

1 BOKHOUR LAW GROUP, P.C.

Mehrddad Bokhour, Esq. (CA Bar No. 285256)

mehrdad@bokhourlaw.com

1901 Avenue of the Stars, Suite 450

Los Angeles, California 90067

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

5 FALAKASSA LAW, P.C.

Joshua S. Falakassa, Esq. (CA Bar No. 295045)

josh@falakassalaw.com

1901 Avenue of the Stars, Suite 450

Los Angeles, California 90067

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

Attorneys for Plaintiff and the Putative Classes

SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF LOS ANGELES**JOSE OLIVA, on behalf of himself and all others
similarly situated,

Plaintiff,

v.

PHENIX ENTERPRISES, INC., a California
Corporation; SAFE VEHICLE SYSTEMS,
INC., a California Corporation; ONEPAYHR,
LLC., a New Mexico Company; SATELLITE
BODY, INC, a California Corporation; and
DOES 1-30, inclusive.

Defendants.

CASE NO.: 23STCV09529

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

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

DEMAND FOR JURY TRIAL**FILED**
Superior Court of California
County of Los Angeles**08/21/2023**

David W. Slayton, Executive Officer / Clerk of Court

By: D. Tamayo Deputy

1 Plaintiff Jose Oliva (“Plaintiff”) on behalf of himself, and all other similarly situated non-
2 exempt employees, alleges and complains of Defendants OnePayHR, LLC., Phenix Enterprises, Inc.,
3 Satellite Body, Inc., and Safe Vehicle Systems, Inc. (collectively, “Defendants”), and DOES 1 to 30
4 (collectively, “Defendants”) and each of them, as follows:

5 **INTRODUCTION**

6 1. Defendants are Southern California’s largest work truck, van equipment, and specialty
7 truck body superstore.

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

10 3. As set forth below, Plaintiff alleges that Defendants deprived Plaintiff and other non-
11 exempt employees for all hours worked, and all overtime and sick pay wages by failing to properly
12 calculate the “regular rate of pay.” Moreover, Plaintiff alleges that Defendants’ meal and rest period
13 policies and practices failed to provide him and all other similarly situated employees with compliant
14 meal and rest periods or pay premium pay at the “regular rate of pay” in lieu thereof. Finally, Plaintiff
15 alleges that Defendants failed to reimburse necessary business expenses, failed to provide non-
16 exempt employees with accurate written itemized wage statements, and failed to timely pay all final
17 wages upon separation of employment.

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

21 **JURISDICTION AND VENUE**

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

23 6. Plaintiff, on behalf of himself and all others similarly situated employees hereby
24 brings this class action for recovery of unpaid wages and penalties under California Labor Code §§
25 200, 201-203, 204, 210, 226a, 226(e), 226.3, 226.7, 246, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199,
26 2802, 2698 *et seq.* and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in
27 addition to seeking declaratory relief and restitution pursuant to California Business and Professions
28 Code § 17200, *et. seq.*

7. 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.

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

PARTIES

9. 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 and other similarly situated employees as non-exempt employees in California in the County of Los Angeles.

10. Plaintiff is informed and believes and thereon alleges that Defendants are a California corporation authorized and doing business in Los Angeles County, California; and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods.

11. Defendants' policies and/or practices outlined herein have deprived Plaintiff and other similarly situated non-exempt employees of the rights afforded to them by California Labor Code §§ 201-203, 204, 210, 226, 226a, 226(e), 226.3, 226.7, 246, 510, 512, 1194, 1197.1, 1199, 2802, 2698 *et seq.*, and California Business and Professions Code § 17200 *et seq.*, and applicable Wage Order(s).

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

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

1 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
2 alleged herein.

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

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

16 **COMMON FACTUAL ALLEGATIONS**

17 16. Defendants are Southern California's Largest Work Truck, Van Equipment, and
18 Specialty Truck Body Superstore. Plaintiff was employed by Defendants as a non-exempt employee
19 with the title of "Driver/Quality Inspector" from approximately April 29, 2014, until his separation
20 from employment on September 28, 2022.

