

FILED/ENDORSED
Clerk of the Superior Court

JUL 18 2022

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DEPUTY CLERK

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SOLANO

DELORIS MCGRUFF, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

CALSON MANAGEMENT, LLC a California
Limited Liability Company; THE LODGE AT
GLEN COVE, and DOES 1-50, inclusive.

Defendants.

CASE NO.: FCS057790

*[Assigned for all purposes to the Hon. E.
Bradley Nelson]*

**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) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES;
- (6) WAGE STATEMENT VIOLATIONS;
- (7) WAITING TIME PENALTIES; and
- (8) UNFAIR COMPETITION
- (9) PAGA PENALTIES

DEMAND FOR JURY TRIAL

Action Filed: February 7, 2022
Trial Date: No Trial Set

1
2 Plaintiff Deloris McGriff (“Plaintiff”) on behalf of herself, the State of California, and all
3 other similarly situated non-exempt employees, alleges and complains of defendant Calson
4 Management, LLC, defendant The Lodge at Glen Cove, and DOES 1 to 50 (collectively,
5 “Defendants”) and each of them, as follows:

6 **INTRODUCTION**

7 1. Defendant The Lodge at Glen Cove is a 140-unit assisted and senior living community
8 in Vallejo, California. Plaintiff brings this class and PAGA representative action against Defendants
9 for alleged violations of the California Labor Code and Business and Professions Code.

10 2. Defendant Calson Management, LLC operates at least eight senior living and assisted
11 living communities across California. Plaintiff brings this class action against Defendants for alleged
12 violations of the California Labor Code and Business and Professions Code.

13 3. As set forth below, Plaintiff alleges that Defendants have had a uniform payroll
14 practice/policy that unlawfully and unfairly rounds Plaintiff and other non-exempt employees’ time
15 entries. As a result, Plaintiff and other non-exempt employees were not paid for all hours worked,
16 including all minimum and overtime wages. Plaintiff further alleges that Defendants failed to include
17 all forms of compensation/renumeration, when calculating the regular rate of pay used in overtime
18 calculations, resulting in a failure to pay all overtime wages. Plaintiff further alleges that Defendants’
19 meal and rest period policies and practices failed to provide her and all other similarly situated
20 employees with compliant/timely meal and rest periods, or premium wages at the appropriate “regular
21 rate of pay.” As a result, Plaintiff alleges that Defendants failed to provide non-exempt employees
22 with accurate written itemized wage statements and failed to timely pay all final wages upon
23 separation of employment. Last, Plaintiff alleges that Defendants failed to reimbursement non-
24 exempt employees for all necessary business expenses, including but not limited to a reasonable
25 percentage of their monthly cellular phone bills, Covid-19 testing, and other related business
26 expenses. Based on these alleged Labor Code violations, Plaintiff now brings this class and PAGA
27 representative action to recover unpaid wages, restitution, penalties, and other related relief on behalf
28 of herself and all others similarly situated.

1 **JURISDICTION AND VENUE**

2 4. Plaintiff, on behalf of herself and all other similarly situated non-exempt employees
3 hereby brings this class action for recovery of unpaid wages and penalties under California Labor
4 Code §§ 201-203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 516, 1194, 1197.1, 1199,
5 2802-2804, 2698, *et seq.*, and all applicable Industrial Welfare Commission Wage Orders (“Wage
6 Orders”), in addition to seeking declaratory relief and restitution pursuant to California Business and
7 Professions Code § 17200, *et. seq.* This class action is brought pursuant to California Code of Civil
8 Procedure § 382.

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

12 6. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
13 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the City of
14 Vallejo, County of Solano. Defendants own, maintain offices, transact business, have an agent or
15 agents within the County of Solano, and/or otherwise are found within the County of Solano, and
16 Defendants are within the jurisdiction of this Court for purposes of service of process.

17 **PARTIES**

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

21 8. Plaintiff is informed and believes and thereon alleges that defendant The Lodge at Glen
22 Cove is a company authorized to and doing business in Vallejo, California, and is and/or was the
23 legal employer of Plaintiff and the Class Members during the applicable statutory periods. Plaintiff
24 was, and is, a victim of Defendants’ policies and/or practices complained of herein and has been
25 deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204, 210, 226, 226a,
26 226(e), 226.3, 226.7, 510, 512, 1194, 1197.1, 1199, 2800 *et seq.*, and California Business and
27 Professions Code § 17200 *et seq.*, and all applicable Wage Orders.

