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By..... Deputy
Case Number:
34-2022-00314521

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Attorneys for Plaintiff and the Putative Classes

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

SHEA MULLIN, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

CALIFORNIA SLEEP SOLUTIONS, LLC, a
California Limited Liability Company; and
DOES 1-50, inclusive.

Defendants.

CASE NO.: 34-2022-00314521

Assigned to Hon. Lauri Damrell

**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; and
- (7) UNFAIR COMPETITION
- (8) PAGA PENALTIES

DEMAND FOR JURY TRIAL

Complaint Filed: January 21, 2022

1 Plaintiff Shea Mullin (“Plaintiff”) on behalf of herself, and all other similarly situated
2 employees, alleges and complains of defendants California Sleep Solutions, LLC, and DOES 1 to 50
3 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant California Sleep Solutions, LLC, is a provider of diagnostic and treatment
6 services for sleep disorders, with at least the following locations: Dixon, Folsom, Sacramento,
7 Placerville, and Roseville. Plaintiff brings this class action against Defendant for alleged violations
8 of the California Labor Code and Business and Professions Code.

9 2. As set forth below, Plaintiff alleges that Defendants had a uniform unlawful payroll
10 practice/policy that rounded Plaintiff and other non-exempt employees’ time entries. As a result of
11 the policy/practice of unlawful rounding, Plaintiff and other similarly situated employees were not
12 paid for all hours worked. Plaintiff further alleges that Defendants also failed to pay all overtime
13 compensation as a result of failing to properly calculate the regular rate of pay.

14 3. Plaintiff further alleges that Defendants’ meal and rest period policies and practices
15 failed to provide her and all other similarly situated employees with legally compliant meal and rest
16 periods, or premium wages in lieu thereof. Additionally, Plaintiff alleges that Defendants failed to
17 provide non-exempt employees with accurate written itemized wage statements and failed to timely
18 pay all final wages upon separation of employment. Based on these alleged Labor Code violations,
19 Plaintiff now brings this class action and PAGA representative action to recover unpaid wages,
20 restitution, penalties, and other related relief on behalf of herself and all others similarly situated.

21 **JURISDICTION AND VENUE**

22 4. Plaintiff, on behalf of herself and all others similarly situated employees hereby brings
23 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
24 203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 516, 1194, 1197.1, 1199, 2698, et seq., and
25 applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to seeking
26 declaratory relief and restitution pursuant to California Business and Professions Code § 17200, *et*
27 *seq.* This class action is brought pursuant to California Code of Civil Procedure § 382.

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

6. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, Defendants own, maintain offices, transact business, have an agent or agents within the County of Sacramento, and/or otherwise are found within the County of Sacramento, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

7. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a California resident residing in the State of California. Defendants employed Plaintiff as a non-exempt employee in California.

8. Plaintiff is informed and believes and thereon alleges that defendant California Sleep Solutions, LLC, is a California Limited Liability Company authorized to and doing business in Sacramento, California, and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendant's policies and/or practices complained of herein and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 510, 512, 516, 1194, 1197.1, 1199, and the California Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

9. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the State of California, County of Sacramento. Defendants operate various facilities, including one in Sacramento, California.

10. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and

proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices alleged herein.

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

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

COMMON FACTUAL ALLEGATIONS

13. Defendants are a provider of diagnostic and treatment services for sleeping disorders, with various locations in California, including, Dixon, Folsom, Sacramento, Placerville, and Roseville. Plaintiff was a non-exempt employee with the title of Polysomnographic Technician. Plaintiff was hired on or about February 24, 2020. Plaintiff and other aggrieved employees were employed as non-exempt employees including sleep technicians, patient service representatives, medical billing specialists, clinical benefits specialists, and other non-exempt positions.

14. Plaintiff alleges that other non-exempt employees were subjected to the same policies, procedures, and practices, working conditions, and corresponding wage and hour violations to which she was subjected, and continues to be subjected to, during her employment with Defendants.

