

FALAKASSA LAW, P.C.

Joshua S. Falakassa, CA Bar No. 295045

josh@falakassalaw.com

1901 Avenue of the Stars, Suite 450

Los Angeles, California 90067

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

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour, Esq., CA Bar No. 285256

mehrdad@bokhourlaw.com

1901 Avenue of the Stars, Suite 450

Los Angeles, California 90067

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

Attorneys for Plaintiff and the Putative Classes

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

SANDRA ARRAYGA, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

MEDICAL EXTRUSION TECHNOLOGIES,
INC., a California Corporation; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: CVRI2203190

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

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

DEMAND FOR JURY TRIAL

1 Plaintiff Sandra Arrayga (“Plaintiff”) on behalf of herself, and all other similarly situated non-
2 exempt employees, alleges and complains of defendant Medical Extrusion Technologies, Inc.
3 (“Defendant”), and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant Medical Extrusion Technologies, Inc (‘Defendant’) manufactures
6 polyethylene tubing, PVC tubing, polyurethane tubing and almost all thermoplastic resins for use in
7 the health services industry.

8 2. Plaintiff brings this class and PAGA representative action against Defendants for
9 alleged violations of the California Labor Code and Business and Professions Code.

10 3. As set forth below, Plaintiff alleges that Defendants failed and continue to fail to pay
11 all minimum and overtime wages due to their policy/practice of not compensating employees for time
12 spent off the clock performing pre-shift tasks. Plaintiff further alleges that Defendants deprived
13 Plaintiff and other non-exempt employees of overtime wages and that Defendants’ meal and rest
14 period policies and practices failed to provide her and all other similarly situated employees with
15 compliant meal and rest periods or pay premium pay at the “regular rate of pay” in lieu thereof.

16 4. Moreover, Plaintiff alleges that Defendants failed to reimburse necessary business
17 expenses, failed to provide non-exempt employees with accurate written itemized wage statements,
18 and failed to timely pay all final wages 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, restitution, penalties, and other related relief
21 on behalf of himself and all others similarly situated.

22 **JURISDICTION AND VENUE**

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

24 7. Plaintiff, on behalf of himself and all others similarly situated employees hereby
25 brings this class action for recovery of unpaid wages and penalties under California Labor Code §§
26 200, 201-203, 204, 210, 226a, 226(e), 226.3, 226.7, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199,
27 2802-2804, 2698 *et seq.* and applicable Industrial Welfare Commission Wage Orders (“Wage
28 Orders”), in addition to seeking declaratory relief and restitution pursuant to California Business and

1 Professions Code § 17200, *et. seq.*

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

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

10 **PARTIES**

11 10. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is
12 a California resident residing in the State of California. Defendants employed Plaintiff and other non-
13 exempt employees (including, but not limited to technicians, material handlers, and all other non-
14 exempt positions) as non-exempt employees in Murrieta, California in the County of Riverside.

15 11. Plaintiff is informed and believes and thereon alleges that Defendant is a California
16 corporation authorized and doing business in Riverside County, California; and is and/or was the
17 legal employer of Plaintiff and the Class Members during the applicable statutory periods.

18 12. Defendants' policies and/or practices outlined herein have deprived Plaintiff and other
19 similarly situated non-exempt employees of the rights afforded to them by California Labor Code §§
20 201-203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 510, 512, 1194, 1197.1, 1199, 2802, 2698 *et seq.*,
21 and California Business and Professions Code § 17200 *et seq.*, and applicable Wage Order(s).

22 13. Plaintiff is informed and believes, and based thereon alleges, that during the four years
23 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
24 do) business in the State of California, County of Riverside. Defendants, each of them, own and/or
25 operate within Murrieta in Riverside, California.

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

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

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

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

19 **COMMON FACTUAL ALLEGATIONS**

20 17. Defendants manufacture polyethylene tubing, PVC tubing, polyurethane tubing and
21 almost all thermoplastic resins for uses in the health services industry. Defendants employed Plaintiff
22 and other non-exempt employees in Defendants' Murrieta, California facility. Plaintiff and other non-
23 exempt employees (including, but not limited to technicians, material handlers, and all other non-
24 exempt positions) were responsible for all aspects of Defendants' business operations in the State of
25 California.

