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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

SOPHEAP PRAK & RICARDO PIMENTEL on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

ENOVIX CORPORATION, a California
Corporation; LEGENDARY STAFFING, Inc., a
California Corporation; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: 22CV005846

Assigned to Hon. Brad Seligman

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

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

DEMAND FOR JURY TRIAL

Complaint Filed: January 21, 2022

1 Plaintiffs Sopheap Prak and Ricardo Pimentel (collectively “Plaintiffs”) on behalf of
2 themselves, the State of California, and all other similarly situated employees, allege and complain
3 of Enovix Corporation, Legendary Staffing, Inc., and DOES 1 to 50 (collectively, “Defendants”) and
4 each of them, as follows:

5 **INTRODUCTION**

6 1. Defendant Enovix Corporation is a manufacturer and supplier of lithium-ion batteries
7 operating a large manufacturing plant in Fremont, California.

8 2. Defendant Legendary Staffing, Inc., is a provider of staffing services throughout
9 California. Plaintiffs bring this class action against Defendants for alleged violations of the California
10 Labor Code and Business and Professions Code.

11 3. As set forth below, Plaintiffs allege that Defendants had a uniform payroll
12 practice/policy failed to pay all overtime compensation as a result of failing to properly calculate the
13 regular rate of pay including all forms of compensation/remuneration. Plaintiffs further allege that
14 Defendants’ meal and rest period policies and practices failed to provide them and all other similarly
15 situated employees with compliant/timely meal and rest periods, or premium wages in lieu thereof.
16 Additionally, Plaintiffs allege that Defendants failed to provide non-exempt employees with accurate
17 written itemized wage statements and failed to timely pay all final wages upon separation of
18 employment. Finally, Plaintiffs allege that Defendants failed to reimburse Plaintiff and other similarly
19 situated employees for necessary business expenses. Based on these alleged Labor Code violations,
20 Plaintiffs now bring this class and PAGA representative action to recover unpaid wages, restitution,
21 penalties, and other related relief on behalf of herself and all others similarly situated.

22 **JURISDICTION AND VENUE**

23 4. Plaintiffs, on behalf of themselves and all others similarly situated employees hereby
24 bring this class action for recovery of unpaid wages and penalties under California Labor Code §§
25 201-203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 516, 1194, 1197.1, 1199, 2802-2804 *et*
26 *seq.*, 2698, *et seq.*, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in
27 addition to seeking declaratory relief and restitution pursuant to California Business and Professions
28 Code § 17200, *et. seq.* This class action is brought pursuant to California Code of Civil Procedure §

1 382.

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

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

10 **PARTIES**

11 7. At all relevant times herein, Plaintiffs, who are both over the age of 18, were and
12 currently are California residents residing in the State of California. Defendants employed Plaintiffs
13 as a non-exempt employees in Fremont, California in the County of Alameda.

14 8. Plaintiffs are informed and believe and thereon allege that defendant Enovix
15 Corporation is a California corporation authorized to and doing business in Fremont, California, and
16 is and/or was the legal employer of Plaintiffs and the Class Members during the applicable statutory
17 periods. Plaintiffs were, and are, victims of Defendants' policies and/or practices complained of
18 herein and has been deprived of the rights guaranteed to them by California Labor Code §§ 201-203,
19 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 516, 1194, 1197.1, 1199, and 2800 *et seq.*,
20 California Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

21 9. Plaintiffs are informed and believe and thereon allege that defendant Legendary
22 Staffing, Inc., is a California Corporation authorized to and doing business in Fremont, California,
23 and is and/or was the legal employer of Plaintiffs and the Class Members during the applicable
24 statutory periods. Plaintiffs were, and are, victims of Defendants' policies and/or practices
25 complained of herein and has been deprived of the rights guaranteed to her by California Labor Code
26 §§ 201-203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 516, 1194, 1197.1, 1199, and 2800
27 *et seq.* and California Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders
28

10. Plaintiffs are informed and believe, and based thereon allege, 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 Alameda. Defendants operate and staff a large manufacturing plant at 3501 W Warren Avenue in Fremont, California.

11. Plaintiffs do 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 Plaintiffs will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed, and believe, and thereon allege, 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 Plaintiffs and the Classes to be subject to the unlawful employment practices alleged herein.

