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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF CONTRA COSTA**

12 KIM GRANT, on behalf of himself and all others
13 similarly situated,

14 Plaintiff,

15 v.

16 RODD & GUNN USA RETAIL, INC., a
17 Delaware Corporation; and DOES 1-50,
18 inclusive.

18 Defendants.

CASE NO.: C21-02113

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

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

DEMAND FOR JURY TRIAL

FILED
DEC 09 2021
K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By S. Pool, Deputy Clerk

COPY

1 Plaintiff Kim Grant (“Plaintiff”) on behalf of himself, and all other similarly situated non-
2 exempt employees, alleges and complains of defendants Rodd & Gunn USA Retail, Inc.
3 (“Defendants”), and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendants are a corporation operating a retail store selling high-quality casual wear
6 for men in over 40 store locations throughout California. Plaintiff brings this class and PAGA
7 representative action against Defendants for alleged violations of the California Labor Code and
8 Business and Professions Code.

9 2. As set forth below, Plaintiff alleges that Defendants failed and continue to fail to
10 properly calculate non-exempt employees’ overtime rate by failing to include all forms of non-
11 discretionary compensation in calculating the “regular rate of pay.” As a result, Plaintiff and other
12 similarly situated employees were not paid overtime at the correct overtime rate. Further, Plaintiff
13 alleges that Defendants’ meal and rest period policies and practices failed to provide him and all other
14 similarly situated employees with compliant meal and rest periods or pay premium pay at the “regular
15 rate of pay” in lieu thereof. As a result, Plaintiff alleges that Defendants failed to provide non-exempt
16 employees with accurate written itemized wage statements and failed to timely pay all final wages
17 upon separation of employment. Finally, Plaintiff alleges that Defendants failed to reimburse him and
18 other non-exempt employees for necessary business expenditures, specifically a reasonable
19 percentage of their monthly cellular phone bill and gas expenditures for traveling between two, or
20 more, retail stores owned and operated by Defendants.

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

24 **JURISDICTION AND VENUE**

25 4. This class action is brought pursuant to California Code of Civil Procedure § 382.

26 5. 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, 226.7, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199,

1 2802, 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*.

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 Defendants own, maintain offices, transact business, have an agent or agents
9 within the County of Contra Costa, and/or otherwise are found within the County of Contra Costa,
10 and Defendants are within the jurisdiction of this Court for purposes of service of process.

11 **PARTIES**

12 8. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is
13 a California resident residing in the State of California. Defendants employed Plaintiff as a non-
14 exempt Stylist employee in Walnut Creek, California in the County of Contra Costa.

15 9. Plaintiff is informed and believes and thereon alleges that defendant Defendants Rodd
16 & Gunn USA Retail, Inc., is a corporation authorized and doing business in Contra Costa County,
17 California; and is and/or was the legal employer of Plaintiff and the Class Members during the
18 applicable statutory periods.

19 10. Defendants’ policies and/or practices outlined herein have deprived Plaintiff and other
20 similarly situated non-exempt employees of the rights afforded to them by California Labor Code §§
21 201-203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 1194, 1197.1, 1199, 2802, and
22 California Business and Professions Code § 17200 *et seq.*, and applicable Wage Order(s).

23 11. Plaintiff is informed and believes, and based thereon alleges, that during the four years
24 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
25 do) business in the State of California, County of Contra Costa. Defendants, each of them, own and/or
26 operate a business in Walnut Creek, California.

27 12. Plaintiff does not know the true names or capacities, whether individual, partner, or
28 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said

1 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
2 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
3 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
4 corporate, were responsible in some manner for the acts and omissions alleged herein, and
5 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
6 alleged herein.

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

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

20 **COMMON FACTUAL ALLEGATIONS**

21 15. Defendants own and/or operate several retail stores selling high-quality casual wear
22 for men, and other products, throughout California.

23 16. Plaintiff was employed by Defendants as a non-exempt “stylist” employee at its
24 Walnut Creek, California location from approximately June 17, 2021, until his termination on or
25 about the August 18, 2021. Plaintiff and other similarly situated employees were employed as non-
26 exempt employees of Defendants and were responsible for all aspects of Rodd & Gunn’s retail
27 operations, including but not limited to sales, customer relations, stocking, and various other services
28 throughout California.