26 18. First, at all relevant times, Defendants have had a consistent practice of inaccurately
27 recording, capturing, rounding, and/or time shaving Plaintiff and other non-exempt employees time
28 entries, resulting in a failure to pay all hours worked, including all minimum and overtime wages.

1 Additionally, at all relevant times, Defendants' have had a payroll policy/practice which
2 automatically deducts 30 minutes for meal periods, regardless of whether an uninterrupted 30-minute
3 meal period was taken.

4 19. Here, Defendants' timekeeping practices are not neutral on its face or in its
5 application, as Plaintiff and other non-exempt employees are subject to discipline, including
6 termination for being tardy in reporting to work, or returning from a meal or rest period. Moreover,
7 because Defendants are capable of tracking the actual time worked and meal periods of non-exempt
8 employees to the minute, the timekeeping practice itself exists not for the convenience or benefit of
9 the non-exempt employees who are trying to report their time worked accurately, but for Defendants'
10 benefit. As a result of Defendants' uniform unlawful timekeeping practices, Plaintiff and other non-
11 exempt employees are not compensated for all the hours that they work and all of the overtime hours
12 they work, in violation of Labor Code §§ 204, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

13 20. 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 21. As set forth above, Defendants fail to compensate Plaintiff and other non-exempt
21 employees for all hours worked, including all minimum and overtime wages, by failing to properly
22 record non-exempt employees' hours worked and by unlawful rounding/shaving of non-exempt
23 employees' time worked.

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

26 23. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were not
27 properly paid at the correct overtime rate for all hours worked in excess of eight (8) hours per workday
28 and/or forty (40) hours per workweek. Although Plaintiff and other non-exempt employees regularly

1 worked overtime hours, they were not compensated at one and one-half times their “regular rate of
2 pay” because Defendants failed to include all forms of compensation, including, but not limited to,
3 shift differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration when
4 calculating the “regular rate of pay” used for payment of overtime wages.

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

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

17 26. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt employees
18 are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204, 210, 510,
19 1197.1.

20 27. Moreover, at all relevant times, Plaintiff and other non-exempt employees were denied
21 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
22 Defendants’ uniform meal period policies/practices and work demands, Plaintiff and other non-
23 exempt employees were often unable to take timely and uninterrupted 30-minute first meal periods
24 before the end of the fifth hour of work. Making matters worse, as alleged above, Defendants’ have
25 a payroll practice that automatically deducted 30 minutes for meal periods regardless of whether a
26 30-minute meal period was actually provided. Further, when Plaintiff and other non-exempt
27 employees worked more than 10 hours in a shift, they were not always allowed and permitted to take
28 a mandated second meal period before the end of the tenth hour of work in violation of the Labor

1 Code and applicable Wage Orders.

2 28. Additionally, for each missed or non-compliant meal period, Defendants failed to
3 maintain a mechanism by which non-exempt employees were paid meal period premiums at the
4 “regular rate of pay” pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor
5 Code § 226.7. Accordingly, due to Defendants’ uniform meal period practices, Plaintiff and other
6 non-exempt employees were also regularly denied legally compliant meal periods in violation of
7 Labor Code §§ 226.7, 510, 516, and applicable IWC Wage Orders.

8 29. Moreover, at all relevant times, Plaintiff and other non-exempt employees were not
9 provided with all 10-minute rest periods for every four hours worked, or major fraction thereof due
10 to Defendants’ uniform rest period policies/practices and work demands. As a result, Plaintiff and
11 other non-exempt employees were and are often unable to take a net 10-minute duty free rest periods
12 for every major fraction of four hours worked. This includes a second rest period for shifts in excess
13 of six hours, and a third rest period for shifts in excess of 10 hours in a workday. Making matters
14 worse, Defendants’ have a policy/practice that required non-exempt employees to remain on premises
15 during rest periods.

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

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

27 32. Accordingly, due to Defendants’ uniform rest period policies/practices and work
28 demands, Plaintiff and other non-exempt employees were also regularly denied legally compliant rest

1 breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

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

8 34. In addition, Defendants' wage statements uniformly failed to include "the name and
9 address of the legal entity that is the employer" in violation of Labor Code 226(a)(8).

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

15 36. Thus, for the violations of Labor Code § 226 described above, Plaintiff and other non-
16 exempt employees may also recover Labor Code § 226.3 penalties for Defendants' violations of
17 Labor Code § 226(a).

