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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

THOMAS D. MASON, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

PACIFIC PAPER TUBE, INC., a California
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: STK-CV-UOE-2022-11256

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

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

DEMAND FOR JURY TRIAL

1 Plaintiff Thomas D. Mason (“Plaintiff”) on behalf of himself, and all other similarly situated
2 non-exempt employees, alleges and complains of defendant Pacific Paper Tube, Inc., and DOES 1 to
3 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant Pacific Paper Tube, Inc. operates as a manufacturer of paper tubes and cores
6 and offers concrete forming and mailing tubes, industrial paper and precision knife-cut cores, and
7 custom slitting.

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

10 3. As set forth below, Plaintiff alleges that Defendants failed to pay for all minimum
11 wages due to their timekeeping policy/practice of unevenly rounding/shaving non-exempt
12 employees’ time entries. Plaintiff further alleges that Defendants failed to pay all overtime wages by
13 failing to include all forms of compensation when calculating the “regular rate of pay” used in
14 payment of overtime wages. Similarly, Plaintiff also alleges that Defendants failed to pay all sick
15 days at the legal “regular rate of pay.” Plaintiff further alleges that Defendants’ meal and rest period
16 policies and practices did not allow and permit all compliant and timely meal and rest periods or pay
17 premium wages at the “regular rate of pay” in lieu thereof. As a result, Plaintiff alleges that
18 Defendants failed to provide non-exempt employees with accurate written itemized wage statements
19 and failed to timely pay all final wages upon separation of employment.

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

23 **JURISDICTION AND VENUE**

24 5. Plaintiff, on behalf of himself and all others similarly situated employees hereby brings
25 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
26 203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1197.1, 1194, 1199, 2698
27 *et seq.* and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to
28 seeking declaratory relief and restitution pursuant to California Business and Professions Code §

1 17200, *et. seq.*

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

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

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

10 **PARTIES**

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

14 10. Plaintiff is informed and believes and thereon alleges that Defendant Pacific Paper
15 Tube, Inc. is a California corporation authorized to and doing business in California and is and/or
16 was the legal employer of Plaintiff and the Class Members during the applicable statutory periods.
17 Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has
18 been deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204, 210, 221,
19 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1194.2, 1197.1, 1199, and 2698 *et seq.*
20 and the California Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

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

24 12. Plaintiff does not know the true names or capacities, whether individual, partner, or
25 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
26 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
27 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
28 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or

1 corporate, were responsible in some manner for the acts and omissions alleged herein, and
2 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
3 alleged herein.

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

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

17 **COMMON FACTUAL ALLEGATIONS**

18 15. Defendants are a manufacturer of paper tubes and cores and offer concrete forming
19 and mailing tubes, industrial paper and precision knife-cut cores, and custom slitting. Plaintiff was
20 employed by Pacific Paper as a non-exempt employee out of its Stockton, California location.
21 Plaintiff began working as an as a driver on or about September 15, 2021, until his separation from
22 employment on or about October 7, 2022. Plaintiff and other aggrieved employees (including, but
23 not limited to, drivers, forklift operators, laborers, machine operators, and all other non-exempt
24 positions) were responsible for all aspects of Defendants' business across the state of California.
25 However, in these roles Plaintiff and other aggrieved employees were often not afforded all
26 protections and rights conferred under the California Labor Code and applicable Wage Orders.

27 16. First, at all relevant times, Defendants have had a consistent practice of unevenly
28 rounding/shaving Plaintiff' and other non-exempt employees' time entries, resulting in a failure to

1 pay all hours worked. As a result of this practice, Plaintiff and other non-exempt employees are not
2 compensated for all the hours that they work and all of the overtime hours they work, in violation of
3 Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

4 17. California courts have held that rounding time policies can be lawful, “if the rounding
5 policy is fair and neutral on its face and ‘it is used in such a manner that it will not result, over a
6 period of time, in failure to compensate the employees properly for all the time they have actually
7 worked.” *See’s Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907 (29 C.F.R. § 785.48;
8 see DLSE Manual, *supra*, §§ 47.1, 47.2.).

9 18. Here, Defendants’ rounding time policy is not neutral on its face or in practice, as
10 Plaintiff and other non-exempt employees were not paid for all the time they actually worked. Indeed,
11 Plaintiff and other non-exempt employees are subject to discipline, including termination for being
12 tardy in reporting to work, or returning from a meal or rest period. Moreover, because Defendants are
13 capable of tracking the time worked by non-exempt employees to the exact minute, the policy itself
14 exists not for the convenience or benefit of the employees who are trying to report their time on
15 timecards or otherwise, but for Defendants’ benefit.

