

FILED/ENDORSED

SEP 19 2023

By: K. Fay
Deputy Clerk

FALAKASSA LAW, P.C.

Joshua S. Falakassa, CA Bar No. 295045

josh@falakassalaw.com

1901 Avenue of the Stars, Suite 450

Los Angeles, California 90067

Tel: (818) 456-6168; Fax: (888) 505-0868

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour, Esq., CA Bar No. 285256

mehrdad@bokhourlaw.com

1901 Avenue of the Stars, Suite 450

Los Angeles, California 90067

Tel: (310) 975-1493; Fax: (310) 675-0861

Attorneys for Plaintiff and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

MARTIN BARTHOLOMEW, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

GOODMAN MANUFACTURING
COMPANY, L.P., a Texas Limited Partnership;
GOODMAN GLOBAL HOLDINGS, INC., a
Delaware Corporation; GOODMAN GLOBAL
GROUP, INC.; a Delaware Corporation; and
DOES 1-50, inclusive.

Defendants.

CASE NO.: 2021-311588

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

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

DEMAND FOR JURY TRIAL

1 Plaintiff Martin Bartholomew ("Plaintiff") on behalf of himself, and all other similarly
2 situated employees, alleges, and complains of defendants Goodman Manufacturing Company, L.P.,
3 Goodman Global Group, Inc., Goodman Global Holdings, Inc, and DOES 1 to 50 (collectively,
4 "Defendants" and/or "Goodman") and each of them, as follows:

5 **INTRODUCTION**

6 1. Defendants are the world's largest manufacturer of HVAC products and systems.
7 Goodman was founded in 1975, manufacturing and selling their products globally with a major
8 presence in California. Defendant operates a manufacturing and distribution facility in Sacramento,
9 California, as well as various other facilities throughout California.

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

12 3. As set forth below, Plaintiff alleges that Defendants had a uniform practice/policy that
13 did not credit Plaintiff and other similarly situated employees with time spent undergoing screening
14 for COVID-19, which over time resulted in a failure to pay for all hours worked. Plaintiff further
15 alleges that Defendants failed to pay all overtime and sick time compensation at the legal rate of pay.
16 Moreover, Plaintiff alleges that Defendants' meal and rest period policies and practices failed to
17 provide him and all other similarly situated employees with compliant meal and rest periods, or
18 premium wages in lieu thereof.

19 4. Additionally, Plaintiff alleges that Defendants failed to provide non-exempt employees
20 with accurate written itemized wage statements and failed to timely pay final wages upon separation
21 of employment.

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

25 **JURISDICTION AND VENUE**

26 6. Plaintiff, on behalf of himself and all others similarly situated employees hereby brings
27 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
28 203, 204, 210, 226(a), 226.3, 226.6, 226.7, 246, 510, 516, 512, 1174, 1182.12, 1194, 1194.2, 1197,

1 1197.1, 1198-99, 2698 *et seq.* and applicable Industrial Welfare Commission Wage Orders (“Wage
2 Orders”), in addition to seeking declaratory relief and restitution pursuant to California Business and
3 Professions Code § 17200, *et. seq.*

4 7. This class action is brought pursuant to California Code of Civil Procedure § 382 and
5 Federal Rules of Civil Procedure Rule 23.

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

9 9. Venue is proper in this judicial district as most of the acts and omissions complained
10 of herein occurred in the City of Sacramento, County of Sacramento. Defendants own, maintain
11 offices, transact business, have an agent or agents within the County of Sacramento, and/or otherwise
12 are found within the County of Sacramento, and Defendants are within the jurisdiction of this Court
13 for purposes of service of process.

14 PARTIES

15 10. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a
16 California resident residing in the State of California. Defendants employed Plaintiff as a non-exempt
17 employee with the title of “Warehouse Coordinator” in Sacramento, California in the County of
18 Sacramento.

19 11. Plaintiff is informed and believes and thereon alleges that defendant Goodman
20 Manufacturing Co., L.P., is a Texas Limited Partnership authorized to and doing business in
21 Sacramento County, California, and is and/or was the legal employer of Plaintiff and the Class
22 Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants’
23 policies and/or practices complained of herein and has been deprived of the rights guaranteed to him
24 by California Labor Code §§ 201-203, 204, 210, 226(a), 226.3, 226.6, 226.7, 246, 510, 516, 512,
25 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198-99, 2698 *et seq.* and California Business and
26 Professions Code § 17200 *et seq.*, and applicable Wage Orders.