18 37. As a further result of Defendants' failure to pay all minimum and overtime wages, and
19 meal and rest period premiums at the "regular rate of pay", Defendants also failed and continues to
20 fail to pay the non-exempt employees all wages, as well as accrued and unused paid time off, owed
21 at their time of separation from employment in violation of Labor Code §§ 201-203.

22 38. Finally, at all relevant times, Defendants' required Plaintiff and other non-exempt
23 employees to incur necessary business expenses, including, but not limited to, the use of their personal
24 cell phones, but did not reimburse non-exempt employees adequately for these necessary
25 expenditures in violation of Labor Code §§ 2802-2804. *See Cochran v. Schwan's Home Service, Inc.*,
26 (2014) 228 Cal.App.4th 1137, 1144 ["[i]f an employee is required to make work-related calls on a
27 personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does
28 not matter whether the phone bill is paid for by a third person, or at all..."].

39. Here, Defendants uniformly failed to reimburse non-exempt employees for a reasonable portion of their monthly cellular phone bills and other costs incurred in the discharge of their duties. Indeed, any indication of a reimbursement is absent from Plaintiff's wage statements.

40. Accordingly, due to Defendants' uniform failure to adequately reimburse for necessary business expenditures in violation of Labor Code §§ 2802-2804 and applicable Wage Orders.

CLASS ACTION ALLEGATIONS

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

All non-exempt delivery driver 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”)

42. **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 three hundred (300) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment and payroll records.

43. **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. Whether Defendants failed to pay all minimum and overtime wages to members of the Classes;
2. Whether Defendants failed to pay overtime at the appropriate legal rate to members of the Classes;
2. Whether Defendants provided legally compliant meal and rest periods or proper compensation at the “regular rate of pay” in lieu thereof to members of the Classes;
3. Whether Defendants furnished legally compliant wage statements to members of the Classes pursuant to Labor Code § 226(a); and
4. Whether Defendants failed to reimburse necessary business expenses to members of the Classes pursuant to Labor Code §§ 2802-2804.
5. Whether the timing and amount of payment of final wages to members of the Class at the time of separation from employment were unlawful.

44. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants’ policies and/or practices applicable to each individual class member, such as Defendants’ policy/practice of inaccurately recording, capturing, rounding, and/or time shaving Plaintiff and other non-exempt employees time entries, resulting in a failure to pay all hours worked, including all minimum and overtime wages, Defendants’ policy/practices of failing to pay overtime at the appropriate premium rate, Defendants’ uniform policy of failing to provide compliant meal and rest periods or adequate compensation in lieu thereof, and Defendants’ resulting failure to provide accurate itemized wage statements, Defendants’ failure to reimburse necessary business expenses, and to pay for all wages due upon separation of employment. As such, the common questions predominate over individual questions concerning each individual class member’s showing as to his or her eligibility for recovery or as to the amount of his or her damages.

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

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

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

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

1 actions by the individual class members, even if possible, would create a substantial risk of
2 inconsistent or varying verdicts or adjudications with respect to the individual class members against
3 Defendants herein; and which would establish potentially incompatible standards of conduct for
4 Defendants; and/or legal determinations with respect to individual class members which would, as a
5 practical matter, be dispositive of the interest of the other class members not parties to adjudications
6 or which would substantially impair or impede the ability of the class members to protect their
7 interests. Further, the claims of the individual members of the class are not sufficiently large to
8 warrant vigorous individual prosecution considering all of the concomitant costs and expenses
9 attending thereto. As such, the Classes identified in Paragraph 41 are maintainable as Classes under
10 § 382 of the Code of Civil Procedure.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY ALL MINIMUM WAGES**

13 **(AGAINST ALL DEFENDANTS)**

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

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

21 51. At all relevant times herein, Defendants failed to conform their pay practices to the
22 requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform
23 and unlawful practice of failing to pay for all hours worked as a result of its practice of inaccurately
24 recording, capturing, rounding, and/or time shaving Plaintiff and other non-exempt employees time
25 entries. Accordingly, Plaintiff and members of the Classes were not compensated for all hours worked
26 including, but not limited to, all hours they were subject to the control of Defendants and/or suffered
27 or permitted to work under the California Labor Code and applicable Wage Orders.

28 52. Labor Code § 1198 makes unlawful the employment of an employee under conditions

1 that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer
2 who has failed to pay its employees the legal minimum wage is liable to pay those employees the
3 unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
4 due and interest thereon.

