

ORIGINAL

FALAKASSA LAW, P.C.

Joshua S. Falakassa, CA Bar No. 295045

josh@falakassalaw.com

1901 Avenue of the Stars, Suite 450

Los Angeles, California 90067

Tel: (818) 456-6168; Fax: (888) 505-0868

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour, Esq., CA Bar No. 285256

mehrdad@bokhourlaw.com

1901 Avenue of the Stars, Suite 450

Los Angeles, California 90067

Tel: (310) 975-1493; Fax: (310) 675-0861

Attorneys for Plaintiff and the Putative Classes

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

LOUIS ARRIOLA, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

LIFETIME BRANDS, INC., a Delaware
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: CIVSB2210887

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

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

DEMAND FOR JURY TRIAL

FILED

1 Plaintiff Louis Arriola (“Plaintiff”) on behalf of himself, and all other similarly situated non-
2 exempt employees, alleges and complains of defendant Lifetime Brands, Inc., and DOES 1 to 50
3 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant Lifetime Brands, Inc. is a manufacturer and supplier of cutlery, silverware,
6 and other products operating in California. Plaintiff brings this class action against Defendant for
7 alleged violations of the California Labor Code and Business and Professions Code.

8 2. As set forth below, Plaintiff alleges that Defendants failed to pay for all minimum
9 wages due to their timekeeping policy/practice of unevenly rounding/shaving time entries. Plaintiff
10 further alleges that Defendants failed to pay all overtime wages by failing to include all forms of
11 compensation when calculating the “regular rate of pay” used in payment of overtime wages.

12 3. Similarly, Plaintiff also alleges that Defendants failed to pay all sick days at the legal
13 “regular rate of pay.” Plaintiff further alleges that Defendants’ meal and rest period policies and
14 practices did not allow and permit all compliant/timely meal and rest periods or pay premium wages
15 at the “regular rate of pay” in lieu thereof. As a result, Plaintiff alleges that Defendants failed to
16 provide non-exempt employees with accurate written itemized wage statements.

17 4. Based on these alleged Labor Code violations, Plaintiff now brings this class and
18 PAGA representative action to recover unpaid wages, restitution, penalties, and other related relief
19 on behalf of himself and all others similarly situated.

20 **JURISDICTION AND VENUE**

21 5. Plaintiff, on behalf of himself and all others similarly situated employees hereby brings
22 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 204,
23 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1197.1, 1194, 1199, 2698 *et seq.*,
24 and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to seeking
25 declaratory relief and restitution pursuant to California Business and Professions Code § 17200, *et*.
26 *seq.*

27 6. This class action is brought pursuant to California Code of Civil Procedure § 382.
28

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

8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, Defendants own and/or operate a warehouse at 1221 Alder Ave, in Rialto California within the County of San Bernardino, and/or otherwise are found within the County of San Bernardino and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

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

10. Plaintiff is informed and believes and thereon alleges that defendant Lifetime Brands, Inc. is a Delaware corporation authorized to and doing business in California, and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to him by California Labor Code §§ 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1194.2, 1197.1, 1199, 2698 *et seq* and the California Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

11. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the State of California, County of San Bernardino.

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

1 alleged herein.

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

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

15 **COMMON FACTUAL ALLEGATIONS**

16 15. Defendants are a manufacturer and supplier of cutlery, silverware, and other products
17 operating in California. Plaintiff was employed by Defendants as a non-exempt employee out of its
18 Rialto, California warehouse. Plaintiff began working with Defendants in 2019 and continues to be
19 employed. Plaintiff and other non-exempt employees (including, but not limited to warehouse
20 associates, equipment operators, drivers, and other non-exempt positions) were responsible for all
21 aspects of Defendants' business in California.

22 16. First, at all relevant times, Defendants have had a consistent practice of unlawfully and
23 unevenly rounding/shaving Plaintiff's and other non-exempt employees' time entries, resulting in a
24 failure to pay for all hours worked. As a result of this practice, Plaintiff and other non-exempt
25 employees are not compensated for all the hours that they work and all of the overtime hours they
26 work, in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

27 17. California courts have held that rounding time policies can be lawful, "if the rounding
28 policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a

1 period of time, in failure to compensate the employees properly for all the time they have actually
2 worked. *See's Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907 (29 C.F.R. § 785.48;
3 see DLSE Manual, *supra*, §§ 47.1, 47.2).”

