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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA**12 FOR THE COUNTY OF LOS ANGELES**13 DAVID CASTILLO, on behalf of himself and all
14 others similarly situated,

15 Plaintiff,

16 v.

17 KW INTERNATIONAL, INC., a California
18 Corporation; and DOES 1-50, inclusive.

19 Defendants.

CASE NO.: 22STCV08958

[Assigned to Hon. Kenneth R. Freeman, Dept.
14]**FIRST AMENDED CLASS ACTION AND
PAGA COMPLAINT:**

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

DEMAND FOR JURY TRIAL

Action Filed: March 14, 2022

Trial Date: No Trial Set

1 Plaintiff David Castillo (“Plaintiff”) on behalf of himself, the state of California, and all
2 other similarly situated non-exempt employees, alleges and complains of defendants KW
3 International, Inc., and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant KW International, Inc., is a logistic provider offering 3PL, warehousing,
6 transportation, and other logistics services in California. Plaintiff brings this class and PAGA
7 representative action against Defendant for alleged violations of the California Labor Code and
8 Business and Professions Code.

9 2. As set forth below, Plaintiff alleges that Defendants had a uniform payroll
10 practice/policy that unfairly rounded/shaved Plaintiff and other non-exempt employees’ time
11 entries. Further, Plaintiff alleges that Defendants failed to pay for all hours worked as a result of
12 temperature screening in light of the COVID-19 pandemic. As a result of the policy/practice of
13 rounding/shaving time, and the temperature screening policy/procedure, Plaintiff and other similarly
14 situated employees were not paid for all hours worked. Plaintiff further alleges that Defendants
15 failed to pay all overtime compensation as a result of not accounting for all hours worked and failing
16 to properly calculate the “regular rate of pay.” Moreover, Plaintiff alleges that Defendants’ meal
17 and rest period policies and practices did not provide him and all other similarly situated non-exempt
18 employees with all compliant/timely meal and rest periods, or premium wages at the “regular rate
19 of pay” in lieu thereof. As a result of the above, Plaintiff alleges that Defendants failed to provide
20 non-exempt employees with accurate written itemized wage statements and failed to timely pay all
21 final wages upon separation of employment. Based on these alleged Labor Code violations, Plaintiff
22 now brings this class and PAGA representative action to recover unpaid wages, restitution,
23 penalties, and other related relief on behalf of himself and all others similarly situated.

24 **JURISDICTION AND VENUE**

25 3. Plaintiff, on behalf of himself and all others similarly situated employees hereby
26 brings this class action for recovery of unpaid wages and penalties under California Labor Code §§
27 201-203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 516, 1194, 1197.1, 1199, 2698, *et*
28 *seq.*, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to

1 seeking declaratory relief and restitution pursuant to California Business and Professions Code §
2 17200, *et. seq.* This class action is brought pursuant to California Code of Civil Procedure § 382.

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

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

10 **PARTIES**

11 6. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is
12 a California resident residing in the State of California. Defendants employed Plaintiff as a non-
13 exempt employee in Carson, California in the County of Los Angeles.

14 7. Plaintiff is informed and believes and thereon alleges that defendant KW
15 International, Inc. is a Delaware corporation authorized to and doing business in Carson, California,
16 and is and/or was the legal employer of Plaintiff and the Class Members during the applicable
17 statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained
18 of herein and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-
19 203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 516, 1194, 1197.1, 1199, and the California
20 Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

21 8. Plaintiff is informed and believes, and based thereon alleges, that during the four years
22 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue
23 to do) business in the State of California, County of Los Angeles. Defendants operate approximately
24 five locations in California, as well as several warehouses, including the warehouse at 18655 Bishop
25 Avenue, Carson, California.

26 9. Plaintiff does not know the true names or capacities, whether individual, partner, or
27 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
28 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to

1 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
2 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
3 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
4 and proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
5 alleged herein.