1 9. Plaintiff is informed and believes and thereon alleges that defendant Calson
2 Management, LLC, is a California limited liability company authorized to and doing business in
3 Vallejo, California, and is and/or was the legal employer of Plaintiff and the Class Members during
4 the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices
5 complained of herein and has been deprived of the rights guaranteed to her by California Labor Code
6 §§ 201-203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 1194, 1197.1, 1199, 2800 *et seq.*,
7 and California Business and Professions Code § 17200 *et seq.*, and all applicable Wage Orders

8 10. Plaintiff is informed and believes, and based thereon alleges, that during the four years
9 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
10 do) business in the State of California, County of Solano. Defendants operate a senior living facility
11 at 140 Glen Cove Marina Road, in Vallejo, California, as well at least eight other facilities throughout
12 California.

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

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

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

6 **COMMON FACTUAL ALLEGATIONS**

7 14. Defendants are providers of senior living and assisted living facilities, providing
8 various home health services in their locations across California. Defendants employed Plaintiff as a
9 non-exempt medical technician during the relevant time period. Plaintiff and other non-exempt
10 employees, including, but not limited to, medical technicians, caregivers, administrators, and other
11 non-exempt positions, were responsible for all aspects of Defendants' services throughout California.

12 15. At all relevant times, Plaintiff and other non-exempt employees regularly worked
13 various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek.
14 Plaintiff alleges that she and other non-exempt employees were also subjected to the same policies,
15 procedures, and practices, working conditions, and corresponding wage and hour violations to which
16 Plaintiff was subjected during her employment with Defendants.

17 16. First, at all relevant times, Defendants have had a consistent policy of unfairly rounding
18 Plaintiff and other non-exempt employees' time entries to the nearest quarter hour. As a result of this
19 practice, Plaintiff and other non-exempt employees are not compensated for all regular and overtime
20 hours they work in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable
21 Wage Orders.

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

27 18. Here, Defendants' rounding time policy is not neutral on its face as Plaintiff and other
28 non-exempt employees are subject to discipline, including termination for being tardy in reporting to

1 work, or returning from a meal or rest period. Moreover, because Defendants can track the time
2 worked by non-exempt employees to the minute, the policy itself exists not for the convenience or
3 benefit of the non-exempt employees who are trying to report their time on timecards or otherwise,
4 but for Defendants' benefit. As a result, the policy is not neutral on its face, and over a period of time,
5 Plaintiff and other non-exempt employees were not properly paid for all hours worked in violation of
6 Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

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

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

20 21. Here, although Defendants consistently paid non-exempt employees non-discretionary
21 bonuses and other renumeration, Defendants omitted these payments when calculating the regular
22 rate of pay used in overtime calculations and when paying overtime to non-exempt employees.

23 22. Labor Code § 510 requires an employer to compensate an employee who works more
24 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
25 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
26 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
27 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
28 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the

1 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
2 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
3 (11/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

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

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

15 25. As set forth above, Defendants failed to compensate Plaintiff and other non-exempt for
16 all overtime wages at the proper overtime rates and also by failing to include all forms of
17 compensation/renumeration, when calculating the regular rate of pay used in overtime calculations.
18 As a result of this practice, aggrieved employees are not compensated at the appropriate premium
19 overtime rate for all overtime hours that they work in violation of Labor Code §§ 204, 210, 510, 1194,
20 1197.1, 1199, and applicable Wage Orders.

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

25 27. Moreover, at all relevant times, Plaintiff and other non-exempt employees were denied
26 compliant and timely 30-minute off-duty meal periods as mandated by California law. First, as a
27 result of Defendants' uniform meal period and staffing policies/practices, Plaintiff and other non-
28 exempt employees were often unable to take uninterrupted 30-minute first meal periods before the

1 end of the fifth hour of work. On other occasions, non-exempt employees' meal periods were cut
2 short or interrupted due to staffing shortages and work demands. Further, when Plaintiff and other
3 non-exempt employees worked in excess of 10.0 hours in a shift, which was a regular occurrence,
4 they were not allowed and permitted to take all mandated and timely second meal period before the
5 end of the tenth hour of work in violation of the Labor Code and applicable Wage Orders.