27 12. Plaintiff is informed and believes and thereon alleges that defendant Goodman Global
28 Group, Inc., is a Delaware Corporation authorized to and doing business in Sacramento County,

1 California, and is and/or was the legal employer of Plaintiff and the Class Members during the
2 applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices
3 complained of herein and has been deprived of the rights guaranteed to him by California Labor Code
4 §§ 201-203, 204, 210, 226(a), 226.3, 226.6, 226.7, 246, 510, 516, 512, 1174, 1182.12, 1194, 1194.2,
5 1197, 1197.1, 1198-99, 2698 *et seq.* and California Business and Professions Code § 17200 *et seq.*,
6 and applicable Wage Orders.

7 13. Plaintiff is informed and believes and thereon alleges that defendant Goodman Global
8 Holdings, Inc., is a Delaware Corporation authorized to and doing business in Sacramento County,
9 California, and is and/or was the legal employer of Plaintiff and the Class Members during the
10 applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices
11 complained of herein and has been deprived of the rights guaranteed to him by California Labor Code
12 §§ 201-203, 204, 210, 226(a), 226.3, 226.6, 226.7, 246, 510, 516, 512, 1174, 1182.12, 1194, 1194.2,
13 1197, 1197.1, 1198-99, 2698 *et seq.* and California Business and Professions Code § 17200 *et seq.*,
14 and applicable Wage Orders.

15 14. Plaintiff is informed and believes, and based thereon alleges, that during the four years
16 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
17 do) business in the State of California, County of Sacramento. Defendants operate and manage their
18 facility at 4750 Lang Ave, Building 786D, Sacramento, California.

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

27 16. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned
28 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all

1 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
2 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
3 them, were the agents, servants, and employees of each and every one of the other Defendants, as
4 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
5 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
6 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

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

12 **COMMON FACTUAL ALLEGATIONS**

13 18. Defendants are the world's largest HVAC manufacturers and distributors. Defendants
14 operate a manufacturing plant in Sacramento, California as well as multiple other facilities in
15 Sacramento and across California.

16 19. Plaintiff was employed by Defendants as a non-exempt warehouse coordinator
17 employee at the Sacramento warehouse. Plaintiff and other non-exempt employees are or were
18 employed as non-exempt employees in Defendants' warehouses and other facilities in California.
19 Plaintiff and other non-exempt employees were responsible for all aspects of manufacturing,
20 packaging, sales, and distribution.

21 20. At all relevant times, Plaintiff alleges other non-exempt employees were subjected to
22 the same policies, procedures, and practices, working conditions, and corresponding wage and hour
23 violations to which Plaintiff was subjected during his employment.

24 21. First, at all relevant times, in light of the COVID-19 pandemic, Defendants instituted a
25 uniform policy/practice of conducting temperature checks for non-exempt employees as they entered
26 the work premises. These temperature checks occurred before employees clocked in and resulted in
27 time non-exempt employees did not receive compensation.

28 22. Due to Defendants' COVID-19 temperature checks, Plaintiff and other non-exempt

1 employees were not fully compensated for all minimum and overtime wages as required by the
2 California Labor Code and applicable Wage Orders. Defendants have no valid defense to this claim
3 given the California Supreme Court's recent unanimous decision in *Frlekin v. Apple, Inc.* (2020) 8
4 Cal.5th 1038, which held that employees "must be paid" during security checks since "it is clear that
5 [employees] are subject to [the employer's] control while awaiting, and during, [the] exit searches."

6 23. As a result, Plaintiff and other non-exempt employees were not properly paid for all
7 hours worked, including overtime hours, in violation of Cal. Labor Code §204, 510, 1194, 1197.1,
8 1199, and applicable Wage Orders. Additionally, Plaintiff and other non-exempt employees were not
9 properly paid at the correct overtime rate for hours worked in excess of eight hours per shift.

