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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

ANGEL PADILLA, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

DISCOVERY PRACTICE MANAGEMENT,
INC., a California Corporation; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: 23-CIV-00637

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

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

DEMAND FOR JURY TRIAL

1 Plaintiff Angel Padilla (“Plaintiff”) on behalf of himself, and all other similarly situated non-
2 exempt employees, alleges, and complains of Discovery Practice Management, Inc. (“Defendant”)
3 and DOES 1 to 50 (hereinafter collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendants operate treatment centers within the State of California and provide mental
6 health, eating disorder, and addiction services in a continuum of care including outpatient, intensive
7 outpatient, partial hospitalization/day treatment, residential treatment, and inpatient detox. Plaintiff
8 brings this class action lawsuit against Defendants for alleged violations of the California Labor Code
9 and Business and Professions Code.

10 2. As set forth below, Plaintiff alleges that Defendants failed to pay all minimum wages
11 and overtime compensation and failed to pay all sick pay wages at the proper “regular rate of pay.”
12 Plaintiff further alleges that Defendants’ meal and rest period policies/practices and work demands
13 failed to allow and permit non-exempt employees to take all compliant and timely meal and rest
14 periods or pay premium wages at the “regular rate of pay” in lieu thereof. Moreover, Plaintiff alleges
15 that Defendants failed to provide non-exempt employees with accurate written itemized wage
16 statements in violation of Labor Code § 226(a), failed to reimburse all necessary business
17 expenditures in violation of Labor Code §§ 2802-2804, and failed to timely pay all final wages upon
18 separation of employment in violation of Labor Code §§ 201-203.

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

22 **JURISDICTION AND VENUE**

23 4. Plaintiff, on behalf of himself and all others similarly situated employees hereby brings
24 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
25 203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1197.1, 1199,
26 2802-2804, 2698 *et seq.*, and applicable Industrial Welfare Commission Wage Orders (“Wage
27 Orders”), in addition to seeking declaratory relief and restitution pursuant to California Business and
28 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 California within the County of San Mateo, 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 the County of San Mateo.

9. Plaintiff is informed and believes and thereon alleges that Defendants are authorized to and doing business in Menlo Park, California, within the County of San Mateo 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 her 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, 2802-2804, 2698 *et seq.*, 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 Mateo.

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.

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 operate treatment centers within the State of California and provide mental health, eating disorder, and addiction services in a continuum of care including outpatient, intensive outpatient, partial hospitalization/day treatment, residential treatment, and inpatient detox.

15. Plaintiff was employed by Defendants as a non-exempt employee with the title of “Residential Counselor” out of its Menlo Park, California location. Plaintiff and other non-exempt employees for Defendants across the State of California. Plaintiff and other non-exempt employees (including, but not limited to, therapists, eating disorder technicians, residential counselors, dietician, LVNs and all other non-exempt positions) were responsible for all aspects of Defendants’ services across the State of California. At all relevant times, Plaintiff and the other non-exempt employees were subjected to the same policies, procedures, and practices, working conditions, and corresponding wage and hour violations.

16. First, at all relevant times, Plaintiff and other non-exempt employees were not paid for all hours worked, including for all hours they were subjected to the control of the employer or permitted and suffered to work. Specifically, as a result of Defendants' uniform pay practices,

1 Plaintiff and other non-exempt employees were often not paid for attendance at weekly staff meetings
2 and training sessions, amongst other off-the-clock work. As a result of Defendants' uniform pay
3 policies/practices, Plaintiff and other non-exempt employees were not fully compensated for all hours
4 worked, and thus, subject to the control of Defendants. As such, Defendants systematically failed to
5 pay Plaintiff and other non-exempt employees for all hours worked and minimum and overtime wages
6 due. Defendants have had a consistent policy of unfairly rounding Plaintiff and other non-exempt
7 employees' time entries. As a result of this practice, Plaintiff and other non-exempt employees are
8 not compensated for all the hours that they work and all of the overtime hours they work, in violation
9 of Cal. Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

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

17 18. Moreover, at all relevant times, Plaintiff and other non-exempt employees worked
18 regular shifts that lasted longer than 8.0 hours in a workday and resulted in Plaintiff and other non-
19 exempt employees regularly working more than 40 hours in a workweek. However, upon information
20 and belief, non-exempt employees were not properly paid at the correct overtime rate for all overtime
21 hours worked due to Defendants' uniform failure to include all forms of compensation/renumeration,
22 including, but not limited to, non-discretionary bonuses, commissions, shift differentials, and other
23 forms of remuneration when calculating the "regular rate of pay" used in payment of overtime
24 compensation.

