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

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

Plaintiff,

v.

SCOSCHE INDUSTRIES, INC., a California
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.:56-2022-00564014-CU-OW-VTA

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

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

DEMAND FOR JURY TRIAL

1 Plaintiff Joshua Gonzalez (erroneously named in caption as “Gonzales”) (“Plaintiff”) on
2 behalf of himself, and all other similarly situated non-exempt employees, alleges and complains of
3 defendant Scosche Industries, Inc., and DOES 1 to 50 (collectively, “Defendants”) and each of them,
4 as follows:

5 **INTRODUCTION**

6 1. Defendant Scosche Industries, Inc., is a manufacturer and distributor of car phone
7 mounts, cell phone peripherals, heart rate monitors, and other products based in California. Plaintiff
8 brings this class action against Defendants for alleged violations of the California Labor Code and
9 Business and Professions Code.

10 2. As set forth below, Plaintiff alleges that Defendants failed to pay for all hours worked
11 as a result of Defendants required off-the-clock Covid-19 temperature screening. Plaintiff further
12 alleges that Defendants failed to pay all overtime compensation due to its uniform failure to properly
13 calculate the “regular rate of pay.” Similarly, Plaintiff alleges that Defendants uniformly failed to pay
14 all sick time at the legal rate, and that Defendants failed to pay all vested and unused vacation time
15 at the correct final rate. Moreover, Plaintiff alleges that Defendants’ meal and rest period policies and
16 practices did not provide him and all other similarly situated employees with all compliant/timely
17 meal and rest periods, or premium wages in lieu thereof. Plaintiff further alleges that Defendants
18 failed to reimburse all necessary business expenses, that Defendants failed to provide non-exempt
19 employees with accurate written itemized wage statements and failed to timely pay all final wages
20 upon separation of employment.

21 3. Based on these alleged Labor Code violations, Plaintiff now brings this class and
22 Private Attorneys General Act (“PAGA”) representative action to recover unpaid wages, restitution,
23 penalties, and other related relief on behalf of himself, all others similarly situated, and the state of
24 California.

25 **JURISDICTION AND VENUE**

26 4. Plaintiff, on behalf of himself and all others similarly situated employees hereby brings
27 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
28 203, 204, 210, 226, 226a, 226(e), 226.3, 226.7 227.3, 246, 510, 512, 516, 1194, 1197.1, 1199, 2802-

1 2804, 2698, *et seq.*, amongst others, and applicable Industrial Welfare Commission Wage Orders
2 (“Wage Orders”), in addition to seeking declaratory relief and restitution pursuant to California
3 Business and Professions Code § 17200, *et. seq.* This class action is brought pursuant to California
4 Code of Civil Procedure § 382.

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

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

12 **PARTIES**

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

16 8. Plaintiff is informed and believes and thereon alleges that Defendant Scosche
17 Industries, Inc. is a California corporation authorized to and doing business in Oxnard, California,
18 and is and/or was the legal employer of Plaintiff and the Class Members during the applicable
19 statutory periods. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained
20 of herein and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-
21 203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1197.1, 1199, 2802-
22 2804, 2698, *et seq.*, amongst others, and the California Business and Professions Code § 17200, *et*
23 *seq.*, and applicable Wage Orders.

24 9. Plaintiff is informed and believes, and based thereon alleges, that during the four years
25 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
26 do) business in the State of California, County of Ventura. Defendants’ principal place of business is
27 1550 Pacific Avenue, in Oxnard California.

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

13. Defendants are a manufacturer and distributor of car phone mounts, cell phone peripherals, heart rate monitors, and other products based in California. Plaintiff was employed by Defendants as a non-exempt employee out of their Oxnard, California location. Plaintiff worked as an “Inventory Control Lead” from approximately July 2021 until January 18, 2022. Plaintiff and other non-exempt employees (including, but not limited to inventory control associates, warehouse associates, and other non-exempt positions) were responsible for all aspects of Defendants’ business

1 in California.