12. Plaintiffs are informed, and believe, and thereon allege, that at all times mentioned herein, Defendants were and are the employers of Plaintiffs 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.

13. 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, Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and all members of the Classes.

COMMON FACTUAL ALLEGATIONS

14. Defendants operate and staff a manufacturing plant in Fremont, California, producing lithium-ion batteries. Ms. Prak was employed by Enovix Corporation on assignment by Legendary

1 Staffing, Inc. as a non-exempt employee. Ms. Prak served as an assembly line worker starting on or
2 about June 17, 2021, until her termination on November 1, 2021. Mr. Pimentel similarly was first
3 hired on assignment through Legendary Staffing, Inc., and assigned to work at Enovix Corporation's
4 Fremont facility. However, starting in August 2021 until his termination in November 2021, Mr.
5 Pimentel was directly hired by Enovix Corporation.

6 15. Plaintiffs and other aggrieved employees were employed as non-exempt employees
7 including manufacturing operators, technicians, production associates, assembly line workers, and
8 other non-exempt positions at Defendants' Fremont, California location.

9 16. At all relevant times, Plaintiffs and other non-exempt employees were employed by
10 Enovix Corporation and/or Legendary Staffing, Inc. (collectively "Defendants"). Since both
11 companies set the terms and conditions of Plaintiffs and other non-exempt employees' work, and
12 control how non-exempt employees are paid and in what amounts, each is considered the employer
13 of all non-exempt employees. Further, the work policies and procedures that both companies
14 disseminated uniformly applied to all non-exempt employees who worked for both companies.
15 California courts have recognized that the definition of "employer" for purposes of enforcement of
16 the California Labor Code goes beyond the concept of traditional employment to reach irregular
17 working arrangements for the purpose of preventing evasion and subterfuge of California's labor
18 laws. (*Martinez v. Combs* (2010) 49 Cal.4th 35, 65.) As such, anyone who directly or indirectly, or
19 through an agent or any other person, engages, suffers, or permits any person to work or exercises
20 control over the wages, hours, or working conditions of any person, may be liable for violations of
21 the California Labor Code as to that person. (See also Labor Code §§ 558, 558.1.).

22 17. California courts have recognized that the definition of "employer" for purposes of
23 enforcement of the California Labor Code goes beyond the concept of traditional employment to
24 reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
25 California's labor laws. (*Martinez v. Combs* (2010) 49 Cal.4th 35, 65.) As such, anyone who directly
26 or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work
27 or exercises control over the wages, hours, or working conditions of any person, may be liable for
28 violations of the California Labor Code as to that person. (See also Labor Code §§ 558, 558.1.).

1 18. Plaintiffs allege that other non-exempt employees were subjected to the same policies,
2 procedures, and practices, working conditions, and corresponding wage and hour violations to which
3 Plaintiffs were subjected during their employment with Defendants.

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

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

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

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

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

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

17 25. Moreover, at all relevant times, Plaintiffs and other non-exempt employees were denied
18 compliant and timely 30-minute off-duty meal periods as mandated by California law. As a result of
19 Defendants' uniform meal period policies and/or practices and operational requirements, Plaintiffs
20 and other non-exempt employees were unable to take legally compliant and uninterrupted 30-minute
21 first meal periods before the end of the fifth hour of work. Further, when Plaintiffs and other non-
22 exempt employees worked in excess of 10.0 hours in a shift, which was a regular occurrence, they
23 were not allowed and permitted to take all mandated and timely second meal periods before the end
24 of the tenth hour of work in violation of the California Labor Code and applicable Wage Orders. In
25 addition, Defendants automatically deducted 30 minutes of time from non-exempt employees' time
26 entries regardless of whether they had actually taken uninterrupted 30-minute meal periods.

27 26. Each time Plaintiffs 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 27. Accordingly, due to Defendants’ uniform meal period policies/practices, Plaintiffs 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 28. Next, at all relevant times, Plaintiffs 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, work demands, and operational requirements.
9 Indeed, Plaintiffs and other non-exempt employees worked through their second rest periods and
10 were not provided with a third rest periods for shifts longer than 10 hours. As a result, Plaintiffs and
11 other non-exempt employees were and are routinely unable to take legally compliant (10) minute
12 duty-free rest periods for every major fraction of four hours worked. This includes a second rest
13 period for shifts in excess of six hours, and a third rest period for shifts in excess of 10 hours in a
14 workday.

