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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

CHARLES HICKS, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

DECKER ELECTRIC CO., a California
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: CGC-22-599591

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

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

DEMAND FOR JURY TRIAL

Action Filed: May 11, 2022

Trial Date: No Date Set

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

07/18/2022
Clerk of the Court
BY: KAREN VALDES
Deputy Clerk

1 Plaintiff Charles Hicks (“Plaintiff”) on behalf of himself, the State of California, and all other
2 similarly situated non-exempt employees, alleges and complains of defendant Decker Electric Co.,
3 Inc., and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant Decker Electric Co., Inc. is an electrical contractor servicing the Bay Area
6 of California. Plaintiff brings this class action against Defendant for alleged violations of the
7 California Labor Code and Business and Professions Code.

8 2. As set forth below, Plaintiff alleges that Defendants failed to pay for all hours worked
9 due to its failure to accurately record time entries, and by automatically deducted 30 minutes for meal
10 periods. Plaintiff further alleges that Defendants failed to include all forms of compensation,
11 including, but not limited to, non-discretionary bonuses, incentive pay, and other forms of
12 remuneration when calculating the “regular rate of pay” used in payment of overtime wages. Plaintiff
13 also alleges that Defendants’ meal and rest period policies and practices did not allow and permit all
14 compliant/timely meal and rest periods or pay premium wages at the “regular rate of pay” in lieu
15 thereof. Additionally, Plaintiff alleges that Defendants failed to provide non-exempt employees with
16 accurate written itemized wage statements and failed to timely pay all final wages upon separation of
17 employment. Based on these alleged Labor Code violations, Plaintiff now brings this class action 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 3. 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, 510, 512, 516, 1174, 1174.4, 1194, 1194.2,
24 1197.1, 1199, 2698, *et seq.*, and applicable Industrial Welfare Commission Wage Orders (“Wage
25 Orders”), in addition to seeking declaratory relief and restitution pursuant to California Business and
26 Professions Code § 17200, *et. seq.*

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

28 5. 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 6. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
4 §§ 395(a) and 395.5, Defendants principal place of business is 1282 Folsom Street, San Francisco
5 California within the County of San Francisco, and/or otherwise are found within the County of San
6 Francisco, and Defendants are within the jurisdiction of this Court for purposes of service of process.

7 **PARTIES**

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

11 8. Plaintiff is informed and believes and thereon alleges that defendant Decker Electric
12 Co., Inc. is a California corporation authorized to and doing business in California, and is and/or was
13 the legal employer of Plaintiff and the Class Members during the applicable statutory periods.
14 Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has
15 been deprived of the rights guaranteed to him by California Labor Code §§ 201-203, 204, 210, 221,
16 226(a), 226(e), 226.3, 226.7, 227.3, 510, 512, 516, 1174, 1174.4, 1194, 1194.2, 1197.1, 1199, and the
17 California Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

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

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

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

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

COMMON FACTUAL ALLEGATIONS

13. Defendants are an electrical contractor servicing the Bay Area of California. Plaintiff was employed by Defendants as a non-exempt employee with the title of material handler. Plaintiff began working with Defendants from approximately 2006 until his separation from employment on December 3, 2021. Plaintiff and other non-exempt employees (including, but not limited to electricians, material handlers, janitorial staff, and other non-exempt positions) were responsible for all aspects of Defendants' business in California.

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

15. Here, Defendants' time recording practice is not neutral on its face or in its application as Plaintiff and other non-exempt employees are subject to discipline, including termination for being

1 tardy in reporting to work, or returning from a meal or rest period. Moreover, because Defendants are
2 capable of tracking the time worked by non-exempt employees to the minute, the policy itself exists
3 not for the convenience or benefit of the employees who are trying to report their time on timecards
4 or otherwise, but for Defendants' benefit.

5 16. Further, at all relevant times, Defendants have had a payroll policy/practice which
6 automatically deducts 30 minutes for meal periods, regardless of whether a complaint 30-minute meal
7 period was provided. As a result, over a period of time, Plaintiff and other non-exempt employees
8 were not properly paid for all hours worked in violation of Cal. Labor Code §§ 204, 210, 510, 1194,
9 1197.1, 1199, and applicable Wage Orders.

10 17. Additionally, as a result of the unlawful time recording and rounding practice, Plaintiff
11 and other non-exempt employees were not properly paid at the correct overtime rate for hours worked
12 in excess of eight hours per shift in violation of Labor Code § 510.

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

20 19. Labor Code § 510 requires an employer to compensate an employee who works more
21 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
22 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
23 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
24 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
25 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
26 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
27 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
28 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

1 20. Accordingly, and to the extent permitted by law, Plaintiff and other non-exempt
2 employees are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204,
3 210, 510, 1194, 1197.1, 1199 1197.1.

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

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

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

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

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

1 hour of work. Moreover, at all relevant times, Defendants had a payroll policy/practice which
2 automatically deducted 30 minutes for meal periods, regardless of whether a 30-minute meal period
3 was provided. Further, when Plaintiff and other non-exempt employees worked more than 10.0 hours
4 in a shift, they were not always allowed and permitted to take a mandated second meal period before
5 the end of the tenth hour of work in violation of the Labor Code and applicable Wage Orders.

