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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

ISIDRO MANUEL REYES, on behalf of himself and all others similarly situated,

Plaintiff,

v.

LAIRD R & F PRODUCTS, INC., a Delaware Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 37-2022-00041800-CU-OE-CTL

CLASS AND PAGA REPRESENTATIVE 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 PAY ALL SICK TIME;
(6) FAILURE TO PAY ALL VESTED VACATION PAY;
(7) WAGE STATEMENT VIOLATIONS;
(8) WAITING TIME PENALTIES;
(9) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES;
(10) UNFAIR COMPETITION; and
(11) PAGA PENALTIES

Plaintiff Isidrio Manuel Reyes ("Plaintiff") on behalf of himself, and all other similarly situated non-exempt employees, alleges and complains of Defendants Laird R & F Products, Inc. ("Defendant") and DOES 1 to 50 (hereinafter collectively, "Defendants") and each of them, as follows:

INTRODUCTION

1. Defendants design and develop high-performance custom materials for the aerospace and defense markets that enhance survivability, antenna patterns and more. Plaintiff brings this class action lawsuit against Defendants for alleged violations of the California Labor Code and Business and Professions Code.

2. As set forth below, Plaintiff alleges that Defendants failed to pay for all hours worked as a result of Defendants' unlawful timekeeping and pay policies/practices which resulted in a failure to pay for all hours worked, including all minimum and overtime wages. Plaintiff further alleges that Defendants failed to pay all overtime compensation as a result of failing to properly calculate the "regular rate of pay." Plaintiff also alleges that Defendants failed to pay all sick pay wages all vacation time at the proper legal rates. Moreover, Plaintiff alleges that Defendants' meal and rest period policies and practices failed to allow and permit non-exempt employees to take all compliant and timely meal and rest periods or pay premium wages at the "regular rate of pay" in lieu thereof. As a result, Plaintiff alleges that Defendants failed to provide non-exempt employees with accurate written itemized wage statements and failed to timely pay all final wages upon separation of employment. Finally, Plaintiff alleged that Defendants uniformly failed to reimburse non-exempt employees for all necessary business expenses.

3. Based on these alleged Labor Code violations, Plaintiff now brings this class action and representative action to recover unpaid wages, restitution, penalties, and other related relief on behalf of himself and all others similarly situated non-exempt employees.

JURISDICTION AND VENUE

4. Plaintiff, on behalf of himself and all others similarly situated employees hereby brings this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1197.1, 1199,

2800-2802, and applicable Industrial Welfare Commission Wage Orders ("Wage Orders"), in addition to seeking declaratory relief and restitution pursuant to California Business and Professions Code § 17200, *et seq*.

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

6. 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.

7. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, Defendants operate in Carlsbad, California within the County of San Diego, and/or otherwise are found within the County of San Diego, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

8. 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 Carlsbad, California in the County of San Diego.

9. Plaintiff is informed and believes and thereon alleges that Defendant Laird R & F Products, Inc. and Defendants are authorized to and doing business in Carlsbad, California, and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1197.1, 1199, 2800-2802. and the California Business and Professions Code § 17200 *et seq*., and applicable Wage Orders.

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

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

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

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

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

COMMON FACTUAL ALLEGATIONS

14. Defendants design and develop high-performance custom materials for the aerospace and defense markets that enhance survivability, antenna patterns and more. Plaintiff began working as a non-exempt employee on approximately August 7, 2017, until his separation from employment on September 27, 2022. Plaintiff and other non-exempt employees (including, but not limited to, technicians, quality coordinators, shipping and receiving clerks, and all other non-exempt positions) were responsible for all aspects of Defendants' business in the State of California.

15. First, at all relevant times, Defendants have had a consistent practice of unevenly rounding/shaving Plaintiff's and other non-exempt employees' time entries, resulting in a failure to pay all hours worked. As a result of this practice, Plaintiff and other non-exempt employees are not

compensated for all the hours that they work and all of the overtime hours they work, in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

16. California courts have held that rounding time policies can be lawful, "if the rounding policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked. *See's Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907 (29 C.F.R. § 785.48)

17. Here, Defendants' rounding time policy is not neutral on its face or in practice as Plaintiff and other non-exempt employees are subject to discipline, including termination for being tardy in reporting to work, or returning from a meal or rest period. Moreover, because Defendants is capable of tracking the time worked by aggrieved employees to the minute, the policy itself exists not for the convenience or benefit of the employees who are trying to accurately report their time on timecards or otherwise, but for Defendants' benefit.

