasonable portion of their monthly personal cell phone bills and expenses necessarily incurred in
9 their discharge of their duties, as required by *Cochran v. Schwan's Home Service, Inc.* (2014) 228
10 Cal.App.4th 1137 ("We hold that when employees must use their personal cell phones for work-
11 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
12 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement
13 owed is a reasonable percentage of their cell phone bills.") (reversing denial of class certification in
14 cell phone reimbursement class action and setting forth the applicable law for these claims); *Aguilar*
15 *v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. 2014) (granting Plaintiff's motion for partial
16 summary judgment on the Mr. Toys' cell phone reimbursement claim); *Ritchie v. Blue Shield of*
17 *California*, 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone
18 reimbursement claim and adopting the logic of Cochran).

19 34. Although Plaintiff and the other non-exempt employees used their personal cell
20 phones in the discharge of their job duties with the knowledge and/or acquiescence of Defendants,
21 they were not reimbursed in any amount for expenses incurred throughout the relevant liability
22 period. Defendants' failure to reimburse Plaintiff and the other non-exempt employees for their on-
23 going cell phone business expenses incurred in their discharge of their duties continues through the
24 present day. Indeed, any reimbursement is absent from Plaintiff's wage statements during his
25 employment.

26 35. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees all
27 minimum and overtime wages, and failure to provide all statutorily-mandated meal and rest periods,
28 or proper 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)(1),(5),(9).

36. As a further result of Defendants' Labor Code violations stated herein above, 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 a non-exempt 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

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

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”)

38. **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.

39. **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:

a. Whether Defendants' timekeeping policies/practices regarding COVID-19 screening resulted in a failure to pay for all hours worked to the members of the Classes;

1 b. Whether Defendants provided legally compliant meal and rest periods or proper
2 compensation in lieu thereof to members of the Classes;

3 c. Whether Defendants furnished legally compliant wage statements to members of the
4 Classes pursuant to Labor Code § 226(a);

5 d. Whether the timing and amount of payment of final wages to members of the Class at
6 the time of separation from employment were unlawful; and

7 e. Whether Defendants properly reimbursed members of the Class for all necessary
8 business expenditures.

9 40. **Predominance of Common Questions:** Common questions of law and fact
10 predominate over questions that affect only individual members of the Classes. The common
11 questions of law set forth above are numerous and substantial and stem from Defendants' policies
12 and/or practices applicable to each individual class member, such as Defendants' policy/practice of
13 failing to pay all wages, Defendants' uniform policy of failing to provide complaint meal and rest
14 periods or adequate compensation in lieu thereof, Defendants' uniform policy of failing to
15 compensate non-exempt employees for their cell phone expenses incurred at the behest of
16 Defendant, and Defendants' resulting failure to provide accurate itemized wage statements, and to
17 pay for all wages due upon separation of employment. As such, the common questions predominate
18 over individual questions concerning each individual class member's showing as to his or her
19 eligibility for recovery or as to the amount of his or her damages.

20 41. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
21 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
22 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged
23 herein, Plaintiff, like the members of the Classes was deprived of minimum and overtime wages,
24 was deprived of meal and rest period premium wages, was subject to Defendants' uniform meal and
25 rest period policies/practices, was not reimbursed for required work expenses, was not provided
26 accurate itemized wage statements, and was not paid all wages owed at the time of his separation of
27 employment.

1 42. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
2 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
3 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
4 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
5 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
6 members of the Classes.

7 43. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
8 important public interest in establishing minimum working conditions and standards in California.
9 These laws and labor standards protect the average working employee from exploitation by
10 employers who have the responsibility to follow the laws and who may seek to take advantage of
11 superior economic and bargaining power in setting onerous terms and conditions of employment.
12 The nature of this action and the format of laws available to Plaintiff and members of the Classes
13 make the class action format a particularly efficient and appropriate procedure to redress the
14 violations alleged herein. If each employee were required to file an individual lawsuit, Defendants
15 would necessarily gain an unconscionable advantage since they would be able to exploit and
16 overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
17 legal resources.