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

7 15. First, at all relevant times, Defendants have had a uniform practice of requiring Plaintiff
8 and other non-exempt employees to undergo mandatory temperature screening in light of the COVID-
9 19 pandemic. Plaintiff and other non-exempt employees were required to spend several minutes off-
10 the-clock before each shift to undergo a temperature screening and then clock in to begin work. As a
11 result of Defendants' uniform temperature screening and clock-in procedures/practices, Plaintiff and
12 other non-exempt employees were not fully compensated for all hours they were subject to the control
13 of Defendants. Therefore, Defendants systematically failed to pay Plaintiff and other non-exempt
14 employees for all hours worked and minimum and overtime wages due. Defendants have no valid
15 defense to this claim given the California Supreme Court's recent unanimous decision in *Frlekin v.*
16 *Apple, Inc.* (2020) 8 Cal.5th 1038, which held that employees "must be paid" during security checks
17 since "it is clear that [employees] are subject to [the employer's] control while awaiting, and during,
18 [the] exit searches."

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

26 17. As set forth above, Defendants failed to compensate Plaintiff and other non-exempt
27 employees for all hours worked as a result of its COVID-19 screening procedures. Accordingly, to
28 the extent permitted by law, Plaintiff and other non-exempt employees are entitled to recover unpaid

1 wages and liquidated damages for violations of Labor Code § 1197.1. Based upon these same factual
2 allegations, Plaintiff and the other non-exempt employees are also entitled to penalties under Labor
3 Code § 1199.

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

11 19. 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 20. 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 21. By their policy of requiring Plaintiff and the other non-exempt employees to work in
2 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
3 them at the rate of one-half (11/2) their regular rate of pay, and twice the regular rate for shifts more
4 than twelve (12) hours, Defendants willfully violated the provisions of Labor Code § 510 and the
5 applicable Wage Orders.

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

10 23. Moreover, pursuant to Labor Code § § 246(a),(b), “[a]n employee who, on or after July
11 1, 2015, works in California for the same employer for 30 or more days within a year from the
12 commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour
13 per every 30 hours worked, beginning at the commencement of employment.” In addition, Labor
14 Code § 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the
15 same manner as the regular rate of pay for the workweek in which the employee uses paid sick time,
16 whether or not the employee actually works overtime in that workweek.” Additionally, Labor Code
17 § 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total wages,
18 not including overtime premium pay, by the employee’s total hours worked in the full pay periods of
19 the prior 90 days of employment.” Finally, Labor Code §246(i) requires employers to “provide an
20 employee with written notice that sets forth the amount of paid sick leave available, or paid time off
21 leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage
22 statement described in Section 226 or in a separate writing provided on the designated pay date with
23 the employee’s payment of wages.”

24 24. Here, at all relevant times, Defendants failed in their obligation to provide Plaintiff and
25 other non-exempt employees the legally required paid sick days at the legal rate pursuant to Labor
26 Code §§ 246(a),(b). Indeed, Plaintiff’s wage statements show that he was paid at seemingly arbitrary
27 rates, and not at the “regular rate of pay,” as required by Labor Code § 246. Plaintiff’s January 7 wage
28 statement indicates Plaintiff was paid at his base rate of \$24.00 an hour for “Regular” pay, but on his

1 January 21 statement, he was paid only \$18 for “Sick” time. As such, Defendants paid sick time
2 below his base rate of pay, rather than the “regular rate of pay” as required by Labor Code §§ 246(l)(1-
3 2).

4 25. Moreover, Labor Code section 227.3 provides that whenever a contract of employment
5 or employer policy provides for paid vacations, and an employee is separated without having used
6 his or her vested vacation time, all vested vacation shall be paid as wages at their final rate in
7 accordance with such contract of employment or employer policy respecting eligibility or time. At
8 all relevant times, Defendants maintained such a paid vacation policy, yet Defendants uniformly
9 failed to pay all vested and unused vacation time to Plaintiff and the non-exempt employees at their
10 respective final rates of pay at their time of separation. In fact, Plaintiff was paid his vested and
11 unused vacation time at below his rate of pay of \$24 an hour. As such, Defendants have violated
12 Labor Code § 227.3.