10 24. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were not
11 properly paid at the correct overtime rate for all hours worked in excess of eight hours per workday
12 or 40 hours per workweek. When Plaintiff and the other non-exempt employees worked overtime
13 hours, Defendants failed to include all compensation, including but not limited to all non-
14 discretionary bonus payments and other forms of remuneration, when calculating the regular rate of
15 pay used in overtime calculations. For instance, Defendants routinely paid Plaintiff and other non-
16 exempt employees bonuses linked to Defendants' sales. Defendants would issue a separate check for
17 the bonuses. However, Defendants omitted these bonus payments when calculating the regular rate
18 of pay used in overtime calculations and when paying overtime to Plaintiff and the other non-exempt
19 employees.

20 25. Under the California Labor Code (as well as the FLSA), courts have held that regularly
21 paid non-discretionary incentive pay/bonuses must be included in determining an employee's
22 "regular rate of pay" for purposes of calculating overtime.

23 26. 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 the regular rate of pay for
26 an employee. In addition, Labor Code § 510 obligates employers to compensate employees at no less
27 than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or
28 more than eight (8) hours on the seventh consecutive day of work.

1 27. Pursuant to Section 3 of the applicable Wage Orders, employees shall not be employed
2 more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee
3 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over
4 40 hours in the workweek. By their policy of requiring Plaintiff and the other non-exempt employees
5 to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
6 compensating them at the rate of one-half (1 1/2) their regular rate of pay, Defendants willfully
7 violated the provisions of Labor Code § 510 and applicable Wage Orders.

8 28. As a result of Defendants' failure to include all forms of compensation in calculating
9 the regular rate as set forth above, Defendants failed to compensate Plaintiff and other non-exempt
10 employees for all overtime wages at the proper rates. Plaintiff and other non-exempt employees are
11 entitled to recover liquidated damages for violations of Labor Code § 1197.1.

12 29. Moreover, at all relevant times, Defendants failed in its obligation to provide Plaintiff
13 and other non-exempt employees the legally required paid sick days at the legal "regular rate of pay"
14 pursuant to Labor Code 246(a),(b).

15 30. Pursuant to Labor Code § § 246(a),(b), "[a]n employee who, on or after July 1, 2015,
16 works in California for the same employer for 30 or more days within a year from the commencement
17 of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
18 worked, beginning at the commencement of employment." Additionally, Labor Code § 246(l)(1)
19 provides that paid sick time for non-exempt employees must be "calculated in the same manner as
20 the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not
21 the employee actually works overtime in that workweek." Furthermore, Labor Code § 246(l)(2) states
22 that the paid sick time must be "calculated by dividing the employee's total wages, not including
23 overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90
24 days of employment." Finally, Labor Code §246(i) requires employers to "provide an employee with
25 written notice that sets forth the amount of paid sick leave available, or paid time off leave an
26 employer provides in lieu of sick leave, for use on either the employee's itemized wage statement
27 described in Section 226 or in a separate writing provided on the designated pay date with the
28 employee's payment of wages."

1 31. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiff and
2 other non-exempt employees the legally required paid sick days at the "regular rate of pay" pursuant
3 to Labor Code §§246(a),(b). Instead, Defendants paid sick time at the non-exempt employees' base
4 rate of pay, rather than the "regular rate of pay" as required by Labor Code §§246(l)(1-2).

5 32. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt employees
6 are entitled to recover unpaid sick wages and penalties for violations of Labor Code § 246.

7 33. Next, at all relevant times, Plaintiff and other non-exempt employees were denied
8 legally compliant and timely off-duty meal periods of at least thirty (30) minutes due to Defendants'
9 unlawful policies/practices, including, but not limited to, rough demands of the job and staffing
10 shortages, that often prevented Plaintiff and other non-exempt employees from taking compliant 30-
11 minute first meal periods before the end of the fifth hour of work, and second meal periods before the
12 end of the tenth hour of work as required by California law.

13 34. Additionally, Defendants failed to adequately pay Plaintiff and other non-exempt
14 employees' payment for meal period premiums for non-compliant meal periods in compliance with
15 *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858. In *Ferra*, the California Supreme
16 Court made clear that payment of meal (and rest) period premiums must include more than just the
17 employee's base hourly rate but their "regular rate of pay," which is used to calculate overtime pay,
18 which includes other forms of compensation, including, but not limited to, non-discretionary bonuses
19 and shift pay, and is often higher than the base hourly rate. Throughout Plaintiff's employment,
20 Defendants failed to adequately pay missed or late meal and rest period premiums at the appropriate
21 regular rate of pay, if at all.