6 28. Each time Plaintiff and other non-exempt employees were not provided a legally
7 compliant meal period, Defendants also failed to provide meal period premiums for missed or non-
8 compliant meal periods at the "regular rate of pay" in accordance with Labor Code § 226.7 and *Ferra*
9 *v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 ("*Ferra*").

10 29. Accordingly, due to Defendants' uniform policies and/or practices, Plaintiff and other
11 non-exempt employees were also regularly denied legally compliant meal periods in violation of
12 Labor Code 226.7, 510, 516, and applicable IWC Wage Orders.

13 30. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were also
14 not provided with 10 minutes of net rest period time for every 4 hours worked, or major fraction
15 thereof due to Defendants' persistent understaffing and work demands. Indeed, Defendants did not
16 ensure that Plaintiff and other non-exempt employees took their rest periods at all. As a result,
17 Plaintiff and other non-exempt employees were and are routinely unable to take 10-minute duty free
18 rest periods for every major fraction of four hours worked. This includes a second rest period for
19 shifts in excess of six hours, and a third rest period for shifts in excess of 10 hours in a workday.

20 31. Each time Plaintiff and other non-exempt employees were unable to take compliant
21 rest periods, Defendants failed and continues to fail to adequately pay rest period premium payments
22 at the "regular rate of pay" as required by Labor Code § 226.7 and *Ferra*.

23 32. Accordingly, due to Defendants' uniform rest period and staffing policies/practices,
24 Plaintiff and other non-exempt employees were also regularly denied legally compliant rest breaks in
25 violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

26 33. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees for
27 all minimum and overtime wages, and failure to pay for meal and rest period premiums at the "regular
28 rate of pay," Defendants issued wage statements which failed and continue to fail to accurately

1 identify the gross wages earned, the total hours worked, the net wages earned, and the correct
2 corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2,
3 5, and 9). In addition, the wage statements issued to Plaintiff fails to state the name and address of
4 the legal entity that is the employer in violation of Labor Code § 226(a)(8). Indeed, the wage
5 statements fail to state the name of the legal entity that is the employer, which is “Calson
6 Management, LLC.”

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

12 35. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
13 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of
14 Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiff and other non-
15 exempt employees are in violation of Labor Code § 226 (a). Consequently, because Defendants failed
16 to comply with Labor Code § 226(a) and applicable Wage Orders, Plaintiff and other non-exempt
17 employees would be entitled to recover penalties under Labor Code §§ 226(e).

18 36. Moreover, because of, Defendants’ failure to pay all minimum and overtime wages,
19 and meal and rest period premiums at the “regular rate of pay”, Defendants also failed and continues
20 to fail to pay Plaintiff and other non-exempt employees all wages owed at their time of separation
21 from employment in violation of Labor Code §§ 201-203 and applicable Wage Orders. Thus, non-
22 exempt employees would be entitled to recover penalties under Labor Code §§ 201-203, and 256.

23 37. Finally, at all relevant times, Defendants required Plaintiff and other non-exempt
24 employees to incur necessary business expenses including but not limited to, costs associated with
25 personal cell phones for work related purposes, Covid-19 testing, and other business expenses but did
26 not reimburse non-exempt employees for these necessary expenditures. See *Cochran v. Schwan’s*
27 *Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144 “[i]f an employee is required to make work-
28 related calls on a personal cell phone, then he or she is incurring an expense for the purposes of

1 section 2802. It does not matter whether the phone bill is paid for by a third person, or at all...it is
2 irrelevant whether the employee changed plans to accommodate work-related cell phone usage...To
3 show liability under section 2802, an employee need only show that he or she was required to use a
4 personal cell phone to make work-related calls, and he or she was not reimbursed”].Defendants’
5 uniform failure to reimburse Plaintiff and other non-exempt employees for their on-going business
6 expenses incurred in their discharge of their duties continues through the present day. Indeed,
7 adequate reimbursement is absent from Plaintiff’s wage statements during her employment.