25 19. Under the California Labor Code (as well as the FLSA), courts have held that regularly
26 paid non-discretionary bonuses, commissions and shift pay must be included in determining an
27 employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The Americana*
28 *Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be

1 included in calculating the “regular rate”]; *Wang v. Chinese Daily News, Inc.* 435 F. Supp. 2d 1042,
2 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under California and federal
3 law on the grounds, that Defendant improperly calculated overtime by excluding annual bonuses paid
4 to employees from the “regular rate of compensation”].)

5 20. At all relevant times, Defendants consistently paid non-exempt employees non-
6 discretionary compensation, including non-discretionary bonuses, commissions, shift differentials,
7 and other forms of remuneration when calculating the “regular rate of pay” used in payment of
8 overtime wages. as well as overtime pay, however these forms of compensation were uniformly
9 omitted when calculating non-exempt employees’ regular rate of pay for overtime purposes.

10 21. Labor Code § 510 requires an employer to compensate an employee who works more
11 than eight (8.0) hours in one workday, forty (40.0) hours in a workweek, and for the first eight (8.0)
12 hours worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular
13 rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less
14 than twice the regular rate of pay when an employee works more than twelve (12.0) hours in a
15 workday or more than eight (8.0) hours on the seventh consecutive day of work. Pursuant to Section
16 3 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8.0)
17 hours in any workday or more than 40.0 hours in any workweek unless the employee receives one
18 and one-half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in
19 the workweek.

20 22. By their policy of requiring non-exempt employees to work in excess of eight (8)
21 hours in a workday and/or forty (40.0) hours in a workweek without compensating them at the rate
22 of one-half (1 1/2) their regular rate of pay, Defendants willfully violated the provisions of Labor
23 Code § 510 and the applicable Wage Orders.

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

1 worked, beginning at the commencement of employment.” Labor Code § 246(l)(1) provides that paid
2 sick time for non-exempt employees must be “calculated in the same manner as the regular rate of
3 pay for the workweek in which the employee uses paid sick time, whether or not the employee
4 actually works overtime in that workweek.”

5 24. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated
6 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
7 hours worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i)
8 requires employers to “provide an employee with written notice that sets forth the amount of paid
9 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
10 the employee’s itemized wage statement described in Section 226 or in a separate writing provided
11 on the designated pay date with the employee’s payment of wages.”

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

16 26. Moreover, at all relevant times, Plaintiff and other non-exempt employees were denied
17 complaint and timely 30-minute off-duty meal periods as mandated by California law. As a result of
18 Defendants’ uniform meal period policies/practices and work demands and staffing shortages,
19 Plaintiff and other non-exempt employees were often unable to take timely and uninterrupted 30-
20 minute first meal periods before the end of the fifth hour of work. Further, when Plaintiff and other
21 non-exempt employees worked in excess of 10.0 hours in a shift, they were not allowed and permitted
22 to take a mandated and timely second meal period before the end of the tenth hour of work in violation
23 of the Labor Code and applicable Wage Orders.

24 27. In addition, Plaintiff and other non-exempt employees were not provided meal period
25 premiums at the “regular rate of pay” for their missed or non-complaint meal periods pursuant to
26 Labor Code 226.7 and *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858.

27 28. Accordingly, due to Defendants’ uniform meal period policies/practices, Plaintiff and
28 other non-exempt employees were also regularly denied legally complaint meal periods in violation

1 of Labor Code 226.7, 510, 516, and applicable IWC Wage Orders.

2 29. Moreover, at all relevant times, Plaintiff and other non-exempt employees were also
3 not provided with 10 minutes of net rest period time for every 4 hours worked, or major fraction
4 thereof as mandated by California law. Specifically, in light of the staffing shortages and stringent
5 work demands imposed by Defendants, Plaintiff and other non-exempt employees were often unable
6 to take complaint and uninterrupted rest periods of 10 minutes time for every 4 hours worked, or
7 major fraction thereof. On occasions when Plaintiff and other non-exempt employees worked in
8 excess of 10.0 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest
9 break. Moreover, Defendants had a rest break policy which required that non-exempt employees
10 remain “on premises” during rest periods, thereby failing to relinquish control over non-exempt
11 employees during rest periods.