15. First, at all relevant times, Defendants have had a consistent policy of unevenly rounding Plaintiff and other non-exempt employees' time entries. As a result of this practice, Plaintiff and other non-exempt employees are not compensated for all the hours that they work and all the

1 overtime hours they work, in violation of Cal. Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and
2 applicable Wage Orders.

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

8 17. Here, Defendants’ rounding time policy is not neutral on its face as Plaintiff and other
9 non-exempt employees are subject to discipline, including termination for being tardy in reporting to
10 work, or returning from a meal or rest period. Moreover, because Defendants is capable of tracking
11 the time worked by non-exempt employees to the minute, the policy itself exists not for the
12 convenience or benefit of the employees who are trying to report their time on timecards or otherwise,
13 but for Defendants’ benefit. As a result, the policy is not neutral on its face, and over a period of time,
14 Plaintiff and other non-exempt employees were not properly paid for all hours worked in violation of
15 Cal. Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders. Further, as a
16 result of the unlawful rounding policy, Plaintiff and other non-exempt employees were not properly
17 paid at the correct overtime rate for hours worked in excess of eight hours per shift.

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

25 19. As set forth above, Defendants failed to compensate Plaintiff and other non-exempt
26 employees for all hours worked as a result of its unlawful rounding policy. To the extent permitted
27 by law, Plaintiff and other non-exempt employees are entitled to recover unpaid wages, liquidated
28 damages for violations of Labor Code § 1197.1. Based upon these same factual allegations, Plaintiff

1 and other non-exempt employees are entitled to penalties under Labor Code § 1199.

2 20. Furthermore, Plaintiff and other non-exempt employees were not properly paid at the
3 correct overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty (40)
4 hours per workweek. While Plaintiff and other non-exempt employees regularly worked overtime
5 hours, they were not compensated at one and one-half times their regular rate of pay because
6 Defendants failed to include all forms of compensation, including but not limited to, shift
7 differentials, non-discretionary bonuses, and other forms of non-hourly remuneration when
8 calculating the regular rate of pay used in payment of overtime wages.

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

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

26 23. By their policy of requiring Plaintiff and the other non-exempt employees to work in
27 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
28 them at the rate of one-half (1/2) their regular rate of pay, and twice the regular rate for shifts more

1 than twelve (12) hours, Defendants willfully violated the provisions of Labor Code § 510 and the
2 applicable Wage Orders.

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

10 25. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt employees
11 are entitled to recover unpaid overtime wages, liquidated damages for violations of Labor Code §
12 1197.1. Based upon these same factual allegations, Plaintiff and the other non-exempt employees are
13 entitled to penalties under Labor Code § 1199.

14 26. Moreover, at all relevant times, Plaintiff and other non-exempt employees were denied
15 compliant and timely 30-minute off-duty meal periods as mandated by California law. As a result of
16 Defendants' uniform meal period policies and/or practices and work demand, Plaintiff and other non-
17 exempt employees were unable to take legally compliant, off-duty, and uninterrupted 30-minute first
18 meal periods before the end of the fifth hour of work. Further, when Plaintiff and other non-exempt
19 employees worked in excess of 10.0 hours in a shift, which was a regular occurrence, they were not
20 allowed and permitted to take all mandated and timely second meal periods before the end of the
21 tenth hour of work.

22 27. In addition, to the extent Defendants required some non-exempt employees, including,
23 Plaintiff, to sign an on-duty meal waiver, any such waiver is unlawful because the nature of the work
24 does not prevent employees from being relieved of all duties during the meal period. Plaintiff, and
25 similar non-exempt employees, positions are not analogous to security guards or other positions
26 which lend themselves to on-duty meal periods.

27 28. Each time Plaintiff and other non-exempt employees were not provided a legally
28 compliant meal period, Defendants also failed to provide meal period premiums for missed or non-

1 compliant meal periods at the “regular rate of pay” as required by Labor Code § 226.7 and *Ferra v.*
2 *Loews Hollywood Hotel, LLC* (2021) 11 5th 858 (“*Ferra*”).

3 29. Accordingly, due to Defendants’ uniform meal period policies/practices, Plaintiff and
4 other non-exempt employees were also regularly denied legally compliant meal periods in violation
5 of Labor Code 226.7, 510, 516, and applicable IWC Wage Orders.