18 44. Moreover, requiring each member of the Classes to pursue an individual remedy
19 would also discourage the assertion of lawful claims by employees who would be disinclined to file
20 an action against their former and/or current employer for real and justifiable fear of retaliation and
21 permanent damages to their careers at subsequent employment. Further, the prosecution of separate
22 actions by the individual class members, even if possible, would create a substantial risk of
23 inconsistent or varying verdicts or adjudications with respect to the individual class members against
24 Defendants herein; and which would establish potentially incompatible standards of conduct for
25 Defendants; and/or legal determinations with respect to individual class members which would, as
26 a practical matter, be dispositive of the interest of the other class members not parties to
27 adjudications or which would substantially impair or impede the ability of the class members to
28 protect their interests. Further, the claims of the individual members of the class are not sufficiently

1 large to warrant vigorous individual prosecution considering all of the concomitant costs and
2 expenses attending thereto. As such, the Classes identified in Paragraph 36 are maintainable as
3 Classes under § 382 of the Code of Civil Procedure.

4 **FIRST CAUSE OF ACTION**

5 **MINIMUM WAGE VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

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

8 46. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
9 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in
10 amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has
11 not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid
12 balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount
13 equal to the unpaid wages and interest accrued thereon.

14 47. At all relevant times herein, Defendants failed to conform their pay practices to the
15 requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform
16 and unlawful practice of failing to pay for all off-the clock work, which resulted in these individuals
17 not being paid for all hours actually worked. Accordingly, Plaintiff and members of the Classes
18 were not compensated for all hours worked including, but not limited to, all hours they were subject
19 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
20 and applicable Wage Orders.

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

26 49. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
27 Plaintiff and the Classes have sustained economic damages, including but not limited to unpaid
28 wages and lost interest, in an amount to be established at trial, and they are entitled to recover

1 economic and statutory damages and penalties and other appropriate relief as a result of Defendants’
2 violations of the California Labor Code and applicable Wage Orders.

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

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY ALL OVERTIME WAGES**

10 **(AGAINST ALL DEFENDANTS)**

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

12 52. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and
13 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime
14 hours worked and provide a private right of action for the failure to pay all overtime compensation
15 for overtime work performed.

16 53. At all times relevant herein, Defendants were required to properly pay Plaintiff and
17 members of the Classes and Overtime Subclass for all overtime hours worked pursuant to California
18 Labor Code § 1194 and the applicable Wage Orders.

19 54. Section 3 of the applicable Wage Order requires an employer to pay an employee “one
20 and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per
21 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
22 employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve
23 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
24 the workweek. Defendants caused Plaintiff to work overtime hour, by mandating that they submit
25 to off the clock COVID-19 screening, but did not compensate Plaintiff or members of the Classes
26 at one and one-half times their regular rate of pay for such hours.

27 55. Defendants failed to conform their pay practices to the requirements of the law. This
28 unlawful conduct includes but is not limited to Defendants’ uniform and unlawful policy/practice

1 of failing to pay for all pre-shift time spent on COVID-19 screening and security checks for the
2 Classes and Overtime Subclass which resulted in these individuals not being paid all overtime wages
3 owed.

4 56. The foregoing policies and practices are unlawful and create entitlement to recovery
5 by Plaintiff and the members of the Classes and Overtime Subclass in a civil action for the unpaid
6 amount of overtime wages, including interest thereon, statutory penalties, attorney's fees, and costs
7 of suit according to Labor Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and
8 Code of Civil Procedure § 1021.5.