22 35. Based on the foregoing, Plaintiff seeks to recover on behalf of himself and other non-
23 exempt employees' meal period premiums and penalties. Consequently, Defendants has violated
24 Labor Code §§ 226.7, 512, 516 and applicable Wage Orders. Plaintiff and other non-exempt
25 employees would be entitled to recover penalties under Labor Code §226.7.

26 36. Furthermore, at all relevant times, Defendants failed and continues to fail to authorize
27 and permit Plaintiff and other non-exempt employees from taking legally compliant rest periods.
28 Plaintiff and other non-exempt employees were often unable to take legally compliant rest periods,

1 or have their rest periods cut short, due to the demands of the job, interruption by supervisors, staffing
2 shortages and job responsibilities. As a result, Plaintiff and other non-exempt employees were and
3 are often unable to take (10) minute duty free rest periods for every major fraction of four hours
4 worked. This includes a second rest period for shifts in excess of six hours, and a third rest period for
5 shifts in excess of 10 hours in a workday.

6 37. By not relieving all non-exempt employees of all duties during rest periods, Defendants
7 failed to provide code compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016) 2
8 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all duties
9 and relinquish control over how employees spend their time.”]. In *Augustus*, the court expressly
10 rejected the employers’ assertion that it could provide an on-duty rest period to employees who
11 worked as security guards and further explained “that employers [must] relinquish any control over
12 how employees spend their break time and relieve their employees of all duties.” *Id.* at 273.

13 38. Moreover, Defendants has no procedure in place to provide rest period premiums for
14 missed rest periods. As such, each time Plaintiff and other non-exempt employees were unable to
15 take a compliant rest period, Defendants failed and continues to fail to adequately pay rest period
16 premium payments at the “regular rate of pay” as required by Labor Code § 226.7. As a result of
17 Defendants’ unlawful rest period policy/practices, Plaintiff seeks to recover on behalf of himself and
18 all non-exempt employees’ rest period premiums and penalties under Labor Code § 226.7 and § 512.

19 39. As a result of Defendants’ failure to pay for all hours worked, failure to pay the correct
20 overtime rate, failure to pay meal period and rest period premiums for missed/non-compliant meal
21 periods and rest periods, Defendants issued wage statements which failed to accurately identify the
22 gross wages earned, the total hours worked, the net wages earned, and the correct corresponding
23 number of hours worked at each hourly rate, in violation of Labor Code §226(a) (1, 2, 5, and 9).
24 Additionally, the wage statements provided by Defendants to Plaintiff and other non-exempt
25 employees fail to state the “name and legal address of the entity that is the employer” in direct
26 violation of Labor Code § 226(a)(8).

27 40. Mr. Bartholomew’s wage statement from Defendants failed to include the name and
28 address of the legal entity (*i.e.*, “Goodman Manufacturing Co. LP”) that is the employer. Plaintiff is

1 informed and believes that Defendants uniformly deceived him and other non-exempt employees
2 through their wage statements.

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

8 42. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
9 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of
10 Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiff and other non-
11 exempt employees are in violation of Labor Code § 226 (a). Thus, Defendants have violated Labor
12 Code §226(a) with respect to Plaintiff and other non-exempt employees.

13 43. Finally, because of, Defendants’ failure to pay all minimum and overtime wages, sick
14 time wages, and meal and rest period premiums at the appropriate legal rate, Defendants also failed
15 and continues to fail to pay other non-exempt employees all wages owed at their time of separation
16 from employment in violation of Labor Code §§ 201-203 and applicable Wage Orders. Thus, non-
17 exempt employees would be entitled to recover penalties under Labor Code §§ 201-203.

