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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

DAVID VERDUGO, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

NVENT THERMAL, LLC., a Delaware
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 21-CIV-04370

Assigned to the Hon. Robert D. Foiles

**SECOND AMENDED CLASS ACTION
AND PAGA 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) PAGA PENALTIES

DEMAND FOR JURY TRIAL

Electronically
FILED
by Superior Court of California, County of San Mateo
ON **10/4/2022**
By /s/ Vanessa Jimenez
Deputy Clerk

1
2 Plaintiff David Verdugo (“Plaintiff”) on behalf of himself, and all other similarly situated
3 employees, alleges and complains of defendants nVent Thermal, LLC, and DOES 1 to 50
4 (collectively, “Defendants”) and each of them, as follows:

5 **INTRODUCTION**

6 1. Defendant nVent Thermal, LLC is a manufacturer producing heat tracing and
7 monitoring products in California and across the United States. Plaintiff brings this class action
8 against Defendants for alleged violations of the California Labor Code and Business and Professions
9 Code.

10 2. As set forth below, Plaintiff alleges that Defendants had a uniform payroll
11 practice/policy that unfairly rounded Plaintiff’s and other similarly situated non-exempt employees’
12 time entries and which over time resulted in a failure to pay for all hours worked and have uniformly
13 failed to pay for off-the-clock time spent donning and doffing Personal Protective Equipment (“PPE”)
14 and going through COVID-19 screening prior to clocking in for shifts. As a result, Plaintiff and other
15 similarly situated employees were not paid for all hours worked.

16 3. Plaintiff further alleges that Defendants failed to pay all overtime compensation at the
17 appropriate legal rate, and that Defendants’ meal and rest period policies and practices failed to
18 provide him and all other similarly situated employees with compliant and timely meal and rest
19 periods, or premium wages at the appropriate legal rate in lieu thereof. Additionally, Plaintiff alleges
20 that Defendants failed to provide non-exempt employees with accurate written itemized wage
21 statements and failed to timely pay all final wages upon separation of employment.

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

25 **JURISDICTION AND VENUE**

26 5. Plaintiff, on behalf of himself and all others similarly situated employees hereby brings
27 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
28 203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 1194, 1197.1, 1199, 2698, *et seq.*, and

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

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

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

13 **PARTIES**

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

17 9. Plaintiff is informed and believes and thereon alleges that defendant nVent Thermal,
18 LLC. is a Delaware corporation authorized to and doing business in San Mateo County, California,
19 and is and/or was the legal employer of Plaintiff and the Class Members.

20 10. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
21 herein and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-203,
22 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 1194, 1197.1, 1199, and California Business and
23 Professions Code § 17200 *et seq.*, and applicable Wage Orders.

24 11. Plaintiff is informed and believes, and based thereon alleges, that during the four years
25 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
26 do) business in the State of California, County of San Mateo. Defendants operate within the county
27 of San Mateo.

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

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

17 14. At all times mentioned herein, Defendants, and each of them, were members of and
18 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
19 scope of and in pursuit of the joint venture, partnership, and common enterprise. Further, Plaintiff
20 alleges that all Defendants were joint employers for all purposes of Plaintiff and the Class.

21 **COMMON FACTUAL ALLEGATIONS**

22 15. Defendant nVent Thermal LLC is a manufacturer producing heat tracing and
23 monitoring products in California and across the United States. Defendants operate a manufacturing
24 plant located at 899 Broadway St., Redwood City California, 94063. Plaintiff was employed by
25 Defendants as a non-exempt “Extruder Operator” at the Redwood City facility. Plaintiff and other
26 non-exempt employees are or were employed as non-exempt employees in Defendants’ facility
27 responsible for all aspects of Defendants’ manufacturing business in California.

1 16. At all relevant times, Plaintiff and other non-exempt employees worked three separate
2 shifts, including, the day shift, swing shift and graveyard shift. Nonetheless, Plaintiff and other non-
3 exempt employees were subjected to the same policies, procedures, and practices, working
4 conditions, and corresponding wage and hour violations to which Mr. Verdugo was subjected during
5 his employment.