9 **THIRD CAUSE OF ACTION**

10 **MEAL PERIOD VIOLATIONS**

11 **(AGAINST ALL DEFENDANTS)**

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

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

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

21 **FOURTH CAUSE OF ACTION**

22 **REST PERIOD VIOLATIONS**

23 **(AGAINST ALL DEFENDANTS)**

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

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

62. Due to their unlawful rest period policy and practices, Defendants did not authorize and permit Plaintiff and members of the Classes to take any rest periods to which they were legally entitled, including failing to allow non-exempt employees to leave the premises during rest periods. Despite Defendants' violations, Defendants have not paid an additional hour of pay at the "regular rate of pay" to Plaintiff and members of the Classes at their respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

63. The foregoing violations create an entitlement to recovery by Plaintiff 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.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR CELL PHONE USAGE

(AGAINST ALL DEFENDANTS)

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

65. Labor Code 2208(a) states in pertinent part the following:

“(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

66. As set forth above, Plaintiff and members of the Classes must be compensated for a reasonable portion of their monthly personal cell phone bills and expenses necessarily incurred in their discharge of their duties, as required by *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.") (reversing denial of class certification in cell phone reimbursement class action and setting forth the applicable law for these claims); *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. 2014) (granting Plaintiff's motion for partial

1 summary judgment on the Mr. Toys' cell phone reimbursement claim); Ritchie v. Blue Shield of
2 California, 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement
3 claim and adopting the logic of Cochran).

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
6 **(AGAINST ALL DEFENDANTS)**

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

8 68. Labor Code 226(a) states in pertinent part the following:

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

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

24 70. As a result of Defendants failure to pay Plaintiff and the Classes for all overtime wages
25 at the appropriate legal rate, and missed meal and rest period premiums, Defendants failed to include
26 required information on Plaintiff and the Classes' wage statements, including, but not limited to, the
27 gross wages earned, the net wages earned in violation of Labor Code section 226a. Additionally,
28 Defendants' wage statements issued failed to state the name and address of the legal entity that is

1 the employer in violation Labor Code Section 226(a)(8). (Attached hereto as Exhibit A is a true and
2 correct copy of Plaintiff's wage statement, which fails to include the name and address of the legal
3 entity that is the employer.)

4 71. Defendants' failure to comply with section 226(a) of the Labor Code was knowing
5 and intentional.

6 72. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff

7 73. and members of the Classes in violation of section 226(a) of the California Labor
8 Code, Plaintiff and members of the Classes are each entitled to recover an initial penalty of \$50, and
9 subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per
10 Plaintiff and per every member of the Classes from Defendants pursuant to section 226(e) of the
11 Labor Code, costs and reasonable attorneys' fees.

12 **SEVENTH CAUSE OF ACTION**

13 **WAITING TIME PENALTIES**

14 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

25 78. Defendants willfully failed to pay Plaintiff and the Waiting Time Subclass for all
26 hours worked, including all minimum and overtime wages, and their meal and rest period premiums
27 at the "regular rate of pay", prior to or upon termination or separation from employment with
28 Defendants as required by Labor Code §§ 201 and 202.

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

5 **EIGHTH CAUSE OF ACTION**

6 **UNFAIR COMPETITION**

7 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

26 85. Plaintiff was compelled to retain the services of counsel to file this court action to
27 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
28 Defendants' current hourly non-exempt employees and to enforce important rights affecting the

1 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
2 he is entitled to recover under Code of Civil Procedure § 1021.5.

3 **NINTH CAUSE OF ACTION**

4 **PRIVATE ATTORNEYS GENERAL ACT**

5 **(Labor Code § 2698 et seq.)**

6 **(AGAINST ALL DEFENDANTS)**

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

8 87. 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 non-exempt employees, bring this representative action
11 against Defendants to recover the civil penalties due to Plaintiff, other similarly non-exempt
12 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)
13 including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent
14 violation per employee per pay period for those violations of the Labor Code for which no civil
15 penalty is specifically provided based on the following Labor Code violations:

16 a. Failing to pay Plaintiff and other non-exempt employees for all hours worked,
17 including all minimum and overtime wages in violation of Labor Code §§ 204, 510, 1194, 1197,
18 1198, and 1182.12

19 b. Failing to provide Plaintiff and other non-exempt employees with all of their
20 statutorily mandated meal periods or compensation at the "regular rate of pay" in lieu thereof in
21 violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

