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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

JOSHUA MAGNOTTI on behalf of himself and
all others similarly situated,

Plaintiff,

v.

THE HIGHEST CRAFT, LLC., a California
Limited Liability Company; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: CVRI2105547

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

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

DEMAND FOR JURY TRIAL

1 Plaintiff Joshua Magnotti (“Plaintiff”) on behalf of himself, the State of California, and all
2 other similarly situated non-exempt employees, alleges and complains of defendant The Highest
3 Craft, LLC, doing business as HyperWolf, Community Development LLC, Hyper Technologies, Inc.,
4 Jacob Telo, Nick Wolin, and Hyper Inc. and DOES 1 to 50 (collectively, “Defendants”) and each of
5 them, as follows:

6 **INTRODUCTION**

7 1. Defendants distribute cannabis and related products throughout Southern California.
8 Plaintiff brings this class and PAGA representative action against Defendants for alleged violations
9 of the California Labor Code and Business and Professions Code.

10 2. As set forth below, Plaintiff alleges that Defendants failed and continue to fail to pay
11 all minimum and overtime wages due to their policy/practice of not compensating employees for time
12 spent off the clock performing pre-shift tasks. Plaintiff further alleges that Defendants deprived
13 Plaintiff and other non-exempt employees of overtime wages and that Defendants’ meal and rest
14 period policies and practices failed to provide him and all other similarly situated employees with
15 compliant meal and rest periods or pay premium pay at the “regular rate of pay” in lieu thereof.
16 Moreover, Plaintiff alleges that Defendants failed to reimburse necessary business expenses,
17 including but not limited to a reasonable portion of monthly cellular phone bills. Finally, as a result,
18 Plaintiff alleges that Defendants failed to provide non-exempt employees with accurate written
19 itemized wage statements and failed to timely pay all final wages upon separation of employment.

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

23 **JURISDICTION AND VENUE**

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

25 5. Plaintiff, on behalf of himself and all others similarly situated employees hereby
26 brings this class action for recovery of unpaid wages and penalties under California Labor Code §§
27 200, 201-203, 204, 210, 226a, 226(e), 226.3, 226.7, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199,
28 2802-2804, 2698, *et seq.*, and applicable Industrial Welfare Commission Wage Orders (“Wage

1 Orders”), in addition to seeking declaratory relief and restitution pursuant to California Business and
2 Professions Code § 17200, *et. seq.*

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

6 7. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
7 §§ 395(a) and 395.5, as Defendants operate a warehouse/office in Fairfield, California. Defendants
8 own, maintain offices, transact business, have an agent or agents within the County of Riverside
9 and/or otherwise are found within the County of Riverside, and Defendants are within the jurisdiction
10 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 employee “Delivery Driver” in Lake Elsinore, California in the County of Riverside.

15 9. Plaintiff is informed and believes and thereon alleges that defendant The Highest
16 Craft, LLC, doing business as HyperWolf, is a limited liability company authorized and doing
17 business in Riverside County, California; and is and/or was the legal employer of Plaintiff and the
18 Class Members during the applicable statutory periods.

19 10. Plaintiff is informed and believes and thereon alleges that Community Development
20 LLC, Hyper Technologies, Inc., Jacob Telo, Nick Wolin, and Hyper Inc. are authorized and doing
21 business in Riverside County, California; and are and/or were the legal employer of Plaintiff and the
22 Class Members during the applicable statutory periods

23 11. Defendants’ policies and/or practices outlined herein have deprived Plaintiff and other
24 similarly situated non-exempt employees of the rights afforded to them by California Labor Code §§
25 201-203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 1194, 1197.1, 1199, 2802, and
26 California Business and Professions Code § 17200 *et seq.*, and applicable Wage Order(s).

27 12. Plaintiff is informed and believes, and based thereon alleges, that during the four years
28 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to

1 do) business in the State of California, County of Riverside.

