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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

ANICIA CISNEROS, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

THERMA LLC, a Delaware Limited Liability
Company; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 22CV399660

**FIRST AMENDED CLASS AND PAGA
REPRESENTATIVE ACTION
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) FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT AND UPON TERMINATION;
- (7) UNFAIR COMPETITION; and
- (8) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff Anicia Cisneros (“Plaintiff”) on behalf of herself, and all other similarly situated non-
2 exempt employees, alleges and complains of defendants Therma LLC and Legence Payroll Solutions,
3 LLC (dba Therma Solutions LLC) (formerly known as Therma Services, LLC), and DOES 1 to 50
4 (collectively, “Defendants”) and each of them, as follows:

5 **INTRODUCTION**

6 1. Defendants are a mechanical fabrication company manufacturing heating, ventilation,
7 and air conditioning (“HVAC”) systems and components in California, and its associated entities.

8 2. Plaintiff brings this class action against Defendants for alleged violations of the
9 California Labor Code, Business and Professions Code, and the Labor Code Private Attorneys
10 General Act of 2004.

11 3. As set forth below, Plaintiff alleges that Defendants failed to pay for all minimum and
12 overtime wages at the “regular rate of pay” due to their uniform timekeeping policies/practices which
13 failed to accurately capture and record all hours worked. Plaintiff further alleges that Defendants’
14 meal and rest period policies and practices did not allow and permit all compliant and timely meal
15 and rest periods or pay premium wages at the “regular rate of pay” in lieu thereof.

16 4. As a result, Plaintiff alleges that Defendants failed to provide non-exempt employees
17 with accurate written itemized wage statements and failed to timely pay all final wages during
18 employment and upon separation of employment.

19 5. Based on these alleged Labor Code violations, Plaintiff now brings this class and
20 PAGA representative action to recover unpaid wages, liquidated damages, restitution, penalties, and
21 other related relief on behalf of herself and all others similarly situated.

22 **JURISDICTION AND VENUE**

23 6. Plaintiff, on behalf of herself and all others similarly situated employees hereby brings
24 this class and PAGA representative action for recovery of unpaid wages and penalties under
25 California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 510, 512, 516,
26 1174, 1197.1, 1194, 1199, 2698 *et seq.* and applicable Industrial Welfare Commission Wage Orders
27 (“Wage Orders”), in addition to seeking declaratory relief and restitution pursuant to California
28 Business and Professions Code § 17200, *et. seq.*

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

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

9. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, Defendants principal place of business is in San Jose within the County of Santa Clara, and/or otherwise are found within the County of Santa Clara and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

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

11. Plaintiff is informed and believes and thereon alleges that defendant Therma LLC and Legence Payroll Solutions, LLC (dba Therma Solutions LLC) (formerly known as Therma Services, LLC) are Delaware limited liability companies authorized to and doing business in California and are and/or were the legal employer of Plaintiff and the Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 510, 512, 516, 1174, 1194, 1194.2, 1197.1, 1199, 2698 *et seq.*, and the California Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

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

13. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and

1 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
2 corporate, were responsible in some manner for the acts and omissions alleged herein, and
3 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
4 alleged herein.

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

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

18 **COMMON FACTUAL ALLEGATIONS**

19 16. Defendants are a mechanical fabrication company manufacturing heating, ventilation,
20 and air conditioning (“HVAC”) systems and components in California, and its associated entities.
21 Plaintiff was employed by Defendants as a non-exempt employee out of its San Jose, California
22 location. Plaintiff began working for Defendants in September 2021 until her separation of
23 employment on April 7, 2022. Plaintiff and other non-exempt employees (including, but not limited
24 to project manager assistants, clerical employees, and all other non-exempt positions) were
25 responsible for all aspects of Defendants’ business in California.

26 17. First, at all relevant times, Defendants implemented a uniform timekeeping
27 practice/policy that failed to accurately record/capture Plaintiff’ and other non-exempt employees’
28 time entries, resulting in a failure to calculate and provide payment of all minimum and overtime

1 wages. Instead of recording the actual hours to the minute worked, Defendants utilized a timekeeping
2 policy/practice that assumed that non-exempt employees arrived and departed exactly at the time of
3 their pre-scheduled shifts without accounting for actual time worked, and resulting in off-the-clock
4 work. Indeed, Defendants' time keeping policy/practice is not neutral and non-exempt employees
5 were subject to discipline for being tardy in reporting to work or returning from a meal or rest period
6 or for leaving early. Because Defendants are capable of tracking the actual time worked to the minute,
7 the policy/practice exists not for the convenience or benefit of the employees who are reporting to
8 work early and trying to report their time correctly, but for Defendants' benefit. As a result of this
9 policy/practice, Plaintiff and other non-exempt employees are not properly compensated for all the
10 hours that they work and paid all of the overtime hours they work at the "regular rate of pay," in
11 violation of Labor Code §§ 204, 210, 510, 1194, 1194.2, 1197.1, 1199, and applicable Wage Orders.