4 18. Here, Defendants’ rounding time policy is not neutral on its face or in practice, as
5 Plaintiff and other non-exempt employees were not paid for all the time they actually worked. Indeed,
6 Plaintiff and other non-exempt employees are subject to discipline, including termination for being
7 tardy in reporting to work, or returning from a meal or rest period. Moreover, because Defendants are
8 capable of tracking the time worked by non-exempt employees to the exact minute, the policy itself
9 exists not for the convenience or benefit of the employees who are trying to report their time on
10 timecards or otherwise, but for Defendants’ benefit.

11 19. As a result, over a period of time, Plaintiff and other non-exempt employees were not
12 properly paid for all hours worked in violation of Cal. Labor Code §§ 204, 210, 1194, 1197.1, 1199,
13 and applicable Wage Orders. Additionally, as a result of the unlawful rounding policy, Plaintiff and
14 other non-exempt employees were also not properly paid at the correct overtime rate for hours worked
15 in excess of eight hours per shift in violation of Labor Code § 510.

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

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

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

4 22. Accordingly, and to the extent permitted by law, Plaintiff and other non-exempt
5 employees are entitled to recover unpaid minimum and overtime wages and penalties for violations
6 of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199 1197.1, and 1199.

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

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

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

26 26. Accordingly, and to the extent permitted by law, Plaintiff and other non-exempt
27 employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510, and 1197.1.

1 27. Moreover, at all relevant times, Defendant failed in its obligation to provide Plaintiff
2 and other non-exempt employees the legally required paid sick days at the legal “regular rate of pay”
3 pursuant to Labor Code §§ 246(a),(b).

4 28. Similarly, at all relevant times, Defendants failed in their obligation to provide Plaintiff
5 and other non-exempt employees the legally required paid sick days at the legal “regular rate of pay”
6 pursuant to Labor Code §§ 246(a),(b). Pursuant to Labor Code § 246(a),(b), “[a]n employee who,
7 on or after July 1, 2015, works in California for the same employer for 30 or more days within a year
8 from the commencement of employment is entitled to paid sick days. . . at the rate of not less than
9 one hour per every 30 hours worked, beginning at the commencement of employment.”

10 29. In addition, Labor Code § 246(l)(1) provides that paid sick time for non-exempt
11 employees must be “calculated in the same manner as the regular rate of pay for the workweek in
12 which the employee uses paid sick time, whether or not the employee actually works overtime in that
13 workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated
14 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
15 hours worked in the full pay periods of the prior 90 days of employment.”

16 30. Finally, Labor Code §246(i) requires employers to “provide an employee with written
17 notice that sets forth the amount of paid sick leave available, or paid time off leave an employer
18 provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in
19 Section 226 or in a separate writing provided on the designated pay date with the employee’s payment
20 of wages.”

21 31. Here, at all relevant times, Defendants failed in their obligation to provide Plaintiff and
22 other non-exempt employees the legally required paid sick days at the “regular rate of pay” pursuant
23 to Labor Code §§ 246(a), (b). Indeed, Defendants paid sick time at the base rate of pay, rather than
24 the “regular rate of pay” as required by Labor Code §§ 246(l)(1-2).

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

1 the end of the fifth hour of work. Moreover, when Plaintiff and other non-exempt employees worked
2 in excess of 10.0 hours in a shift, they were not always allowed and permitted to take a mandated
3 second meal period before the end of the tenth hour of work in violation of the Labor Code and
4 applicable Wage Orders.

5 33. Each time Plaintiff and other non-exempt employees were unable to take a compliant
6 meal period, Defendants failed and continues to fail to adequately pay meal period premium payments
7 at the “regular rate of pay” as required by *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858
8 and Labor Code § 226.7.

9 34. Accordingly, due to Defendants’ uniform meal period policies/practices, Plaintiff and
10 other non-exempt employees were also regularly denied legally compliant meal periods in violation
11 of Labor Code §§ 226.7, 512, 516, and applicable Wage Orders.