6 17. First, at all relevant times, Defendants required Plaintiff and other non-exempt
7 employees to undergo COVID-19 temperature screening at the beginning of each shift. Additionally,
8 Plaintiff and other non-exempt employees were required to don and doff personal protective
9 equipment (“PPE”) on site while off-the-clock and prior to their scheduled shifts. However,
10 Defendants failed to compensate Plaintiff and other non-exempt employees for the time spent
11 undergoing COVID-19 temperature screening and donning/doffing PPE because these required tasks
12 were performed off-the-clock. Thus, Plaintiff and other non-exempt employees were required to
13 arrive at the work site approximately 5 to 10 minutes before the start of their scheduled shifts in order
14 to have enough time to walk to the on-site locker room to don and doff their PPE prior to submitting
15 to a temperature check and clocking in.

16 18. As a result, Plaintiff and other non-exempt employees are not fully compensated for all
17 hours they were undergoing the mandatory temperature screening, and donning and doffing PPE, and
18 thus subject to the control of Defendants. As such, Defendants systematically failed to pay Plaintiff
19 and other non-exempt employees for all hours worked and minimum and overtime wages due.
20 Defendants has no valid defense to this claim given the California Supreme Court’s recent unanimous
21 decision in *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038, which held that employees “must be paid”
22 during security checks since “it is clear that [employees] are subject to [the employer’s] control while
23 awaiting, and during, [the] exit searches.”

24 19. Thus, Defendants failed to pay Plaintiff and other non-exempt employees for all hours
25 worked, including all minimum and overtime wages. Defendants’ policies and procedures resulted in
26 a failure to pay legal minimum wages to Plaintiff and other non-exempt employees in violation of
27 Labor Code §§ 1194, 1197, and applicable Wage Orders. Defendants’ policies and procedures also
28 resulted in a failure to pay overtime wages to Plaintiff and other non-exempt employees in violation

1 of Labor Code §§ 510, 1194, 1197, and applicable Wage Orders.

2 20. Accordingly, Plaintiff and other non-exempt employees are entitled to recover
3 liquidated damages for violations of Labor Code § 1197.1.

4 21. Based upon these same factual allegations, Plaintiff and the other aggrieved employees
5 are entitled to penalties under Labor Code § 1199.

6 22. Moreover, at all relevant times, Defendants has had a consistent policy of rounding
7 Plaintiff and other non-exempt employees' time entries to the nearest quarter hour. As a result of this
8 practice, Plaintiff and other non-exempt employees are not compensated for all the hours that they
9 work and all of the overtime hours they work, in violation of Cal. Labor Code §§ 204, 210, 510, 1194,
10 1197.1, 1199, and applicable Wage Orders.

11 23. The Court in *See's Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907,
12 held that rounding time policies can be lawful, "if the rounding policy is fair and neutral on its face
13 and 'it is used in such a manner that it will not result, over a period of time, in failure to compensate
14 the employees properly for all the time they have actually worked,' (29 C.F.R. § 785.48; see DLSE
15 Manual, supra, §§ 47.1, 47.2.)."

16 24. Here, Defendants' rounding time policy is not neutral on its face as Plaintiff and other
17 non-exempt employees are subject to discipline, including termination for being tardy in reporting to
18 work, or returning from a meal period. Moreover, because Defendants are capable of tracking the
19 time worked by non-exempt employees to the minute, the policy itself exists not for the convenience
20 or benefit of the employees who are trying to report their time on timecards or otherwise, but for
21 Defendants' benefit. As a result, the policy is not neutral on its face, and over a period of time,
22 Plaintiff and other non-exempt employees were not properly paid for all hours worked in violation of
23 Cal. Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

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

1 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
2 underpaid regardless of whether the initial violation is intentionally committed. As set forth above,
3 Defendants failed to compensate Plaintiff and other non-exempt employees for all hours worked.
4 Accordingly, through PAGA and to the extent permitted by law Plaintiff and other non-exempt
5 employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1.

6 26. Moreover, at all relevant times, Plaintiff and other non-exempt employees were not
7 properly paid at the correct overtime rate for all hours worked in excess of eight (8) hours per workday
8 and/or forty (40) hours per workweek. While Plaintiff and other non-exempt employees regularly
9 worked overtime hours, they were not compensated at one and one-half times their regular rate of
10 pay because Defendants failed to include all forms of compensation, including but not limited to,
11 shift-differentials and non-discretionary bonuses, when calculating the regular rate of pay used in
12 overtime calculations. For instance, although Defendants consistently paid its employees a shift
13 differential for working the graveyard shift, Defendants omitted this increased shift pay when
14 calculating the regular rate of pay used in overtime calculations and when paying overtime to Mr.
15 Verdugo and the other aggrieved employees.