6 26. Additionally, Plaintiff and other non-exempt employees were not properly paid meal
7 period premiums for missed or non-compliant meal periods at the “regular rate of pay” pursuant to
8 *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor Code 226.7.

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

12 28. Moreover, at all relevant times, Plaintiff and other non-exempt employees were not
13 provided with all 10-minute rest periods for every four hours worked, or major fraction thereof due
14 to Defendants’ uniform rest period policies/practices and work demands. Plaintiff and other non-
15 exempt employees were and are routinely unable to take a net 10-minute duty free rest periods for
16 every major fraction of four hours worked. This includes a second rest period for shifts in excess of
17 six hours, and a third rest period for shifts in excess of 10 hours in a workday.

18 29. By not relieving all non-exempt employees of all duties during rest periods, Defendants
19 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
20 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all
21 duties and relinquish control over how employees spend their time.”]. In *Augustus*, the California
22 Supreme Court expressly rejected the employers’ assertion that it could provide an on-duty rest period
23 to employees who worked as security guards and further explained “that employers [must] relinquish
24 any control over how employees spend their break time and relieve their employees of all duties.” *Id.*
25 at 273.

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

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

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

10 33. Moreover, at all relevant times, Defendants' wage statements failed to include the legal
11 name and address of the employer as required by Labor Code § 226(a)(8), the inclusive dates of the
12 period for which the employee is paid as required by Labor Code § 226(a)(6). Finally, the wage
13 statements also fail to include all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate by the employee in violation of Labor
15 Code § 226(a)(9).

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

21 35. Accordingly, for the violations of Labor Code section 226 described above, Plaintiff
22 and other non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants'
23 violations of Labor Code § 226(a).

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

1 **CLASS ACTION ALLEGATIONS**

2 37. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
3 § 382 of the Code of Civil Procedure:

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

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

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

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

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

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

27 1. Whether Defendants’ timekeeping/payroll policies/practices resulted in a failure to pay
28 for all hours worked to the members of the Class;

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

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

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

5 40. **Predominance of Common Questions:** Common questions of law and fact
6 predominate over questions that affect only individual members of the Classes. The common
7 questions of law set forth above are numerous and substantial and stem from Defendants' policies
8 and/or practices applicable to each individual class member, such as Defendants' failure to pay for
9 all hours worked, Defendants' failure to provide all compliant meal and rest periods or compensation
10 at the "regular rate of pay" in lieu thereof, and Defendants' failure to provide accurate itemized wage
11 statements, and to pay for all wages due upon separation of employment. As such, the common
12 questions predominate over individual questions concerning each individual class member's showing
13 as to his or her eligibility for recovery or as to the amount of his or her damages.

14 41. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
15 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
16 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
17 Plaintiff, like the members of the Classes was deprived of minimum and overtime wages, was
18 deprived of meal and rest period premium wages, was subject to Defendants' uniform meal and rest
19 period policies/practices, was not provided accurate itemized wage statements, and was not timely
20 paid all wages owed upon separation of employment.

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

27 43. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
28 important public interest in establishing minimum working conditions and standards in California.

1 These laws and labor standards protect the average working employee from exploitation by
2 employers who have the responsibility to follow the laws and who may seek to take advantage of
3 superior economic and bargaining power in setting onerous terms and conditions of employment. The
4 nature of this action and the format of laws available to Plaintiff and members of the Classes make
5 the class action format a particularly efficient and appropriate procedure to redress the violations
6 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
7 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
8 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

9 44. Moreover, requiring each member of the Classes to pursue an individual remedy would
10 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
11 against their former and/or current employer for real and justifiable fear of retaliation and permanent
12 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
13 the individual class members, even if possible, would create a substantial risk of inconsistent or
14 varying verdicts or adjudications with respect to the individual class members against Defendants
15 herein; and which would establish potentially incompatible standards of conduct for Defendants;
16 and/or legal determinations with respect to individual class members which would, as a practical
17 matter, be dispositive of the interest of the other class members not parties to adjudications or which
18 would substantially impair or impede the ability of the class members to protect their interests.
19 Further, the claims of the individual members of the class are not sufficiently large to warrant
20 vigorous individual prosecution considering all of the concomitant costs and expenses attending
21 thereto. As such, the Classes identified in Paragraph 37 are maintainable as Classes under § 382 of
22 the Code of Civil Procedure.

23 **FIRST CAUSE OF ACTION**

24 **MINIMUM WAGE VIOLATIONS**

25 **(AGAINST ALL DEFENDANTS)**

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

27 46. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
28 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts

1 set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
2 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
3 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to
4 the unpaid wages and interest accrued thereon.