12 35. Next, at all relevant times, Plaintiff and other non-exempt employees were not provided
13 with all net 10-minute rest periods for every four hours worked, or major fraction thereof due to
14 Defendants’ uniform rest period policies/practices. Plaintiff and other non-exempt employees were
15 not allowed and permitted to take all of their rest periods, including second rest periods for shifts in
16 excess of six hours, and a third rest periods for shifts in excess of 10.0 hours in a workday. Notably,
17 to the extent non-exempt employees were allowed and permitted to take rest periods, non-exempt
18 employees were not permitted to leave the facility during their rest periods. As a result, Plaintiff and
19 other non-exempt employees were and are routinely unable to take a net 10-minute duty-free rest
20 periods for every major fraction of four hours worked

21 36. By not relieving all non-exempt employees of all duties during rest periods, Defendants
22 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
23 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all
24 duties and relinquish control over how employees spend their time.”]. In *Augustus*, the California
25 Supreme Court expressly rejected the employers’ assertion that it could provide an on-duty rest period
26 to employees who worked as security guards and further explained “that employers [must] relinquish
27 any control over how employees spend their break time and relieve their employees of all duties.” *Id.*
28 at 273.

37. Each time Plaintiff and other non-exempt employees were unable to take a compliant rest period, Defendants failed and continue to fail to adequately pay rest period premium payments at the “regular rate of pay” as required by Labor Code § 226.7.

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

39. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees for all minimum and overtime wages, sick pay, and for meal and rest period premiums at the "regular rate of pay", Defendants issued wage statements which failed to accurately identify the gross wages earned, the total hours worked, the net wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

40. Further, at all relevant times, Defendants' wage statements also failed to accurately state all applicable hourly rates (including all overtime rates) in effect during the pay period in violation of Labor Code § 226(a)(9).

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

42. Consequently, because Defendants failed to comply with Labor Code § 226(a), Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code §§ 226(e).

CLASS ACTION ALLEGATIONS

43. 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, during the four years immediately preceding the filing of the Complaint through the date of trial. (“Class”);

All non-exempt employees who worked for Defendants in California and who worked overtime hours during at least one shift, during the four years

1 immediately preceding the filing of the Complaint through the date of trial.
2 (“Overtime Subclass”);

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

6 (collectively “the Classes”)

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

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

16 1. Whether Defendants’ timekeeping policy/practice of unevenly rounding/shaving non-
17 exempt employees’ time entries resulted in a failure to pay all minimum and overtime wages;

18 2. Whether Defendants’ pay policies/practices resulted in a failure to pay all overtime
19 wages at the “regular rate of pay” because Defendants failed to include all forms of compensation,
20 including, but not limited to, non-discretionary bonuses, incentive pay, and other forms of
21 remuneration;

22 3. Whether Defendants’ payroll policies/practices resulted in a failure to pay all sick pay
23 at the “regular rate of pay”;

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

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

28 46. **Predominance of Common Questions:** Common questions of law and fact
predominate over questions that affect only individual members of the Classes. The common

1 questions of law set forth above are numerous and substantial and stem from Defendants' policies
2 and/or practices applicable to each individual class member, such as Defendants' failure to pay all
3 minimum and overtime wages due to their timekeeping policy/practice of unevenly rounding/shaving
4 non-exempt employees' time entries, Defendants' failure to pay for all overtime wages and sick pay
5 at the "regular rate" including all forms of compensation, Defendants' failure to provide all compliant
6 meal and rest periods or compensation at the "regular rate of pay" in lieu thereof, and Defendants'
7 resulting failure to provide accurate itemized wage statements. As such, the common questions
8 predominate over individual questions concerning each individual class member's showing as to his
9 or her eligibility for recovery or as to the amount of his or her damages.

10 47. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
11 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
12 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
13 Plaintiff, like the members of the Classes was deprived of minimum wages, was deprived of overtime
14 wages and sick pay at the "regular rate," was deprived of meal and rest period premium wages, was
15 subject to Defendants' uniform meal and rest period policies/practices, and was not provided accurate
16 itemized wage statements.

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

23 49. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
24 important public interest in establishing minimum working conditions and standards in California.
25 These laws and labor standards protect the average working employee from exploitation by
26 employers who have the responsibility to follow the laws and who may seek to take advantage of
27 superior economic and bargaining power in setting onerous terms and conditions of employment. The
28 nature of this action and the format of laws available to Plaintiff and members of the Classes make

1 the class action format a particularly efficient and appropriate procedure to redress the violations
2 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
3 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
4 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

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

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY ALL MINIMUM WAGES**

21 **(AGAINST ALL DEFENDANTS)**

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

23 52. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
24 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts
25 set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
26 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
27 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to
28 the unpaid wages and interest accrued thereon.