13 26. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were
14 denied compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
15 Defendants’ uniform meal period policies/practices and work demands, Plaintiff and other non-
16 exempt employees were often unable to take uninterrupted 30-minute first meal periods before the
17 end of the fifth hour of work. Further, when Plaintiff and other non-exempt employees worked in
18 excess of 10.0 hours in a shift, they were not allowed and permitted to take a mandated second meal
19 period before the end of the tenth hour of work in violation of the Labor Code and applicable Wage
20 Orders. Additionally, Plaintiff and other non-exempt employees were not properly paid all meal
21 period premiums for missed or non-compliant meal periods at the “regular rate of pay” pursuant to
22 *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858.

23 27. Each time Plaintiff and other non-exempt employees were not provided a legally
24 compliant meal period, Defendants also failed to provide meal period premiums for missed or non-
25 compliant meal periods at the “regular rate of pay” as required by Labor Code § 226.7 and *Ferra v.*
26 *Loews Hollywood Hotel, LLC* (2021) 11 5th 858 (“*Ferra*”).
27
28

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

4 29. Likewise, at all relevant times, Plaintiff and other non-exempt employees were also
5 not provided with all 10-minute rest periods for every four hours worked, or major fraction thereof
6 due to the uniform rest period policies/practices and work demands of Defendants. As a result,
7 Plaintiff and other non-exempt employees were and are routinely unable to take a net 10-minute duty
8 free rest periods for every major fraction of four hours worked. This includes a second rest period for
9 shifts in excess of six hours, and a third rest period for shifts in excess of 10 hours in a workday.

10 30. By not relieving all non-exempt employees of all duties during rest periods, Defendants
11 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
12 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all
13 duties and relinquish control over how employees spend their time.”]. In *Augustus*, the California
14 Supreme Court expressly rejected the employers’ assertion that it could provide an on-duty rest period
15 to employees who worked as security guards and further explained “that employers [must] relinquish
16 any control over how employees spend their break time and relieve their employees of all duties.” *Id.*
17 at 273.

18 31. Each time Plaintiff and other non-exempt employees were unable to take a compliant
19 rest period, Defendants failed and continues to fail to adequately pay rest period premium payments
20 at the “regular rate of pay” as required by Labor Code § 226.7. Accordingly, due to Defendants’
21 uniform rest period policies/practices, Plaintiff and other non-exempt employees were also regularly
22 denied legally compliant rest breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage
23 Orders.

24 32. As a result of Defendants’ failure to pay Plaintiff and other non-exempt employees for
25 all hours they were subject to the control of Defendants, including all minimum and overtime wages,
26 all sick time and vacation time, and failure to pay for meal and rest period premiums at the “regular
27 rate of pay”, Defendants issued wage statements which failed to accurately identify the gross wages
28 earned, the total hours worked, the net wages earned, and the correct corresponding number of hours

1 worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

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

7 34. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
8 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of
9 Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiff and other non-
10 exempt employees are in violation of Labor Code § 226(a). Thus, Defendants have violated Labor
11 Code § 226(a) with respect to Plaintiff and other non-exempt employees. Consequently, because
12 Defendants failed to comply with Labor Code § 226(a), Plaintiff and other non-exempt employees
13 would be entitled to recover penalties under Labor Code §§ 226(e).