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

20 31. Each time non-exempt employees were unable to take a compliant rest period,
21 Defendants failed and continues to fail to adequately pay rest period premium payments at the
22 “regular rate of pay” as required by Labor Code § 226.7.

23 32. Accordingly, due to Defendants’ uniform rest period policies/practices, non-exempt
24 employees were regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7,
25 512, and applicable Wage Orders.

26 33. As a result of Defendants’ failure to pay Plaintiff and other non-exempt employees for
27 all hours they were subject to the control of Defendants, including all minimum and overtime wages,
28 failure to adequately compensate Plaintiff and other non-exempt employees at the appropriate legal

1 overtime rate, and failure to pay for meal/rest period premiums for missed/non-compliant meal and
2 rest periods, Defendants issued wage statements which failed to accurately identify the gross wages
3 earned, the total hours worked, the net wages earned, and the correct corresponding number of hours
4 worked at each hourly rate, in violation of Labor Code §226(a) (1, 2, 5, and 9).

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

10 35. Thus, for the violations of Labor Code § 226 described above, Plaintiff and other non-
11 exempt employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of
12 Labor Code § 226(a). Consequently, because Defendants failed to comply with Labor Code § 226(a)
13 and applicable Wage Orders, Plaintiff and other non-exempt employees would be entitled to recover
14 penalties under Labor Code §§ 226(e).

15 36. Moreover, at all relevant times, Plaintiff and other non-exempt employees, at the
16 direction of Defendants and/or with Defendants’ knowledge and acquiescence, have used their
17 personal cell phones in the discharge of their duties. However, Defendants failed to adequately
18 reimburse Plaintiff and other non-exempt employees for the reasonable portion of their monthly
19 personal cell phone bills and expenses necessarily incurred in their discharge of their duties, as
20 required by *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that
21 when employees must use their personal cell phones for work-related calls, Labor Code section 2802
22 requires the employer to reimburse them. Whether the employees have cell phone plans with
23 unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their
24 cell phone bills.”)

25 37. Although Plaintiff and other non-exempt employees used their personal cell phones in
26 the discharge of their job duties with the knowledge and/or acquiescence of Defendants, they were
27 not adequately reimbursed for an appropriate amount for expenses incurred throughout the relevant
28 liability period. Clearly, Defendants has failed to adequately reimburse Plaintiff and other non-

1 exempt employees a reasonable portion of their monthly personal cell phone bills and expenses
2 necessarily incurred in violation of the California Labor Code Section 2802-2804.

3 38. As a result of Defendants' unlawful reimbursement policy/practices, Plaintiff seeks to
4 recover on behalf of himself and all non-exempt employees' necessary expenditures, losses, and
5 penalties, and reasonable attorneys' fees/costs under Labor Code § 2802.

6 39. Finally, because of, Defendants' failure to pay all minimum and overtime wages, and
7 meal and rest period premiums for non-complaint meal and rest periods, Defendants also failed and
8 continues to fail to pay Plaintiff and other non-exempt employees all wages owed at their time of
9 separation from employment in violation of Labor Code §§ 201-203.

10 **CLASS ACTION ALLEGATIONS**

11 40. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
12 § 382 of the Code of Civil Procedure:

13 All non-exempt employees who work or worked for Defendants in
14 California, during the four years immediately preceding the filing of the
15 Complaint through the date of trial. ("Class");

16 All non-exempt employees who worked for Defendants in California and
17 who worked overtime hours during at least one shift, during the four years
18 immediately preceding the filing of the Complaint through the date of trial.
("Overtime Subclass");

19 All employees who work or worked for Defendants in California, during
20 the one year immediately preceding the filing of the Complaint through the
21 date of trial. ("Wage Statement Subclass")

22 All employees who work or worked for Defendants in California, and who
23 left their employ during the three years immediately preceding the filing of
24 the Complaint through the date of trial. ("Waiting Time Penalty Subclass")
(collectively "the Classes")

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

Defendants' employment and payroll records.