16 27. Under the California Labor Code (as well as the FLSA), courts have held that regularly
17 paid non-discretionary Shift Premium Pay/Bonuses must be included in determining an employee's
18 "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The Americana Corp.* 378
19 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included
20 in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F. Supp. 2d 1042, 1055-
21 1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under California and federal law on
22 the grounds, that Defendant improperly calculated overtime by excluding annual bonuses paid to
23 employees from the "regular rate of compensation"].)

24 28. Labor Code § 510 requires an employer to compensate an employee who works more
25 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
26 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
27 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
28 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or

1 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
2 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
3 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
4 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

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

12 30. By their policy of requiring Mr. Verdugo and the other aggrieved employees to work
13 in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
14 them at the rate of one-half (1 1/2) their regular rate of pay, Defendants willfully violated the
15 provisions of Labor Code § 510 and the applicable Wage Orders.

16 31. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt employees
17 are entitled to recover liquidated damages for violations of Labor Code § 1197.1.

18 32. Next, at all relevant times, Plaintiff and other non-exempt employees were not provided
19 with rest periods of at least ten (10) ten minutes for each four (4) hour work period, or major fraction
20 thereof due to operational requirements and rest period policies/practices that often-required
21 aggrieved employees remain working on premises during rest periods. In practice, aggrieved
22 employees were regularly unable to take legally complaint rest periods as Plaintiff and other non-
23 exempt employees could not leave their stations, much less the jobsite, to take compliant rest periods.
24 Thus, Defendants prevented Plaintiff and other non-exempt employees from taking timely and legally
25 compliant rest periods.

26 33. Under the applicable Wage order, an employer must authorize and permit all employees
27 to take ten (10) minute duty free rest periods relieved of all duties for every major fraction of four
28 hours worked. This includes a third rest period for shifts in excess of 10.0 hours in a workday. See

1 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest
2 periods employers must relieve employees of all duties and relinquish control over how employees
3 spend their time.”]. In *Augustus*, the court expressly rejected the employer’s assertion that it could
4 provide an on-duty rest period to employees who worked as security guards and further explained
5 “that employers [must] relinquish any control over how employees spend their break time and relieve
6 their employees of all duties.” *Id.* at 273.

7 34. As detailed above, Plaintiff and other non-exempt employees could not take their rest
8 periods “relinquished from all duties” as required by Labor Code § 226.7. Additionally, Defendants
9 also failed to maintain any mechanism for the payment of rest period premium payments at the regular
10 rate of pay as required by Labor Code § 226.7.

11 35. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were
12 denied complaint and timely 30-minute off-duty meal periods as mandated by California law. As a
13 result of Defendants’ uniform meal period policies/practices, Plaintiff and other non-exempt
14 employees were often unable to take timely and uninterrupted 30-minute first meal periods before
15 the end of the fifth hour of work. Further, Defendants’ uniform operational requirements often
16 required Plaintiff and other non-exempt employees to remain at their workstations during meal
17 periods.

18 36. Additionally, at all relevant times, when Plaintiff and other non-exempt employees
19 worked in excess of 10.0 hours in a shift, they were not allowed and permitted to take a mandated
20 and timely second meal period before the end of the tenth hour of work in violation of the Labor Code
21 and applicable Wage Orders. Additionally, Plaintiff and other non-exempt employees were not
22 provided bona fide meal periods because the time they spent doffing and donning PPE while off-the-
23 clock resulted in their meal period being less than 30 minutes in length. Indeed, Defendants provided
24 Plaintiff and other non-exempt employees with exactly 30 minutes for meal periods, but the 30-
25 minute period was inclusive of the time it took to don and doff PPE. Moreover, Plaintiff and other
26 non-exempt employees were not provided meal period premiums at the “regular rate of pay” for their
27 missed or non-complaint meal periods.

1 37. Accordingly, due to Defendants' uniform meal period policies/practices and
2 operational requirements, Plaintiff and other non-exempt employees were also often denied legally
3 complaint meal periods in violation of Labor Code 226.7, 510, 516, and applicable IWC Wage
4 Orders.

5 38. As a result of Defendants' unlawful rest and meal period policies and practices, Mr.
6 Verdugo seeks to recover on behalf of himself and all aggrieved employees rest period premiums and
7 penalties. Consequently, Defendants has violated Labor Code §§ 226.7, 512 and applicable Wage
8 Orders.