18 **CLASS ACTION ALLEGATIONS**

19 44. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
20 § 382 of the Code of Civil Procedure:

- 21 (1) All non-exempt employees who work or worked for Defendants in
22 California, during the four years immediately preceding the filing of the
23 Complaint through the date of trial. (“Class”)
- 24 (2) All non-exempt employees who worked for Defendants in California and
25 who worked overtime hours during at least one shift and earned a non-
26 discretionary bonus payment, during the four years immediately preceding
27 the filing of the Complaint through the date of trial. (“Overtime Reg Rate
28 Subclass”)

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

5 (4) All employees who work or worked for Defendants in California and who
6 received at least one wage statement, during the one year immediately
7 preceding the filing of the Complaint through the date of trial
8 (“Wage Statement Subclass”)
9 (collectively “the Classes”)

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

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

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

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

23 3. Whether Defendants’ payroll policies/practices resulted in a failure to pay all sick pay
24 at the “regular rate of pay”;

25 3. Whether Defendants provided legally compliant meal and rest periods or appropriate
26 compensation in lieu thereof to members of the Classes;

27 4. Whether Defendants furnished legally compliant wage statements to members of the
28 Wage Statement Subclass pursuant to Labor Code § 226(a); and

5. Whether the timing and amount of payment of final wages to members of the Waiting

1 Time Subclass at the time of separation from employment were unlawful.

2 47. **Predominance of Common Questions:** Common questions of law and fact
3 predominate over questions that affect only individual members of the Classes. The common
4 questions of law set forth above are numerous and substantial and stem from Defendants' policies
5 and/or practices applicable to each individual class member, such as Defendants' uniform
6 policy/practice of failing to pay for time spent undergoing temperature screening during the COVID-
7 19 pandemic, policy/practice of failing to account for non-discretionary bonus payments in
8 calculating employees' regular rate for overtime purposes, Defendants' uniform policy of failing to
9 provide compliant meal and rest periods, and Defendants' resulting failure to provide accurate
10 itemized wage statements, and to pay for all wages due upon separation of employment. As such, the
11 common questions predominate over individual questions concerning each individual class member's
12 showing as to his or her eligibility for recovery or as to the amount of his or her damages.

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

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

26 50. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
27 important public interest in establishing minimum working conditions and standards in California.
28 These laws and labor standards protect the average working employee from exploitation by

1 employers who have the responsibility to follow the laws and who may seek to take advantage of
2 superior economic and bargaining power in setting onerous terms and conditions of employment. The
3 nature of this action and the format of laws available to Plaintiff and members of the Classes make
4 the class action format a particularly efficient and appropriate procedure to redress the violations
5 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
6 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
7 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

8 51. Moreover, requiring each member of the Classes to pursue an individual remedy would
9 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
10 against their former and/or current employer for real and justifiable fear of retaliation and permanent
11 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
12 the individual class members, even if possible, would create a substantial risk of inconsistent or
13 varying verdicts or adjudications with respect to the individual class members against Defendants
14 herein; and which would establish potentially incompatible standards of conduct for Defendants;
15 and/or legal determinations with respect to individual class members which would, as a practical
16 matter, be dispositive of the interest of the other class members not parties to adjudications or which
17 would substantially impair or impede the ability of the class members to protect their interests.
18 Further, the claims of the individual members of the class are not sufficiently large to warrant
19 vigorous individual prosecution considering all of the concomitant costs and expenses attending
20 thereto. As such, the Classes identified in Paragraph 35 are maintainable as Classes under § 382 of
21 the Code of Civil Procedure.

22 **FIRST CAUSE OF ACTION**

23 **MINIMUM WAGE VIOLATIONS**

24 **(AGAINST ALL DEFENDANTS)**

25 52. Plaintiff re-alleges and incorporates by reference all previous paragraphs. Section 4
26 of the applicable Wage Orders and California Labor Code §§ 1197 and 1182.12 establish the right of
27 employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code
28 §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage

1 as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and
2 costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest
3 accrued thereon.

4 53. At all relevant times herein, Defendants failed to conform their pay practices to the
5 requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform
6 and unlawful practice of failing to pay for all off-the clock work by requiring Plaintiff and other non-
7 exempt employees to undergo temperature screening, during the COVID-19 pandemic, prior to
8 clocking in, which resulted in these individuals not being paid for all hours worked. Accordingly,
9 Plaintiff and members of the Classes were not compensated for all hours worked including, but not
10 limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to
11 work under the California Labor Code and applicable Wage Orders.

