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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SOLANO**

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

14 Plaintiff,

15 v.

16 ARDAGH METAL BEVERAGES USA, INC.,
a Delaware Corporation; and DOES 1-50,
17 inclusive.

18 Defendants.

CASE NO.: FSC057518

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

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

DEMAND FOR JURY TRIAL

FILED/ENDORSED
Clerk of the Superior Court

MAY - 8 2023

J. Abueg

By _____
DEPUTY CLERK

1 Plaintiff Grant Diaz (“Plaintiff”) on behalf of himself, and all other similarly situated non-
2 exempt employees, alleges and complains of defendant Ardagh Metal Packaging USA Corp.
3 (formerly known as Ardagh Metal Beverage USA Inc.) (“Defendant” or “Ardagh”), and DOES 1 to
4 50 (collectively, “Defendants”) and each of them, as follows:

5 **INTRODUCTION**

6 1. Defendant is a manufacturer and supplier of beverage cans and other sustainable
7 packaging to major brands such as Coca Cola. Plaintiff brings this class and PAGA representative
8 action against Defendants for alleged violations of the California Labor Code and Business and
9 Professions Code.

10 2. As set forth herein, Plaintiff alleges that Defendants failed and continue to fail to pay
11 all minimum and overtime wages due to their policy and/or practice of unfairly rounding time entries
12 to the nearest quarter hour. Plaintiff further alleges that Defendants failed to properly calculate non-
13 exempt employees’ overtime rate by failing to include all forms of compensation in calculating the
14 “regular rate of pay.” As a result, Plaintiff and other similarly situated employees were not paid
15 overtime at the correct overtime rate. Further, Plaintiff alleges that Defendants’ meal and rest period
16 policies and practices failed to provide him and other similarly situated employees with compliant
17 meal and rest periods or pay premium pay at the “regular rate of pay” in lieu thereof. Finally, as a
18 result of the above, Plaintiff alleges that Defendants failed to provide non-exempt employees with
19 accurate written itemized wage statements and failed to timely pay all final wages upon separation of
20 employment.

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

24 **JURISDICTION AND VENUE**

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

26 5. Plaintiff, on behalf of himself and all others similarly situated employees hereby
27 brings this class action for recovery of unpaid wages and penalties under California Labor Code §§
28 200, 201-203, 204, 210, 226(a), 226(e), 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1197.1, 1199,

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

4 6. This Court has jurisdiction over Defendants’ violations of the California Labor Code
5 and applicable California Industrial Welfare Commission Wage Orders (“Wage Orders”) because the
6 amount in controversy exceeds this Court's jurisdictional minimum.

7 7. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
8 §§ 395(a) and 395.5, as Defendants operate a manufacturing plant in Fairfield, California. Defendants
9 own, maintain offices, transact business, have an agent or agents within the County of Solano, and/or
10 otherwise are found within the County of Solano, and Defendants are within the jurisdiction of this
11 Court for purposes of service of process.

12 **PARTIES**

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

16 9. Plaintiff is informed and believes and thereon alleges that defendant Ardagh Metal
17 Packaging USA Corp., is a corporation authorized and doing business in Solano County, California;
18 and is and/or was the legal employer of Plaintiff and the Class Members during the applicable
19 statutory periods.

20 10. Defendants’ policies and/or practices outlined herein have deprived Plaintiff and other
21 similarly situated non-exempt employees of the rights afforded to them by California Labor Code §§
22 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 510, 512, 1194, 1197.1, 1199, 2698 *et seq.* and
23 California Business and Professions Code § 17200 *et seq.*, and applicable Wage Order(s).

24 11. Plaintiff is informed and believes, and based thereon alleges, that during the four years
25 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
26 do) business in the State of California, County of Solano. Defendants, each of them, own and/or
27 operate a warehouse at 2433 Crocker Circle in Fairfield, California.

28 12. Plaintiff does not know the true names or capacities, whether individual, partner, or

1 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
2 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
3 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
4 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
5 corporate, were responsible in some manner for the acts and omissions alleged herein, and
6 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
7 alleged herein.

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

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

21 **COMMON FACTUAL ALLEGATIONS**

22 15. Defendant Ardagh Metal Packaging USA Corp. is a manufacturer and supplier of
23 beverage cans and other sustainable packaging and operates various facilities in California.

24 16. Plaintiff was employed by Ardagh as a non-exempt employee with the title of “Front
25 End Mechanic” from approximately June 2012, until he was terminated on November 24, 2021.
26 Plaintiff and other non-exempt employees were employed as non-exempt employees working out of
27 Ardagh’s facility in Fairfield, California. Plaintiff and other non-exempt employees were responsible
28 for all aspects of Ardagh services at its facility in Fairfield, California.