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

19. Moreover, at all relevant times, Defendants have had a uniform practice of requiring Plaintiff and other non-exempt employees to undergo mandatory temperature screening in light of the Covid-19 pandemic. Thus, Plaintiff and other non-exempt employees were required to spend several minutes waiting in line in order to undergo a temperature screening before clocking in for their shifts. As a result, Plaintiff and other non-exempt employees were required to spend minutes off-the-clock before each shift to undergo a Covid-19 temperature screening.

20. As a result of Defendants' uniform temperature screening procedures, Plaintiff and other non-exempt employees were not fully compensated for all hours they were waiting or undergoing a temperature screening and thus, subject to the control of Defendants. As such, Defendants systematically failed to pay Plaintiff and other non-exempt employees for all hours

worked and minimum and overtime wages due. Defendants have no valid defense to this claim given the California Supreme Court's recent unanimous decision in *Frlekin v. Apple, Inc*. (2020) 8 Cal.5th 1038, which held that employees "must be paid" during security checks since "it is clear that [employees] are subject to [the employer's] control while awaiting, and during, [the] exit searches."

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

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

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

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

25. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt employees are entitled to recover unpaid overtime wages and liquidated damages for violations of Labor Code §

1197.1.

26. Next, at all relevant times, Defendants also failed in its obligation to provide Plaintiff and other non-exempt employees the legally required paid sick days at the legal rate pursuant to Labor Code §§ 246(a),(b), which requires that “[a]n employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment.”

27. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i) requires employers to “provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

28. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiff and other non-exempt employees the legally required paid sick days at the legal rate, including all forms of compensation, pursuant to Labor Code §§ 246(a),(b). As such, Defendants paid sick time below his base rate of pay, rather than the “regular rate of pay” as required by Labor Code §§ 246(l)(1-2).

29. Based on the foregoing Labor Code violations, Plaintiff seeks unpaid sick pay wages and all civil and statutory penalties available and applicable under Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, 1199.

30. Furthermore, at all relevant times, Defendants maintained such a paid vacation policy, yet Defendants failed to pay all vacation time to the non-exempt employees at their respective final rates of pay at their time of separation.

31. Labor Code section 227.3 provides that whenever a contract of employment or employer policy provides for paid vacations, and an employee is separated without having used his or her vested vacation time, all vested vacation shall be paid as wages at non-exempt employees' final rate in accordance with such contract of employment or employer policy respecting eligibility or time. At all relevant times, Defendants maintained such a paid vacation policy, yet Defendants failed to pay all vacation time to the non-exempt employees at their respective final rates of pay at their time of separation. As such, Defendants has violated Labor Code § 227.3.

32. Accordingly, Plaintiff and other non-exempt employees are vacation pay and to civil and statutory penalties to the extent permitted by law.

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

34. 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."

35. As such, the wage statements Defendants issued to Plaintiff and other non-exempt employees are in violation of Labor Code § 226(a). Thus, Defendants has violated Labor Code §226(a) with respect to Plaintiff and other non-exempt employees. 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).

36. Moreover, at all relevant times, Defendants required Plaintiff and other non-exempt employees to incur necessary business expenses associated with using their personal cell phones and other expenses for work related purposes but did not reimburse aggrieved employees in violation of

Labor Code §§ 2802-2804. See *Cochran v. Schwan's Home Service, Inc*., (2014) 228 Cal.App.4th 1137, 1144 ["[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all..."].

37. Here, Defendants uniformly failed to reimburse aggrieved employees for a reasonable portion of monthly cellular phone costs and other costs incurred in the discharge of their duties. Indeed, any reimbursement is absent from Plaintiff's wage statements. Accordingly, due to Defendants' uniform failure to adequately reimburse for necessary business expenditures in violation of Labor Code §§ 2802-2804 and applicable Wage Orders, Plaintiff and other non-exempt employees would be entitled to unpaid expenses, penalties and reasonable attorneys' fees and costs.

38. Finally, because of Defendants' failure to pay all minimum and overtime wages, sick pay wages, and meal and rest period premiums at the "regular rate of pay", as well as pay all vested and unused vacation time at the correct final rate, Defendants also failed and continues to fail to pay the non-exempt all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203.