21 17. At all relevant times, Plaintiff and other non-exempt employees regularly worked
22 various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek.
23 Plaintiff alleges that other aggrieved employees were also subjected to the same systemic violations
24 as well as policies, procedures, and practices, working conditions, and corresponding wage and hour
25 violations during their employment.

26 18. First, at all relevant times, Defendants has had a consistent policy of failing to pay all
27 wages due and owed, including, but not limited to all, the legally required minimum and overtime
28 wages as a result of Defendants' uniform failure to pay for all hours worked or which Plaintiff and

1 other non-exempt employees were subject to control of Defendants, including, but not limited to, pre-
2 shift and post-shift time spent on work duties. As a result of Defendants' practice/policy, Plaintiff
3 and other non-exempt employees are not compensated for all regular and overtime hours they work
4 in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

5 19. Labor Code § 510 requires an employer to compensate an employee who works more
6 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
7 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
8 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
9 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
10 more than eight (8) hours on the seventh consecutive day of work.

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

18 21. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt employees
19 are entitled to recover liquidated damages for violations of Labor Code § 1197.1. Based upon these
20 same factual allegations, Plaintiff and the other aggrieved employees are entitled to unpaid wages
21 and penalties under Labor Code §§ 1197.1, 1199.

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

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

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

13 25. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt employees
14 are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204, 210, 510,
15 1197.1.

16 26. Similarly, at all relevant times, Defendants also failed in its obligation to provide
17 Plaintiff and other non-exempt employees the legally required paid sick days at the legal rate pursuant
18 to Labor Code §§ 246(a),(b), which requires that "[a]n employee who, on or after July 1, 2015, works
19 in California for the same employer for 30 or more days within a year from the commencement of
20 employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
21 worked, beginning at the commencement of employment." Labor Code § 246(l)(1) provides that paid
22 sick time for non-exempt employees must be "calculated in the same manner as the regular rate of
23 pay for the workweek in which the employee uses paid sick time, whether or not the employee
24 actually works overtime in that workweek."

25 27. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated
26 by dividing the employee's total wages, not including overtime premium pay, by the employee's total
27 hours worked in the full pay periods of the prior 90 days of employment." Finally, Labor Code §246(i)
28 requires employers to "provide an employee with written notice that sets forth the amount of paid

1 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
2 the employee's itemized wage statement described in Section 226 or in a separate writing provided
3 on the designated pay date with the employee's payment of wages."

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

8 29. Next, at all relevant times, Plaintiff and other non-exempt employees were denied
9 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
10 Defendants' uniform meal period policies/practices and work demands/operational requirements,
11 Plaintiff and other non-exempt employees were often unable to take timely and uninterrupted 30-
12 minute first meal periods before the end of the fifth hour of work.

13 30. Further, when Plaintiff and other non-exempt employees worked more than 10.0 hours
14 in a shift, they were not always allowed and permitted to take a mandated second meal period before
15 the end of the tenth hour of work in violation of the Labor Code and applicable Wage Orders.

16 31. Additionally, for each missed or non-compliant meal period, Defendants failed to
17 maintain a mechanism by which non-exempt employees were paid meal period premiums at the
18 "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor
19 Code § 226.7. Accordingly, due to Defendants' uniform meal period practices, Plaintiff and other
20 non-exempt employees were also regularly denied legally compliant meal periods in violation of
21 Labor Code 226.7, 510, 516, and applicable IWC Wage Orders.

22 32. Moreover, at all relevant times, Plaintiff and other non-exempt employees were not
23 provided with all 10-minute rest periods for every four hours worked, or major fraction thereof due
24 to Defendants' uniform rest period policies/practices and work demands. As a result, Plaintiff and
25 other non-exempt employees were and are often unable to take a net 10-minute duty free rest periods
26 for every major fraction of four hours worked. This includes a second rest period for shifts in excess
27 of six hours, and a third rest period for shifts in excess of 10.0 hours in a workday. Making matters
28 worse, Defendants have a policy/practice that required non-exempt employees to remain on premises

1 during rest periods.

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

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

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

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

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

27 38. Thus, for the violations of Labor Code § 226 described above, Plaintiff and other non-
28 exempt employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of

1 Labor Code § 226(a).

2 39. As a further result of Defendants' failure to pay all sick pay and overtime wages, and
3 meal and rest period premiums at the "regular rate of pay," Defendants also failed and continues to
4 fail to pay the non-exempt employees all wages owed at their time of separation from employment
5 in violation of Labor Code §§ 201-203.