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

10 54. Defendants' practices/policies and uniform administration of corporate policy
11 regarding illegal employee compensation is unlawful and creates an entitlement to recovery by
12 Plaintiff and members of the Classes in a civil action for the unpaid amount of minimum wages,
13 liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit
14 according to Labor Code §§ 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY ALL OVERTIME WAGES**

17 **(AGAINST ALL DEFENDANTS)**

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

19 56. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and
20 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
21 worked and provide a private right of action for the failure to pay all overtime compensation for
22 overtime work performed.

23 57. At all times relevant herein, Defendants were required to properly pay Plaintiff and
24 members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code
25 § 1194 and the applicable Wage Orders.

26 58. Section 3 of the applicable Wage Order requires an employer to pay an employee "one
27 and one-half (1 1/2) times the employee's regular rate of pay" for work in excess of 8 hours per
28 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an

1 employer to pay an employee double the employee's regular rate of pay for work in excess of twelve
2 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
3 the workweek.

4 59. Defendants failed to conform their pay practices to the requirements of the law. This
5 unlawful conduct includes but is not limited to (1) Defendants' uniform and unlawful policy/practice
6 of failing to pay overtime at the minimum statutory rate for much of the statutory period, and (2)
7 Defendants' policy/practice of inaccurately recording, capturing, rounding, and/or time shaving
8 Plaintiff and other non-exempt employees time entries, resulting in a failure to pay all hours worked,
9 which resulted in the Classes not being paid all overtime wages owed.

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

15 **THIRD CAUSE OF ACTION**

16 **MEAL PERIOD VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

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

19 62. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
20 their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff
21 and members of the Class, with all required meal periods in accordance with the mandates of the
22 California Labor Code and applicable Wage Orders, for the reasons set forth in the Common
23 Allegations section of this Complaint. Despite Defendants' violations, Defendants have not paid an
24 additional hour of pay at the "regular rate of pay" to Plaintiff and members of the Class at their
25 respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

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

1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

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

8 66. Due to their unlawful rest period policy and practices, Defendants did not authorize
9 and permit Plaintiff and members of the Class to take code-compliant rest periods to which they were
10 legally entitled, including, but not limited to, failing to relieve employees of all duties and
11 relinquishing all control over employees during their rest periods. Despite Defendants' violations,
12 Defendants have not paid an additional hour of pay at the "regular rate of pay" to Plaintiff and
13 members of the Class at their respective regular rates of pay for each violation, in accordance with
14 California Labor Code § 226.7.

15 67. The foregoing violations create an entitlement to recovery by Plaintiff and members
16 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
17 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
18 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

19 **FIFTH CAUSE OF ACTION**

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

21 **(AGAINST ALL DEFENDANTS)**

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

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

24 "(a) An employer, semimonthly or at the time of each payment of wages, shall furnish
25 to his or her employee, either as a detachable part of the check, draft, or voucher
26 paying the employee's wages, or separately if wages are paid by personal check or
27 cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
28 total hours worked by the employee, except as provided in subdivision (j), (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

1 written orders of the employee may be aggregated and shown as one item, (5) net
2 wages earned, (6) the inclusive dates of the period for which the employee is paid,
3 (7) the name of the employee and only the last four digits of his or her social security
4 number or an employee identification number other than a social security number,
5 (8) the name and address of the legal entity that is the employer and, if the employer
6 is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
7 and address of the legal entity that secured the services of the employer, and (9) all
8 applicable hourly rates in effect during the pay period and the corresponding number
9 of hours worked at each hourly rate by the employee.”

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

13 71. First, Defendants’ wage statements uniformly failed to include “the name and address
14 of the legal entity that is the employer” in violation of Labor Code 226(a)(8).

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

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

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

28 **SIXTH CAUSE OF ACTION**

FAILURE TO REIMBURSE FOR CELL PHONE USAGE

(AGAINST ALL DEFENDANTS)

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

2 76. Labor Code 2802(a) states in pertinent part the following:

3 “(a) An employer shall indemnify his or her employee for all necessary
4 expenditures or losses incurred by the employee in direct consequence of
5 the discharge of his or her duties, or of his or her obedience to the directions
6 of the employer, even though unlawful, unless the employee, at the time of
 obeying the directions, believed them to be unlawful.”