14 35. Moreover, at all relevant times, Defendants required Plaintiff and other non-exempt
15 employees to incur the business expense associated with using their personal cell phones for work
16 related purposes and for other necessary business expenses but did not reimburse non-exempt
17 employees for these necessary business expenditures. (See *Cochran v. Schwan’s Home Service, Inc.*
18 (2014) 228 Cal.App.4th 1137 [“We hold that when employees must use their personal cell phones
19 for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether
20 the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement
21 owed is a reasonable percentage of their cell phone bills.”].) Defendants’ uniform failure to reimburse
22 Plaintiff and other non-exempt employees for their on-going business expenses incurred in their
23 discharge of their duties continues through the present day. Indeed, any reimbursement is absent from
24 Plaintiff’ wage statements during his employment. Since Defendants failed to and continue to fail to
25 reimburse Plaintiff and other non-exempt employees for necessary business expenses, they are in
26 violation of Labor Code § 2802.

27 36. Finally, because of, Defendants’ failure to pay all minimum wages, their failure to pay
28 all overtime wages, sick time, and meal and rest period premiums at the “regular rate of pay”, as well

as pay all vested and unused vacation time at the correct final rate, Defendants also failed and continue to fail to pay Plaintiff and other non-exempt employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203. Thus, non-exempt employees would be entitled to recover penalties under Labor Code §§ 201-203, and 256.

CLASS ACTION ALLEGATIONS

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

All non-exempt employees who work or worked for Defendants in California, from March 1, 2020 through February 2, 2023. (“Class”);

All non-exempt employees who worked for Defendants in California and who worked overtime hours during at least one shift, from March 1, 2020 through February 2, 2023. (“Overtime Subclass”);

All employees who work or worked for Defendants in California, during the one year immediately preceding the filing of the Complaint through February 2, 2023. (“Wage Statement Subclass”)

All employees who work or worked for Defendants in California, and who left their employ from March 1, 2020 through February 2, 2023. (“Waiting Time Penalty Subclass”)

(collectively “the Classes”)

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

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

1. Whether Defendants’ temperature screening policies/practices resulted in a failure to pay for all hours worked to the members of the Class;

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

3. Whether Defendants paid sick time at the correct regular rate including all forms of compensation to members of the Class;

4. Whether Defendants paid all vested and unused vacation time at the correct final rate to members of the Class;

5. Whether Defendants reimbursed all necessary business expenses to members of the Class;

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

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

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

40. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants’ policies and/or practices applicable to each individual class member, such as Defendants’ COVID-19 temperature screening policy/practice, Defendants’ failure to pay overtime at the correct “regular rate,” Defendants’ failure to pay sick time at the correct “regular rate of pay,” Defendants’ failure to pay all vested and unused vacation time at the correct final rate, Defendants’ uniform policy of failing to provide all compliant meal and rest periods or adequate compensation at the “regular rate of pay” in lieu thereof, Defendants’ failure to reimburse all necessary business expenses, 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.

1 41. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
2 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
3 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
4 Plaintiff, like the members of the Classes was deprived of minimum and overtime wages, deprived
5 of sick time paid at the correct regular rate, deprived of vested and unused vacation pay at the correct
6 final rate, was deprived of meal and rest period premium wages, was subject to Defendants' uniform
7 meal and rest period policies/practices, was not reimbursed for necessary business expenses, was not
8 provided accurate itemized wage statements, and was not paid all wages owed at his time of
9 separation.

10 42. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
11 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
12 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
13 Plaintiff's 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 Plaintiff 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 40 are maintainable as Classes under § 382 of
11 the Code of Civil Procedure.

12 **FIRST CAUSE OF ACTION**

13 **MINIMUM WAGE VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

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

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

22 47. At all relevant times herein, Defendants failed to conform their pay practices to the
23 requirements of the law. This unlawful conduct includes but is not limited to Defendants' COVID-
24 19 temperature screening policy/practice, which resulted in these individuals not being paid for all
25 hours actually worked. Accordingly, Plaintiff and members of the Classes were not compensated for
26 all hours worked including, but not limited to, all hours they were subject to the control of Defendants
27 and/or suffered or permitted to work under the California Labor Code and applicable Wage Orders.