8 CLASS ACTION ALLEGATIONS

9 38. Plaintiff brings this action on behalf of herself and the following Classes pursuant to
10 § 382 of the Code of Civil Procedure:

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

13 All non-exempt employees who worked for Defendants in California and
14 who worked overtime hours during at least one shift, during the four years
15 immediately preceding the filing of the Complaint through the date of trial.
16 (“Overtime Subclass”);

17 All non-exempt employees who work or worked for Defendants in
18 California, and during the one year immediately preceding the filing of the
19 Complaint through the date of trial. (“Wage Statement Subclass”);

20 All employees who work or worked for Defendants in California, and who
21 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”)

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

27 40. **Common Questions of Law and Fact Predominate/Well Defined Community of**
28 **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 timekeeping policies/practices resulted in a failure to pay for all hours worked to the members of the Classes;

2. Whether Defendants' failure to pay all overtime wages at the correct regular rate including all forms of compensation/remuneration resulted in a failure to pay all overtime wages to members of the Overtime Subclass;

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

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

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

6. Whether Defendants failed to reimburse all necessary business expenses to members of the Classes.

41. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policy and/or practice of rounding time entries resulted in a failure to pay minimum and overtime wages for all hours worked, Defendants' failure to pay all overtime wages at the correct regular rate, Defendants' uniform policy of failing to provide compliant meal and rest periods or adequate compensation in lieu thereof, Defendants' failure to reimburse all necessary business expenses, and Defendants' resulting failure to provide accurate itemized wage statements and to pay for all wages due upon separation of employment. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

42. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)

1 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
2 Plaintiff, like the members of the Classes was deprived of minimum and overtime wages, was
3 subjected to Defendants' uniform rounding policy, was deprived of meal and rest period premium
4 wages at the "regular rate of pay," was subject to Defendants' uniform meal and rest period
5 policies/practices, was not reimbursed for necessary business expenses, was not provided accurate
6 itemized wage statements, and was not paid all wages owed at the time of his separation of
7 employment.

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

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

24 45. Moreover, requiring each member of the Classes to pursue an individual remedy would
25 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
26 against their former and/or current employer for real and justifiable fear of retaliation and permanent
27 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
28 the individual class members, even if possible, would create a substantial risk of inconsistent or

1 varying verdicts or adjudications with respect to the individual class members against Defendants
2 herein; and which would establish potentially incompatible standards of conduct for Defendants;
3 and/or legal determinations with respect to individual class members which would, as a practical
4 matter, be dispositive of the interest of the other class members not parties to adjudications or which
5 would substantially impair or impede the ability of the class members to protect their interests.
6 Further, the claims of the individual members of the class are not sufficiently large to warrant
7 vigorous individual prosecution considering all of the concomitant costs and expenses attending
8 thereto. As such, the Classes identified in Paragraph 38 are maintainable as Classes under § 382 of
9 the Code of Civil Procedure.

10 **FIRST CAUSE OF ACTION**
11 **MINIMUM WAGE VIOLATIONS**
12 **(AGAINST ALL DEFENDANTS)**

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

14 47. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
15 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts
16 set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
17 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
18 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to
19 the unpaid wages and interest accrued thereon.

20 48. At all relevant times herein, Defendants failed to conform their pay practices to the
21 requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform
22 and unlawful practice of rounding non-exempt employees' time entries, which resulted in a failure to
23 pay for all hours worked. Accordingly, Plaintiff and members of the Classes were not compensated
24 for all hours worked including, but not limited to, all hours they were subject to the control of
25 Defendants and/or suffered or permitted to work under the California Labor Code and applicable
26 Wage Orders.

27 49. Labor Code § 1198 makes unlawful the employment of an employee under conditions
28 that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer

1 who has failed to pay its employees the legal minimum wage is liable to pay those employees the
2 unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
3 due and interest thereon.

