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10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SAN JOAQUIN** *2022*

13 PATRICK FAIAIPAU, on behalf of himself and
14 all others similarly situated,

15 Plaintiff,

16 v.

17 RUGS USA LLC, a Delaware Limited Liability
Company; and DOES 1-50, inclusive.

18 Defendants.
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CASE NO.: STK-CV-UOE-3707

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

- (1) FAILURE TO PAY ALL OVERTIME WAGES;
- (2) FAILURE TO PAY ALL SICK TIME;
- (3) MEAL PERIOD VIOLATIONS;
- (4) REST PERIOD VIOLATIONS;
- (5) WAGE STATEMENT VIOLATIONS;
- (6) WAITING TIME PENALTIES;
- (7) UNFAIR COMPETITION (BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.); and
- (8) PAGA PENALTIES

DEMAND FOR JURY TRIAL

FILED
SUPERIOR COURT

2022 NOV -3 AM 11:36

BRANDON E. RILEY, CLERK

BY Donna Edwards
DEPUTY

BY FAX

1 Plaintiff Patrick Faiaipau (“Plaintiff”) on behalf of himself, and all other similarly situated
2 non-exempt employees, alleges and complains of defendant RUGS USA LLC, and DOES 1 to 50
3 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant RUGS USA LLC is a merchant selling affordable rugs throughout
6 California and the USA. Plaintiff brings this class action against Defendant for alleged violations of
7 the California Labor Code and Business and Professions Code.

8 2. As set forth below, Plaintiff alleges that Defendants failed to pay for all overtime wages
9 by failing to include all forms of compensation, including, but not limited to, non-discretionary
10 bonuses, incentive pay, and other forms of remuneration when calculating the “regular rate of pay”
11 used in payment of overtime wages. Similarly, Plaintiff also alleges that Defendants failed to pay all
12 sick days at the legal “regular rate of pay.” Plaintiff further alleges that Defendants’ meal and rest
13 period policies and practices did not allow and permit all compliant/timely meal and rest periods or
14 pay premium wages at the “regular rate of pay” in lieu thereof. As a result, Plaintiff alleges that
15 Defendants failed to provide non-exempt employees with accurate written itemized wage statements
16 and failed to timely pay all final wages upon separation of employment.

17 3. 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 4. 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 §§ 201-
23 203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1197.1, 1194, 1199, 2698,
24 *et seq.* and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to
25 seeking declaratory relief and restitution pursuant to California Business and Professions Code §
26 17200, *et. seq.*

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

28 6. This Court has jurisdiction over Defendants’ violations of the California Labor Code

1 and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional
2 minimum.

3 7. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
4 §§ 395(a) and 395.5, Defendants own and/or operate a warehouse at 1655 Tillie Lewis Drive,
5 Stockton California within the County of San Joaquin, and/or otherwise are found within the County
6 of San Joaquin, and Defendants are within the jurisdiction of this Court for purposes of service of
7 process.

8 **PARTIES**

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

12 9. Plaintiff is informed and believes and thereon alleges that defendant Rugs USA LLC.
13 is a Delaware limited liability company authorized to and doing business in California, and is and/or
14 was the legal employer of Plaintiff and the Class Members during the applicable statutory periods.
15 Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has
16 been deprived of the rights guaranteed to him by California Labor Code §§ 201-203, 204, 210, 221,
17 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1194.2, 1197.1, 1199, 2698, *et seq.*
18 and the California Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

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

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

1 alleged herein.

2 12. 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 13. 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 14. Defendants are merchant selling affordable rugs throughout California. Plaintiff was
17 employed by Defendant as a non-exempt employee with the title “equipment operator” working out
18 of its Stockton, California location. Plaintiff began working with Defendants on August 10, 2020
19 until his separation from employment on December 2, 2021. Plaintiff and other non-exempt
20 employees (including, but not limited to, equipment operators, warehouse associates, and other non-
21 exempt positions) were responsible for all aspects of Defendants’ business in California.

22 15. First, at all relevant times, Plaintiff and other non-exempt employees were not properly
23 paid at the correct overtime rate for hours worked in excess of eight (8) hours per workday and/or
24 forty (40) hours per workweek. While Plaintiff and other non-exempt employees worked overtime
25 hours, they were not compensated at one and one-half times their “regular rate of pay” because
26 Defendants failed to include all forms of compensation, including, but not limited to, non-
27 discretionary bonuses, incentive pay, and other forms of remuneration when calculating the “regular
28 rate of pay” used in payment of overtime wages.