6 30. Next, at all relevant times, Plaintiff and other non-exempt employees were also not
7 provided with 10 minutes of net rest period time for every 4 hours worked, or major fraction thereof
8 due to Defendants’ rest period policies/practices and work demands. Plaintiff and other non-exempt
9 routinely had to work through their rest periods. As a result, Plaintiff and other non-exempt
10 employees were and are routinely unable to take legally compliant (10) minute duty-free rest periods
11 for every major fraction of four hours worked. This includes a second rest period for shifts in excess
12 of six hours, and a third rest period for shifts in excess of 10 hours in a workday.

13 31. Further, Defendants’ rest period policy is facially invalid insofar as it states that
14 **“Employees may not leave the worksite during the rest period. If for any reason an employee**
15 **does not take the applicable rest period it will be forfeited.”** (emphasis added). By preventing
16 non-exempt employees from leaving the premises, Defendants are exercising control over them and
17 thus not relieving them of all duties. By not relieving all non-exempt employees of all duties during
18 rest periods, Defendants failed to provide legally compliant rest periods. *See Augustus v. ABM*
19 *Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest periods employers
20 must relieve employees of all duties and relinquish control over how employees spend their time.”].
21 In *Augustus*, the California Supreme Court expressly rejected the employers’ assertion that it could
22 provide an on-duty rest period to employees who worked as security guards and further explained
23 “that employers [must] relinquish any control over how employees spend their break time and relieve
24 their employees of all duties.” *Id.* at 273.

25 32. Further, the rest period policy is unlawful because it provides that rest periods are
26 “forfeited” simply because an employee did not take them. This is not in compliance with Labor Code
27 226.7 and *Ferra*. Indeed, each time Plaintiff and other non-exempt employees were unable to take
28 compliant rest periods, Defendants failed and continues to fail to adequately pay rest period premium

1 payments at the “regular rate of pay” as required by Labor Code § 226.7 and *Ferra*.

2 33. Accordingly, due to Defendants’ uniform rest period policies/practices and work
3 demands, Plaintiff and other non-exempt employees were also regularly denied legally compliant rest
4 breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

5 34. As a result of Defendants’ failure to pay Plaintiff and other non-exempt employees for
6 all overtime wages, and for failure to pay for meal and rest period premiums at the “regular rate of
7 pay”, Defendants issued wage statements which fail to accurately identify the gross wages earned,
8 the total hours worked, the net wages earned, and the correct corresponding number of hours worked
9 at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9). Additionally, Defendants
10 failed to include the hourly rates, overtime rates, and shift differential pay rates and corresponding
11 number of hours in the wage statements issued to Plaintiff and other non-exempt employees in
12 violation of Labor Code § 226(a)(9). Attached is a true and correct copy of Plaintiffs wage statement.
13 (*See* Attachment “A”).

14 35. 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 36. 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). Consequently, because Defendants failed
23 to comply with Labor Code § 226(a) and applicable Wage Orders, Plaintiff and other non-exempt
24 employees would be entitled to recover penalties under Labor Code §§ 226(e).

25 37. Finally, because of, Defendants’ failure to pay all overtime wages at the appropriate
26 legal rate, and meal and rest period premiums at the “regular rate of pay”, Defendants also failed and
27 continue to fail to pay non-exempt employees all wages owed at their time of separation from
28 employment in violation of Labor Code §§ 201-203 and applicable Wage Orders. Thus, non-exempt

employees would be entitled to recover penalties under Labor Code §§ 201-203 and 256.