12 18. As a result, over a period of time, Plaintiff and other non-exempt employees were not
13 properly paid for all hours worked in violation of Cal. Labor Code §§ 204, 210, 1194, 1194.2, 1197.1,
14 1199, and applicable Wage Orders. Additionally, as a result of Defendants' unlawful policies,
15 Plaintiff and other non-exempt employees were also not properly paid at the correct overtime rate at
16 the "regular rate of pay" for hours worked in excess of eight hours per shift in violation of Labor
17 Code § 510.

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

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

1 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
2 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
3 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
4 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
5 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

6 21. Accordingly, and to the extent permitted by law, Plaintiff and other non-exempt
7 employees are entitled to recover unpaid minimum and overtime wages and penalties for violations
8 of Labor Code §§ 204, 210, 510, 1194, 1194.2, 1197.1, and 1199.

9 22. Next, at all relevant times, Plaintiff and other non-exempt employees were often not
10 allowed and permitted to take all compliant and timely 30-minute off-duty meal periods as required
11 by California law. Due to Defendants' uniform meal period policies/practices and operational
12 requirements, Plaintiff and other non-exempt employees were often unable to take timely, complete,
13 and uninterrupted 30-minute first meal periods before the end of the fifth hour of work. When Plaintiff
14 and other non-exempt employees worked in excess of 10.0 hours in a shift, they were not always
15 allowed and permitted to take a mandated timely, complete, and uninterrupted 30-minute second meal
16 period before the end of the tenth hour of work in violation of the Labor Code and applicable Wage
17 Orders.

18 23. Each time Plaintiff and other non-exempt employees were unable to take a compliant
19 meal period (i.e., when they took a late, short, or missed a meal period), Defendants failed and
20 continues to fail to pay meal period premium payments at the "regular rate of pay" as required by
21 *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 ("*Ferra*") and Labor Code § 226.7.

22 24. Accordingly, due to Defendants' uniform meal period policies/practices, Plaintiff and
23 other non-exempt employees were often denied legally compliant meal periods in violation of Labor
24 Code §§ 226.7, 512, 516, and applicable Wage Orders.

25 25. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were often
26 not provided with all net 10-minute rest periods for every four hours worked, or major fraction thereof
27 due to Defendants' uniform rest period policies/practices and operational requirements. Indeed,
28 Plaintiff and other non-exempt employees were often not allowed and permitted to take all of their

1 rest periods, including second rest periods for shifts in excess of six hours, and a third rest periods for
2 shifts in excess of 10.0 hours in a workday. In addition, non-exempt employees' rest periods were
3 often impeded by work demands and operational requirements. Finally, Defendants also required
4 Plaintiff and other non-exempt employees to remain on premises during rest periods. As a result,
5 Plaintiff and other non-exempt employees were and are routinely unable to take a net 10-minute duty
6 free rest periods for every major fraction of four hours worked.

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

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

18 28. Accordingly, due to Defendants' uniform rest period policies/practices, Plaintiff and
19 other non-exempt employees were also often denied legally compliant rest breaks in violation of
20 Labor Code §§ 226.7, 512, 516, and applicable Wage Orders.

21 29. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees for
22 all hours they were subject to the control of Defendants, including all minimum and overtime wages,
23 and Defendants' failure to adequately pay for meal and rest period premiums at the “regular rate of
24 pay,” Defendants issued wage statements which failed to accurately identify the gross wages earned,
25 the total hours worked, the net wages earned, and the correct corresponding number of hours worked
26 at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9). Further, at all relevant times,
27 Defendants' wage statements also failed to include the correct name and address of the legal entity
28 that is the employer in violation of Labor Code § 226(a)(8).

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

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

32. Finally, because of, Defendants' failure to pay all minimum and overtime wages, 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 during their employment and at their time of separation from employment in violation of Labor Code §§ 201-204 and 210. Thus, Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code §§ 201-204 and 210.