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

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

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

22 19. As set forth above, Defendants failed to compensate Plaintiff and other non-exempt
23 employees for all hours worked, including all overtime wages, by failing to pay overtime at the
24 regular rate including all forms of compensation. Accordingly, and to the extent permitted by law,
25 Plaintiff and other non-exempt employees are entitled to recover unpaid wages and penalties for
26 violations of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199 1197.1.

27 20. Moreover, at all relevant times, Defendant failed in its obligation to provide Plaintiff
28 and other non-exempt employees the legally required paid sick days at the legal "regular rate of pay"

1 pursuant to Labor Code §§ 246(a),(b).

2 21. Pursuant to Labor Code § 246(a),(b), “[a]n employee who, on or after July 1, 2015,
3 works in California for the same employer for 30 or more days within a year from the commencement
4 of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
5 worked, beginning at the commencement of employment.”

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

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

17 24. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiff and
18 other non-exempt employees the legally required paid sick days at the “regular rate of pay” pursuant
19 to Labor Code §§ 246(a),(b). Instead, Defendant paid sick time at the non-exempt employees’ base
20 rate of pay, rather than the “regular rate of pay” as required by Labor Code §§ 246(l)(1-2).

21 25. Based on the foregoing Labor Code violations, Plaintiff seeks all civil and statutory
22 penalties, as well as unpaid wages, available and applicable under Labor Code §§ 246, 1194.2,
23 1197.1, 1198, and 1199.

24 26. Next, at all relevant times, Plaintiff and other non-exempt employees were denied
25 compliant and timely 30-minute off-duty meal periods as mandated by California law due its facially
26 unlawful meal period policy and practices. Defendants’ meal period policy states in relevant part as
27 follows:

1 “Each shift is offered 2 short breaks and a lunch break. If you do not wish to clock
2 out, you must remain on the premises and within the designated break areas.
3 Employees are not allowed to take their break in any area outside of the
4 designated area i.e., you are not permitted to eat food, have drinks, or use the
warehouse product as your break area.”

5 27. Here, at all relevant times, Defendants’ meal period policy is facially invalid as it does
6 not specify the timing or duration of meal periods, nor does it provide for a second meal period for
7 shifts greater than 10.0 hours. Indeed, as a result of this facially unlawful policy, Plaintiff and other
8 non-exempt employees were often unable to take timely and uninterrupted 30-minute first meal
9 periods before the end of the fifth hour of work due to Defendants’ uniform meal period policy and
10 practices.

11 28. Furthermore, Defendants’ meal period policy is completely silent as to the provision of
12 second meal periods when Plaintiff and other non-exempt employees worked in excess of 10.0 hours
13 in a shift. In fact, Plaintiff and other non-exempt employees were not always allowed and permitted
14 to take a mandated second meal period before the end of the tenth hour of work in violation of the
15 Labor Code and applicable Wage Orders.

16 29. Additionally, Plaintiff and other non-exempt employees were not properly paid meal
17 period premiums for missed or non-compliant meal periods at the “regular rate of pay” as required
18 by *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 (“Ferra”) and Labor Code § 226.7.

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

22 31. Moreover, at all relevant times, Plaintiff and other non-exempt employees were also
23 not provided with all 10-minute rest periods for every four hours worked, or major fraction thereof
24 due to Defendants’ facially unlawful rest period policy and practices. Here, Defendants’ rest period
25 policy fails to state the timing and duration of the rest periods and fails to state that employees are
26 entitled to net 10-minute rest periods for every 4 hours worked “or major fraction thereof.”
27 Defendants’ rest period policy fails to provide for additional rest periods for shifts greater than 10.0
28 and 12.0 hours in a day. Making matters worse, at all relevant times, Defendants’ rest period policy

1 required that all non-exempt employees remain on premises during rest periods.

2 32. By not relieving all non-exempt employees of all duties during rest periods, Defendants
3 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
4 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all
5 duties and relinquish control over how employees spend their time.”]. In *Augustus*, the California
6 Supreme Court expressly rejected the employers’ assertion that it could provide an on-duty rest period
7 to employees who worked as security guards and further explained “that employers [must] relinquish
8 any control over how employees spend their break time and relieve their employees of all duties.” *Id.*
9 at 273.

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

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

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

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

26 37. Accordingly, for the violations of Labor Code section 226 described above, Plaintiff
27 and other non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants’
28 violations of Labor Code § 226(a).

38. Finally, because of, Defendants' failure to pay all overtime wages, sick pay, and meal and rest period premiums at the "regular rate of pay", Defendants also failed and continue to fail to pay Plaintiff and other non-exempt employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203. Thus, Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code §§ 201-203, and 256.

CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

13 42. **Predominance of Common Questions:** Common questions of law and fact
14 predominate over questions that affect only individual members of the Classes. The common
15 questions of law set forth above are numerous and substantial and stem from Defendants’ policies
16 and/or practices applicable to each individual class member, such as Defendants’ failure to pay for
17 all overtime wages and sick pay at the “regular rate” including all forms of compensation,
18 Defendants’ failure to provide all compliant meal and rest periods or compensation at the “regular
19 rate of pay” in lieu thereof, and Defendants’ resulting failure to provide accurate itemized wage
20 statements, and to pay for all wages due upon separation of employment. As such, the common
21 questions predominate over individual questions concerning each individual class member’s showing
22 as to his or her eligibility for recovery or as to the amount of his or her damages.

23 43. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
24 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
25 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
26 Plaintiff, like the members of the Classes was deprived of overtime wages and sick pay at the “regular
27 rate,” was deprived of meal and rest period premium wages, was subject to Defendants’ uniform meal
28 and rest period policies/practices, was not provided accurate itemized wage statements, and was not

1 timely paid all wages owed upon separation of employment.

2 44. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
3 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
4 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
5 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
6 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
7 members of the Classes.

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

18 46. Moreover, requiring each member of the Classes to pursue an individual remedy would
19 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
20 against their former and/or current employer for real and justifiable fear of retaliation and permanent
21 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
22 the individual class members, even if possible, would create a substantial risk of inconsistent or
23 varying verdicts or adjudications with respect to the individual class members against Defendants
24 herein; and which would establish potentially incompatible standards of conduct for Defendants;
25 and/or legal determinations with respect to individual class members which would, as a practical
26 matter, be dispositive of the interest of the other class members not parties to adjudications or which
27 would substantially impair or impede the ability of the class members to protect their interests.
28 Further, the claims of the individual members of the class are not sufficiently large to warrant

1 vigorous individual prosecution considering all of the concomitant costs and expenses attending
2 thereto. As such, the Classes identified in Paragraph 38 are maintainable as Classes under § 382 of
3 the Code of Civil Procedure.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY ALL OVERTIME WAGES**

6 **(AGAINST ALL DEFENDANTS)**

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

8 48. This cause of action is brought pursuant to Labor Code §§ 204, 210, 510, 558, 1194,
9 and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime
10 hours worked and provide a private right of action for the failure to pay all overtime compensation
11 for overtime work performed.

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

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

22 51. Defendants failed to conform their pay practices to the requirements of the law. This
23 unlawful conduct includes but is not limited to Defendants’ failure to include all forms of
24 compensation, including, but not limited to, non-discretionary bonuses, incentive pay, and other
25 forms of remuneration when calculating the “regular rate of pay” used in payment of overtime wages,
26 all of which resulted in Plaintiff and the Classes not being paid all overtime wages owed.

27 52. The foregoing policies and practices are unlawful and create entitlement to recovery
28 by Plaintiff and the members of the Classes in a civil action for the unpaid amount of overtime wages,

1 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
2 Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure §
3 1021.5.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY ALL SICK TIME**

6 **(AGAINST ALL DEFENDANTS)**

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

8 54. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
9 1198, and 1199 which provide that non-exempt employees are entitled to have their sick time paid at
10 the regular rate, including all forms of compensation/remuneration.

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

13 56. Defendants failed to conform their pay practices to the requirements of the law. This
14 unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of
15 failing to include all forms of compensation, including but not limited to non-discretionary bonuses,
16 into the calculation of the "regular rate of pay," which resulted in Plaintiff and the Classes not being
17 paid all sick time wages owed.

18 57. The foregoing policies and practices are unlawful and create entitlement to recovery
19 by Plaintiff and the members of the Classes in a civil action for the unpaid amount of sick time wages,
20 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
21 Code §§ 246, 558, 1194.2, 1197.1, 1198, the applicable Wage Orders, and Code of Civil Procedure
22 § 1021.5

23 **THIRD CAUSE OF ACTION**

24 **MEAL PERIOD VIOLATIONS**

25 **(AGAINST ALL DEFENDANTS)**

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

27 59. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
28 their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff

1 and members of the Class, with all required meal periods in accordance with the mandates of the
2 California Labor Code and applicable Wage Orders, for the reasons set forth in the Common
3 Allegations section of this Complaint.

4 60. Despite Defendants' violations, Defendants have not paid an additional hour of pay at
5 the "regular rate of pay" to Plaintiff and members of the Class at their respective regular rates of pay
6 for each violation, in accordance with *Ferra* and Labor Code § 226.7.