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

23 30. Each time Plaintiffs and other non-exempt employees were unable to take compliant
24 rest periods, Defendants failed and continue to fail to adequately pay rest period premium payments
25 at the “regular rate of pay” as required by Labor Code § 226.7 and *Ferra*.

26 31. Accordingly, due to Defendants’ uniform rest period policies/practices, Plaintiff and
27 other non-exempt employees were also regularly denied legally compliant rest breaks in violation of
28 Labor Code §§ 226.7, 512, and applicable Wage Orders.

1 32. Furthermore, at all relevant times, Defendants required Plaintiff and other non-exempt
2 employees to incur necessary business expenses associated with using their personal cell phones for
3 work related purposes, including but not limited to downloading and using timekeeping software on
4 their phones for clocking in and out for shifts, but did not reimburse non-exempt employees for these
5 necessary expenditures in violation of Labor Code §§ 2802-2804. *See Cochran v. Schwan's Home*
6 *Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144 “[i]f an employee is required to make work-related
7 calls on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802.
8 It does not matter whether the phone bill is paid for by a third person, or at all...it is irrelevant whether
9 the employee changed plans to accommodate work-related cell phone usage...To show liability under
10 section 2802, an employee need only show that he or she was required to use a personal cell phone
11 to make work-related calls, and he or she was not reimbursed”]. Defendants’ uniform failure to
12 reimburse Plaintiffs and other non-exempt employees for their on-going business expenses incurred
13 in their discharge of their duties continues through the present day. Indeed, adequate reimbursement
14 is absent from Plaintiffs’ wage statements during their employment.

15 33. As a result of Defendants’ failure to pay Plaintiffs and other non-exempt employees for
16 all hours they were subject to the control of Defendants, including all overtime wages at the
17 appropriate legal rate, and failure to adequately pay for meal/rest period premiums at the “regular rate
18 of pay”, Defendants issued wage statements which failed to accurately identify the gross wages
19 earned, the total hours worked, the net wages earned, and the correct corresponding number of hours
20 worked at each hourly rate, in violation of Labor Code § 226(a)(1), (2), (5), and (9).

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

26 35. Thus, for the violations of Labor Code section 226 described above, Plaintiffs and other
27 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of
28 Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiffs and other non-

1 exempt employees are in violation of Labor Code § 226 (a). Consequently, because Defendants failed
2 to comply with Labor Code § 226(a) and applicable Wage Orders, Plaintiffs and other non-exempt
3 employees would be entitled to recover penalties under Labor Code §§ 226(e).

4 36. Finally, because of, Defendants' failure to pay all overtime wages at the appropriate
5 legal rate, and meal and rest period premiums at the "regular rate of pay", Defendants also failed and
6 continue to fail to pay Plaintiffs and other non-exempt employees all wages owed at their time of
7 separation from employment in violation of Labor Code §§ 201-203 and applicable Wage Orders.
8 Pursuant to Labor Code §§ 201-202, an employer must provide non-exempt employees' wages at the
9 time or discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203
10 provides "if an employer willfully fails to pay ... any wages of an employee who is discharged or who
11 quits, the wages of the employee shall continue as a penalty ..." for up to 30 days. Thus, non-exempt
12 employees would be entitled to recover penalties under Labor Code §§ 201-203.

13 **CLASS ACTION ALLEGATIONS**

14 37. Plaintiffs bring this action on behalf of themselves and the following Classes pursuant
15 to § 382 of the Code of Civil Procedure:

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

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

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

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

27 (collectively "the Classes")
28

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

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

10 1. Whether Defendants' paid overtime at the overtime rate to members of the Overtime
11 Subclass;

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

14 3. Whether Defendants reimbursed all necessary business expenses, including, but not
15 limited to, a reasonable percentage of monthly cellular phone bills;

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

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

20 40. **Predominance of Common Questions:** Common questions of law and fact
21 predominate over questions that affect only individual members of the Classes. The common
22 questions of law set forth above are numerous and substantial and stem from Defendants' policies
23 and/or practices applicable to each individual class member, such as Defendants' failure to pay
24 overtime at the correct "regular rate" including all forms of compensation, Defendants' failure to
25 reimburse all necessary business expenses, Defendants' uniform policy of failing to provide
26 compliant meal and rest periods or adequate compensation in lieu thereof, and Defendants' resulting
27 failure to provide accurate itemized wage statements, and to pay for all wages due upon separation
28 of employment. As such, the common questions predominate over individual questions concerning