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action on behalf of herself 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”)

1
2 34. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
3 joinder of all members would be unfeasible and not practicable. The membership of the Classes is
4 unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one
5 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of
6 Defendants' employment and payroll records.

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

11 1. Whether Defendants' uniform timekeeping practices failed to accurately capture,
12 record, and calculate all hours worked resulted in a failure to pay all minimum and overtime wages;

13 2. Whether Defendants provided legally compliant meal and rest periods or proper
14 compensation in lieu thereof at the "regular rate of pay" to members of the Class;

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

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

20 36. **Predominance of Common Questions:** Common questions of law and fact
21 predominate over questions that affect only individual members of the Classes. The common
22 questions of law set forth above are numerous and substantial and stem from Defendants' policies
23 and/or practices applicable to each individual class member, such as Defendants' failure to pay all
24 minimum and overtime wages due to their timekeeping policy/practice failing to accurately capture
25 and record all hours worked, Defendants' failure to provide all compliant meal and rest periods or
26 compensation at the "regular rate of pay" in lieu thereof, and Defendants' resulting failure to provide
27 accurate itemized wage statements, and to pay for all wages due upon separation of employment. As
28

1 such, the common questions predominate over individual questions concerning each individual class
2 member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

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

10 38. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
11 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
12 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
13 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
14 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
15 members of the Classes.

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

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

1 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
2 the individual class members, even if possible, would create a substantial risk of inconsistent or
3 varying verdicts or adjudications with respect to the individual class members against Defendants
4 herein; and which would establish potentially incompatible standards of conduct for Defendants;
5 and/or legal determinations with respect to individual class members which would, as a practical
6 matter, be dispositive of the interest of the other class members not parties to adjudications or which
7 would substantially impair or impede the ability of the class members to protect their interests.
8 Further, the claims of the individual members of the class are not sufficiently large to warrant
9 vigorous individual prosecution considering all of the concomitant costs and expenses attending
10 thereto. As such, the Classes identified in Paragraph 33 are maintainable as Classes under § 382 of
11 the Code of Civil Procedure.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY ALL MINIMUM WAGES**

14 **(AGAINST ALL DEFENDANTS)**

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

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

22 43. At all relevant times herein, Defendants failed to conform their pay practices to the
23 requirements of the Labor Code and California law. This unlawful conduct includes but is not limited
24 to Defendants' uniform timekeeping policies/practices of failing to accurately capture, record, and
25 provide payment for all hours worked, resulting in these individuals not being paid for all hours
26 actually worked (including off-the-clock work). Accordingly, Plaintiff and members of the Class
27 were not compensated for all hours worked including, but not limited to, all hours they were subject
28

1 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
2 and applicable Wage Orders.

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

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

13 46. Defendants' practice and uniform administration of corporate policy regarding illegal
14 employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members
15 of the Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including
16 interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 204,
17 210, 558, 1194 *et seq.*, 1197, 1197.1, 1198, and Code of Civil Procedure § 1021.5.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY ALL OVERTIME WAGES**

20 **(AGAINST ALL DEFENDANTS)**

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

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

26 49. At all times relevant herein, Defendants were required to properly pay Plaintiff and
27 members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code
28 § 1194 and the applicable Wage Orders.

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

9 51. Defendants failed to conform their pay practices to the requirements of the law. This
10 unlawful conduct includes but is not limited to Defendants’ of failing to accurately capture and record
11 all hours worked, which resulted in Plaintiff and the Overtime Subclass not being paid all overtime
12 wages owed.

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

18 **THIRD CAUSE OF ACTION**

19 **MEAL PERIOD VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

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

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

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

4 56. As a result, Defendants are responsible for paying premium compensation for meal
5 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
6 applicable Wage Orders, Labor Code §§ 226.7, 512, 516, and Civil Code §§ 3287(b) and 3289.

7
8 **FOURTH CAUSE OF ACTION**

9 **REST PERIOD VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

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

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

15 59. Due to their unlawful rest period policy and practices, Defendants did not authorize
16 and permit Plaintiff and members of the Class to take all rest periods to which they were legally
17 entitled. Defendants also required Plaintiff and other non-exempt employees to remain on premises
18 during rest periods. As a result, Plaintiff and other non-exempt employees were and are routinely
19 unable to take a net 10-minute duty free rest periods for every major fraction of four hours worked.
20 Despite Defendants’ violations, Defendants have not paid an additional hour of pay at the “regular
21 rate of pay” to Plaintiff and members of the Class at their respective regular rates of pay for each
22 violation, in accordance with California Labor Code § 226.7.