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

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

19 **COMMON FACTUAL ALLEGATIONS**

20 12. Defendants are logistic providers offering 3PL, warehousing, transportation, and
21 other logistics services in California. Plaintiff was employed by Defendants out of its Carson
22 location. Plaintiff has been a non-exempt employee from 2011 until the present. Plaintiff and other
23 non-exempt employees (including, but not limited to warehouse associates, forklift operators, heavy
24 equipment operators, and other non-exempt positions) were responsible for all aspects of
25 Defendants' services in California.

26 13. At all relevant times, Plaintiff and other non-exempt employees regularly worked
27 various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a
28 workweek. Plaintiff alleges that other non-exempt employees were also subjected to the same

1 policies, procedures, and practices, working conditions, and corresponding wage and hour violations
2 to which Plaintiff was subjected during his employment at the Carson, California facility.

3 14. At all relevant times, Defendants have had a consistent policy/practice of unevenly
4 rounding/shaving Plaintiff and other non-exempt employees' time entries. As a result of this
5 practice, Plaintiff and other non-exempt employees are not compensated for all the hours that they
6 work and all the overtime hours they work, in violation of Cal. Labor Code §§ 204, 510, 1194,
7 1197.1, 1199, and applicable Wage Orders.

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

13 16. Here, Defendants' rounding time policy is not neutral on its face as Plaintiff and other
14 non-exempt employees are subject to discipline, including termination for being tardy in reporting
15 to work, or returning from a meal or rest period. Moreover, because Defendants are capable of
16 tracking the time worked by non-exempt employees to the minute, the policy itself exists not for the
17 convenience or benefit of the employees who are trying to report their time on timecards or
18 otherwise, but for Defendants' benefit. As a result, the policy is not neutral on its face, and over a
19 period of time, Plaintiff and other non-exempt employees were not properly paid for all hours
20 worked in violation of Cal. Labor Code §§ 204, 510, 1194, 1197.1, 1199, and applicable Wage
21 Orders.

22 17. Furthermore, as a result of Defendants' unlawful rounding policy, Plaintiff and other
23 non-exempt employees were also not properly paid for all overtime hours.

24 18. Moreover, during the relevant time period, Defendants have had a uniform practice
25 of requiring Plaintiff and other non-exempt employees to undergo mandatory temperature screening
26 in light of the COVID-19 pandemic. Plaintiff and other non-exempt employees were required to
27 spend several minutes to undergo mandatory temperature screenings before clocking in for their
28

1 shifts. As a result, Plaintiff and other non-exempt employees were required to spend several minutes
2 off-the-clock before each shift to undergo a temperature screening and then clock in to begin work.

3 19. As a result of Defendants' uniform temperature screening and clock-in
4 procedures/practices, Plaintiff and other non-exempt employees were not fully compensated for all
5 hours they were subject to the control of Defendants. As such, Defendants systematically failed to
6 pay Plaintiff and other non-exempt employees for all hours worked, including all minimum and
7 overtime wages due. Defendants have no valid defense to this claim given the California Supreme
8 Court's recent unanimous decision in *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038, which held that
9 employees "must be paid" during security checks since "it is clear that [employees] are subject to
10 [the employer's] control while awaiting, and during, [the] exit searches."

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

18 21. As set forth above, Defendants failed to compensate Plaintiff and other non-exempt
19 employees for all hours worked as a result of its unlawful rounding policy/practice and COVID-19
20 screening procedures. To the extent permitted by law, Plaintiff and other non-exempt employees are
21 entitled to recover unpaid wages and liquidated damages for violations of Labor Code § 1197.1.
22 Based upon these same factual allegations, Plaintiff and other non-exempt employees are entitled to
23 penalties under Labor Code § 1199.

24 22. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were not
25 properly paid at the correct overtime rate for all hours worked in excess of eight (8) hours per
26 workday and/or forty (40) hours per workweek. While Plaintiff and other non-exempt employees
27 regularly worked overtime hours, they were not compensated at one and one-half times their
28 "regular rate of pay" because Defendants failed to include all forms of compensation, including but

1 not limited to, non-discretionary bonuses and other forms of non-hourly remuneration when
2 calculating the “regular rate of pay” used for payment of overtime wages.