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

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

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

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

26 44. Moreover, requiring each member of the Classes to pursue an individual remedy would
27 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
28 against their former and/or current employer for real and justifiable fear of retaliation and permanent

1 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
2 the individual class members, even if possible, would create a substantial risk of inconsistent or
3 varying verdicts or adjudications with respect to the individual class members against Defendants
4 herein; and which would establish potentially incompatible standards of conduct for Defendants;
5 and/or legal determinations with respect to individual class members which would, as a practical
6 matter, be dispositive of the interest of the other class members not parties to adjudications or which
7 would substantially impair or impede the ability of the class members to protect their interests.
8 Further, the claims of the individual members of the class are not sufficiently large to warrant
9 vigorous individual prosecution considering all of the concomitant costs and expenses attending
10 thereto. As such, the Classes identified in Paragraph 37 are maintainable as Classes under § 382 of
11 the Code of Civil Procedure.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY ALL OVERTIME WAGES**

14 **(AGAINST ALL DEFENDANTS)**

15 45. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

16 46. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and
17 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
18 worked and provide a private right of action for the failure to pay all overtime compensation for
19 overtime work performed.

20 47. At all times relevant herein, Defendants were required to properly pay Plaintiffs and
21 members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code
22 § 1194 and the applicable Wage Orders.

23 48. Section 3 of the applicable Wage Order requires an employer to pay an employee “one
24 and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per
25 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
26 employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve
27 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
28 the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate

1 Plaintiff or members of the Classes at one and one-half times their regular rate of pay for such hours.

2 49. Defendants failed to conform their pay practices to the requirements of the law. This
3 unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of
4 failing to include all forms of compensation, including but not limited to shift differentials and non-
5 discretionary bonuses, into the calculation of the "regular rate of pay," which resulted in Plaintiffs
6 and the Overtime Subclass not being paid all overtime wages owed.

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

12 **SECOND CAUSE OF ACTION**

13 **MEAL PERIOD VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

15 51. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

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

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

24 **THIRD CAUSE OF ACTION**

25 **REST PERIOD VIOLATIONS**

26 **(AGAINST ALL DEFENDANTS)**

27 54. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

1 55. 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 56. Due to their unlawful rest period policy and practices, Defendants did not authorize
5 and permit Plaintiffs and members of the Class to take any rest periods to which they were legally
6 entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay at the
7 "regular rate of pay" to Plaintiffs and members of the Class at their respective regular rates of pay for
8 each violation, in accordance with California Labor Code § 226.7.

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

13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
15 **(AGAINST ALL DEFENDANTS)**

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

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

18 “(a) An employer, semimonthly or at the time of each payment of wages,
19 shall furnish to his or her employee, either as a detachable part of the check,
20 draft, or voucher paying the employee's wages, or separately if wages are
21 paid by personal check or cash, an accurate itemized statement in writing
22 showing (1) gross wages earned, (2) total hours worked by the employee,
23 except as provided in subdivision (j), (3) the number of piece-rate units
24 earned and any applicable piece rate if the employee is paid on a piece-rate
25 basis, (4) all deductions, provided that all deductions made on written orders
26 of the employee may be aggregated and shown as one item, (5) net wages
27 earned, (6) the inclusive dates of the period for which the employee is paid,
28 (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 (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. . .”

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

61. As a result of Defendants failure to pay Plaintiff and the Wage Statement Subclass for all overtime wages, and missed meal and rest period premiums at the appropriate legal rate, Defendants failed to include required information on Plaintiffs 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).

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

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

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

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

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

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

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

1 *Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that when employees must use
2 their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to
3 reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited
4 minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”); *Aguilar v.*
5 *Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. 2014) (granting Plaintiff’s motion for partial summary
6 judgment on Plaintiff’s cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014
7 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement claim and
8 adopting the logic of Cochran).

9 67. At all relevant times, by failing to reimburse Plaintiffs and the Class for all necessary
10 business expenditures, including a reasonable portion of non-exempt employees’ cell phone bills,
11 Defendants have failed to comply with Labor Code Section 2802 and the applicable Wage Orders.