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

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

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY ALL OVERTIME WAGES**

16 **(AGAINST ALL DEFENDANTS)**

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

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

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

25 55. Section 3 of the applicable Wage Order requires an employer to pay an employee "one
26 and one-half (1 1/2) times the employee's regular rate of pay" for work in excess of 8 hours per
27 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
28 employer to pay an employee double the employee's regular rate of pay for work in excess of twelve

1 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
2 the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate
3 Plaintiff or members of the Classes at one and one-half times their regular rate of pay for such hours.

4 56. Defendants failed to conform their pay practices to the requirements of the law. This
5 unlawful conduct includes, but is not limited to (1) Defendants' uniform and unlawful policy/practice
6 of rounding time entries to the nearest 15-minute interval and (2) failure to pay all overtime wages at
7 the correct regular rate, including all forms of compensation/remuneration, which resulted in Plaintiff
8 and the Classes not being paid all overtime wages owed.

9 57. The foregoing policies and practices are unlawful and create entitlement to recovery
10 by Plaintiff and the members of the Classes in a civil action for the unpaid amount of overtime wages,
11 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
12 Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure §
13 1021.5.

14 **THIRD CAUSE OF ACTION**

15 **MEAL PERIOD VIOLATIONS**

16 **(AGAINST ALL DEFENDANTS)**

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

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

23 60. As a result, Defendants are responsible for paying premium compensation for meal
24 period violations at the "regular rate of pay," including interest thereon, statutory penalties, and costs
25 of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b)
26 and 3289.

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1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

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

8 63. Due to their unlawful rest period policy and practices, Defendants did not authorize
9 and permit Plaintiff and members of the Classes to take all rest periods to which they were legally
10 entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay at the
11 "regular rate of pay" to Plaintiff and members of the Classes for each violation, in accordance with
12 California Labor Code § 226.7.

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

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO REIMBURSE FOR BUSINESS EXPENDITURES**

19 **(AGAINST ALL DEFENDANTS)**

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

21 66. Labor Code 2208(a) states in pertinent part the following: "(a) An employer shall
22 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
23 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions
24 of the employer, even though unlawful, unless the employee, at the time of obeying the directions,
25 believed them to be unlawful."

26 67. As set forth above, Plaintiff and members of the Classes must be compensated for a
27 reasonable portion of their monthly personal cell phone bills and expenses necessarily incurred in
28 their discharge of their duties, as required by *Cochran v. Schwan's Home Service, Inc.* (2014) 228

1 Cal.App.4th 1137 (“We hold that when employees must use their personal cell phones for work-
2 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
3 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement
4 owed is a reasonable percentage of their cell phone bills.”) (reversing denial of class certification in
5 cell phone reimbursement class action and setting forth the applicable law for these claims); *Aguilar*
6 *v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. 2014) (granting Plaintiff’s motion for partial
7 summary judgment on the Mr. Toys’ cell phone reimbursement claim); *Ritchie v. Blue Shield of*
8 *California*, 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement
9 claim and adopting the logic of Cochran). Further, Defendants also failed to reimburse Plaintiff and
10 the members of the Classes for the cost of their required Covid-19 testing pursuant to their written
11 policy and various other business expenses.

12 68. Defendants have intentionally and willfully failed to reimburse Plaintiff and the
13 Class Members for all necessary business-related expenses and costs. Plaintiff and the Class
14 Members are entitled to recover from Defendants their business-related expenses and costs incurred
15 during the course and scope of their employment, plus interest accrued from the date on which the
16 employee incurred the necessary expenditures at the same rate as judgments in civil actions in the
17 State of California as well as penalties, reasonable attorneys’ fees and costs of suit.

18 **SIXTH CAUSE OF ACTION**

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

20 **(AGAINST ALL DEFENDANTS)**

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

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

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

1 of the employee may be aggregated and shown as one item, (5) net wages
2 earned, (6) the inclusive dates of the period for which the employee is paid,
3 (7) the name of the employee and only the last four digits of his or her social
4 security number or an employee identification number other than a social
5 security number, (8) the name and address of the legal entity that is the
6 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. . .”

7 71. As set forth above, during the Class Period, Defendants issued and continues to issue
8 wage statements to its employees including Plaintiff and members of the Classes, which are
9 inadequate under Labor Code Section 226(a).