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

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

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

26 26. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt
27 employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1. Based
28

1 upon these same factual allegations, Plaintiff and the other non-exempt employees are entitled to
2 unpaid overtime wages and penalties under Labor Code § 1199.

3 27. Next, at all relevant times, Plaintiff and other non-exempt employees were denied
4 timely 30-minute off-duty meal periods as mandated by California law. Due to Defendants' uniform
5 meal period policies/practices and work demands, Plaintiff and other non-exempt employees were
6 often unable to take uninterrupted 30-minute meal periods before the end of the fifth hour of work.
7 Further, when Plaintiff and other non-exempt employees worked in excess of 10.0 hours in a shift,
8 they often were not allowed and permitted to take a mandated second meal period before the end of
9 the tenth hour of work in violation of the Labor Code and applicable Wage Orders.

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

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

17 30. Likewise, at all relevant times, Plaintiff and other non-exempt employees were also
18 not provided with all 10-minute rest periods for every four hours worked, or major fraction thereof
19 due to Defendants' uniform rest period policies/practices that required non-exempt employees to
20 "remain on premises," during rest periods. As a result, Plaintiff and other non-exempt employees
21 were and are routinely unable to take a net 10-minute duty free rest periods for every major fraction
22 of four hours worked. This includes a second rest period for shifts in excess of six hours, and a third
23 rest period for shifts in excess of 10 hours in a workday.

24 31. By not relieving all non-exempt employees of all duties during rest periods,
25 Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services,*
26 *Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve
27 employees of all duties and relinquish control over how employees spend their time."]. In *Augustus*,
28 the California Supreme Court expressly rejected the employers' assertion that it could provide an

1 on-duty rest period to employees who worked as security guards and further explained “that
2 employers [must] relinquish any control over how employees spend their break time and relieve
3 their employees of all duties.” *Id.* at 273.

4 32. Each time Plaintiff and other non-exempt employees were unable to take a compliant
5 rest period, Defendants failed and continue to fail to adequately pay rest period premium payments
6 at the “regular rate of pay” as required by Labor Code § 226.7. Accordingly, due to Defendants’
7 uniform rest period policies/practices, Plaintiff and other non-exempt employees were often denied
8 legally compliant rest breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

9 33. As a result of Defendants’ failure to pay Plaintiff and other non-exempt employees
10 for all hours they were subject to the control of Defendants, including all minimum and overtime
11 wages, and failure to adequately pay overtime and meal/rest period premiums at the “regular rate of
12 pay” as described herein above, Defendants issued wage statements which failed to accurately
13 identify the gross wages earned, the total hours worked, the net wages earned, and the correct
14 corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1,
15 2, 5, and 9).

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

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

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

1 also failed and continue to fail to pay non-exempt employees all wages owed at their time of
2 separation from employment in violation of Labor Code §§ 201-203 and applicable Wage Orders.
3 Pursuant to Labor Code §§ 201-202, an employer must provide non-exempt employees' wages at
4 the time or discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203
5 provides "if an employer willfully fails to pay ... any wages of an employee who is discharged or
6 who quits, the wages of the employee shall continue as a penalty ..." for up to 30 days. Thus, non-
7 exempt employees would be entitled to recover penalties under Labor Code §§ 201-203.

8 CLASS ACTION ALLEGATIONS

9 37. Plaintiff brings this action on behalf of himself 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
14 and who worked overtime hours during at least one shift, during the
15 four years immediately preceding the filing of the Complaint through
the date of trial. ("Overtime Subclass");

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

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

22 38. **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
26 of Defendants' employment and payroll records.