22 c. Failing to authorize and permit Plaintiff and other non-exempt employees with all
23 of their statutorily mandated rest periods or compensation at the "regular rate of pay" in lieu thereof
24 in violation of Labor Code §§ 226.7, and 516;

25 d. Failing to reimburse Plaintiff and other non-exempt employees for all necessary
26 business expenditures in violation of Labor Code 2208 and 2802;

27 e. Failing to timely compensate Plaintiff and other non-exempt employees with all
28 earnings at their separation of employment in violation of Labor Code §§ 201-203; and

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

3 88. On or about August 26, 2021, Plaintiff notified Frank Rimerman + Co., LLP; Frank,
4 Rimerman Advisors, LLC; Frank, Rimerman Information Security, LLC, via certified mail, and the
5 California Labor and Workforce Development Agency (“LWDA”) via its website of Defendants’
6 violations of the California Labor Code § 2698 et seq., with respect to violations of the California
7 Labor Code identified in Paragraph 87 (a)-(f). Now that sixty-five days have passed from Plaintiff
8 notifying Defendants and the LWDA of these violations, Plaintiff will have exhausted his
9 administrative requirements for bringing a claim under the Private Attorneys General Act with respect
10 to these violations.

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

15 **PRAYER FOR RELIEF**

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

- 18 1. For an order certifying the proposed Classes;
- 19 2. For an order appointing Plaintiff as representative of the Classes;
- 20 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 21 4. Upon the First Cause of Action, for compensatory, consequential, general and special
22 damages according to proof pursuant to Labor Code §§ 204, 210, 510, and 1194;
- 23 5. Upon the Second Cause of Action, for compensatory, consequential, general and
24 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 25 6. Upon the Third Cause of Action, for compensatory, consequential, general and
26 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 27 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
28 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

1 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 2208, and
2 reasonable costs and attorneys' fees;

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

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

7 10. Upon the Eighth 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 Ninth Cause of Action, for civil penalties due to Plaintiff, other non-exempt
11 aggrieved 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 11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
16 § 218.6 and Civil Code §§ 3287 and 3289;

17 12. 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 13. For such other relief that the Court may deem just and proper.

20 Dated: April 25, 2022

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

21
22
23 By: _____

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Anwar D. Burton, Esq.

Attorneys for Plaintiff and the Putative Classes

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 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.

5 On May 5, 2022, I served the following document(s) described as **FIRST AMENDED**
6 **CLASS ACTION AND PAGA COMPLAINT** on the interested parties in this action by
7 placing true copies thereof enclosed in sealed envelopes addressed as follows:

8 **FALAKASSA LAW, P.C.**

9 Joshua S. Falakassa, Esq.
10 *josh@falakassalaw.com*
11 1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067

12 ***Co-Counsel for Plaintiff and the Putative***
13 ***Classes***

HOGUE, FENTON, JONES & APPEL, INC.

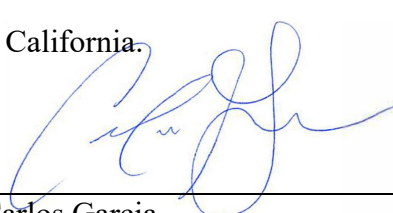
Jenn M. Protas, Esq.
Jenn.protas@hogefenton.com
Laura C. Riparbelli, Esq.
Laura.riparbelli@hogefenton.com
55 South Market Street, Suite 900
San Jose, California 95113

14 ***Counsel for defendants Frank, Rimerman +***
15 ***Co., LLP, Frank, Rimerman Advisors, LLC,***
16 ***and Frank, Rimerman Information Security,***
17 ***LLC***

18 **BY ELECTRONIC MAIL:** Based on a Court order or an agreement by the parties to accept
19 service by e-mail or electronic transmission, I caused such the document(s) described above to be
20 sent from my email address to the persons listed above. I did not receive, within a reasonable time
21 after the transmission, any electronic message or indication that the transmission was unsuccessful.

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

24 Executed on May 5, 2022, at Los Angeles, California.

25
26
27
28


Carlos Garcia