1 17. At all relevant times, Defendants failed to pay and continue to fail to pay the correct
2 overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours
3 per workweek. While non-exempt employees regularly worked overtime hours, they were not
4 compensated at one and one-half times their regular rate of pay because Defendants failed to include
5 all forms of compensation, including, but not limited to, commission pay, bonuses, and other forms
6 of non-hourly compensation or remuneration when calculating the regular rate of pay used in
7 overtime calculations.

8 18. For instance, although Defendants consistently paid its employees commission pay
9 based on certain sales, Defendants omitted these payments when calculating the regular rate of pay
10 used in overtime calculations and when paying overtime to non-exempt employees. Upon information
11 and belief, Defendants paid and continue to pay overtime at the statutory minimum without including
12 all forms of compensation, including commissions.

13 19. Under the California Labor Code (as well as the FLSA), courts have held that regularly
14 paid non-discretionary pay, including commissions and bonuses must be included in determining an
15 employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The Americana*
16 *Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be
17 included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F. Supp. 2d 1042,
18 1055-1057 (C.D. Cal. 2006); See Labor Commissioner's Office FAQ on "Overtime",
19 https://www.dir.ca.gov/dlse/FAQ_Overtime.htm)

20 20. At all relevant times, Defendants consistently paid non-exempt employees
21 commissions as well as hourly pay, however these commissions were uniformly omitted when
22 calculating non-exempt employees' regular rate of pay for overtime purposes.

23 21. Labor Code § 510 requires an employer to compensate an employee who works more
24 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
25 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
26 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
27 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
28 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the

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

4 22. By its policy of requiring non-exempt employees to work in excess of eight (8) hours
5 in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-
6 half (1 1/2) their regular rate of pay, Defendants willfully violated the provisions of Labor Code § 510
7 and the applicable Wage Orders.

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

15 24. Based upon these same factual allegations, non-exempt employees are entitled to
16 penalties under Labor Code § 1199.

17 25. Moreover, from at least one year ago and continuing into the present, Plaintiff and
18 other non-exempt employees regularly worked shifts in excess of 6.0 hours, and often shifts in excess
19 of 10.0 hours, but were not provided with legally compliant off-duty meal periods of at least thirty
20 (30) minutes before the end of the fifth and tenth hour of work due to Defendants' uniform meal
21 period policies/practices. At all relevant times, Plaintiff alleges that he and other non-exempt
22 employees were not provided legally compliant off-duty meal periods of at least thirty (30) minutes
23 before the end of the fifth hour of work. For shifts in excess of 10.0 hours, Plaintiff and other non-
24 exempt employees were not provided with a second meal period before the tenth hour of work.

25 26. Additionally, Plaintiff and other non-exempt employees were not provided bona fide
26 meal periods because their meal periods would be interrupted, or otherwise cut short, due to the
27 demands of the job. Plaintiff would consistently have his meal periods interrupted by his supervisor,
28 requiring him to return to work or schedule impromptu meetings during his and other non-exempt

employees' meal periods.

27. Each time Plaintiff and other non-exempt employees were unable to take a compliant meal period, Defendants failed and continues to fail to adequately pay meal period premium payments at the "regular rate of pay" as required by Labor Code § 226.7.

28. Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC") See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1016-1017 ("[T]he wage order's meal period requirement is satisfied if the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for the entire period. . .The employer satisfies the [meal period] obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so")(emphasis added).

29. As a result of Defendants' unlawful meal period policies/practices, Plaintiff seeks to recover on behalf of himself and all non-exempt employees' meal period premiums and penalties under Labor Code § 226.7 and § 512.

30. Moreover, at all relevant times, Defendants failed and continue to fail to authorize and permit Plaintiff and other non-exempt employees from taking legally compliant rest periods. Plaintiff and other non-exempt employees were often unable to take legally compliant rest periods, or had their rest periods cut short, due to the demands of the job, interruption by supervisors, staffing shortages and job responsibilities. As a result, Plaintiff and other non-exempt employees were and are routinely unable to take (10) minute duty free rest periods for every major fraction of four hours worked. This includes a second rest period for shifts in excess of six hours, and a third rest period for shifts in excess of 10.0 hours in a workday. Each time Plaintiff and other non-exempt employees were unable to take a compliant rest period, Defendants failed and continues to fail to adequately pay rest period premium payments at the "regular rate of pay" as required by Labor Code § 226.7.