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

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

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

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

19 61. Defendants failed to conform their pay practices to the requirements of the law. This
20 unlawful conduct includes but is not limited to Defendants’ uniform and unlawful policy/practice of
21 (1) failing to pay for off-the clock Covid-19 screening, and (2) failing to account for non-discretionary
22 bonuses in calculating the regular rate for calculating members of the Class and Overtime Subclass
23 overtime rate which resulted in these individuals not being paid all overtime wages owed.

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

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY ALL SICK TIME**

3 **(AGAINST ALL DEFENDANTS)**

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

5 64. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
6 1198, and 1199 which provide that non-exempt employees are entitled to have their sick time paid at
7 the regular rate, including all forms of compensation/remuneration.

8 65. At all times relevant herein, Defendants were required to properly pay Plaintiff and
9 members of the Class for all accrued sick leave taken, pursuant to California Labor Code § 246.

10 66. Defendants failed to conform their pay practices to the requirements of the law. This
11 unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of
12 failing to include all forms of compensation, including but not limited to shift differentials, non-
13 discretionary bonuses, and other forms of remuneration into the calculation of the "regular rate of
14 pay," which resulted in Plaintiff and the Class not being paid all sick time wages owed.

15 67. The foregoing policies and practices are unlawful and create entitlement to recovery by
16 Plaintiff and the members of the Class in a civil action for the unpaid amount of sick time wages,
17 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
18 Code §§ 246, 558, 1194.2, 1197.1, 1198, the applicable Wage Orders, and Code of Civil Procedure
19 § 1021.5.

20 **FOURTH CAUSE OF ACTION**

21 **MEAL PERIOD VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

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

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

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

4 **FIFTH CAUSE OF ACTION**

5 **REST PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

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

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

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

16 74. The foregoing violations create an entitlement to recovery by Plaintiff and members of
17 the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
18 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
19 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

20 **SIXTH CAUSE OF ACTION**

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

22 **(AGAINST ALL DEFENDANTS)**

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

24 76. Labor Code 226(a) states in pertinent part the following:

25 “(a) An employer, semimonthly or at the time of each payment of wages, shall
26 furnish to his or her employee, either as a detachable part of the check, draft, or
27 voucher paying the employee's wages, or separately if wages are paid by personal
28 check or cash, an accurate itemized statement in writing showing (1) gross wages
earned, (2) total hours worked by the employee, 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. . .”

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

78. As a result of Defendants failure to pay Plaintiff and the Classes for all minimum 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. Additionally, Defendants wage statements uniformly failed to state the name and address of the legal entity that is the employer in violation Labor Code Section 226(a)(8).

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

80. As a result of Defendants’ issuance of inaccurate itemized wage statements to Plaintiff and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor Code, Plaintiff and members of the Wage Statement Subclass 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 Wage Statement Subclass from Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys’ fees.

1 **SEVENTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

13 85. Defendants willfully failed to pay Plaintiff and the Waiting Time Subclass for all hours
14 worked, including all minimum and overtime wages, and their meal and rest period premiums, prior
15 to or upon termination or separation from employment with Defendants as required by Labor Code
16 §§ 201 and 202.

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

21 **EIGHTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(AGAINST ALL DEFENDANTS)**

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

25 88. Defendants have engaged and continue to engage in unfair and/or unlawful business
26 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
27 failing to pay all minimum and overtime wages at the appropriate legal rate, by failing to provide all
28 legally required meal and rest periods or pay premium payments in lieu thereof, by failing to provide

1 accurate wage statements, and by failing to pay all earned wages at the time of separation from
2 employment.

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

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

12 91. The acts complained of herein occurred within the last four years immediately
13 preceding the filing of the Complaint in this action.

14 92. Plaintiff was compelled to retain the services of counsel to file this court action to
15 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
16 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
17 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
18 he is entitled to recover under Code of Civil Procedure § 1021.5.