CLASS ACTION ALLEGATIONS

38. Plaintiff brings this action on behalf of herself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

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

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

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

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

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

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

1. Whether Defendants' rounding and other timekeeping policies/practices resulted in a failure to pay for all hours worked to the members of the Class;

2. Whether Defendants' paid overtime at the correct regular rate including all forms of compensation to members of the Overtime Subclass;

1 3. Whether Defendants provided legally compliant meal and rest periods or proper
2 compensation in lieu thereof to members of the Class;

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

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

7 41. **Predominance of Common Questions:** Common questions of law and fact
8 predominate over questions that affect only individual members of the Classes. The common
9 questions of law set forth above are numerous and substantial and stem from Defendants' policies
10 and/or practices applicable to each individual class member, such as Defendants' policy and/or
11 practice of rounding time entries, Defendants' failure to pay overtime at the correct "regular rate"
12 including all forms of compensation, Defendants' uniform policies/practices of failing to provide
13 compliant meal and rest periods or adequate compensation in lieu thereof, and Defendants' failure to
14 provide accurate itemized wage statements, and to pay for all wages due upon separation of
15 employment. As such, the common questions predominate over individual questions concerning each
16 individual class member's showing as to his or her eligibility for recovery or as to the amount of his
17 or her damages.

18 42. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
19 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
20 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
21 Plaintiff, like the members of the Classes was deprived of minimum and overtime wages, was
22 deprived of meal and rest period premium wages, was subject to Defendants' uniform meal and rest
23 period policies/practices, and was not provided accurate itemized wage statements.

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

1 members of the Classes.

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

12 45. Moreover, requiring each member of the Classes to pursue an individual remedy would
13 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
14 against their former and/or current employer for real and justifiable fear of retaliation and permanent
15 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
16 the individual class members, even if possible, would create a substantial risk of inconsistent or
17 varying verdicts or adjudications with respect to the individual class members against Defendants
18 herein; and which would establish potentially incompatible standards of conduct for Defendants;
19 and/or legal determinations with respect to individual class members which would, as a practical
20 matter, be dispositive of the interest of the other class members not parties to adjudications or which
21 would substantially impair or impede the ability of the class members to protect their interests.
22 Further, the claims of the individual members of the class are not sufficiently large to warrant
23 vigorous individual prosecution considering all of the concomitant costs and expenses attending
24 thereto. As such, the Classes identified in Paragraph 37 are maintainable as Classes under § 382 of
25 the Code of Civil Procedure.

26 **FIRST CAUSE OF ACTION**

27 **MINIMUM WAGE VIOLATIONS**

28 **(AGAINST ALL DEFENDANTS)**

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

2 47. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
3 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts
4 set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
5 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
6 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to
7 the unpaid wages and interest accrued thereon.

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

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

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

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

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

19 56. Defendants failed to conform their pay practices to the requirements of the law. This
20 unlawful conduct includes but is not limited to Defendants’ uniform and unlawful policy/practice of
21 (1) failing to pay for all hours worked due to rounding time entries, and (2) failing to include all forms
22 of compensation, including but not limited to non-discretionary bonuses, into the calculation of the
23 “regular rate of pay,” both of which resulted in Plaintiff and the Classes not being paid all overtime
24 wages owed.

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

1 1021.5.

2 **THIRD CAUSE OF ACTION**

3 **MEAL PERIOD VIOLATIONS**

4 **(AGAINST ALL DEFENDANTS)**

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

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

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

14 **FOURTH CAUSE OF ACTION**

15 **REST PERIOD VIOLATIONS**

16 **(AGAINST ALL DEFENDANTS)**

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

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

21 63. Due to their unlawful rest period policy and practices, Defendants did not authorize
22 and permit Plaintiff and members of the Class to take any rest periods to which they were legally
23 entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay at the
24 "regular rate of pay" to Plaintiff and members of the Class at their respective regular rates of pay for
25 each violation, in accordance with California Labor Code § 226.7.

26 64. The foregoing violations create an entitlement to recovery by Plaintiff and members
27 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
28 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§

226.7 and 516, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS)

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

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

“(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. . .”

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

68. As a result of Defendants failure to pay Plaintiff and the Wage Statement Subclass for all regular and overtime wages, and missed meal and rest period premiums at the appropriate legal rate, Defendants failed to include required information on Plaintiff and the Wage Statement Subclass’ 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). Additionally, Defendants failed to include the hourly rates, overtime rates, and shift differential pay rates and corresponding number of hours in the wage statements issued to Plaintiff and the Wage Statement Subclass in violation of Labor Code §

1 226(a)(9).