9 39. As a result of Defendants failure to pay Plaintiff and other non-exempt employees for
10 all hours they were subject to the control of Defendants, and failure to pay for meal and rest period
11 premiums at the regular rate of pay for missed/non-compliant meal and rest periods, Defendants
12 issued wage statements which failed to accurately identify the gross wages earned, the total hours
13 worked, the net wages earned, and the correct corresponding number of hours worked at each hourly
14 rate, in violation of Labor Code §226(a) (1, 2, 5, and 9).

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

20 41. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
21 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants' violations of
22 Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiff and other non-
23 exempt employees are in violation of Labor Code § 226 (a)(9). Consequently, because Defendants
24 failed to comply with Labor Code § 226(a) and applicable Wage Orders, Plaintiff and other non-
25 exempt employees would be entitled to recover penalties under Labor Code §§ 226(e).

26 42. Finally, because of Defendants' failure to pay all minimum and overtime wages, and
27 meal and rest period premiums at the regular rate of pay for non-complaint meal and rest periods,
28 Defendants also failed and continues to fail to pay other aggrieved employees all wages owed at their

1 time of separation from employment in violation of Labor Code §§ 201-203 and applicable Wage
2 Orders. Pursuant to Labor Code §§ 201-202, an employer must provide a non-exempt employee's
3 wages at the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code
4 § 203 provides "if an employer willfully fails to pay ... any wages of an employee who is discharged
5 or who quits, the wages of the employee shall continue as a penalty ..." for up to 30 days.

6 **CLASS ACTION ALLEGATIONS**

7 43. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
8 § 382 of the Code of Civil Procedure:

- 9 (1) All non-exempt employees who work or worked for Defendants in
10 California, during the four years immediately preceding the filing of
the Complaint through the date of trial. ("Class")
- 11 (2) All non-exempt employees who worked for Defendants in
12 California and who worked overtime hours during at least one shift
13 and earned a non-discretionary bonus payment and/or shift
14 differential pay, during the four years immediately preceding the
filing of the Complaint through the date of trial. ("Overtime Reg
15 Rate Subclass")
- 16 (3) All non-exempt employees who worked for Defendants in
17 California, and who have separated their employment with
18 Defendants during one year immediately preceding the filing of the
Complaint through the date of trial. ("Waiting Time Subclass")
19 (collectively "the Classes")

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

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

1 1. Whether Defendants' Covid-19 screening and donning/doffing PPE policies/practices
2 resulted in a failure to pay for all hours worked to the members of the Classes;

3 2. Whether Defendants' payroll policies/practices resulted in a failure to pay overtime at
4 the appropriate premium rate resulted to members of the Overtime Subclass;

5 3. Whether Defendants provided legally compliant meal and rest periods or proper
6 compensation in lieu thereof to members of the Classes;

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

9 5. Whether the timing and amount of payment of final wages to members of the Waiting
10 Time Subclass at the time of separation from employment were unlawful.

11 46. **Predominance of Common Questions:** Common questions of law and fact
12 predominate over questions that affect only individual members of the Classes. The common
13 questions of law set forth above are numerous and substantial and stem from Defendants' policies
14 and/or practices applicable to each individual class member, such as Defendants' policy/practice of
15 failing to pay for time spent pre-shift undergoing Covid-19 screening and donning/doffing required
16 PPE while under the control of Defendants, Defendants' policy/practice of failing to account for non-
17 discretionary bonus and/or shift differential payments in calculating employees' regular rate for
18 overtime purposes, Defendants' uniform policy of failing to provide complaint meal and rest periods
19 or adequate compensation in lieu thereof, and Defendants' resulting failure to provide accurate
20 itemized wage statements, and to pay for all wages due upon separation of employment. As such, the
21 common questions predominate over individual questions concerning each individual class member's
22 showing as to his or her eligibility for recovery or as to the amount of his or her damages.

23 47. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
24 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
25 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
26 Plaintiff, like the members of the Classes was deprived of minimum and overtime wages, was
27 deprived of meal and rest period premium wages, was subject to Defendants' uniform meal and rest
28

1 period policies/practices, was not provided accurate itemized wage statements, and was not paid all
2 wages owed at the time of her separation of employment.

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

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

19 50. Moreover, requiring each member of the Classes to pursue an individual remedy would
20 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
21 against their former and/or current employer for real and justifiable fear of retaliation and permanent
22 damages to their careers at subsequent employment.