10 72. As a result of Defendants failure to pay Plaintiff and the Classes for all regular and
11 overtime wages, and missed meal and rest period premiums at the “regular rate of pay,” Defendants
12 failed to include required information on Plaintiff and the Classes’ wage statements, including, but
13 not limited to, the gross wages earned, the net wages earned in violation of Labor Code § 226(a).

14 73. In addition, the wage statements issued to Plaintiff fails to state the name and address
15 of the legal entity that is the employer in violation of Labor Code § 226(a)(8). Indeed, the wage
16 statements fail to state the name of the legal entity that is the employer, which is “Calson
17 Management, LLC.”

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

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

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1 **SEVENTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

21 **EIGHTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(AGAINST ALL DEFENDANTS)**

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

25 83. Defendants have engaged and continue to engage in unfair and/or unlawful business
26 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
27 failing to pay for all hours worked, failing to pay overtime at the correct regular rate, failing to
28 reimburse all necessary business expenses, by failing to provide all legally required meal and rest

1 periods or pay premium payments at the regular rate of pay in lieu thereof, by failing to provide
2 accurate wage statements, and by failing to pay all earned wages at the time of separation from
3 employment.

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

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

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

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

20 **NINTH CAUSE OF ACTION**

21 **PRIVATE ATTORNEYS GENERAL ACT**

22 **(Labor Code § 2698 et seq.)**

23 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

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

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

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

20 90. On or about February 7, 2022, Plaintiff notified Calson Management, LLC, and The
21 Lodge at Glen Cove via certified mail, and the California Labor and Workforce Development Agency
22 (“LWDA”) via its website of Defendant’s violations of the California Labor Code § 2698 et seq.,
23 with respect to violations of the California Labor Code identified in Paragraph 89 (a)-(f). Now that
24 sixty-five days have passed from Plaintiff notifying Defendant and the LWDA of these violations,
25 Plaintiff will have exhausted her administrative requirements for bringing a claim under the Private
26 Attorneys General Act with respect to these violations.

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

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

3 **PRAYER FOR RELIEF**

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

- 6 1. For an order certifying the proposed Classes;
- 7 2. For an order appointing Plaintiff as representative of the Classes;
- 8 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 9 4. Upon the First Cause of Action, for compensatory, consequential, general and special
10 damages according to proof pursuant to Labor Code §§ 204, 210, 510, and 1194;
- 11 5. Upon the Second Cause of Action, for compensatory, consequential, general and
12 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 13 6. Upon the Third Cause of Action, for compensatory, consequential, general and special
14 damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 15 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
16 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 17 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 2208, and
18 reasonable costs and attorneys' fees;
- 19 9. Upon the Sixth Cause of Action, penalties pursuant to Labor Code § 226(a), and
20 reasonable costs and attorneys' fees;
- 21 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to
22 Labor Code §§ 201-203.
- 23 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
24 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
25 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
- 26 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other non-exempt
27 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
28 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each

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

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

5 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
6 218.5, 226, 1194, and Code of Civil Procedure § 1021.5; and

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

8
9 Dated: June 7, 2022

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

10
11
12 By: _____

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

Attorneys for Plaintiff and the Putative Classes

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 July 18, 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:

FALAKASSA LAW, P.C.

Joshua S. Falakassa, Esq.
josh@falakassalaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067

***Co-Counsel for Plaintiff and the Putative
Classes***

**KAUFMAN DOLOWICH &
VOLUCK LLP**

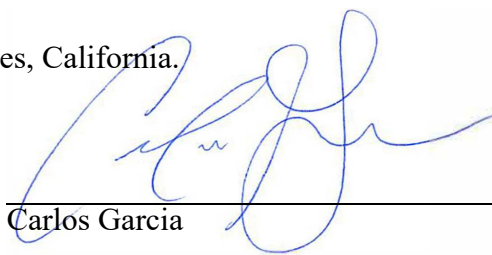
Arthur Gaus, Esq.
jbramwell@kdvlaw.com
Julianna Bramwell, Esq.
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425 California Street, Suite 2100
San Francisco, California 94104

Counsel for Defendants

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 July 18, 2022, at Los Angeles, California.



Carlos Garcia