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

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

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

23 **COMMON FACTUAL ALLEGATIONS**

24 16. Defendants distribute cannabis and related products throughout Southern California.
25 Defendants provide on-demand and customer-oriented marijuana/CBD delivery services across
26 Southern California.

27 17. Plaintiff was employed by Defendants as a non-exempt employee with the title of
28 “Delivery Driver” from approximately May 2021, until he was terminated on November 30, 2021.

1 Plaintiff and other non-exempt employees were employed as non-exempt driver employees. The work
2 policies and procedures that Defendants disseminated, including use of certain proprietary
3 smartphone applications, uniformly applied to all non-exempt driver employees who worked for
4 Defendants, providing same day, on-demand delivery services across Southern California. Plaintiff
5 and other non-exempt employees were responsible for all aspects of Defendants services across all
6 of its California facilities.

7 18. At all relevant times, Plaintiff alleges other non-exempt delivery driver employees
8 were subjected to the same policies, procedures, and practices, working conditions, use of certain
9 proprietary smartphone applications and corresponding wage and hour violations to which Plaintiff
10 was subjected during his employment.

11 19. At all relevant times, Plaintiff and other non-exempt delivery driver employees were
12 required by Defendants to use their own personal vehicles to pick up and deliver marijuana products
13 to Defendant's customers. Defendant's delivery policies and practices required non-exempt
14 employees to load marijuana products in bulk in their personal vehicles at Defendants' warehouse,
15 and then make deliveries on demand as received by the Defendant's smartphone applications.
16 Plaintiff and other non-exempt employees were expected to work their assigned schedule till the last
17 order is delivered. To that end, Defendants had a policy/practice that required Plaintiff and other non-
18 exempt employees to receive on demand customer orders on their proprietary applications.
19 Defendants used GPS to track non-exempt employees and has a policy that required non-exempt
20 employees to always answer their phones.

21 20. First, at all relevant times, Plaintiff and other non-exempt delivery driver employees
22 were required to take inventory of their delivery vehicles. Defendant's policies and procedures
23 required Plaintiff and other non-exempt employees to conduct their inventory prior to clocking in.
24 Defendants used and continues to use a mandatory policy and procedure that required Plaintiff and
25 other non-exempt employees to clock in at the beginning of their work shift and clock out at the end
26 of their work shift. Yet, Defendants uniformly failed to compensate Plaintiff and other non-exempt
27 employees the legal minimum wage for the time it took non-exempt employees to check inventory
28 and conduct other pre-delivery tasks. This resulted in daily-uncompensated time during which

1 Plaintiff and other non-exempt employees were not paid a legal minimum wage. Defendant's policies
2 and procedures resulted in a failure to pay legal minimum wages to Plaintiff and other non-exempt
3 employees in violation of Labor Code §§ 1194, 1197, and applicable Wage Orders. Defendant's
4 policies and procedures also resulted in a failure to pay overtime wages to Plaintiff and other non-
5 exempt employees in violation of Labor Code §§ 510, 1194, 1197, and applicable Wage Orders.

6 21. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt employees
7 are entitled to recover liquidated damages for violations of Labor Code § 1197.1. Based upon these
8 same factual allegations, Plaintiff and the other non-exempt employees are entitled to penalties under
9 Labor Code § 1197.

10 22. Next, at all relevant times, Plaintiff and other non-exempt employees worked regular
11 shifts that lasted longer than 8.0 hours in a workday and resulted in Plaintiff and other non-exempt
12 employees regularly working more than 40 hours in a workweek. However, upon information and
13 belief, non-exempt employees were not properly paid at the correct overtime rate for all overtime
14 hours.

15 23. For much of the relevant statutory period, Defendants deprived non-exempt
16 employees overtime wages at the statutory minimum. For example, Plaintiff's wage statements for
17 the payroll period of May 31, 2021 to June 6, 2021 and August 9, 2021 to August 15, 2021 indicating
18 that Plaintiff averaged shifts of greater than 12 hours was paid a base hourly rate for all hours worked.