1 53. At all relevant times herein, Defendants failed to conform their pay practices to the
2 requirements of the law. This unlawful conduct includes but is not limited to Defendants' timekeeping
3 policy/practice of unevenly rounding/shaving non-exempt employees' time entries, resulting in these
4 individuals not being paid for all hours actually worked. Accordingly, Plaintiff and members of the
5 Classes were not compensated for all hours worked including, but not limited to, all hours they were
6 subject to the control of Defendants and/or suffered or permitted to work under the California Labor
7 Code and applicable Wage Orders.

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

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

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

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY ALL OVERTIME WAGES**

25 **(AGAINST ALL DEFENDANTS)**

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

27 58. This cause of action is brought pursuant to Labor Code §§ 204, 210, 510, 558, 1194,
28 and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime

1 hours worked and provide a private right of action for the failure to pay all overtime compensation
2 for overtime work performed.

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

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

13 61. Defendants failed to conform their pay practices to the requirements of the law. This
14 unlawful conduct includes but is not limited to Defendants’ (1) timekeeping policy/practice of
15 unevenly rounding/shaving non-exempt employees’ time entries, and (2) failure to include all forms
16 of compensation, including, but not limited to, non-discretionary bonuses, incentive pay, and other
17 forms of remuneration when calculating the “regular rate of pay” used in payment of overtime wages,
18 all of which resulted in Plaintiff and the Classes not being paid all overtime wages owed.

19 62. The foregoing policies and practices are unlawful and create entitlement to recovery
20 by Plaintiff and the members of the Classes in a civil action for the unpaid amount of overtime wages,
21 including interest thereon, statutory penalties, attorney’s fees, and costs of suit according to Labor
22 Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure §
23 1021.5.

24
25
26
27 **THIRD CAUSE OF ACTION**

28 **FAILURE TO PAY ALL SICK TIME**

1 (AGAINST ALL DEFENDANTS)

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

3 64. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
4 1198, and 1199 which provide that non-exempt employees are entitled to have their sick time paid
5 at the regular rate, including all forms of compensation/remuneration.

6 65. At all times relevant herein, Defendants were required to properly pay Plaintiff and
7 members of the Classes for all accrued sick leave taken, pursuant to California Labor Code § 246.

8 66. Defendants failed to conform their pay practices to the requirements of the law. This
9 unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice
10 of 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," which resulted in Plaintiff and the Classes
12 not being paid all sick time wages owed.

13 67. The foregoing policies and practices are unlawful and create entitlement to recovery
14 by Plaintiff and the members of the Classes in a civil action for the unpaid amount of sick time
15 wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to
16 Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, the applicable Wage Orders, and Code of Civil
17 Procedure § 1021.5

18 **FOURTH CAUSE OF ACTION**

19 **MEAL PERIOD VIOLATIONS**

20 (AGAINST ALL DEFENDANTS)

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

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

1 70. Despite Defendants’ violations, Defendants have not paid an additional hour of pay at
2 the “regular rate of pay” to Plaintiff and members of the Class at their respective regular rates of pay
3 for each violation, in accordance with *Ferra* and Labor Code § 226.7.

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

7 **FIFTH CAUSE OF ACTION**

8 **REST PERIOD VIOLATIONS**

9 **(AGAINST ALL DEFENDANTS)**

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

11 73. 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 74. Due to their unlawful rest period policy and practices, Defendants did not authorize
15 and permit Plaintiff and members of the Class 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 Class at their respective regular rates of pay for
18 each violation, in accordance with California Labor Code § 226.7.

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

23 **SIXTH CAUSE OF ACTION**

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

25 **(AGAINST ALL DEFENDANTS)**

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

27 77. 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 (3) the number of piece-rate units earned and any applicable piece rate if the
7 employee is paid on a piece-rate basis, (4) all deductions, provided that all
8 deductions made on written orders of the employee may be aggregated and
9 shown as one item, (5) net wages earned, (6) the inclusive dates of the
10 period for which the employee is paid, (7) the name of the employee and
11 only the last four digits of his or her social security number or an employee
12 identification number other than a social security number, (8) the name and
13 address of the legal entity that is the employer, and (9) all applicable hourly
14 rates in effect during the pay period and the corresponding number of hours
15 worked at each hourly rate by the employee.”