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

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

FAILURE TO PAY ALL OVERTIME WAGES

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

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

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

54. Section 3 of the applicable Wage Order requires an employer to pay an employee “one and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per

1 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
2 employer to pay an employee double the employee's regular rate of pay for work in excess of twelve
3 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
4 the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate
5 Plaintiff or members of the Overtime Subclass at one and one-half times their regular rate of pay for
6 such hours.

7 55. Defendants failed to conform their pay practices to the requirements of the law. This
8 unlawful conduct includes but is not limited to (1) Defendants' COVID-19 temperature screening
9 policy/practice, and (2) failing to include all forms of compensation, including but not limited to non-
10 discretionary bonuses, into the calculation of the "regular rate of pay."

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

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PAY ALL SICK TIME**

18 **(AGAINST ALL DEFENDANTS)**

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

20 58. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2,
21 1197.1, 1198, and 1199 which provide that "[a]n employee who, on or after July 1, 2015, works in
22 California for the same employer for 30 or more days within a year from the commencement of
23 employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
24 worked, beginning at the commencement of employment." In addition, Labor Code § 246(l)(1)
25 provides that paid sick time for non-exempt employees must be "calculated in the same manner as
26 the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not
27 the employee actually works overtime in that workweek." Additionally, Labor Code § 246(l)(2)
28 states that the paid sick time must be "calculated by dividing the employee's total wages, not

59. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Class for all sick time pursuant to California Labor Code § 246 and the applicable Wage Orders.

60. Here, at all relevant times, Defendants failed in their obligation to provide Plaintiff and members of Class the legally required paid sick days at the legal rate pursuant to Labor Code §§ 246(a),(b). Plaintiff and the members of the Class were not paid at the correct “regular rate of pay,” and sometimes paid below their base rate of pay.

61. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Class in a civil action for the unpaid amount of wages, liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 246, 558, 1194 *et seq.*, 1197.1, 1198, 1199 and Code of Civil Procedure § 1021.5.

FAILURE TO PAY ALL VACATION TIME

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

63. This cause of action is brought pursuant to Labor Code § 227.3 which provides that whenever a contract of employment or employer policy provides for paid vacations, and an employee is separated without having used his or her vested vacation time, all vested vacation shall be paid as wages at their final rate in accordance with such contract of employment or employer policy respecting eligibility or time.

64. At all relevant times, Defendants maintained such a paid vacation policy, yet Defendants failed to pay all vested and unused vacation time to Plaintiff and the members of the Class at their respective final rates of pay at their time of separation. As such, Defendants have violated Labor Code § 227.3.

65. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Class in a civil action for the unpaid amount of wages, liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 227.3, 558, 1194 *et seq.*, 1197.1, 1198, 1199 and Code of Civil Procedure § 1021.5.

FIFTH CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

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

SIXTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

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

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES
(AGAINST ALL DEFENDANTS)

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

74. 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.”

75. As set forth above, Plaintiff and members of the Class were not 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. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”); *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. 2014) (granting Plaintiff’s motion for partial summary judgment on Plaintiff’s cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

4 77. The foregoing violations create an entitlement to recovery by Plaintiff and members
5 of the Class in a civil action for the unpaid amount of any unreimbursed expenses, and costs of suit
6 pursuant to the applicable Wage Orders, Labor Code §§2208, and Civil Code §§ 3287(b) and 3289.

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

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

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

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

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

81. As a result of Defendants failure to pay Plaintiff and the Wage Statement Subclass for all regular and overtime wages, and missed meal and rest period premiums at the appropriate legal

1 rate, Defendants failed to include required information on Plaintiff and the Wage Statement Subclass’
2 wage statements, including, but not limited to, the gross wages earned, the net wages earned in
3 violation of Labor Code section 226(a)(1,2,5,9).

4 82. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing
5 and intentional.