19 24. Labor Code § 510 requires an employer to compensate an employee who works more
20 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
21 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
22 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
23 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
24 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
25 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
26 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
27 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

1 25. By their policy of requiring Plaintiff and the other non-exempt employees to work in
2 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
3 them at the rate of one-half (11/2) their regular rate of pay, and twice the regular rate for shifts more
4 than twelve (12) hours, Defendants willfully violated the provisions of Labor Code § 510 and the
5 applicable Wage Orders.

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

13 27. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt employees
14 are entitled to recover liquidated damages for violations of Labor Code § 1197.1. Based upon these
15 same factual allegations, Plaintiff and the other non-exempt employees are entitled to penalties under
16 Labor Code § 1199.

17 28. Moreover, at all relevant times, Plaintiff and other non-exempt employees were denied
18 compliant and timely 30-minute off-duty meal periods as mandated by California law. First, as a
19 result of Defendant's uniform policies and practices and work demands, Plaintiff and other non-
20 exempt employees were often unable to take uninterrupted first meal periods before the end of the
21 fifth hour of work. Considering the demands of the job, Plaintiff and other non-exempt employees
22 would have their meal period delayed beyond the fifth hour of work. Further, when Plaintiff and other
23 non-exempt employees worked in excess of 10.0 hours in a shift, which was a regular occurrence,
24 they were not allowed and permitted to take a mandated and timely second meal period before the
25 end of the tenth hour of work in violation of the Labor Code and applicable Wage Orders.

26 29. Additionally, Plaintiff and other non-exempt employees' meal periods were often
27 interrupted by Defendant's smartphone applications and/or dispatchers. Defendants had a policy that
28 required the smartphone applications to be on at all times, regularly interrupting non-exempt

1 employees' meal and rest periods.

2 30. Finally, each time Plaintiff and other non-exempt employees were not provided a
3 legally compliant meal period, Defendants failed to provide meal period premiums for missed or non-
4 compliant meal periods at the "regular rate of pay."

5 31. Accordingly, due to Defendant's uniform policies and/or practices and work demands,
6 Plaintiff and other non-exempt employees were also regularly denied legally compliant meal periods
7 in violation of Labor Code 226.7, 510, 516, and applicable IWC Wage Orders.

8 32. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were also
9 not provided with 10 minutes of net rest period time for every 4 hours worked, or major fraction
10 thereof due to Defendant's policies and practices and work demands. Indeed, Defendants did not
11 ensure that drivers took their rest periods. In addition, as alleged above, Defendants have had a policy
12 that required Plaintiff and other non-exempt employees to always have the smartphone applications
13 on including during rest periods thereby interrupting delivery drivers during their rest periods in
14 violation of the Labor Code. As a result, Plaintiff and other non-exempt employees were and are
15 routinely unable to take (10) minute duty free rest periods for every major fraction of four hours
16 worked. This includes a second rest period for shifts in excess of six hours, and a third rest period for
17 shifts in excess of 10 hours in a workday.

18 33. By not relieving all non-exempt employees of all duties during rest periods,
19 Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services,*
20 *Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve
21 employees of all duties and relinquish control over how employees spend their time."]. In *Augustus*,
22 the California Supreme Court expressly rejected the employers' assertion that it could provide an on-
23 duty rest period to employees who worked as security guards and further explained "that employers
24 [must] relinquish any control over how employees spend their break time and relieve their employees
25 of all duties." *Id.* at 273. Accordingly, due to Defendant's uniform meal period policies/practices,
26 Plaintiff and other non-exempt employees were also regularly denied legally compliant meal periods
27 in violation of Labor Code 226.7, 510, 516, and applicable IWC Wage Orders.

1 34. Each time Plaintiff and other non-exempt employees were unable to take compliant
2 rest periods, Defendants failed and continues to fail to adequately pay rest period premium payments
3 at the “regular rate of pay” as required by Labor Code § 226.7.