1 17. At all relevant times, Plaintiff and other non-exempt employees regularly worked
2 various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek.
3 Plaintiff alleges that other non-exempt employees were also subjected to the same policies,
4 procedures, and practices, working conditions, and corresponding wage and hour violations to which
5 Plaintiff was subjected during his employment at the facility in Fairfield, California.

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

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

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

26 21. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
27 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of
28 wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed,

1 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
2 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
3 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
4 underpaid regardless of whether the initial violation is intentionally committed.

5 22. As set forth above, Defendant failed to compensate Plaintiff and other non-exempt
6 employees for all hours worked as a result of its unlawful rounding policy. Accordingly, to the extent
7 permitted by law Plaintiff and other non-exempt employees are entitled to recover unpaid wages and
8 liquidated damages for violations of Labor Code § 1197.1.

9 23. Next, at all relevant times, non-exempt employees were not properly paid at the correct
10 overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours
11 per workweek due to Defendant's uniform failure to include all forms of compensation/renumeration,
12 including, but not limited to, non-discretionary bonuses, shift pay, when calculating the regular rate
13 of pay used in overtime calculations.

14 24. For instance, although Defendant consistently paid its employees non-discretionary
15 incentive bonuses, Defendant omitted these payments when calculating the regular rate of pay used
16 in overtime calculations and when paying overtime to Plaintiff and the other non-exempt employees.

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

25 26. At all relevant times, Defendant consistently paid non-exempt employees non-
26 discretionary compensation as well as overtime pay, however these forms of compensation were
27 uniformly omitted when calculating non-exempt employees' regular rate of pay for overtime
28 purposes.

1 27. Labor Code § 510 requires an employer to compensate an employee who works more
2 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
3 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
4 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
5 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
6 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
7 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
8 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
9 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

10 28. By their policy of requiring non-exempt employees to work in excess of eight (8)
11 hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of
12 one-half (1 1/2) their regular rate of pay, Defendant willfully violated the provisions of Labor Code §
13 510 and the applicable Wage Orders.

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

21 30. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt employees
22 are entitled to recover unpaid wages and liquidated damages for violations of Labor Code § 1197.1
23 and penalties pursuant to Labor Code § 1199.

24 31. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were
25 often denied timely and compliant 30-minute off-duty meal periods as mandated by California law.
26 First, as a result of Defendant's uniform meal period policies and/or practices, Plaintiff and other non-
27 exempt employees were often unable to take uninterrupted first meal periods before the end of the
28 fifth hour of work. Further, when Plaintiff and other non-exempt employees worked in excess of 10.0

1 hours in a shift, which was a regular occurrence, they were not always allowed and permitted to take
2 a mandated and timely second meal period before the end of the tenth hour of work in violation of
3 the Labor Code and applicable Wage Orders. In addition, Plaintiff and other non-exempt employees
4 were not provided meal period premiums for missed or non-compliant meal periods at the “regular
5 rate of pay.”

6 32. Accordingly, due to Defendant’s uniform meal period policies and/or practices,
7 Plaintiff and other non-exempt employees were often denied legally compliant meal periods in
8 violation of Labor Code 226.7, 510, 516, and applicable IWC Wage Orders.

9 33. Moreover, at all relevant times, Plaintiff and other non-exempt employees were also
10 not provided with all legally mandated 10-minute rest periods for every 4 hours worked or major
11 fraction thereof as mandated by California law. Instead, Defendant often only provided a single
12 combined rest period with the meal period. However, Defendant failed to provide any 10-minute rest
13 periods for every 4 hours or major fraction thereof. As a result, Plaintiff and other non-exempt
14 employees were and are routinely unable to take (10) minute duty free rest periods for every major
15 fraction of four hours worked. This includes a second rest period for shifts in excess of six hours, and
16 a third rest period for shifts in excess of 10 hours in a workday.

17 34. By not relieving all non-exempt employees of all duties during rest periods, Defendant
18 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
19 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all
20 duties and relinquish control over how employees spend their time.”]. In *Augustus*, the California
21 Supreme Court expressly rejected the employers’ assertion that it could provide an on-duty rest period
22 to employees who worked as security guards and further explained “that employers [must] relinquish
23 any control over how employees spend their break time and relieve their employees of all duties.” *Id.*
24 at 273.

25 35. Each time Plaintiff and other non-exempt employees were unable to take a compliant
26 rest period, Defendant failed and continues to fail to adequately pay rest period premium payments
27 at the “regular rate of pay” as required by Labor Code § 226.7.

1 36. Accordingly, due to Defendant's uniform rest period policies/practices, Plaintiff and
2 other non-exempt employees were also regularly denied legally compliant rest breaks in violation of
3 Labor Code §§ 226.7, 512, and applicable Wage Orders.