42. **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 failed to pay minimum wages for all hours worked;
2. Whether Defendants failed to pay adequate overtime and sick pay wages at the "regular rate of pay" to the members of the Class;
3. 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;
4. 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;
5. 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;
6. Whether Defendants paid all sick pay wages at the appropriate "regular rate of pay";
7. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Subclass pursuant to Labor Code § 226(a);
8. Whether Defendants accurately paid all sick pay wages owed using the "regular rate of pay" to Plaintiff and members of the Class;
9. Whether Defendants reimbursed all necessary business expenditures to members of the Class; and
10. 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.

43. **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, and failure to adequately calculate the "regular rate of pay" for

1 purposes of overtime pay and sick pay, Defendants' failure to provide all compliant meal and rest
2 periods or premiums at the "regular rate of pay" in lieu thereof, Defendants' failure to provide
3 accurate itemized wage statements, failure to reimburse all necessary business expenditures, and
4 Defendants' failure to pay for all wages due upon separation of employment. As such, the common
5 questions predominate over individual questions concerning each individual class member's showing
6 as to his or her eligibility for recovery or as to the amount of his or her damages.

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

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

21 46. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
22 important public interest in establishing minimum working conditions and standards in California.
23 These laws and labor standards protect the average working employee from exploitation by
24 employers who have the responsibility to follow the laws and who may seek to take advantage of
25 superior economic and bargaining power in setting onerous terms and conditions of employment. The
26 nature of this action and the format of laws available to Plaintiff and members of the Classes make
27 the class action format a particularly efficient and appropriate procedure to redress the violations
28 alleged herein. If each employee were required to file an individual lawsuit, Defendants would

1 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
2 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

3 47. Moreover, requiring each member of the Classes to pursue an individual remedy would
4 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
5 against their former and/or current employer for real and justifiable fear of retaliation and permanent
6 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
7 the individual class members, even if possible, would create a substantial risk of inconsistent or
8 varying verdicts or adjudications with respect to the individual class members against Defendants
9 herein; and which would establish potentially incompatible standards of conduct for Defendants;
10 and/or legal determinations with respect to individual class members which would, as a practical
11 matter, be dispositive of the interest of the other class members not parties to adjudications or which
12 would substantially impair or impede the ability of the class members to protect their interests.
13 Further, the claims of the individual members of the class are not sufficiently large to warrant
14 vigorous individual prosecution considering all of the concomitant costs and expenses attending
15 thereto. As such, the Classes identified in Paragraph 40 are maintainable as Classes under § 382 of
16 the Code of Civil Procedure.

17 **FIRST CAUSE OF ACTION**

18 **MINIMUM WAGE VIOLATIONS**

19 **(AGAINST ALL DEFENDANTS)**

20 48. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

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

27 50. At all relevant times herein, Defendants failed to conform their pay practices to the
28 requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform

1 and unlawful pay plan, policies, practices, which resulted in these individuals not being paid for all
2 hours they were actually suffered or permitted worked. Accordingly, Plaintiffs and members of the
3 Classes were not compensated for all hours worked including, but not limited to, all hours they were
4 subject to the control of Defendants and/or suffered or permitted to work under the Labor Code and
5 applicable Wage Orders.

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

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

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

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY ALL OVERTIME WAGES**

23 **(AGAINST ALL DEFENDANTS)**

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

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

1 56. At all times relevant herein, Defendants were required to properly pay Plaintiff and
2 members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code
3 § 1194 and the applicable Wage Orders.

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

12 58. Defendants failed to conform their pay practices to the requirements of the law. At all
13 relevant times herein, Defendants failed to conform their pay practices to the requirements of the law.
14 This unlawful conduct includes but is not limited to Defendant’s failure to properly pay for all hours
15 worked, including all overtime hours at the proper overtime rate, and Defendants’ failure to include
16 all forms of compensation, including, but not limited to, non-discretionary bonuses, commissions,
17 and other pay in calculating the “regular rate of pay,” which resulted in these individuals not being
18 paid for all overtime hours worked.