5 47. At all relevant times herein, Defendants failed to conform their pay practices to the
6 requirements of the law. This unlawful conduct includes but is not limited to (1) Defendants'
7 timekeeping and rounding policy/practice which resulted in these individuals not being paid for all
8 hours actually worked, and (2) Defendants' policy/practice of automatically deducting 30 minutes
9 for meal periods regardless of whether a 30-minute meal period was actually provided. Accordingly,
10 Plaintiff and members of the Classes were not compensated for all hours worked including, but not
11 limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to
12 work under the California Labor Code and applicable Wage Orders.

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

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

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

28 ///

SECOND CAUSE OF ACTION
FAILURE TO PAY ALL OVERTIME WAGES
(AGAINST ALL DEFENDANTS)

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

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

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

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

55. Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to (1) Defendants’ unfair timekeeping and rounding/shaving practice, and (2) Defendants’ policy/practice of automatically deducting 30 minutes from a meal period regardless of whether a 30-minute meal period was actually provided, and (3) Defendants’ failure to include all forms of compensation, including, but not limited to, non-discretionary bonuses, incentive pay, and other forms of remuneration when calculating the “regular rate of pay” used in payment of overtime wages, all of which resulted in Plaintiff and the Classes not being paid all overtime wages owed.

56. The foregoing policies and practices are unlawful and create entitlement to recovery 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 **THIRD CAUSE OF ACTION**

5 **MEAL PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

19 **FOURTH CAUSE OF ACTION**

20 **REST PERIOD VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

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

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

26 63. Due to their unlawful rest period policy and practices, Defendants did not authorize
27 and permit Plaintiff and members of the Class to take all rest periods to which they were legally
28 entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay at the

1 “regular rate of pay” to Plaintiff and members of the Class at their respective regular rates of pay for
2 each violation, in accordance with California Labor Code § 226.7.

3 64. The foregoing violations create an entitlement to recovery by Plaintiff and members
4 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
5 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
6 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

7 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

25 68. As a result of Defendants failure to pay Plaintiff and the Wage Statement Subclass for
26 all regular and overtime wages, and missed meal and rest period premiums at the appropriate legal
27 rate, Defendants failed to include required information on Plaintiff and the Wage Statement Subclass’
28 wage statements, including, but not limited to, the gross wages earned, the net wages earned in

1 violation of Labor Code section 226(a)(1,2,5, and 9).

2 69. Moreover, Defendants failed to include the legal name and address of the employer as
3 required by § 226(a)(8) and failed to all applicable hourly rates in effect during the pay period and
4 the corresponding number of hours worked at each hourly rate by the employee in violation of §
5 226(a)(9).

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

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

14 **SIXTH CAUSE OF ACTION**

15 **WAITING TIME PENALTIES**

16 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

26 76. Defendants willfully failed to pay the Waiting Time Subclass for all hours worked,
27 including all minimum and overtime wages, sick time, vested and unused vacation time, and their
28

1 meal and rest period premiums at the “regular rate of pay”, prior to or upon termination or separation
2 from employment with Defendants as required by Labor Code §§ 201 and 202.

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

7 **SEVENTH CAUSE OF ACTION**

8 **UNFAIR COMPETITION**

9 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

28 83. Plaintiff was compelled to retain the services of counsel to file this court action to

1 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
2 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
3 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
4 he is entitled to recover under Code of Civil Procedure § 1021.5.

5 **EIGHTH CAUSE OF ACTION**

6 **PRIVATE ATTORNEYS GENERAL ACT**

7 **(Labor Code § 2698 et seq.)**

8 **(AGAINST ALL DEFENDANTS)**

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

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

18 a. Failing to pay Plaintiff and other non-exempt employees for all hours worked,
19 including all minimum and overtime wages in violation of Labor Code §§ 204, 510, 1194, 1197,
20 1198, and 1182.12

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

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

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

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

3 86. On or about May 10, 2022, Plaintiff notified Decker Electric Co., via certified mail,
4 and the California Labor and Workforce Development Agency (“LWDA”) via its website of
5 Defendants’ violations of the California Labor Code § 2698 et seq., with respect to violations of the
6 California Labor Code identified in Paragraph 85 (a)-(e). Now that sixty-five days have passed from
7 Plaintiff notifying Defendants and the LWDA of these violations, Plaintiff will have exhausted his
8 administrative requirements for bringing a claim under the Private Attorneys General Act with respect
9 to these violations.

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

14 **PRAYER FOR RELIEF**

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

- 17 1. For an order certifying the proposed Classes;
- 18 2. For an order appointing Plaintiff as representative of the Classes;
- 19 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 20 4. Upon the First Cause of Action, for compensatory, consequential, general and
21 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, and 1194;
- 22 5. Upon the Second Cause of Action, for compensatory, consequential, general and
23 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 24 6. Upon the Third Cause of Action, for compensatory, consequential, general and
25 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 26 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
27 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

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

3 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
4 Labor Code §§ 201-203;

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

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

13 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
14 § 218.6 and Civil Code §§ 3287 and 3289;

15 13. For attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194, and
16 Code of Civil Procedure § 1021.5; and

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

18 Dated: July 18, 2022

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

19
20
21 By: _____

Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

Anwar D. Burton, Esq.

Attorneys for Plaintiff and the Putative Classes