27 39. **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 policy/practice resulted in a failure to pay for all hours worked to the members of the Class;

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

3. Whether Defendants paid overtime at the correct "regular rate of pay" to members of the Overtime Subclass;

4. Whether Defendants provided legally compliant meal periods or compensation in lieu thereof at the "regular rate of pay" to members of the Class;

5. Whether Defendants provided legally compliant rest periods or compensation in lieu thereof at the "regular rate of pay" 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' policy and/or practice of rounding/shaving time entries, Defendants' COVID-19 temperature screening policy/practice, Defendants' failure to pay overtime at the correct "regular rate" including all forms of compensation, 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, 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.

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
4 herein, Plaintiff, like the members of the Classes was subject to the same payroll policies/practices
5 that deprived him of all minimum and overtime wages, was deprived of meal and rest period
6 premium wages, was subject to Defendants' uniform meal and rest period policies/practices and was
7 not provided accurate itemized wage statements.

8 42. **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 43. **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.
19 The nature of this action and the format of laws available to Plaintiff and members of the Classes
20 make the class action format a particularly efficient and appropriate procedure to redress the
21 violations alleged herein. If each employee were required to file an individual lawsuit, Defendants
22 would necessarily gain an unconscionable advantage since they would be able to exploit and
23 overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
24 legal resources.

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

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

11 **FIRST CAUSE OF ACTION**

12 **MINIMUM WAGE VIOLATIONS**

13 **(AGAINST ALL DEFENDANTS)**

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

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

21 47. At all relevant times herein, Defendants failed to conform their pay practices to the
22 requirements of the law. This unlawful conduct includes but is not limited to 1) Defendants' uniform
23 and unlawful policy/practice of rounding/shaving time entries, and 2) their COVID-19 temperature
24 screening policy/practice, both which resulted in these individuals not being paid for all hours
25 actually worked. Accordingly, Plaintiff and members of the Classes were not compensated for all
26 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.

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

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 Classes 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.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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' uniform and unlawful policy/practice
9 of rounding/shaving time entries, and 2) their COVID-19 temperature screening policy/practice, and
10 (3) failing to include all forms of compensation, including but not limited to non-discretionary
11 bonuses, into the calculation of the "regular rate of pay," all of which resulted in Plaintiff and the
12 Overtime Subclass not being paid all overtime wages owed.

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

18 **THIRD CAUSE OF ACTION**

19 **MEAL PERIOD VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

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

22 58. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
23 in their affirmative obligation to provide all of their hourly non-exempt employees, including
24 Plaintiff and members of the Classes, with all required meal periods in accordance with the mandates
25 of the California Labor Code and applicable Wage Orders, for the reasons set forth in the Common
26 Allegations section of this Complaint. Despite Defendants' violations, Defendants have not paid an
27 additional hour of pay at the "regular rate of pay" to Plaintiff and members of the Classes at their
28

1 respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7
2 and *Ferra*.

3 59. As a result, Defendants are responsible for paying premium compensation at the
4 “regular rate of pay” for meal period violations, including interest thereon, statutory penalties, and
5 costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§
6 3287(b) and 3289.

7 **FOURTH CAUSE OF ACTION**

8 **REST PERIOD VIOLATIONS**

9 **(AGAINST ALL DEFENDANTS)**

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

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

14 62. Due to their unlawful rest period policy and practices, Defendants did not authorize
15 and permit Plaintiff and members of the Classes to take all rest periods to which they were legally
16 entitled. Despite Defendants’ violations, Defendants have not paid an additional hour of pay at the
17 “regular rate of pay” to Plaintiff and members of the Classes at their respective regular rates of pay
18 for each violation, in accordance with California Labor Code § 226.7 and *Ferra*.

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

23 **FIFTH CAUSE OF ACTION**

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

25 **(AGAINST ALL DEFENDANTS)**

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

27 65. Labor Code 226(a) states in pertinent part the following:
28

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

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

16 67. As a result of Defendants failure to pay Plaintiff and the Wage Statement Subclass for
17 all regular and overtime wages, and missed meal and rest period premiums at the appropriate “regular
18 rate of pay,” Defendants failed to include required information on Plaintiff and the Wage Statement
19 Subclass’ wage statements, including, but not limited to, the gross wages earned, the net wages earned
20 in violation of Labor Code section 226(a)(1,2,5,9).