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

24 **THIRD CAUSE OF ACTION**

25 **MEAL PERIOD VIOLATIONS**

26 **(AGAINST ALL DEFENDANTS)**

27 60. Plaintiff re-alleges and incorporates by reference all previous paragraphs.
28

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

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

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

12 **FOURTH CAUSE OF ACTION**

13 **REST PERIOD VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

25 68. The foregoing violations create an entitlement to recovery by Plaintiff and members
26 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
27 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
28 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION
FAILURE TO PAY ALL SICK TIME
(AGAINST ALL DEFENDANTS)

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

70. 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.”

71. 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.

72. 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.”

73. 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.”

74. 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

1 1192, 1194 *et seq.*, 1197, 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

2 **SIXTH CAUSE OF ACTION**

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

4 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

80. 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

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

5 **SEVENTH CAUSE OF ACTION**

6 **WAITING TIME PENALTIES**

7 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

25 **EIGHTH CAUSE OF ACTION**

26 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

27 **(AGAINST ALL DEFENDANTS)**

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

88. 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.”

89. 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 use of personal cell phones for work related purposes, and other business expenses necessarily incurred in 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*)).

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

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

92. 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 overtime wages, sick pay wages, by failing to provide

1 all legally required meal and rest periods or pay premium payments at the “regular rate of pay” in
2 lieu thereof, by failing to provide accurate wage statements, and by failing to pay all earned wages at
3 the time of separation from employment.

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

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

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

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

20 **TENTH CAUSE OF ACTION**

21 **PRIVATE ATTORNEYS GENERAL ACT PENALTIES**

22 **(AGAINST ALL DEFENDANTS)**

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

24 98. Defendants have committed several Labor Code violations against Plaintiff and
25 other non-exempt employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code
26 § 2698 *et seq.*, acting on behalf of himself and other non-exempt employees from February 8, 2022
27 to the present, bring this representative action against Defendants to recover the civil penalties due to
28 Plaintiff, other similarly non-exempt employees, and the State of California according to proof

1 pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial
2 violation and (2) \$200 for each subsequent violation per employee per pay period for those violations
3 of the Labor Code for which no civil penalty is specifically provided based on the following Labor
4 Code violations:

5 a. Failing to accurately capture, record, calculate, and provide payment for all hours
6 worked, resulting in a failure to pay all minimum, in violation of Labor Code §§ 204, 210, 1174,
7 1194, 1194.2, 1197, 1197.1, 1199, and the applicable Wage Orders;

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

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

15 d. Failing to timely compensate Plaintiff and other non-exempt employees with all
16 earnings during their employment and at their separation of employment in violation of Labor Code
17 §§ 201-204, 210, and 256; and

18 e. Failing to furnish Plaintiff and other non-exempt employees with complete,
19 accurate, itemized wage statements and maintain employment records in violations of Labor Code §
20 226(a), 226.3, and 1174.

21 99. Plaintiff has notified Defendant Discovery Practice Management, Inc. via certified
22 mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website of
23 Defendants’ violations of the California Labor Code § 2698 *et seq.*, with respect to violations of the
24 California Labor Code identified in Paragraph 99(a)-(e). Now that sixty-five days have passed from
25 Plaintiff notifying Defendant and the LWDA of these violations, Plaintiff will have exhausted his
26 administrative requirements for bringing a claim under the Private Attorneys General Act with respect
27 to these violations.

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

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, 1194, 1197, 1197.1, and 1198 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 §§ 204, 210, 510, 1194, 1197, and 1198 and reasonable attorneys' fees and costs;
7. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
8. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
9. 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;
10. Upon the Sixth Cause of Action, penalties pursuant to Labor Code § 226(a), and reasonable costs and attorneys' fees;

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

3 12. Upon the Eighth Cause of Action, for unreimbursed expenses, interest, and
4 reasonable costs and attorneys' fees pursuant to Labor Code § 2802;

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

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

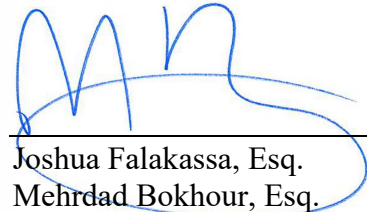
13 15. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
14 § 218.6 and Civil Code §§ 3287 and 3289;

15 16. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
16 218.5, 226, 1194, 2802 Code of Civil Procedure § 1021.5; and

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

19 Dated: April 14, 2023

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

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21
22 By: 

Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff and the Putative Classes
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