31. Pursuant to Labor Code section 226.7 and the applicable Wage Order, each failure to provide a compliant off-duty meal or rest period entitles Plaintiff and non-exempt employees to

1 receive an additional compensation premium equal to one hour at the regular rate of pay. As such,
2 the applicable Wage Order obligates Defendants to provide Plaintiff and other non-exempt employees
3 one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal or
4 rest period is not provided. Accordingly, for each day that Plaintiff and other non-exempt employees
5 did not receive compliant meal or rest periods, they are entitled to receive meal/rest period premiums
6 pursuant to Labor Code § 226.7 and the applicable Wage Order.

7 32. As a result of Defendants' unlawful rest period policies/practices, Plaintiff seeks to
8 recover on behalf of himself and all non-exempt employees' rest period premiums and penalties under
9 Labor Code § 226.7 and § 516.

10 33. Furthermore, at all relevant times, Defendants required Plaintiff and other non-exempt
11 employees to incur the business expense associated with using their personal cell phones for work
12 related purposes and for store-to-store travel, but Defendants did not reimburse non-exempt
13 employees for these necessary expenditures. Defendants' uniform failure to reimburse Plaintiff and
14 other non-exempt employees for their on-going business expenses incurred in their discharge of their
15 duties continues through the present day. Indeed, any reimbursement is absent from Plaintiff's wage
16 statements during his employment. Since Defendants failed to and continue to fail to reimburse
17 Plaintiff and other non-exempt employees for necessary business expenses, they are in violation of
18 Labor Code § 2802.

19 34. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees for
20 all overtime worked at the correct overtime rate, failure to pay for all meal and rest period premiums
21 for missed/non-compliant meal/rest periods, Defendants issued wage statements which failed to
22 accurately identify the gross wages earned, the total hours worked, the net wages earned, and the
23 correct corresponding number of hours worked at each hourly rate, in violation of Labor Code §226(a)
24 (1, 2, 5, and 9).

25 35. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of
26 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
27 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
28 each violation in a subsequent citation, for which the employer fails to provide the employee a wage

deduction statement or fails to keep the required in subdivision (a) of Section 226.”

36. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants' violations of Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiff and other non-exempt employees are in violation of Labor Code §§ 226 (a)(1, 2, 5, 9). Defendants have violated Labor Code §§ 226(a)(1, 2, 5, 9) with respect to Plaintiff and other non-exempt employees. Consequently, because Defendants failed to comply with Labor Code § 226(a) and applicable Wage Orders, Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code §§ 226(e).

37. Finally, because of, Defendants' failure to pay all overtime wages, and meal and rest period premiums for non-compliant meal/rest periods, Defendants also failed and continue to fail 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 and applicable Wage Orders. Thus, non-exempt employees would be entitled to recover penalties under Labor Code §§ 201-203.

CLASS ACTION ALLEGATIONS

38. 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”);

All non-exempt employees who work or worked for Defendants in California, and during the one year immediately preceding the filing of the Complaint through the date of trial. (“Wage Statement Subclass”);

All employees who work or worked for Defendants in California, and who left their employ during the three years immediately preceding the filing of the Complaint through the date of trial. (“Waiting Time Penalty Subclass”)
(collectively “the Classes”)

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

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

10 1. Whether Defendants failed to pay overtime at the appropriate legal rate to members
11 of the Classes;

12 2. Whether Defendants provided legally compliant meal and rest periods or proper
13 compensation at the "regular rate of pay" in lieu thereof to members of the Classes;

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

16 4. Whether the timing and amount of payment of final wages to members of the Class at
17 the time of separation from employment were unlawful; and

18 5. Whether Defendants properly reimbursed members of the Classes for all necessary
19 business expenditures.