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

12 **NINTH CAUSE OF ACTION**

13 **WAITING TIME PENALTIES**

14 **(AGAINST ALL DEFENDANTS)**

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

16 85. 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 86. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and
19 owing to Plaintiff and the Waiting Time Subclass during the actionable period for this cause of action
20 at or around the time that their employment is or was terminated or ended.

21 87. 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 88. Defendants willfully failed to pay Plaintiff and the Waiting Time Subclass for all
25 hours worked, including all minimum wages, and overtime wages, sick time, vested and unused
26 vacation time, and their meal and rest period premiums at the “regular rate of pay”, prior to or upon
27 termination or separation from employment with Defendants as required by Labor Code §§ 201 and
28 202.

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

TENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

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

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

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

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

95. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants’ current hourly non-exempt employees and to enforce important rights affecting the

1 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
2 he is entitled to recover under Code of Civil Procedure § 1021.5.

3 **ELEVENTH CAUSE OF ACTION**

4 **PRIVATE ATTORNEYS GENERAL ACT PENALTIES**

5 **(AGAINST ALL DEFENDANTS)**

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

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

16 a. Failing to provide Plaintiff and other non-exempt employees all minimum wages,
17 overtime wages, vacation pay and sick pay compensation at the appropriate premium rate in violation
18 of Labor Code §§ 204, 210, 510, 1194 and 1198;

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

22 c. Failing to reimburse Plaintiff and other non-exempt employees for all necessary
23 business expenditures in violation of Labor Code §§ 2800 and 2802;

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

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

8 99. Plaintiff was compelled to retain the services of counsel to file this court action to
9 protect his interests and the interests of other non-exempt employees, and to assess and collect the
10 civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys' fees and costs, which he
11 is entitled to receive under California Labor Code § 2698, *et seq.*

PRAYER FOR RELIEF

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff 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, and 1194;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, and 1199;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code § 227.3 and as further allowed by law;
8. Upon the Fifth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 512;

1 9. Upon the Sixth Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

3 10. Upon the Seventh Cause of Action, reimbursement of reasonable business expenses
4 pursuant to Labor Code § 2208, and reasonable costs and attorneys' fees;

5 11. Upon the Eighth Cause of Action, penalties pursuant to Labor Code § 226(a), and
6 reasonable costs and attorneys' fees;

7 12. Upon the Ninth Cause of Action, for statutory waiting time penalties pursuant to
8 Labor Code §§ 201-203;

9 13. Upon the Tenth Cause of Action, for restitution to Plaintiff and members of the
10 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
11 practices declared by this Court to be in violation of Business and Professions Code § 17200, *et*
12 *seq.*;

13 14. Upon the Eleventh Cause of Action, for civil penalties due to Plaintiff, other non-
14 exempt hourly aggrieved employees, and the State of California according to proof pursuant to
15 Labor Code § 2699 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and
16 \$200 for each subsequent violation per employee per pay period for those violations of the Labor
17 Code for which no civil penalty is specifically provided under the Labor Code; and

18 15. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
19 § 218.6 and Civil Code §§ 3287 and 3289;

20 16. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
21 218.5, 226, 1194, and Code of Civil Procedure § 1021.5; and

22 17. For such other relief that the Court may deem just and proper.

23 Dated: March 17, 2023

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

24
25
26 By: _____

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff 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 May 9, 2023, I served the following document(s) described as **FIRST**
6 **AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this
action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

7
8 Jonathan Fraser Light, Esq.
jlight@lightgablerlaw.com
9 Jamie N. Stein, Esq
Kathleen M. Fellows
kfellows@lightgablerlaw.com
10 LIGHTGABLER
760 Paseo Camarillo, Suite 300
11 Camarillo, California 93010

12 **Counsel for defendant Scosche Industries, 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
sent from my email address to the persons listed above. I did not receive, within a reasonable time
15 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 May 9, 2023, at Los Angeles, California.

18
19 
20 Carlos Garcia