19 **NINTH CAUSE OF ACTION**

20 **PRIVATE ATTORNEYS GENERAL ACT PENALTIES**

21 **(AGAINST ALL DEFENDANTS)**

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

23 94. Defendants have committed several Labor Code violations against Plaintiff and other
24 non-exempt employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698
25 *et seq.*, acting on behalf of herself and other non-exempt employees, bring this representative action
26 against Defendants to recover the civil penalties due to Plaintiff, other similarly non-exempt
27 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)
28 including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent

1 violation per employee per pay period for those violations of the Labor Code for which no civil
2 penalty is specifically provided based on the following Labor Code violations:

3 a. Failing to provide Plaintiff and other non-exempt employees all overtime and sick
4 pay compensation at the appropriate premium rate in violation of Labor Code § 204, 210, 510, 1194
5 and 1198;

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

9 c. Failing to reimburse Plaintiff and other non-exempt employees for all necessary
10 business expenditures in violation of Labor Code §§ 2800 and 2802

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

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

15 95. On or about November 22, 2021, Plaintiff notified Defendants via certified mail, and
16 the California Labor and Workforce Development Agency (“LWDA”) via its website of Defendant’s
17 violations of the California Labor Code § 2698 et seq., with respect to violations of the California
18 Labor Code identified in Paragraph 80(a)-(e). Now that sixty-five days have passed from Plaintiff
19 notifying Defendant and the LWDA of these violations, Plaintiff will have exhausted his
20 administrative requirements for bringing a claim under the Private Attorneys General Act with respect
21 to these violations.

22 96. Plaintiff was compelled to retain the services of counsel to file this court action to
23 protect their interests and the interests of other non-exempt employees, and to assess and collect the
24 civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys’ fees and costs, which she
25 is entitled to receive under California Labor Code § 2698 et seq.

26 **PRAYER FOR RELIEF**

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

- 1 1. For an order certifying the proposed Classes;
- 2 2. For an order appointing Plaintiff as representative of the Classes;
- 3 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 4 4. Upon the First Cause of Action, for compensatory, consequential, general and special
5 damages according to proof pursuant to Labor Code §§ 204, 210, 510, and 1194;
- 6 5. Upon the Second Cause of Action, for compensatory, consequential, general and
7 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 8 6. Upon the Third Cause of Action, for compensatory, consequential, general and special
9 damages according to proof pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, 1199;
- 10 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
11 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 12 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and special
13 damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 14 9. Upon the Sixth Cause of Action, penalties pursuant to Labor Code § 226(a), and
15 reasonable costs and attorneys' fees;
- 16 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to
17 Labor Code §§ 201-203.
- 18 11. Upon the Eight Cause of Action, for restitution to Plaintiff and members of the Classes
19 of all money and/or property unlawfully acquired by Defendants by means of any acts or practices
20 declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
- 21 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other non-exempt
22 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
23 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
24 subsequent violation per employee per pay period for those violations of the Labor Code for which
25 no civil penalty is specifically provided under the Labor Code
- 26 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
27 § 218.6 and Civil Code §§ 3287 and 3289;
- 28 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§

1 218.5, 226, and Code of Civil Procedure § 1021.5; and

2 15. For such other relief that the Court may deem just and proper.

3

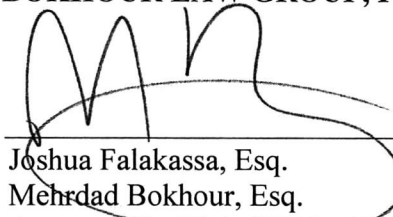
4 Dated: September 12, 2023

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

5

6

7

By: 

Joshua Falakassa, Esq.

8

Mehrdad Bokhour, Esq.

9

Attorneys for Plaintiff Martin Bartholomew 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 September 19, 2023, I served the following document(s) described as
6 **FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested
7 parties in this action as follows:

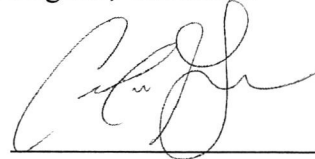
8 SEYFARTH SHAW LLP
9 Justin T. Curly
10 *jcurley@seyfarth.com*
560 Mission Street, 31st Floor
San Francisco, California 94105

11 Jeffrey A. Nordlander
12 *jnordlander@seyfarth.com*
400 Capitol Mall, Suite 2350
13 Sacramento, California 95814

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

17 I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct and that I am a member of the bar of this Court.

18 Executed on September 19, 2023, at Los Angeles, California.

19 
20 _____
21 Carlos Garcia