4 35. Accordingly, due to Defendant’s uniform policies and practices and work demands,
5 Plaintiff and other non-exempt employees were also regularly denied legally compliant rest breaks in
6 violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

7 36. Moreover, as to Plaintiff and all non-exempt employees, Defendants failed to provide
8 accurate itemized wage statements in accordance with Labor Code § 226(a). As a result of
9 Defendant’s failure to pay Plaintiff and other non-exempt delivery driver employees for all hours
10 worked, including all minimum and overtime wages, and failure to adequately pay for meal and rest
11 period premiums at the “regular rate of pay”, Defendants issued wage statements which failed to
12 accurately identify the gross wages earned, the total hours worked, the net wages earned, and the
13 correct corresponding number of hours worked at each hourly rate, in violation of Labor Code §
14 226(a)(1, 2, 5, and 9).

15 37. In addition, the wage statements provided by Defendants to Plaintiff and all non-
16 exempt employees fail to provide the proper name and legal address of the entity that employ them,
17 in direct violation of Labor Code § 226(a)(8). First, for a portion of the liability period, Defendant’s
18 wage statements entirely failed to include the name and address of the legal entity that is the employer.
19 Even after Defendants moved to a formal payroll system, the wage statements fail to include the
20 correct legal name of the entity that is the employer. Plaintiff is informed and believes that Defendants
21 uniformly deceived Plaintiff and the non-exempt employees through their wage statements which
22 failed to include the name and address of the employer. As someone who was provided with such a
23 wage statement, Plaintiff is an aggrieved employee.

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

1 violations of Labor Code section 226 described above, Plaintiff and the other non-exempt employees
2 may also recover Labor Code § 226.3 penalties for Defendant's violations of Labor Code § 226(a).

3 39. As such, the wage statements Defendants issued to Plaintiff and other non-exempt
4 employees are in violation of Labor Code § 226(a)(1, 2, 5, 8, 9). Thus, Defendants have violated
5 Labor Code §226(a)(1, 2, 5, 8, 9). with respect to Plaintiff and other non-exempt employees.

6 40. Furthermore, at all relevant times, Defendants required Plaintiff and other non-exempt
7 delivery drivers to incur necessary business expenses associated with using their personal smartphone
8 for work related purposes but did not reimburse non-exempt employees for these necessary
9 expenditures. See *Cochran v. Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144 ["[i]f
10 an employee is required to make work-related calls on a personal cell phone, then he or she is
11 incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is
12 paid for by a third person, or at all...it is irrelevant whether the employee changed plans to
13 accommodate work-related cell phone usage...To show liability under section 2802, an employee
14 need only show that he or she was required to use a personal cell phone to make work-related calls,
15 and he or she was not reimbursed"]. Defendant's uniform failure to reimburse Plaintiff and other non-
16 exempt delivery driver employees for their on-going business expenses incurred in their discharge of
17 their duties continues through the present day. Indeed, adequate reimbursement is absent from
18 Plaintiff's wage statements during his employment.

19 41. Finally, because of, Defendant's failure to pay all minimum and overtime wages, and
20 meal and rest period premiums at the "regular rate of pay", Defendants also failed and continues to
21 fail to pay Plaintiff and other non-exempt delivery driver employees all wages owed at their time of
22 separation from employment in violation of Labor Code §§ 201-203 and applicable Wage Orders.
23 Thus, non-exempt employees would be entitled to recover penalties under Labor Code §§ 201-203.

24 **CLASS ACTION ALLEGATIONS**

25 42. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
26 § 382 of the Code of Civil Procedure:

27 All non-exempt employees who work or worked for Defendants in
28 California, during the four years immediately preceding the filing of
the Complaint through the date of trial. ("Class");

1 All non-exempt employees who worked for Defendants in California
2 and who worked overtime hours during at least one shift, during the
3 four years immediately preceding the filing of the Complaint through
the date of trial. ("Overtime Subclass");

4 All employees who work or worked for Defendants in California
5 during one year immediately preceding the filing of the Complaint
through the date of trial. ("Wage Statement Subclass")

6 All non-exempt employees who work or worked for Defendants in
7 California, and who left their employ during the three years
8 immediately preceding the filing of the Complaint through the date of
trial. ("Waiting Time Penalty Subclass")
9 (collectively "the Classes")

10 43. **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 three
13 hundred (300) individuals. The identity of such membership is readily ascertainable via inspection of
14 Defendants' employment and payroll records.