4 37. As a result of Defendant's failure to pay Plaintiff and other non-exempt employees for
5 all hours they were subject to the control of Defendants, failure to pay overtime at the correct regular
6 rate including all forms of compensation, and failure to pay for all meal and rest period premiums at
7 the "regular rate of pay" for missed/non-compliant meal/rest periods, Defendants issued wage
8 statements which failed to accurately identify the gross wages earned, the total hours worked, the net
9 wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation
10 of Labor Code §226(a) (1, 2, 5, and 9).

11 38. In addition, the wage statements provided to Plaintiff and other non-exempt
12 employees fail to state the name and address of the legal entity that is the employer in violation of
13 Labor Code Section 226(a)(8)..

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

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

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

1 due at their time of separation from employment in violation of Labor Code §§ 201-203 and
2 applicable Wage Orders.

3 **CLASS ACTION ALLEGATIONS**

4 42. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
5 § 382 of the Code of Civil Procedure:

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

8 All non-exempt employees who worked for Defendants in California
9 and who worked overtime hours during at least one shift and earned
a non-discretionary bonus payment and/or other compensation,
10 during the four years immediately preceding the filing of the
Complaint through the date of trial. (“Overtime Subclass”);

11 All employees who work or worked for Defendants in California, and
12 who left their employ during the three years immediately preceding
the filing of the Complaint through the date of trial; (“Wage Statement
13 Subclass”); and

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

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

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

27 1. Whether Defendants’ rounding policy/practice resulted in a failure to pay all minimum
28 and overtime wages to members of the Class;

2. Whether Defendants failed to pay overtime at the appropriate legal rate to members of the Overtime Subclass;

2. Whether Defendants provided legally compliant meal and rest periods or proper compensation at the “regular rate of pay” in lieu thereof to members of the Class;

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

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

45. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants’ policies and/or practices applicable to each individual class member, such as Defendants’ policy/practice of rounding resulting in a failure to pay all minimum and overtime wages, Defendants’ policy/practices of failing to pay overtime at the appropriate premium rate, Defendants’ uniform policy of failing to provide complaint meal and rest periods or adequate compensation in lieu thereof, and Defendants’ resulting failure to provide accurate itemized wage statements, and to pay for all wages due upon separation of employment. As such, the common questions predominate over individual questions concerning each individual class member’s showing as to his or her eligibility for recovery or as to the amount of his or her damages.

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

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

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

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

1 attending thereto. As such, the Classes identified in Paragraph 42 are maintainable as Classes under
2 § 382 of the Code of Civil Procedure.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY ALL MINIMUM WAGES**
5 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

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

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY ALL OVERTIME WAGES**

10 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

25 60. Defendants failed to conform their pay practices to the requirements of the law. This
26 unlawful conduct includes but is not limited to (1) Defendants’ uniform and unlawful policy/practice
27 of failing to include all forms of compensation including, but not limited to, non-discretionary
28 bonuses, in calculating the “regular rate of pay” for purposes of paying overtime, and (2) Defendants’

1 uniform policy/practice of rounding time entries to the nearest 15-minute interval which resulted in
2 Plaintiff and the Classes not being paid all overtime wages owed, both of which resulted in the Classes
3 not being paid all overtime wages owed.

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

9 **THIRD CAUSE OF ACTION**

10 **MEAL PERIOD VIOLATIONS**

11 **(AGAINST ALL DEFENDANTS)**

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

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

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

23
24
25 **FOURTH CAUSE OF ACTION**

26 **REST PERIOD VIOLATIONS**

27 **(AGAINST ALL DEFENDANTS)**

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

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

4 67. Due to their unlawful rest period policy and practices, Defendants did not authorize
5 and permit Plaintiff and members of the Class to take code-compliant rest periods to which they were
6 legally entitled, including, but not limited to, failing to relieve employees of all duties and
7 relinquishing all control over employees during their rest periods. Despite Defendants' violations,
8 Defendants have not paid an additional hour of pay at the "regular rate of pay" to Plaintiff and
9 members of the Class at their respective regular rates of pay for each violation, in accordance with
10 California Labor Code § 226.7.

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

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
17 **(AGAINST ALL DEFENDANTS)**

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

19 70. Labor Code 226(a) states in pertinent part the following:

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

1 (b) of Section 1682, the name and address of the legal entity that secured the services
2 of the employer, and (9) all applicable hourly rates in effect during the pay period
3 and the corresponding number of hours worked at each hourly rate by the
employee.”

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

7 72. As a result of Defendants failure to pay Plaintiff and the Wage Statement Subclass for
8 all overtime wages at the appropriate legal rate, and missed meal and rest period premiums,
9 Defendants failed to include required information on Plaintiff and the Wage Statement Subclass’
10 wage statements, including, but not limited to, the gross wages earned, the net wages earned in
11 violation of Labor Code section 226(a).