23 51. Further, the prosecution of separate actions by the individual class members, even if
24 possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with
25 respect to the individual class members against Defendants herein; and which would establish
26 potentially incompatible standards of conduct for Defendants; and/or legal determinations with
27 respect to individual class members which would, as a practical matter, be dispositive of the interest
28

1 of the other class members not parties to adjudications or which would substantially impair or impede
2 the ability of the class members to protect their interests.

3 52. Likewise, the claims of the individual members of the class are not sufficiently large to
4 warrant vigorous individual prosecution considering all of the concomitant costs and expenses
5 attending thereto. As such, the Classes identified in Paragraph 35 are maintainable as Classes under
6 § 382 of the Code of Civil Procedure.

7 **FIRST CAUSE OF ACTION**
8 **MINIMUM WAGE VIOLATIONS**
9 **(AGAINST ALL DEFENDANTS)**

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

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

17 45. At all relevant times herein, Defendants failed to conform their pay practices to the
18 requirements of the law. This unlawful conduct includes but is not limited to Defendants' rounding
19 non-exempt employees time entries and uniform and unlawful practice of failing to pay for all off-
20 the clock work including for Covid-19 temperature screening and donning/doffing PPE, which
21 resulted in these individuals not being paid for all hours actually worked.

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

25 47. Labor Code § 1198 makes unlawful the employment of an employee under conditions
26 that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer
27 who has failed to pay its employees the legal minimum wage is liable to pay those employees the
28

1 unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
2 due and interest thereon.

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

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

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PAY ALL OVERTIME WAGES**

15 **(AGAINST ALL DEFENDANTS)**

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

17 51. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and
18 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
19 worked and provide a private right of action for the failure to pay all overtime compensation for
20 overtime work performed.

21 52. At all times relevant herein, Defendants were required to properly pay Plaintiff and
22 members of the Classes and Overtime Regular Rate Subclass for all overtime hours worked pursuant
23 to California Labor Code § 1194 and the applicable Wage Orders.

24 53. Section 3 of the applicable Wage Order requires an employer to pay an employee "one
25 and one-half (1 1/2) times the employee's regular rate of pay" for work in excess of 8 hours per
26 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
27 employer to pay an employee double the employee's regular rate of pay for work in excess of twelve
28 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in

1 the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate
2 Plaintiff or members of the Classes at one and one-half times their regular rate of pay for such hours.

3 54. Defendants failed to conform their pay practices to the requirements of the law. This
4 unlawful conduct includes but is not limited to Defendants' rounding non-exempt employees time
5 entries and uniform and unlawful policy/practice of (1) failing to pay for all pre-shift time spent on
6 temperature screening and donning/doffing PPE, and (2) failing to account for non-discretionary
7 bonuses and shift differential pay in calculating the regular rate for calculating members of the Classes
8 and Overtime Regular Rate Subclass overtime rate which resulted in these individuals not being paid
9 all overtime wages owed.

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

15 **THIRD CAUSE OF ACTION**

16 **MEAL PERIOD VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

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

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

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

1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

14 62. The foregoing violations create an entitlement to recovery by Plaintiff and members of
15 the Classes in a civil action for the unpaid amount of rest period premiums owing, including interest
16 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
17 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

18 **FIFTH CAUSE OF ACTION**

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

20 **(AGAINST ALL DEFENDANTS)**

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

22 64. Labor Code 226(a) states in pertinent part the following:

23 "(a) An employer, semimonthly or at the time of each payment of wages,
24 shall furnish to his or her employee, either as a detachable part of the check,
25 draft, or voucher paying the employee's wages, or separately if wages are
26 paid by personal check or cash, an accurate itemized statement in writing
27 showing (1) gross wages earned, (2) total hours worked by the employee,
28 except as provided in subdivision (j), (3) the number of piece-rate units
earned and any applicable piece rate if the employee is paid on a piece-rate
basis, (4) all deductions, provided that all deductions made on written

orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. . .”

65. As set forth above, during the Class Period, Defendants issued and continue to issue wage statements to its employees including Plaintiff and members of the Classes, which are inadequate under Labor Code Section 226(a).

66. As a result of Defendants failure to pay Plaintiff and the Classes for all minimum wages and overtime wages at the appropriate legal rate, and missed meal and rest period premiums, Defendants failed to include required information on Plaintiff and the Classes’ wage statements, including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section 226a.

67. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing and intentional.

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

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

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

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

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

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

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

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

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

77. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally

1 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over
2 Defendants' competitors.