15 44. **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' failed to pay all minimum and overtime wages to members of
20 the Classes;

21 2. Whether Defendants failed to pay overtime at the appropriate legal rate to members
22 of the Classes;

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

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

27 4. Whether Defendants failed to reimburse necessary business expenses, such as a
28 reasonable portion of monthly cellular phone bills, to members of the Classes pursuant to Labor Code

1 §§ 2802-2804.

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

4 45. **Predominance of Common Questions:** Common questions of law and fact
5 predominate over questions that affect only individual members of the Classes. The common
6 questions of law set forth above are numerous and substantial and stem from Defendants' policies
7 and/or practices applicable to each individual class member, such as Defendants' policy/practice of
8 requiring off-the-clock work pre-shift work to be conducted before non-exempt employees clocked
9 in at the beginning of their shifts resulting in a failure to pay for all hours worked, Defendants'
10 policy/practices of failing to pay overtime at the appropriate premium rate, Defendants' uniform
11 policy of failing to provide compliant meal and rest periods or adequate compensation in lieu thereof,
12 and Defendants' resulting failure to provide accurate itemized wage statements, Defendants' failure
13 to reimburse necessary business expenses, and to pay for all wages due upon separation of
14 employment. As such, the common questions predominate over individual questions concerning each
15 individual class member's showing as to his or her eligibility for recovery or as to the amount of his
16 or her damages.

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

26 47. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
27 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
28 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.

1 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
2 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
3 members of the Classes.

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

14 49. Moreover, requiring each member of the Classes to pursue an individual remedy
15 would also discourage the assertion of lawful claims by employees who would be disinclined to file
16 an action against their former and/or current employer for real and justifiable fear of retaliation and
17 permanent damages to their careers at subsequent employment. Further, the prosecution of separate
18 actions by the individual class members, even if possible, would create a substantial risk of
19 inconsistent or varying verdicts or adjudications with respect to the individual class members against
20 Defendants herein; and which would establish potentially incompatible standards of conduct for
21 Defendants; and/or legal determinations with respect to individual class members which would, as a
22 practical matter, be dispositive of the interest of the other class members not parties to adjudications
23 or which would substantially impair or impede the ability of the class members to protect their
24 interests. Further, the claims of the individual members of the class are not sufficiently large to
25 warrant vigorous individual prosecution considering all of the concomitant costs and expenses
26 attending thereto. As such, the Classes identified in Paragraph 41 are maintainable as Classes under
27 § 382 of the Code of Civil Procedure.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL MINIMUM WAGES**

3 **(AGAINST ALL DEFENDANTS)**

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

5 51. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
6 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts
7 set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
8 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
9 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to
10 the unpaid wages and interest accrued thereon.

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

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

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

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

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY ALL OVERTIME WAGES**

8 **(AGAINST ALL DEFENDANTS)**

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

10 57. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and
11 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
12 worked and provide a private right of action for the failure to pay all overtime compensation for
13 overtime work performed.

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

17 59. Section 3 of the applicable Wage Order requires an employer to pay an employee "one
18 and one-half (1 1/2) times the employee's regular rate of pay" for work in excess of 8 hours per
19 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
20 employer to pay an employee double the employee's regular rate of pay for work in excess of twelve
21 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
22 the workweek.

23 60. Defendants failed to conform their pay practices to the requirements of the law. This
24 unlawful conduct includes but is not limited to (1) Defendants' uniform and unlawful policy/practice
25 of failing to pay overtime at the minimum statutory rate for much of the statutory period, and (2)
26 Defendants' policy/practice of failing to pay for off the clock pre-shift work which resulted in the
27 Classes not being paid all overtime wages owed.