21 68. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing and
22 intentional.

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

1 **SIXTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

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

5 71. 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 72. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and
8 owing to Plaintiff and the Waiting Time Subclass during the actionable period for this cause of
9 action at or around the time that their employment is or was terminated or ended.

10 73. 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 74. Defendants willfully failed to pay Plaintiff and the Waiting Time Subclass for all
14 hours worked, including all minimum and overtime wages, and their meal and rest period premiums
15 at the “regular rate of pay”, prior to or upon termination or separation from employment with
16 Defendants as required by Labor Code §§ 201 and 202.

17 75. 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 **SEVENTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(AGAINST ALL DEFENDANTS)**

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

25 77. 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, and overtime wages at the legal rate, by failing to provide all
28 legally required meal and rest periods or pay premium payments at the “regular rate of pay” in lieu

1 thereof, by failing to provide accurate wage statements, and by failing to pay all earned wages at the
2 time of separation from employment.

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

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

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

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

19 **EIGHTH CAUSE OF ACTION**

20 **PRIVATE ATTORNEYS GENERAL ACT**

21 **(Labor Code § 2698 et seq.)**

22 **(AGAINST ALL DEFENDANTS)**

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

24 83. Defendants have committed several Labor Code violations against Plaintiff and other
25 non-exempt employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698
26 et seq., acting on behalf of himself and other non-exempt employees, bring this representative action
27 against Defendants to recover the civil penalties due to Plaintiff, other similarly non-exempt
28 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)

1 including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent
2 violation per employee per pay period for those violations of the Labor Code for which no civil
3 penalty is specifically provided based on the following Labor Code violations:

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

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

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

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

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

17 84. On or about March 11, 2022, Plaintiff notified KW International, Inc., via certified
18 mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website of
19 Defendant’s violations of the California Labor Code § 2698 et seq., with respect to violations of the
20 California Labor Code identified in Paragraph 83 (a)-(e). Now that sixty-five days have passed from
21 Plaintiff notifying Defendant and the LWDA of these violations, Plaintiff will have exhausted his
22 administrative requirements for bringing a claim under the Private Attorneys General Act with respect
23 to these violations.

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

1 **PRAYER FOR RELIEF**

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

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

1 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
2 218.5, 226, 1194, and Code of Civil Procedure § 1021.5; and

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

5 Dated: June 10, 2022

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

6
7
8 By: _____

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

Attorneys for Plaintiff and the Putative Classes

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On June 10, 2022, I served the following document(s) described as **FIRST AMENDED CLASS ACTION AND PAGA COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

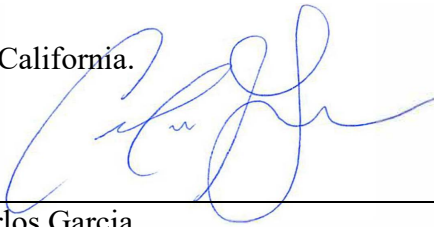
Ellen Connelly Cohen, Esq.
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John Egley, Esq.
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CALL & JENSEN, APC
610 Newport Center Drive, #700
Newport Beach, California 92660

Counsel for defendant KW International, Inc.

BY ELECTRONIC SERVICE (via electronic filing service provider): I caused the document(s) to be electronically transmitted to Case Anywhere, an electronic filing service provider, at www.caseanywhere.com pursuant to the Court’s Order Authorizing Electronic Service governing the matter entitled *David Castillo et al. v. KW International, Inc., et al.*, Case No. 22STCV08958, mandating electronic service. The transmission was reported as complete and without error to the addressees as stated on the above service list.

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

Executed on June 10, 2022, at Los Angeles, California.



Carlos Garcia