7 77. As set forth above, Plaintiff and members of the Class must be compensated for all
8 necessary business expenditures, including, but not limited to, a reasonable portion of their monthly
9 personal cell phone bills necessarily incurred in their discharge of their duties.

10 78. At all relevant times, by failing to reimburse Plaintiff and the Class for all necessary
11 business expenditures, Defendants have failed to comply with Labor Code Section 2802 and the
12 applicable Wage Orders.

13 **SEVENTH CAUSE OF ACTION**

14 **WAITING TIME PENALTIES**

15 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

25 83. Defendants willfully failed to pay Plaintiff and the members of the Waiting Time
26 Penalty Subclass for all hours worked, including all minimum and overtime wages, and their meal
27 and rest period premiums at the “regular rate of pay”, prior to or upon termination or separation from
28 employment with Defendants as required by Labor Code §§ 201 and 202.

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

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

86. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay all minimum and overtime wages, failing to pay all overtime wages at the appropriate legal rate, by failing to provide all legally required meal and rest periods or pay premium payments at the “regular rate of pay” in lieu thereof, by failing to provide accurate itemized wage statements, failing to reimburse necessary business expenditures, and by failing to pay all earned wages at the time of separation from employment.

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

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

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

90. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of

1 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
2 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
3 he is entitled to recover under Code of Civil Procedure § 1021.5.

4 **NINTH CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACT PENALTIES**
6 **(AGAINST ALL DEFENDANTS)**

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

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

17 a. Failing to accurately capture, record, calculate, and provide payment for all hours
18 worked, resulting in a failure to pay all minimum, in violation of Labor Code §§ 204, 210, 1174,
19 1194, 1194.2, 1197, 1197.1, 1199, and the applicable Wage Orders;

20 b. Failing to pay all overtime wages at the "regular rate of pay" because of Defendants'
21 policies/practices, in violation of Labor Code §§ 204, 210, 510, 558, 1174, 1194, and the applicable
22 Wage Orders;

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

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

1 §§ 201-204, 210, and 256; and

2 e. Failing to furnish Plaintiff and other non-exempt employees with complete,
3 accurate, itemized wage statements and maintain employment records in violations of Labor Code §
4 226(a), 226.3, and 1174.

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

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

16 **PRAYER FOR RELIEF**

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

- 19 1. For an order certifying the proposed Classes;
- 20 2. For an order appointing Plaintiff as representative of the Classes;
- 21 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 22 4. Upon the First Cause of Action, for compensatory, consequential, general and special
23 damages according to proof pursuant to Labor Code §§ 204, 510, 1194, 1197.1, 1199;
- 24 5. Upon the Second Cause of Action, for compensatory, consequential, general and
25 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 26 6. Upon the Third Cause of Action, for compensatory, consequential, general and special
27 damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 28 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and

1 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

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

4 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §§
5 2802-2804.

6 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to
7 Labor Code §§ 201-203.;

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

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

16 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
17 § 218.6 and Civil Code §§ 3287 and 3289;

18 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
19 218.5, 226, and Code of Civil Procedure § 1021.5; and

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

21 Dated: May 16, 2023

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

22
23
24 By: _____

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff and the Putative Classes

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

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

5 On May 19, 2023, I served the following document(s) described as **FIRST AMENDED**
6 **CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this action by
placing true copies thereof enclosed in sealed envelopes addressed as follows:

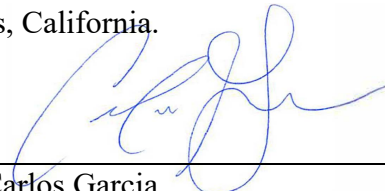
7
8 Michael W. Healy, Esq.
mhealy@lbbklaw.com
9 Jenny Yu, Esq.
jyu@lbbklaw.com
10 LAGASSE BRANCH BELL + KINKEAD, LLP
4365 Executive Drive, Suite 950
11 San Diego, California 92121

12 **Counsel for defendant Medical Extrusion**
13 **Technologies, Inc.**

14 **BY ELECTRONIC SERVICE:** I transmitted the above-referenced document(s) via
15 electronic service provider First Legal to the person(s) identified above at the email address(es)
16 indicated and did not, within a reasonable time after transmission, receive any message or
communication indicating that delivery failed or that any other error had occurred which would
delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

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

18 Executed on May 19, 2023, at Los Angeles, California.

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20 
21 _____
22 Carlos Garcia
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