6 40. Finally, at all relevant times, Defendants' required Plaintiff and other non-exempt
7 employees to incur necessary business expenses, including, but not limited to, the use of their personal
8 cell phones, but did not reimburse non-exempt employees adequately for these necessary
9 expenditures in violation of Labor Code §§ 2802-2804. *See Cochran v. Schwan's Home Service, Inc.*,
10 (2014) 228 Cal.App.4th 1137, 1144 "[i]f an employee is required to make work-related calls on a
11 personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does
12 not matter whether the phone bill is paid for by a third person, or at all..."

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

15 **CLASS ACTION ALLEGATIONS**

16 42. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
17 § 382 of the Code of Civil Procedure:

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

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

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

25 All non-exempt delivery driver employees who work or worked for
26 Defendants in California, and who left their employ during the three
27 years immediately preceding the filing of the Complaint through the
date of trial. ("Waiting Time Penalty Subclass")

(collectively “the Classes”)

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

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

1. Whether Defendants failed to pay all minimum and overtime wages for all hours worked to members of the Classes;

2. Whether Defendants failed to pay overtime and sick pay at the appropriate legal rate to members of the Classes;

2. Whether Defendants provided legally compliant meal and rest periods or proper compensation at the “regular rate of pay” in lieu thereof to members of the Classes;

3. Whether Defendants furnished legally compliant wage statements to members of the Classes pursuant to Labor Code § 226(a);

4. Whether Defendants failed to reimburse necessary business expenses to members of the Classes pursuant to Labor Code §§ 2802-2804; and

5. Whether the timing and amount of payment of final wages to members of the Class at the time of separation from employment were unlawful.

45. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants’ policies and/or practices applicable to each individual class member, such as Defendants’ policy/practice of failing to pay overtime and sick pay at the appropriate premium rate, Defendants’ uniform policy of failing to provide compliant meal and rest periods or adequate compensation in lieu thereof, and

1 Defendants' resulting failure to provide accurate itemized wage statements, Defendants' failure to
2 reimburse necessary business expenses, and to pay for all wages due upon separation of employment.
3 As such, the common questions predominate over individual questions concerning each individual
4 class member's showing as to his or her eligibility for recovery or as to the amount of his or her
5 damages.

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

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

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

1 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

2 49. Moreover, requiring each member of the Classes to pursue an individual remedy
3 would also discourage the assertion of lawful claims by employees who would be disinclined to file
4 an action against their former and/or current employer for real and justifiable fear of retaliation and
5 permanent damages to their careers at subsequent employment. Further, the prosecution of separate
6 actions by the individual class members, even if possible, would create a substantial risk of
7 inconsistent or varying verdicts or adjudications with respect to the individual class members against
8 Defendants herein; and which would establish potentially incompatible standards of conduct for
9 Defendants; and/or legal determinations with respect to individual class members which would, as a
10 practical matter, be dispositive of the interest of the other class members not parties to adjudications
11 or which would substantially impair or impede the ability of the class members to protect their
12 interests. Further, the claims of the individual members of the class are not sufficiently large to
13 warrant vigorous individual prosecution considering all of the concomitant costs and expenses
14 attending thereto. As such, the Classes identified in Paragraph 41 are maintainable as Classes under
15 § 382 of the Code of Civil Procedure.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY ALL MINIMUM WAGES**

18 **(AGAINST ALL DEFENDANTS)**

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

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

26 52. At all relevant times herein, Defendants failed to conform their pay practices to the
27 requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform
28 and unlawful practice of failing to pay for all hours worked as a result of its practice of failing to

1 pay all shift differential payments owed and due. Accordingly, Plaintiff and members of the Classes
2 were not compensated for all hours worked, including, but not limited to, all hours they were subject
3 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
4 and applicable Wage Orders.

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

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

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

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY ALL OVERTIME WAGES**

23 **(AGAINST ALL Defendants)**

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

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

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

59. Section 3 of the applicable Wage Order requires an employer to pay an employee “one and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours of work in the workweek. The same section also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek.

60. Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes, but is not limited to, Defendants' uniform and unlawful policy/practice of failing to pay for all hours worked, and failure to include all forms of compensation in calculating the "regular rate of pay", which resulted in the Classes not being paid all overtime wages owed.

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

THIRD CAUSE OF ACTION

FAILURE TO PAY ALL SICK TIME

(AGAINST ALL Defendants)

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

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

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

65. Defendants failed to conform their pay practices to the requirements of the law. This

1 unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of
2 failing to include all forms of compensation, including but not limited to shift differentials, non-
3 discretionary bonuses, and other forms of remuneration into the calculation of the "regular rate of
4 pay," which resulted in Plaintiff and the Classes not being paid all sick time wages owed.

5 66. The foregoing policies and practices are unlawful and create entitlement to recovery
6 by Plaintiff and the members of the Classes in a civil action for the unpaid amount of sick time wages,
7 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
8 Code §§ 246, 558, 1194.2, 1197.1, 1198, the applicable Wage Orders, and Code of Civil Procedure
9 § 1021.5.

10 **FOURTH CAUSE OF ACTION**

11 **MEAL PERIOD VIOLATIONS**

12 **(AGAINST ALL Defendants)**

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

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

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

24 **FIFTH CAUSE OF ACTION**

25 **REST PERIOD VIOLATIONS**

26 **(AGAINST ALL Defendants)**

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

28 71. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516

1 establishes the right of non-exempt employees to be provided with a rest period of at least ten (10)
2 minutes for each four (4) hour period worked, or major fraction thereof.

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

10 73. The foregoing violations create an entitlement to recovery by Plaintiff and members
11 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
12 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
13 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

14 **SIXTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS** 16 **(AGAINST ALL Defendants)**

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

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

19 "(a) An employer, semimonthly or at the time of each payment of wages, shall
20 furnish to his or her employee, either as a detachable part of the check, draft, or
21 voucher paying the employee's wages, or separately if wages are paid by personal
22 check or cash, an accurate itemized statement in writing showing (1) gross wages
23 earned, (2) total hours worked by the employee, except as provided in subdivision
24 (j), (3) the number of piece-rate units earned and any applicable piece rate if the
25 employee is paid on a piece-rate basis, (4) all deductions, provided that all
26 deductions made on written orders of the employee may be aggregated and shown
27 as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
28 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, if the employer is a farm labor contractor, as defined in subdivision
(b) of Section 1682, the name and address of the legal entity that secured the services

1 of the employer, and (9) all applicable hourly rates in effect during the pay period
2 and the corresponding number of hours worked at each hourly rate by the
3 employee.”

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

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

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

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

20 **SEVENTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

22 **(AGAINST ALL Defendants)**

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

24 81. Labor Code 2802(a) states in pertinent part the following:

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

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

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

7 **EIGHTH CAUSE OF ACTION**

8 **WAITING TIME PENALTIES**

9 **(AGAINST ALL Defendants)**

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

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

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

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

19 88. Defendants willfully failed to pay Plaintiff and the members of the Waiting Time
20 Penalty Subclass for all minimum wages, and overtime and sick pay wages, and their meal and rest
21 period premiums at the “regular rate of pay”, prior to or upon termination or separation from
22 employment with Defendants as required by Labor Code §§ 201 and 202.

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

1 **NINTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL Defendants)**

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

5 91. 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 all minimum wages, and overtime and sick pay wages at the appropriate legal rate, by
8 failing to provide all legally required meal and rest periods or pay premium payments at the “regular
9 rate of pay” in lieu thereof, by failing to provide accurate itemized wage statements, failing to
10 reimburse necessary business expenditures, and by failing to pay all earned wages at the time of
11 separation from employment.

12 92. Defendants’ utilization of these unfair and/or unlawful business practices deprived
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 93. 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 94. The acts complained of herein occurred within the last four years immediately
22 preceding the filing of the Complaint in this action.

23 95. 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 he is entitled to recover under Code of Civil Procedure § 1021.5.

TENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(Labor Code § 2698 *et seq.*)

(Against All Defendants)

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

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

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

b. Failing to pay Plaintiff and other non-exempt employees overtime and sick time wages at the “regular rate of pay”, including all forms of non-hourly compensation, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;

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

d. Failing to authorize and permit Plaintiff and other non-exempt employees with all of their statutorily mandated rest periods or compensation at the “regular rate of pay” in lieu thereof in violation of Labor Code §§ 226.7, and 516;

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

f. Failing to furnish Plaintiff and other non-exempt employees with complete, accurate,

1 itemized wage statements in violations of Labor Code § 226(a); and

2 g. Failing to reimburse Plaintiff and other non-exempt employees for necessary business
3 expenses in violation of Labor Code 2802.

4 98. On or about April 26, 2023, Plaintiff notified Defendants OnePayHR, LLC., Phenix
5 Enterprises, Inc., Satellite Body, Inc., and Safe Vehicle Systems, Inc. (“LWDA”) via its website of
6 Defendants’ violations of the California Labor Code § 2698 *et seq.*, with respect to violations of the
7 California Labor Code identified in Paragraph 97 (a)-(g). Now that sixty-five days have passed from
8 Plaintiff notifying Defendants and the LWDA of these violations, Plaintiff will have exhausted their
9 administrative requirements for bringing a claim under the Private Attorneys General Act with respect
10 to these violations.

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

15 **PRAYER FOR RELIEF**

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

- 18 1. For an order certifying the proposed Classes;
- 19 2. For an order appointing Plaintiff as representative of the Classes;
- 20 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 21 4. Upon the First Cause of Action, for compensatory, consequential, general and special
22 damages according to proof pursuant to Labor Code §§ 204, 210, 1194, and 1198;
- 23 5. Upon the Second Cause of Action, for compensatory, consequential, general and
24 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1197, and 1198;
- 25 6. Upon the Third Cause of Action, payment of all unpaid sick pay wages and penalties
26 according to proof pursuant to Labor Code § 246 *et seq.*, and for reasonable attorneys’ fees and costs;
- 27 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
28 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;

1 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and special
2 damages according to proof pursuant to Labor Code §§ 226.7 and 516;

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

5 10. Upon the Seventh Cause of Action, for unreimbursed business expenses and penalties,
6 and attorneys' fees and costs pursuant to Labor Code §§ 2802-2804.

7 11. Upon the Eighth Cause of Action, for statutory waiting time penalties pursuant to
8 Labor Code §§ 201-204 and 210;

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

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

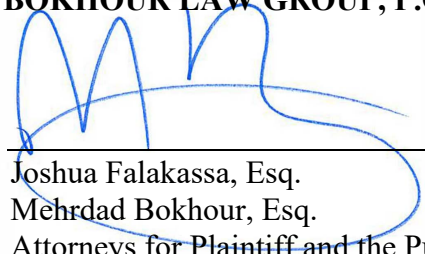
17 14. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
18 § 218.6 and Civil Code §§ 3287 and 3289;

19 15. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
20 218.5, 226, 2802, and Code of Civil Procedure § 1021.5; and

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

22
23 Dated: August 18, 2023

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

24
25
26 By: 

Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff and the Putative Classes

1 **PROOF OF SERVICE**

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

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

5 On August 21, 2023, I served the following document(s) described as **FIRST AMENDED**
6 **CLASS AND PAGA REPRESENTATIVE ACTION COMPLAINT** on the interested parties in
this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

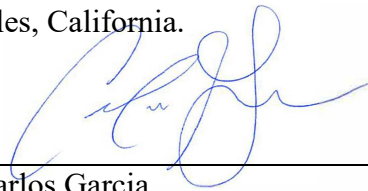
7 Andrew C. Crane, Esq.
acrane@fisherphillips.com
8 Andrew S. Wellman, Esq.
awellman@fisherphillips.com
9 FISHER & PHILLIPS, LLP
2050 Main Street, Suite 1000
10 Irvine, California 92614

11 **Counsel for Defendants Phenix Enterprises, Inc.,**
12 **Safe Vehicle Systems, Inc., OnePayHR, LLC, and**
Satellite Body, Inc.

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

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

18 Executed on August 21, 2023, at Los Angeles, California.

19 
20 _____
Carlos Garcia
21
22
23
24
25
26
27
28