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

6 **THIRD CAUSE OF ACTION**

7 **MEAL PERIOD VIOLATIONS**

8 **(AGAINST ALL DEFENDANTS)**

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

10 63. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
11 their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff
12 and members of the Class, with all required meal periods in accordance with the mandates of the
13 California Labor Code and applicable Wage Orders, for the reasons set forth in the Common
14 Allegations section of this Complaint. Despite Defendants’ violations, Defendants have not paid an
15 additional hour of pay at the “regular rate of pay” to Plaintiff and members of the Class at their
16 respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

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

20 **FOURTH CAUSE OF ACTION**

21 **REST PERIOD VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

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

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

27 67. Due to their unlawful rest period policy and practices, Defendants did not authorize
28 and permit Plaintiff and members of the Class to take code-compliant rest periods to which they were

1 legally entitled, including, but not limited to, failing to relieve employees of all duties and
2 relinquishing all control over employees during their rest periods. Despite Defendants' violations,
3 Defendants have not paid an additional hour of pay at the "regular rate of pay" to Plaintiff and
4 members of the Class at their respective regular rates of pay for each violation, in accordance with
5 California Labor Code § 226.7.

6 68. The foregoing violations create an entitlement to recovery by Plaintiff and members
7 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
8 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
9 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

10 **FIFTH CAUSE OF ACTION**

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

12 **(AGAINST ALL DEFENDANTS)**

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

14 70. 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 (9) all applicable hourly rates in effect during the pay period and the
28 corresponding number of hours worked at each hourly rate by the employee."

71. 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,
which are inadequate under Labor Code Section 226(a).

72. Defendants issued wage statements lacking the correct name and address of the legal
employer, in violation of § 226(a)(8).

73. Further, as a result of Defendants' failure to pay Plaintiff and the Wage Statement Subclass for all 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 226(a)(1, 2, 5, 9).

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

75. 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.

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR CELL PHONE USAGE

(AGAINST ALL DEFENDANTS)

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

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

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

78. As set forth above, Plaintiff and members of the Class must be compensated for all necessary business expenditures, including, but not limited to, a reasonable portion of their monthly personal cell phone bills necessarily incurred in their discharge of their duties.

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

1 **SEVENTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

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

5 81. 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 82. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing
8 to Plaintiff and the Waiting Time Penalty Subclass during the actionable period for this cause of
9 action at or around the time that their employment is or was terminated or ended.

10 83. 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 84. Defendants willfully failed to pay Plaintiff and the members of the Waiting Time
14 Penalty Subclass for all hours worked, including all minimum and overtime wages, and their meal
15 and rest period premiums at the “regular rate of pay”, prior to or upon termination or separation from
16 employment with Defendants as required by Labor Code §§ 201 and 202.

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

21 **EIGHTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(AGAINST ALL DEFENDANTS)**

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

25 87. 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, failing to pay all overtime wages at the appropriate
28 legal rate, by failing to provide all legally required meal and rest periods or pay premium payments

1 at the “regular rate of pay” in lieu thereof, by failing to provide accurate itemized wage statements,
2 failing to reimburse necessary business expenditures, and by failing to pay all earned wages at the
3 time of separation from employment.

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

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

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

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

20 **NINTH CAUSE OF ACTION**

21 **PRIVATE ATTORNEYS GENERAL ACT**

22 **(Labor Code § 2698 et seq.)**

23 **(AGAINST ALL DEFENDANTS)**

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

25 93. Defendants have committed several Labor Code violations against Plaintiff and other
26 non-exempt delivery drivers. Plaintiff, an “aggrieved employee” within the meaning of Labor Code
27 § 2698 et seq., acting on behalf of himself and other non-exempt employees, bring this representative
28 action against Defendants to recover the civil penalties due to Plaintiff, other similarly non-exempt

1 delivery drivers, and the State of California according to proof pursuant to Labor Code § 2699 (a)
2 and (f) including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent
3 violation per employee per pay period for those violations of the Labor Code for which no civil
4 penalty is specifically provided based on the following Labor Code violations:

5 a. Failing to pay Plaintiff and other non-exempt delivery drivers for all hours worked,
6 including all minimum and overtime wages in violation of Labor Code §§ 204, 510, 1194, 1197,
7 1198, and 1182.12

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

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

14 d. Failing to reimburse Plaintiff and other non-exempt delivery drivers for all
15 necessary business expenditures in violation of Labor Code § 2802;

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

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

20 94. On or about December 6, 2021, Plaintiff notified The Highest Craft, LLC, via certified
21 mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website of
22 Defendant’s violations of the California Labor Code § 2698 et seq., with respect to violations of the
23 California Labor Code identified in Paragraph 93 (a)-(f). Now that sixty-five days have passed from
24 Plaintiff notifying Defendant and the LWDA of these violations, Plaintiff will have exhausted his
25 administrative requirements for bringing a claim under the Private Attorneys General Act with respect
26 to these violations.

27 95. Plaintiff was compelled to retain the services of counsel to file this court action to
28 protect their interests and the interests of other non-exempt employees, and to assess and collect the

1 civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys' fees and costs, which he
2 is entitled to receive under California Labor Code § 2699.

3 **PRAYER FOR RELIEF**

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

- 6 1. For an order certifying the proposed Classes;
- 7 2. For an order appointing Plaintiff as representative of the Classes;
- 8 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 9 4. Upon the First Cause of Action, for compensatory, consequential, general and special
10 damages according to proof pursuant to Labor Code §§ 204, 510, 1194, 1197.1, 1199;
- 11 5. Upon the Second Cause of Action, for compensatory, consequential, general and
12 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 13 6. Upon the Third Cause of Action, for compensatory, consequential, general and special
14 damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 15 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
16 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 17 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and
18 reasonable costs and attorneys' fees;
- 19 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §§
20 2802-2804.
- 21 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to
22 Labor Code §§ 201-203.;
- 23 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
24 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
25 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq*;
- 26 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other non-exempt
27 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
28 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each

1 subsequent violation per employee per pay period for those violations of the Labor Code for which
2 no civil penalty is specifically provided under the Labor Code.

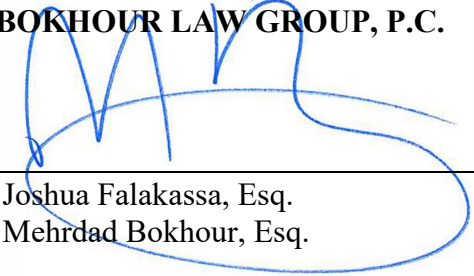
3 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
4 § 218.6 and Civil Code §§ 3287 and 3289;

5 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
6 218.5, 226, and Code of Civil Procedure § 1021.5; and

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

8 Dated: January 12, 2023

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

9
10
11 By: 

12 Joshua Falakassa, Esq.
13 Mehrdad Bokhour, Esq.

14 Attorneys for Plaintiff and the Putative Classes
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1 **PROOF OF SERVICE**

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

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

5 On January 25, 2023, I served the following document(s) described as **SECOND**
6 **AMENDED CLASS ACTION AND PAGA COMPLAINT** on the interested parties in this
action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

7
8 **JACKSON LEWIS P.C.**

Nicole M. Shaffer, Esq.

9 Nicole.Shaffer@jacksonlewis.com

Kien C. Tiet, Esq.

10 Kien.tiet@jacksonlewis.com

3390 University Avenue, Suite 110

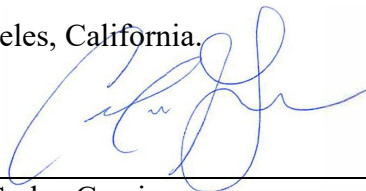
11 Riverside, California 92501

12 *Counsel for Defendant The Highest Craft*
13 *LLC*

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

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

19 Executed on January 25, 2023, at Los Angeles, California.

20
21 
22 _____
Carlos Garcia