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

10 **FOURTH CAUSE OF ACTION**

11 **REST PERIOD VIOLATIONS**

12 **(AGAINST ALL DEFENDANTS)**

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

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

17 64. Due to their unlawful rest period policy and practices, Defendants did not authorize
18 and permit Plaintiff and members of the Class to take all rest periods to which they were legally
19 entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay at the
20 "regular rate of pay" to Plaintiff and members of the Class at their respective regular rates of pay for
21 each violation, in accordance with California Labor Code § 226.7.

22 65. The foregoing violations create an entitlement to recovery by Plaintiff and members
23 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
24 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
25 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

1 **FIFTH CAUSE OF ACTION**

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

3 **(AGAINST ALL DEFENDANTS)**

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

5 67. Labor Code 226(a) states in pertinent part the following:

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

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

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

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

71. 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

1 initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate
2 penalty of \$4,000 per Plaintiff and per every member of the Wage Statement Subclass from
3 Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

4 **SIXTH CAUSE OF ACTION**

5 **WAITING TIME PENALTIES**

6 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

16 76. Defendants willfully failed to pay the Waiting Time Subclass for all hours worked,
17 including all overtime wages, sick time, and their meal and rest period premiums at the "regular rate
18 of pay", prior to or upon termination or separation from employment with Defendants as required by
19 Labor Code §§ 201 and 202.

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

24 **SEVENTH CAUSE OF ACTION**

25 **UNFAIR COMPETITION**

26 **(AGAINST ALL DEFENDANTS)**

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

28 79. Defendants have engaged and continue to engage in unfair and/or unlawful business

1 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
2 failing to pay for overtime wages and sick time by failing to properly calculate the “regular rate of
3 pay,” by failing to provide legally required meal and rest periods or pay premium payments at the
4 “regular rate of pay” in lieu thereof, by failing to provide accurate wage statements, and by failing to
5 pay all earned wages at the time of separation from employment.

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

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

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

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

22 **EIGHT CAUSE OF ACTION**

23 **PRIVATE ATTORNEYS GENERAL ACT PENALTIES**

24 **(AGAINST ALL DEFENDANTS)**

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

26 85. Defendants have committed several Labor Code violations against Plaintiff and
27 other non-exempt employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code
28 § 2698 *et seq.*, acting on behalf of himself and other non-exempt employees, bring this representative

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

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

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

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

14 d. Failing to reimburse Plaintiff and other non-exempt employees for all necessary
15 business expenditures in violation of Labor Code §§ 2800 and 2802

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

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

20 86. On or about May 10, 2022, Plaintiff notified Defendant RugsUSA, LLC, via
21 certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its
22 website of Defendant’s violations of the California Labor Code § 2698 et seq., with respect to
23 violations of the California Labor Code identified in Paragraph 77(a)-(e). Now that sixty-five days
24 have passed from Plaintiff notifying Defendant and the LWDA of these violations, Plaintiff will have
25 exhausted his administrative requirements for bringing a claim under the Private Attorneys General
26 Act with respect to these violations.

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

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

3 **PRAYER FOR RELIEF**

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

- 6 1. For an order certifying the proposed Classes;
- 7 2. For an order-appointing Plaintiff as representative of the Classes;
- 8 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 9 4. Upon the First Cause of Action, for compensatory, consequential, general and
10 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 11 5. Upon the Second Cause of Action, for compensatory, consequential, general and
12 special damages according to proof pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, 1199;
- 13 6. Upon the Third Cause of Action, for compensatory, consequential, general and
14 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 15 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
16 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 17 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and
18 reasonable costs and attorneys' fees;
- 19 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
20 Labor Code §§ 201-203;
- 21 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
22 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
23 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
- 24 11. Upon the Eight Cause of Action, for civil penalties due to Plaintiff, other non-exempt
25 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
26 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
27 subsequent violation per employee per pay period for those violations of the Labor Code for which
28 no civil penalty is specifically provided under the Labor Code;

1 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
2 § 218.6 and Civil Code §§ 3287 and 3289;

3 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
4 218.5, 226, 1194, and Code of Civil Procedure § 1021.5; and

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

6 Dated: October 24, 2022

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

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8
9 By: _____

Joshua Falakassa, Esq.

Mehrdad Bokhour, 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 November 2, 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:

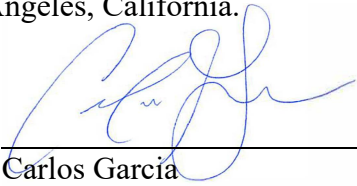
Marissa Alguire, Esq.
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Kevin Finley, Esq.
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AKERMAN, LLP
601 West Fifth Street, Suite 300
Los Angeles, California 90071

Counsel for defendant RUGSUSA, LLC

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

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

Executed on November 2, 2022, at Los Angeles, California.



Carlos Garcia