CLASS ACTION ALLEGATIONS

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

> All non-exempt employees who work or worked for Defendants in California, during the four years immediately preceding the filing of the Complaint through the date of trial. ("Class");
>
> All non-exempt employees who worked for Defendants in California and who worked overtime hours during at least one shift, during the four years immediately preceding the filing of the Complaint through the date of trial. ("Overtime Subclass");
>
> All employees who work or worked for Defendants in California, during the one year immediately preceding the filing of the Complaint through the date of trial. ("Wage Statement Subclass")
>
> All employees who work or worked for Defendants in California, and who left their employ during the three years immediately preceding the filing of the Complaint through the date of trial. ("Waiting Time Penalty Subclass")

(collectively "the Classes")

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

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

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

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 Class;

3. Whether Defendants allowed and permitted Plaintiff and the Class to take legally compliant meal periods or pay premium wages at the "regular rate of pay" in lieu thereof;

4. Whether Defendants allowed and permitted Plaintiff and the Class to take legally compliant rest periods or pay premium wages at the "regular rate of pay" in lieu thereof;

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

6. Whether Defendants accurately paid all sick pay wages owed using the "regular rate of pay" to Plaintiff and members of the Class;

7. Whether Defendants accurately paid all vested vacation wages at the correct final rate;

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

9. Whether Defendants reimbursed all necessary business expenses to members of the Class in violation of Labor Code § 2800 *et seq.*

42. **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 without limitation, Defendants' failure to pay for all hours worked due to their rounding/time shaving policies and practices and Covid-19 temperature screening requirements, Defendants failure to adequately calculate the "regular rate of pay" for purposes of overtime pay and sick pay, Defendants' failure to provide all compliant meal and rest periods or premiums at the "regular rate of pay" in lieu thereof, Defendants' failure to pay sick wages at the "regular rate of pay," 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.

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

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

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

46. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 39 are maintainable as Classes under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

49. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to, (1) Defendants' rounding/time shaving policy/practice, and (2) Covid-19 temperature screening requirements, which resulted in these individuals not being paid for all hours actually worked. Accordingly, Plaintiff and members of the Classes were not compensated for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and applicable Wage Orders.

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

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

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

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

56. Section 3 of the applicable Wage Order requires an employer to pay an employee "one and one-half (11⁄2) times the employee's regular rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours of work in the workweek. The same section also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of twelve hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate Plaintiff or members of the Overtime Subclass at one and one-half times their regular rate of pay for such hours.

57. Defendants failed to conform their pay practices to the requirements of the law. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to, (1) Defendants' rounding/time shaving policy/practice, and (2) Covid-19 temperature screening requirements, and (3) failure to include all forms of compensation, including, but not limited to, non-discretionary bonuses and other incentive pay in calculating the "regular rate of pay," which resulted in these individuals not being paid for all overtime hours actually worked.

58. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Subclass in a civil action for the unpaid amount of

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

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

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

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

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

65. Due to their unlawful rest period policy/practices and operational requirements/work demands, Defendants did not authorize and permit Plaintiff and members of the Class to take all rest periods to which they were legally entitled.

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL SICK TIME

(AGAINST ALL DEFENDANTS)

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

69. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, and 1199 which provide that "[a]n employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment."

70. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Class for all sick time pursuant to California Labor Code § 246 and the applicable Wage Orders.

71. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek." Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment." Finally, Labor Code §246(i) requires employers to "provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided

on the designated pay date with the employee's payment of wages."

72. Defendants failed in their obligation to provide Plaintiff and the Class the legally required paid sick days at the legal rate pursuant to Labor Code §§ 246(a),(b). Plaintiff and the members of the Class were not paid at the correct "regular rate of pay."

73. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the members of the Class in a civil action for the unpaid amount of wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 246 1192, 1194 *et seq*., 1197, 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

SIXTH CAUSE OF ACTION

FAILURE TO PAY ALL VESTED VACATION PAY AT TERMINATION

(AGAINST ALL DEFENDANTS)

74. Labor Code § 227.3 provides, in part, that when "an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate**.**

75. At all relevant times, Defendants maintained a paid vacation policy, yet Defendants failed to pay all vacation time to the non-exempt employees at their respective final rates of pay at their time of separation.

76. Labor Code section 227.3 provides that whenever a contract of employment or employer policy provides for paid vacations, and an employee is separated without having used his or her vested vacation time, all vested vacation shall be paid as wages at their final rate in accordance with such contract of employment or employer policy respecting eligibility or time. At all relevant times, Defendants maintained such a paid vacation policy, yet Defendants failed to pay all vacation time to the non-exempt employees at their respective final rates of pay at their time of separation. As such, Defendants has violated Labor Code § 227.3.