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

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

10 **SIXTH CAUSE OF ACTION**

11 **WAITING TIME PENALTIES**

12 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

1 an employee to recover waiting time penalties).

2 **SEVENTH CAUSE OF ACTION**

3 **UNFAIR COMPETITION**

4 **(AGAINST ALL DEFENDANTS)**

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

6 78. Defendants have engaged and continue to engage in unfair and/or unlawful business
7 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
8 failing to pay for all hours worked, and overtime wages at the legal rate, by failing to provide all
9 legally required meal and rest periods or pay premium payments at the regular rate of pay in lieu
10 thereof, by failing to provide accurate wage statements, by failing to reimburse for necessary business
11 expenses, and by failing to pay all earned wages at the time of separation from employment.

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

17 80. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
18 herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of
19 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
20 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

21 81. The acts complained of herein occurred within the last four years immediately
22 preceding the filing of the Complaint in this action.

23 82. Plaintiff was compelled to retain the services of counsel to file this court action to
24 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
25 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
26 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
27 she is entitled to recover under Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code § 2698 et seq.)
(AGAINST ALL DEFENDANTS)

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

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

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

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

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

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

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

85. On or about August 26, 2021, Plaintiff notified Defendant California Sleep Solutions, LLC, via certified mail, and the California Labor and Workforce Development Agency (“LWDA”)

1 via its website of Defendant's violations of the California Labor Code § 2698 et seq., with respect to
2 violations of the California Labor Code identified in Paragraph 84 (a)-(e). Now that sixty-five days
3 have passed from Plaintiff notifying Defendant and the LWDA of these violations, Plaintiff will have
4 exhausted her administrative requirements for bringing a claim under the Private Attorneys General
5 Act with respect to these violations.

6 86. Plaintiff was compelled to retain the services of counsel to file this court action to
7 protect their interests and the interests of other non-exempt employees, and to assess and collect the
8 civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys' fees and costs, which she
9 is entitled to receive under California Labor Code § 2699.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff prays for judgment for herself and for all others on whose behalf
12 this suit is brought against Defendants, as follows:

- 13 1. For an order certifying the proposed Classes;
- 14 2. For an order appointing Plaintiff as representative of the Classes;
- 15 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 16 4. Upon the First Cause of Action, for compensatory, consequential, general and special
17 damages according to proof pursuant to Labor Code §§ 204, 210, 510, and 1194;
- 18 5. Upon the Second Cause of Action, for compensatory, consequential, general and
19 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 20 6. Upon the Third Cause of Action, for compensatory, consequential, general and special
21 damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 22 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
23 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 24 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and
25 reasonable costs and attorneys' fees;
- 26 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor
27 Code §§ 201-203.
- 28 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the

1 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
2 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

3 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other non-exempt
4 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
5 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
6 subsequent violation per employee per pay period for those violations of the Labor Code for which
7 no civil penalty is specifically provided under the Labor Code

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

10 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
11 218.5, 226, and Code of Civil Procedure § 1021.5; and

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

13 Dated: August 11, 2022

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

14
15
16 By: _____

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Anwar D. Burton, Esq.

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18 Attorneys for Plaintiff and the Putative Classes
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 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.

On August 22, 2022, I served the following document(s) described as **FIRST 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:

Ellen C. Arabian-Lee, Esq.
ellen@arabian-leelaw.com
ARABIAN-LEE LAW CORPORATION
2999 Douglas Boulevard, Suite 180
Roseville, California 95661

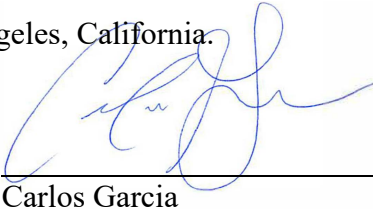
Scott T. Shibayama, Esq.
scott@visionlaw.com
VISION LAW CORPORATION
1380 Lead Hill Boulevard, Suite 106
Roseville, California 95661

Counsel for defendant California Sleep Solutions, LLC

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

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

Executed on August 22, 2022, at Los Angeles, California.



Carlos Garcia