20 41. **Predominance of Common Questions:** Common questions of law and fact
21 predominate over questions that affect only individual members of the Classes. The common
22 questions of law set forth above are numerous and substantial and stem from Defendants' policies
23 and/or practices applicable to each individual class member, such as Defendants' policy/practice of
24 failing to pay overtime at the appropriate premium rate, Defendants' uniform policy of failing to
25 provide compliant meal and rest periods or adequate compensation in lieu thereof, Defendants'
26 uniform policy of failing to compensate non-exempt employees for their cell phone and travel
27 expenses incurred at the behest of Defendants, and Defendants' resulting failure to provide accurate
28 itemized wage statements, and to pay for all wages due upon separation of employment. As such, the

1 common questions predominate over individual questions concerning each individual class member's
2 showing as to his or her eligibility for recovery or as to the amount of his or her damages.

3 42. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
4 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
5 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
6 Plaintiff, like the members of the Classes was deprived of overtime wages, was deprived of meal and
7 rest period premium wages, was subject to Defendants' uniform meal and rest period
8 policies/practices, was not reimbursed for required work related expenses, was not provided accurate
9 itemized wage statements, and was not paid all wages owed at the time of his separation of
10 employment.

11 43. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
12 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
13 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
14 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
15 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
16 members of the Classes.

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

27 45. Moreover, requiring each member of the Classes to pursue an individual remedy
28 would also discourage the assertion of lawful claims by employees who would be disinclined to file

1 an action against their former and/or current employer for real and justifiable fear of retaliation and
2 permanent damages to their careers at subsequent employment. Further, the prosecution of separate
3 actions by the individual class members, even if possible, would create a substantial risk of
4 inconsistent or varying verdicts or adjudications with respect to the individual class members against
5 Defendants herein; and which would establish potentially incompatible standards of conduct for
6 Defendants; and/or legal determinations with respect to individual class members which would, as a
7 practical matter, be dispositive of the interest of the other class members not parties to adjudications
8 or which would substantially impair or impede the ability of the class members to protect their
9 interests. Further, the claims of the individual members of the class are not sufficiently large to
10 warrant vigorous individual prosecution considering all of the concomitant costs and expenses
11 attending thereto. As such, the Classes identified in Paragraph 38 are maintainable as Classes under
12 § 382 of the Code of Civil Procedure.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY ALL OVERTIME WAGES**

15 **(AGAINST ALL DEFENDANTS)**

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

17 47. 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 48. At all times relevant herein, Defendants were required to properly pay Plaintiff and
22 members of Class for all overtime hours worked pursuant to California Labor Code § 1194 and the
23 applicable Wage Orders.

24 49. 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.

2 50. Defendants failed to conform their pay practices to the requirements of the law. This
3 unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of
4 failing to include all forms of compensation including, but not limited to, sales commissions and other
5 non-discretionary non-hourly pay in calculating the "regular rate of pay" for purposes of paying
6 overtime, which resulted in the Class not being paid all overtime wages owed.

7 51. The foregoing policies and practices are unlawful and create entitlement to recovery
8 by Plaintiff and the members of Class in a civil action for the unpaid amount of overtime wages,
9 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
10 Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure §
11 1021.5.

12 **SECOND CAUSE OF ACTION**

13 **MEAL PERIOD VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

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

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

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

24 **THIRD CAUSE OF ACTION**

25 **REST PERIOD VIOLATIONS**

26 **(AGAINST ALL DEFENDANTS)**

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

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

4 57. Due to their unlawful rest period policy and practices, Defendants did not authorize
5 and permit Plaintiff and members of the Class to take code-compliant rest periods to which they were
6 legally entitled, including, but not limited to, failing to provide non-exempt employees with a
7 replacement rest period when their rest period was affirmatively interrupted by Defendants. Despite
8 Defendants' violations, Defendants have not paid an additional hour of pay at the "regular rate of
9 pay" to Plaintiff and members of the Class at their respective regular rates of pay for each violation,
10 in accordance with California Labor Code § 226.7.