23 60. The foregoing violations create an entitlement to recovery by Plaintiff and members
24 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
25 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
26 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

27 **FIFTH CAUSE OF ACTION**

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

(AGAINST ALL DEFENDANTS)

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

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

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

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

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

65. Further, at all relevant times, Defendants’ wage statements also failed to include the correct name and address of the legal entity that is the employer in violation of Labor Code § 226(a)(8).

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

67. As a result of Defendants’ issuance of inaccurate itemized wage statements to Plaintiff

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

6
7 **SIXTH CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES DURING EMPLOYMENT AND UPON TERMINATION OF**
9 **EMPLOYMENT**

10 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

20 72. Labor Code § 204 provides that all wages earned during employment must be timely
21 paid during employment, and Labor Code § 210 provides for penalties for untimely payment.

22 73. Defendants willfully failed to pay the Waiting Time Subclass for all hours worked,
23 including all minimum and overtime wages, sick / vacation time, and their meal and rest period
24 premiums at the "regular rate of pay", during their employment, and prior to or upon termination or
25 separation from employment with Defendants as required by Labor Code §§ 201 and 202 and 204.

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

1 termination entitles an employee to recover waiting time penalties), and for failure to timely pay
2 wages during employment pursuant to Labor Code §§ 204 and 210.

3 **SEVENTH CAUSE OF ACTION**

4 **UNFAIR COMPETITION**

5 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

1 **EIGHT CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

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

5 82. Defendants have committed several Labor Code violations against Plaintiff and
6 other non-exempt employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code
7 § 2698 *et seq.*, acting on behalf of herself and other non-exempt employees from June 2, 2021 to the
8 present, bring this representative action against Defendants to recover the civil penalties due to
9 Plaintiff, other similarly non-exempt employees, and the State of California according to proof
10 pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial
11 violation and (2) \$200 for each subsequent violation per employee per pay period for those violations
12 of the Labor Code for which no civil penalty is specifically provided based on the following Labor
13 Code violations:

14 a. Failing to accurately capture, record, calculate, and provide payment for all hours
15 worked, resulting in a failure to pay all minimum, in violation of Labor Code §§ 204, 210, 1174,
16 1194, 1194.2, 1197, 1197.1, 1199, and the applicable Wage Orders;

17 b. Failing to pay all overtime wages at the “regular rate of pay” because of Defendants’
18 policies/practices, in violation of Labor Code §§ 204, 210, 510, 558, 1174, 1194, and the applicable
19 Wage Orders;

20 c. Failing to provide Plaintiff and other non-exempt employees with all of their
21 statutorily mandated meal or rest periods or compensation at the “regular rate of pay” in lieu thereof
22 in violation of Labor Code §§ 204, 226.7, 510, 512, 516, 558, 1194 1198, and applicable Wage
23 Orders;

24 d. Failing to timely compensate Plaintiff and other non-exempt employees with all
25 earnings during their employment and at their separation of employment in violation of Labor Code
26 §§ 201-204, 210, and 256; and

27 e. Failing to furnish Plaintiff and other non-exempt employees with complete,
28 accurate, itemized wage statements and maintain employment records in violations of Labor Code §

1 226(a), 226.3, and 1174.

2 83. Plaintiff has notified Defendants Therma, LLC and Legence Payroll Solutions, LLC,
3 via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its
4 website of Defendants’ violations of the California Labor Code § 2698 *et seq.*, with respect to
5 violations of the California Labor Code identified in Paragraph 81(a)-(e). Now that sixty-five days
6 have passed from Plaintiff notifying Defendant and the LWDA of these violations, Plaintiff will have
7 exhausted his administrative requirements for bringing a claim under the Private Attorneys General
8 Act with respect to these violations.

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

13 **PRAYER FOR RELIEF**

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

- 16 1. For an order certifying the proposed Classes;
- 17 2. For an order appointing Plaintiff as representative of the Classes;
- 18 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 19 4. Upon the First Cause of Action, for compensatory, consequential, general and
20 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, 1194.2, 1197.1,
21 and 1199;
- 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, 558, 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, 512, and 516;
- 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, 512, and 516;

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

3 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
4 Labor Code §§ 201-204 and 210;

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

17 14. For such other relief that the Court may deem just and proper.
18

19 Dated: May 3, 2023

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

20
21
22 By: _____

Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff and the Putative Classes
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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.

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Executed on May 4, 2023, at Los Angeles, California.

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