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

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

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

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

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

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

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

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

7 27. Similarly, at all relevant times, Defendants failed in their obligation to provide Plaintiff
8 and other non-exempt employees the legally required paid sick days at the legal “regular rate of pay”
9 pursuant to Labor Code §§ 246(a),(b). Pursuant to Labor Code § 246(a),(b), “[a]n employee who,
10 on or after July 1, 2015, works in California for the same employer for 30 or more days within a year
11 from the commencement of employment is entitled to paid sick days. . . at the rate of not less than
12 one hour per every 30 hours worked, beginning at the commencement of employment.” In addition,
13 Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated
14 in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick
15 time, whether or not the employee actually works overtime in that workweek.” Additionally, Labor
16 Code § 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total
17 wages, not including overtime premium pay, by the employee’s total hours worked in the full pay
18 periods of the prior 90 days of employment.” Finally, Labor Code §246(i) requires employers to
19 “provide an employee with written notice that sets forth the amount of paid sick leave available, or
20 paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s
21 itemized wage statement described in Section 226 or in a separate writing provided on the designated
22 pay date with the employee’s payment of wages.”

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

27 29. Moreover, at all relevant times, Plaintiff and other non-exempt employees were denied
28 compliant and timely uninterrupted 30-minute off-duty meal periods as mandated by California law.

1 Due to Defendants' uniform meal period policies/practices and operational requirements, Plaintiff
2 and other non-exempt employees were often unable to take timely and uninterrupted 30-minute first
3 meal periods before the end of the fifth hour of work. Further, when Plaintiff and other non-exempt
4 employees worked in excess of 10.0 hours in a shift, they were not always allowed and permitted to
5 take a mandated second meal period before the end of the tenth hour of work in violation of the Labor
6 Code and applicable Wage Orders.

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

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

13 32. Next, at all relevant times, Plaintiff and other non-exempt employees were not provided
14 with all uninterrupted net 10-minute rest periods for every four hours worked, or major fraction
15 thereof due to Defendants' uniform rest period policies/practices and operational requirements. As a
16 result, Plaintiff and other non-exempt employees were and are often unable to take an uninterrupted
17 net 10-minute duty free rest periods for every major fraction of four hours worked. This includes a
18 second rest period for shifts in excess of six hours, and a third rest period for shifts in excess of 10
19 hours in a workday. Moreover, Defendants had a rest break policy which required that non-exempt
20 remain on premises during rest periods. Despite Defendants' claim that all employees are relieved of
21 all duties during their rest breaks, Defendants still exerts control on employees by requiring them to
22 remain onsite.

23 33. By not relieving all non-exempt employees of all duties during rest periods, Defendants
24 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
25 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all
26 duties and relinquish control over how employees spend their time."]. In *Augustus*, the California
27 Supreme Court expressly rejected the employers' assertion that it could provide an on-duty rest period
28 to employees who worked as security guards and further explained "that employers [must] relinquish

1 any control over how employees spend their break time and relieve their employees of all duties.” *Id.*
2 at 273.

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

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

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

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

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

21 39. Finally, because of, Defendants’ failure to pay all minimum and overtime wages, and
22 meal and rest period premiums and sick pay at the “regular rate of pay”, Defendants also failed and
23 continue to fail to pay other non-exempt employees all wages owed at their time of separation from
24 employment in violation of Labor Code §§ 201-203. Thus, Plaintiff and other non-exempt employees
25 would be entitled to recover penalties under Labor Code §§ 201-203.

26 **CLASS ACTION ALLEGATIONS**

27 40. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
28 § 382 of the Code of Civil Procedure:

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

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

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

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

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

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

24 1. Whether Defendants’ timekeeping policy/practice of unevenly rounding/shaving non-
25 exempt employees’ time entries resulted in a failure to pay all minimum and overtime wages;

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

1 3. Whether Defendants' payroll policies/practices resulted in a failure to pay all sick pay
2 at the "regular rate of pay";

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

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

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

9 43. **Predominance of Common Questions:** Common questions of law and fact
10 predominate over questions that affect only individual members of the Classes. The common
11 questions of law set forth above are numerous and substantial and stem from Defendants' policies
12 and/or practices applicable to each individual class member, such as Defendants' failure to pay all
13 minimum and overtime wages due to their timekeeping policy/practice of unevenly rounding/shaving
14 non-exempt employees' time entries, Defendants' failure to pay for all overtime wages and sick pay
15 at the "regular rate" including all forms of compensation, Defendants' failure to provide all compliant
16 meal and rest periods or compensation at the "regular rate of pay" in lieu thereof, and Defendants'
17 resulting failure to provide accurate itemized wage statements, and to pay for all wages due upon
18 separation of employment. As such, the common questions predominate over individual questions
19 concerning each individual class member's showing as to his or her eligibility for recovery or as to
20 the amount of his or her damages.

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

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

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

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

1 thereto. As such, the Classes identified in Paragraph 38 are maintainable as Classes under § 382 of
2 the Code of Civil Procedure.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY ALL MINIMUM WAGES**

5 **(AGAINST ALL DEFENDANTS)**

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

7 49. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
8 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts
9 set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
10 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
11 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to
12 the unpaid wages and interest accrued thereon.

13 50. At all relevant times herein, Defendants failed to conform their pay practices to the
14 requirements of the law. This unlawful conduct includes but is not limited to Defendants' timekeeping
15 policy/practice of unevenly rounding/shaving non-exempt employees' time entries, resulting in these
16 individuals not being paid for all hours actually worked. Accordingly, Plaintiff and members of the
17 Classes were not compensated for all hours worked including, but not limited to, all hours they were
18 subject to the control of Defendants and/or suffered or permitted to work under the California Labor
19 Code and applicable Wage Orders.