3 78. Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution
4 of monies, as necessary and according to proof, to restore any and all monies withheld, acquired
5 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

6 79. The acts complained of herein occurred within the last four years immediately
7 preceding the filing of the Complaint in this action.

8 80. Plaintiff was compelled to retain the services of counsel to file this court action to
9 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
10 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
11 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs.

12 **EIGHTH CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **(Labor Code § 2698 et seq.)**

15 **(AGAINST ALL DEFENDANTS)**

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

17 82. Defendants have committed several Labor Code violations against Plaintiff and other
18 non-exempt employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698
19 et seq., acting on behalf of himself and other non-exempt employees, bring this representative action
20 against Defendants to recover the civil penalties due to Plaintiff, other similarly non-exempt
21 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)
22 including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent
23 violation per employee per pay period for those violations of the Labor Code for which no civil
24 penalty is specifically provided based on the following Labor Code violations:

25 a. Failing to pay Plaintiff and other non-exempt employees for all hours worked,
26 including all minimum and overtime wages in violation of Labor Code §§ 204, 510, 1194, 1197,
27 1198, and 1182.12

28 b. Failing to provide Plaintiff and other non-exempt employees with all of their

1 statutorily mandated meal periods or compensation at the “regular rate of pay” in lieu thereof in
2 violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

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

6 d. Failing to timely compensate Plaintiff and other non-exempt employees with all
7 earnings at their separation of employment in violation of Labor Code §§ 201-203.

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

10 83. On or about August 13, 2021, and again on or about July 11, 2022, Plaintiff notified
11 nVent Thermal, LLC, via certified mail, and the California Labor and Workforce Development
12 Agency (“LWDA”) via its website of Defendant’s violations of the California Labor Code § 2698 *et*
13 *seq.*, with respect to violations of the California Labor Code identified in Paragraph 82 (a)-(e). Now
14 that sixty-five days have passed from Plaintiff notifying Defendant and the LWDA of these
15 violations, Plaintiff will have exhausted his administrative requirements for bringing a claim under
16 the Private Attorneys General Act with respect to these violations.

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

21 **PRAYER FOR RELIEF**

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

- 24 1. For an order certifying the proposed Classes;
- 25 2. For an order appointing Plaintiff as representative of the Classes;
- 26 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 27 4. Upon the First Cause of Action, for compensatory, consequential, general and special
28 damages according to proof pursuant to Labor Code §§ 204, 210, 510, and 1194;

1 5. Upon the Second Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;

3 6. Upon the Third Cause of Action, for compensatory, consequential, general and special
4 damages according to proof pursuant to Labor Code §§ 226.7 and 512;

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

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

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

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

14 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other non-exempt
15 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
16 (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 under the Labor Code

19 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
20 § 218.6 and Civil Code §§ 3287 and 3289;

21 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
22 218.5, 226, and Code of Civil Procedure § 1021.5; and

23 14. For such other relief that the Court may deem just and proper.
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1 Dated: September 28, 2022

BOKHOUR LAW GROUP, P.C.
FALAKASSA LAW, P.C.

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3
4 By: _____

Mehrdad Bokhour, Esq.

Joshua Falakassa, Esq.

Anwar D. Burton, Esq.

Attorneys for Plaintiff and the Putative Classes

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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 October 4, 2022, I served the following document(s) described as **SECOND**
6 **AMENDED CLASS ACTION PAGA COMPLAINT** on the interested parties in this
action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

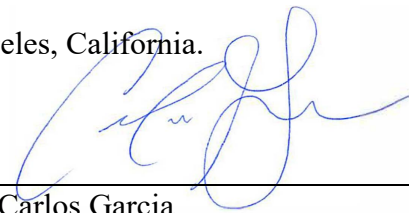
7
8 Jason M. Richardson, Esq.
jmrichardson@shb.com
9 Carrie McAtee, Esq.
cmcatee@shb.com
10 SHOOK, HARDY & BACON, LLP
555 Mission Street, Suite 2300
11 San Francisco, California 94105

12 **Counsel for defendant Nvent Thermal, LLC.**

13 **BY ELECTRONIC SERVICE:** I transmitted the above-referenced document(s) via
14 electronic service provider First Legal to the person(s) identified above at the email address(es)
indicated and did not, within a reasonable time after transmission, receive any message or
15 communication indicating that delivery failed or that any other error had occurred which would
delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

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

17 Executed on October 4, 2022, at Los Angeles, California.

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20 Carlos Garcia
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