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

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

24 80. Further, at all relevant times, Defendants’ wage statements also failed to accurately
25 state all applicable hourly rates (including all overtime rates) in effect during the pay period in
26 violation of Labor Code § 226(a)(9).

27 81. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing
28 and intentional.

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

1 pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

2 **SEVENTH CAUSE OF ACTION**

3 **UNFAIR COMPETITION**

4 **(AGAINST ALL DEFENDANTS)**

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

6 84. Defendants have engaged and continue to engage in unfair and/or unlawful business
7 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
8 failing to pay for all minimum wages, as well as all overtime wages and sick time by failing to
9 properly calculate the "regular rate of pay," by failing to provide legally required meal and rest
10 periods or pay premium payments at the "regular rate of pay" in lieu thereof, and by failing to provide
11 accurate wage statements.

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

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

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

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

1 **EIGHTH CAUSE OF ACTION**

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

3 90. Defendants have committed several Labor Code violations against Plaintiff and
4 other non-exempt employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code
5 § 2698 *et seq.*, acting on behalf of himself and other non-exempt employees, bring this representative
6 action against Defendants to recover the civil penalties due to Plaintiff, other similarly non-exempt
7 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)
8 including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent
9 violation per employee per pay period for those violations of the Labor Code for which no civil
10 penalty is specifically provided based on the following Labor Code violations:

11 a. Failing to pay all minimum and overtime wages due to Defendants’ unlawful
12 rounding and time shaving policy and practice;

13 b. Failing to pay all overtime wages at the “regular rate of pay” because Defendants
14 failed to include all forms of compensation, including, but not limited to, non-discretionary bonuses,
15 incentive pay, and other forms of remuneration;

16 c. Failure to pay all sick pay at the “regular rate of pay”;

17 d. Failing to provide Plaintiff and other non-exempt employees all overtime
18 compensation at the appropriate premium rate in violation of Labor Code § 204, 510, 1194 & 1198;

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

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

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

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

91. On or about May 25, 2022, Plaintiff notified Defendant Lifetime Brands, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website of Defendant’s violations of the California Labor Code § 2698 et seq., with respect to violations of the California Labor Code identified in Paragraph 77(a)-(e). Now that sixty-five days have passed from Plaintiff notifying Defendant and the LWDA of these violations, Plaintiff will have exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

PRAYER FOR RELIEF

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

1. For an order certifying the proposed Classes;
2. For an order appointing 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, 1199;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
8. Upon the Fifth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

1 9. Upon the Sixth Cause of Action, penalties pursuant to Labor Code § 226(a), and
2 reasonable costs and attorneys' fees;

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

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

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

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

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

16 Dated: September 15, 2022

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

17
18
19 By: _____

20 Joshua Falakassa, Esq.
21 Mehrdad Bokhour, Esq.
22 Attorneys for Plaintiff and the Putative Classes
23
24
25
26
27
28

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 September 15, 2022, I served the following document(s) described as **FIRST**
6 **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:

7 **MORGAN, LEWIS & BOCKIUS LLP**

8 Barbara J. Miller, Bar No. 167223

barbara.miller@morganlewis.com

9 Samuel S. Sadeghi, Bar No. 311785

sam.sadeghi@morganlewis.com

10 600 Anton Boulevard, Suite 1800

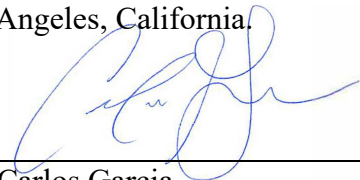
11 Costa Mesa, California 92626-7653

12 **Counsel for defendant Lifetime Brands, Inc.**

13 **BY ELECTRONIC MAIL:** Based on a Court order or an agreement by the parties to
14 accept service by e-mail or electronic transmission, I caused such the document(s) described above
to be sent from my email address to the persons listed above. I did not receive, within a reasonable
15 time after the transmission, any electronic message or indication that the transmission was
unsuccessful.

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

17 Executed on September 15, 2022, at Los Angeles, California.

18 
19
20 Carlos Garcia