77. Accordingly, Plaintiff and non-exempt employees are entitled to unpaid vacation pay and to civil and statutory penalties to the extent permitted by law.

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SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS)

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

79. 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."

80. 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).

81. As a result of Defendants failure to pay Plaintiff and the Wage Statement Subclass for all minimum and overtime wages, sick pay, 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 in violation of Labor Code section 226(a)(1,2,5, and 9).

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

83. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an initial

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

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

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

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

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

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

89. As a result, Defendants are liable to the Waiting Time Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Time Subclass 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).

EIGHT CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

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

91. Labor Code § 2802(a) states in pertinent part the following:

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

92. As set forth above, Plaintiff and members of the Class must be compensated for all necessary business expenditures, including, but not limited to, costs associated with driving their personal vehicles and personal cell phones for work related purposes, and other business expenses necessarily incurred in their discharge of their duties. (See *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."); *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. 2014) (granting Plaintiff's motion for partial summary judgment on Plaintiff's cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

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

94. Plaintiff and the Class seek costs and reasonable attorneys' fees in accordance with Labor Code Section 2802.

<u>NINTH CAUSE OF ACTION</u>

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

96. 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 for all hours worked including minimum and overtime wages, sick pay wages, vested vacation time, 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 wage statements, failing to reimburse necessary business expenses, and by failing to pay all earned wages at the time of separation from employment.

97. 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.

98. 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.

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

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

<u>TENTH CAUSE OF ACTION</u>

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

102. Defendants have committed several Labor Code violations against Plaintiff and other similarly aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq*., acting on behalf of himself and other similarly aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699

(a) and (f) including, but not limited to (1) $100 for each initial violation and (2) $200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided based on the following Labor Code violations:

a. Failing to pay Plaintiff and other similarly aggrieved employees for all hours worked, including all minimum and overtime wages in violation of Labor Code §§ 204, 510, 1194, 1197, 1198, and 1182.12;

b. Failing to pay all sick pay wages at the proper "regular rate of pay" as required by Labor Code §§ 246 *et seq*.;

c. Failing to pay all vested vacation pay wages at the proper final rate as required by Labor Code §§ 227.3;

d. Failing to provide Plaintiff and other similarly aggrieved employees with all of their statutorily mandated meal periods or compensation in lieu thereof at the "regular rate of pay" in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

e. Failing to authorize and permit Plaintiff and other similarly aggrieved employees with all of their statutorily mandated rest periods or compensation in lieu thereof at the "regular rate of pay" in violation of Labor Code §§ 226.7, and 516;

f. Failing to furnish Plaintiff and other similarly situated employees with complete, accurate, itemized wage statements in violations of Labor Code § 226;

g. Failing to timely compensate Plaintiff and similarly aggrieved employees with all earnings at their separation of employment in violation of Labor Code §§ 201-203;

h. Failing to reimburse Plaintiff and similarly aggrieved employees for business expenses and charges necessarily incurred in their discharge of their duties in violation of Labor Code § 2802.

103. On October 13, 2022, Plaintiff notified Defendant and the California Labor and Workforce Development Agency ("LWDA") via email of Defendant's violations of the California Labor Code § 2698 *et seq*., with respect to violations of the California Labor Code identified in Paragraph 102 (a)-(f) and as alleged in the Common Factual Allegations Section. After sixty-five (65) days have passed since that date, Plaintiff will have fully satisfied the administrative prerequisites to

bring suit under the PAGA. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Plaintiff is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

104. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys' fees and costs, which he is entitled to receive under Labor Code § 2699.

PRAYER FOR RELIEF

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

1. For an order certifying the proposed Classes;
2. For an order-appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, and 1194 and reasonable attorneys' fees and costs;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198 and reasonable attorneys' fees and costs;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
8. Upon the Fifth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, and 1199;

9. Upon the Sixth Cause of Action, unpaid vested vacation wages and all penalties as permitted by Labor Code § 227.3;

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

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

12. Upon the Eight Causes of Action, for unreimbursed expenses and reasonable costs and attorneys' fees pursuant to Labor Code § 2802;

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

14. Upon the Tenth Cause of Action, for civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f), including, but not limited to (1) $100.00 for each initial violation and (2) $200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided and reasonable attorneys' fees and costs pursuant to Labor Code § 2699;

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

16. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194, Code of Civil Procedure § 1021.5, and Labor Code § 2699; and

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

Dated: October 14, 2022

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

By: ______________________

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