12 73. In addition, the wage statements provided to Plaintiff and other non-exempt
13 employees fail to state the name and address of the legal entity that is the employer in violation of
14 Labor Code Section 226(a)(8).

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

17 75. As a result of Defendants’ issuance of inaccurate itemized wage statements to Plaintiff
18 and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor
19 Code, Plaintiff and members of the Classes are each entitled to recover an initial penalty of \$50, and
20 subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per
21 Plaintiff and per every member of the Wage Statement Subclass from Defendants pursuant to section
22 226(e) of the Labor Code, costs and reasonable attorneys’ fees.

23 **SIXTH CAUSE OF ACTION**

24 **WAITING TIME PENALTIES**

25 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

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

84. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over

1 Defendants' competitors who have been and/or are currently employing workers and attempting to
2 do so in honest compliance with applicable wage and hour laws.

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

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

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

13 **EIGHT CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT PENALTIES**

15 **(AGAINST ALL DEFENDANTS)**

16 88. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

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

25 a. Failing to provide Plaintiffs and other non-exempt employees all wages as a result
26 of Defendants' unlawful rounding policy and/or practice;

27 b. Failing to provide Plaintiffs and other non-exempt employees all overtime
28 compensation at the appropriate premium rate in violation of Labor Code § 204, 510, 1194 & 1198;

1 c. Failing to provide Plaintiffs and other non-exempt employees with all of their
2 statutorily mandated meal periods or compensation at the “regular rate of pay” in lieu thereof in
3 violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

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

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

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

11 90. On or about December 2, 2021, December 7, 2021 and May 2, 2022, Plaintiff
12 notified Defendant, via certified mail, and the California Labor and Workforce Development Agency
13 (“LWDA”) via its website of Defendant’s violations of the California Labor Code § 2698 *et seq.*,
14 with respect to the specific provisions of the California Labor Code alleged to have been violated,
15 including facts and theories to support the alleged violations, in accordance with California Labor
16 Code § 2699.3. Now that sixty-five days have passed from Plaintiff notifying Defendant and the
17 LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a
18 claim under the Private Attorneys General Act with respect to these violations.

19 91. Accordingly, Plaintiff seeks PAGA civil penalties for himself, all other non-exempt
20 aggrieved employees, and the State of California, for violations of California Labor Code §§ 200,
21 201-203, 204, 210, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 516, 558, 1174, 1174.5, 1182.12,
22 1194, 1194.2, 1197, 1197.1, 1198, 1199, and applicable Wage Orders.

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

1 **PRAYER FOR RELIEF**

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

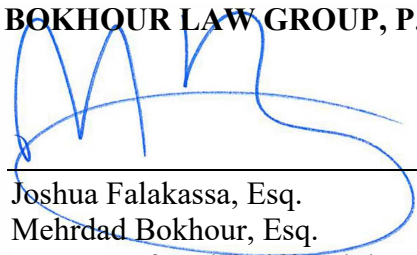
- 4 1. For an order certifying the proposed Classes;
- 5 2. For an order appointing Plaintiff as representative of the Classes;
- 6 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 7 4. Upon the First Cause of Action, for compensatory, consequential, general and special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

1 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
2 218.5, 226, and Code of Civil Procedure § 1021.5; and

3 14. For such other relief that the Court may deem just and proper.
4

5 Dated: April 12, 2023

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

6
7
8 By: 

9 Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

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

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

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

5 On May 8, 2023, I served the following document(s) described as **FIRST**
6 **AMENDED CLASS ACTION AND PAGA ACTION COMPLAINT** on the
interested parties in this action by placing true copies thereof enclosed in sealed envelopes
addressed as follows:

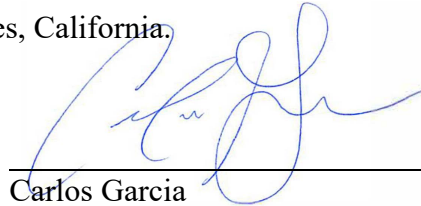
7
8 Sabrina L. Shadi, Esq.
sshadi@bakerlaw.com
9 Nicholas D. Poper, Esq.
npoper@bakerlaw.com
10 BAKER & HOSTETLER, LLP
11 11601 Wilshire Boulevard, Suite 1400
Los Angeles, California 90025

12 **Counsel for defendant Ardagh Metal
Beverage USA, Inc.**

13 **BY ELECTRONIC MAIL:** Based on a Court order or an agreement by the parties to
14 accept 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
15 time after the transmission, any electronic message or indication that the transmission was
unsuccessful.

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

18 Executed on May 8, 2023, at Los Angeles, California.

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Carlos Garcia