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

25 52. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
26 Plaintiff and the Classes have sustained economic damages, including but not limited to unpaid wages
27 and lost interest, in an amount to be established at trial, and they are entitled to recover economic and
28 statutory damages and penalties and other appropriate relief as a result of Defendants' violations of

1 the California Labor Code and applicable Wage Orders.

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

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY ALL OVERTIME WAGES**

9 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

25 58. Defendants failed to conform their pay practices to the requirements of the law. This
26 unlawful conduct includes but is not limited to Defendants' (1) timekeeping policy/practice of
27 unevenly rounding/shaving non-exempt employees' time entries, and (2) failure to include all forms
28 of compensation, including, but not limited to, shift differentials, non-discretionary bonuses,

1 incentive pay, and other forms of remuneration when calculating the “regular rate of pay” used in
2 payment of overtime wages, all of which resulted in Plaintiff and the Classes not being paid all
3 overtime wages owed.

4 59. The foregoing policies and practices are unlawful and create entitlement to recovery
5 by Plaintiff and the members of the Classes in a civil action for the unpaid amount of overtime wages,
6 including interest thereon, statutory penalties, attorney’s fees, and costs of suit according to Labor
7 Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure §
8 1021.5.

9
10 **THIRD CAUSE OF ACTION**
11 **FAILURE TO PAY ALL SICK TIME**
(AGAINST ALL DEFENDANTS)

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

13 61. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
14 1198, and 1199 which provide that non-exempt employees are entitled to have their sick time paid
15 at the regular rate, including all forms of compensation/remuneration.

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

18 63. Defendants failed to conform their pay practices to the requirements of the law. This
19 unlawful conduct includes but is not limited to Defendants’ uniform and unlawful policy/practice
20 of failing to include all forms of compensation, including but not limited to shift differentials, non-
21 discretionary bonuses, and other forms of remuneration into the calculation of the “regular rate of
22 pay,” which resulted in Plaintiff and the Classes not being paid all sick time wages owed.

23 64. The foregoing policies and practices are unlawful and create entitlement to recovery
24 by Plaintiff and the members of the Classes in a civil action for the unpaid amount of sick time
25 wages, including interest thereon, statutory penalties, attorney’s fees, and costs of suit according to
26 Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, the applicable Wage Orders, and Code of Civil
27 Procedure § 1021.5.

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

16 **FIFTH CAUSE OF ACTION**

17 **REST PERIOD VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

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

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

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

72. 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.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS)

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

74. 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.”

75. 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).

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

///

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

78. 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)

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

80. 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.

81. 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.

82. 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.

83. Defendants willfully failed to pay the Waiting Time Subclass for all hours worked, including all minimum and overtime wages, sick time, 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.

84. 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).

1 **EIGHT CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

1 **NINTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

13 a. Failing to provide Plaintiff and other non-exempt employees all minimum wage,
14 overtime wage, and sick pay compensation at the appropriate premium rate in violation of Labor
15 Code § 204, 210, 510, 1194 and 1198;

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

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

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

23 93. On or about December 5, 2022, Plaintiff notified Defendant Pacific Paper Tube, Inc.,
24 via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its
25 website of Defendant’s violations of the California Labor Code § 2698 *et seq.*, with respect to
26 violations of the California Labor Code identified in Paragraph 92(a)-(d). Now that sixty-five days
27 have passed from Plaintiff notifying Defendant and the LWDA of these violations, Plaintiff will have
28 exhausted his administrative requirements for bringing a claim under the Private Attorneys General

1 Act with respect to these violations.

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

6 **PRAYER FOR RELIEF**

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

- 9 1. For an order certifying the proposed Classes;
- 10 2. For an order appointing Plaintiff as representative of the Classes;
- 11 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 12 4. Upon the First Cause of Action, for compensatory, consequential, general and
13 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, and 1194;
- 14 5. Upon the Second Cause of Action, for compensatory, consequential, general and
15 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 16 6. Upon the Third Cause of Action, for compensatory, consequential, general and
17 special damages according to proof pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, 1199;
- 18 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
19 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 20 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
21 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 22 9. Upon the Sixth Cause of Action, penalties pursuant to Labor Code § 226(a), and
23 reasonable costs and attorneys' fees;
- 24 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to
25 Labor Code §§ 201-203;
- 26 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
27 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
28 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

1 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other non-
2 exempt aggrieved employees, and the State of California according to proof pursuant to Labor Code
3 § 2699 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
4 subsequent violation per employee per pay period for those violations of the Labor Code for which
5 no civil penalty is specifically provided under the Labor Code;

6 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
7 § 218.6 and Civil Code §§ 3287 and 3289;

8 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
9 218.5, 226, 1194, and Code of Civil Procedure § 1021.5; and

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

11 Dated: February 1, 2023

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

12
13
14 By: _____

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