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

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO REIMBURSE FOR CELL PHONE USAGE**

17 **(AGAINST ALL DEFENDANTS)**

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

19 60. Labor Code 2802(a) states in pertinent part the following:

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

24 61. As set forth above, Plaintiff and members of the Class must be compensated for all
25 necessary business expenditures, including, but not limited to, a reasonable portion of their monthly
26 personal cell phone bills and travel expenses necessarily incurred in their discharge of their duties.
27 (See *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that when
28 employees must use their personal cell phones for work-related calls, Labor Code section 2802

1 requires the employer to reimburse them. Whether the employees have cell phone plans with
2 unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their
3 cell phone bills.”); *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. 2014) (granting Plaintiff’s
4 motion for partial summary judgment on Plaintiff’s cell phone reimbursement claim); *Ritchie v. Blue*
5 *Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone
6 reimbursement claim and adopting the logic of *Cochran*).

7 62. At all relevant times, by failing to reimburse Plaintiff and the Class for all necessary
8 business expenditures, Defendants have failed to comply with Labor Code Section 2802 and the
9 applicable Wage Orders.

10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
12 **(AGAINST ALL DEFENDANTS)**

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

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

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

1 which are inadequate under Labor Code Section 226(a).

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

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

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

14 **SIXTH CAUSE OF ACTION**

15 **WAITING TIME PENALTIES**

16 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

26 73. Defendants willfully failed to pay Plaintiff and the members of the Waiting Time
27 Penalty Subclass for all hours worked, including all minimum and overtime wages, and their meal
28 and rest period premiums at the "regular rate of pay", prior to or upon termination or separation from

1 employment with Defendants as required by Labor Code §§ 201 and 202.

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

6 **SEVENTH CAUSE OF ACTION**

7 **UNFAIR COMPETITION**

8 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

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

4 **EIGHT CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACT**

6 **(AGAINST ALL DEFENDANTS)**

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

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

16 a. Failing to pay Plaintiff and other non-exempt employees overtime wages at the "regular
17 rate of pay", including all forms of non-hourly compensation, in violation of Labor Code §§ 204,
18 510, 558, 1194, and 1198;

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

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

25 e. Failing to reimburse Plaintiff and other similarly situated employees with incurred
26 business expenses;

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

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

3 83. On or about October 5, 2021, Plaintiff notified Defendant Principal Life Insurance
4 Company via certified U.S. Mail, and the California Labor and Workforce Development Agency
5 (“LWDA”) via its website of Defendant’s violations of the California Labor Code § 2698 *et seq.*,
6 with respect to violations of the California Labor Code identified in Paragraph 81 (a)-(f). Now that
7 sixty-five days have passed from Plaintiff notifying Defendant of these violations, Plaintiff will have
8 exhausted his administrative requirements for bringing a claim under the Private Attorneys General
9 Act with respect to these violations.

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

14 **PRAYER FOR RELIEF**

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

- 17 1. For an order certifying the proposed Classes;
- 18 2. For an order appointing Plaintiff as representative of the Classes;
- 19 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 20 4. Upon the First Cause of Action, for compensatory, consequential, general and special
21 damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 22 5. Upon the Second Cause of Action, for compensatory, consequential, general and
23 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 24 6. Upon the Third Cause of Action, for compensatory, consequential, general and special
25 damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 26 7. Upon the Fourth Cause of Action, penalties pursuant to Labor Code § 2208, and
27 reasonable costs and attorneys’ fees;

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

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

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

8 11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
9 § 218.6 and Civil Code §§ 3287 and 3289;

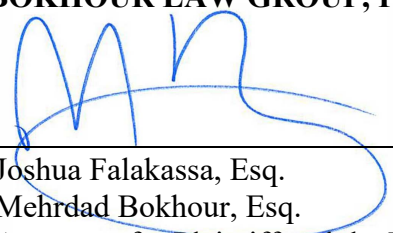
10 12. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other non-exempt
11 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699,
12 including, but not limited to (1) \$100.00 for each initial violation and (2) \$200 for each subsequent
13 violation per employee per pay period for those violations of the Labor Code for which no civil
14 penalty is specifically provided;

15 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
16 218.5, 226, and Code of Civil Procedure § 1021.5; and

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

18 Dated: December 8, 2021

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

19
20
21 By: 

Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff and the Putative Classes