12 **SIXTH CAUSE OF ACTION**

13 **WAITING TIME PENALTIES**

14 **(AGAINST ALL DEFENDANTS)**

15 68. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

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

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

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

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

28 73. As a result, Defendants are liable to Plaintiffs and the Waiting Time Subclass for

1 waiting time penalties amounting to thirty (30) days wages for Plaintiffs and the Waiting Time
2 Subclass pursuant to Labor Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of
3 wages due upon termination entitles an employee to recover waiting time penalties).

4 **SEVENTH CAUSE OF ACTION**

5 **UNFAIR COMPETITION**

6 **(AGAINST ALL DEFENDANTS)**

7 74. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

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

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

19 77. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct alleged
20 herein, Plaintiffs for themselves and on behalf of the members of the Classes, seek full restitution of
21 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
22 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

23 78. The acts complained of herein occurred within the last four years immediately
24 preceding the filing of the Complaint in this action.

25 79. Plaintiffs were compelled to retain the services of counsel to file this court action to
26 protect their interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
27 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
28 public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs,

1 which she is entitled to recover under Code of Civil Procedure § 1021.5.

2 **NINTH CAUSE OF ACTION**

3 **PRIVATE ATTORNEYS GENERAL ACT**

4 **(Labor Code § 2698 et seq.)**

5 **(AGAINST ALL DEFENDANTS)**

6 80. Plaintiffs re-alleges and incorporates by reference all previous paragraphs.

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

15 a. Failing to pay Plaintiffs and other non-exempt employees for all overtime wages
16 in violation of Labor Code §§ 204, 510, 1194, 1197, 1198, and 1182.12;

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

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

23 d. Failing to reimburse Plaintiff and other non-exempt employees for all necessary
24 business expenditures in violation of Labor Code § 2802;

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

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

82. On or about January 20, 2022, Plaintiffs notified Enovix Corporation and Legendary Staffing, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website of Defendants’ violations of the California Labor Code § 2698 *et seq.*, with respect to violations of the California Labor Code identified in Paragraph 81 (a)-(f). Now that sixty-five days have passed from Plaintiffs notifying Defendants and the LWDA of these violations, Plaintiffs will have exhausted their administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

83. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests and the interests of other non-exempt employees, and to assess and collect the civil penalties owed by Defendants. Plaintiffs have hereby incurred attorneys' fees and costs, which they are entitled to receive under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiffs as representative of the Classes;
3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
7. Upon the Fourth Cause of Action, penalties pursuant to Labor Code § 226(a), and reasonable costs and attorneys' fees;
8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 2208, and reasonable costs and attorneys' fees;

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

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

6 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiffs, other non-
7 exempt aggrieved employees, and the State of California according to proof pursuant to Labor Code
8 § 2699 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
9 subsequent violation per employee per pay period for those violations of the Labor Code for which
10 no civil penalty is specifically provided under the Labor Code.

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

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

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

16 Dated: July 11, 2022

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

17
18
19 By: _____

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

Attorneys for Plaintiffs and the Putative Classes

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 July 11, 2022, I served the following document(s) described as **FIRST AMENDED**
6 **CLASS ACTION AND PAGA COMPLAINT** on the interested parties in this action by placing
true copies thereof enclosed in sealed envelopes addressed as follows:

7 Mollie M. Burks, Esq.
8 mburks@grsm.com
9 Emily G. Genge, Esq.
egenge@grsm.com
10 GORDON REES SCULLY
MANSUKHANI, LLP
275 Battery Street, Suite 2000
11 San Francisco, California 94111

12 **Counsel for defendant Enovix
Corporation**

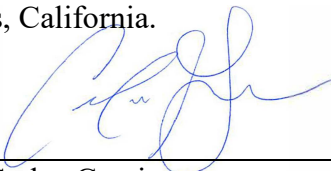
Eric M Welch, Esq.
eric@baronhr.com
BARONHR, LLC
8101 E. Kaiser Boulevard, Suite 110
Anaheim, California 92808

**Counsel for defendant Legendary Staffing,
Inc.**

13 **BY ELECTRONIC MAIL:** Based on a Court order or an agreement by the parties to accept
14 service by e-mail or electronic transmission, I caused such the document(s) described above to be
15 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.

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

17 Executed on July 11, 2022, at Los Angeles, California.

18 
19 _____
20 Carlos Garcia