

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

FALAKASSA LAW, P.C.
Joshua S. Falakassa, CA Bar No. 295045
josh@falakassalaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

Attorneys for Plaintiff and the Putative Classes

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

GORDON HUCKABY, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

PACIFIC SOUTHWEST CONTAINER, LLC,
a California Corporation; and DOES 1-50,
inclusive.

Defendants.

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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Narely Garcia, Deputy

CASE NO.: CV-23-002008

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

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

DEMAND FOR JURY TRIAL

1 Plaintiff Gordon Huckaby (“Plaintiff”), on behalf of himself and all other similarly situated
2 non-exempt employees, alleges and complains of Defendant Pacific Southwest Container, LLC
3 (“Defendant”), and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendants are a leader in manufacturing packaging solutions for our customers across
6 corrugated, folding cartons, SFL, protective packaging, and POP. Plaintiff brings this class action
7 against Defendants for alleged violations of the California Labor Code and Business and Professions
8 Code.

9 2. As set forth below, Plaintiff alleges that Defendants failed and continue to fail to pay
10 all overtime and sick pay wages due to Defendants’ failure to properly calculate the “regular rate of
11 pay,” that Defendants’ meal and rest period policies and practices failed to provide her and all other
12 similarly situated employees with compliant meal and rest periods or pay premium pay at the “regular
13 rate of pay” in lieu thereof. As a result, Plaintiff alleges that Defendants failed to provide non-exempt
14 employees with accurate written itemized wage statements and failed to pay all final wages in a timely
15 manner upon separation of employment.

16 3. Based on these alleged Labor Code violations, Plaintiff now brings this class and
17 PAGA representative action to recover unpaid wages, restitution, penalties, and other related relief
18 on behalf of herself and all others similarly situated.

19 **JURISDICTION AND VENUE**

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

21 5. Plaintiff, on behalf of herself and all other similarly situated employees hereby brings
22 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
23 203, 204, 210, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199, 2802-
24 2804, 2698 *et seq.*, amongst others, and applicable Industrial Welfare Commission Wage Orders
25 (“Wage Orders”), in addition to seeking declaratory relief and restitution pursuant to California
26 Business and Professions Code § 17200, *et. seq.*

27 6. This Court has jurisdiction over Defendants’ violations of the California Labor Code
28 and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional

1 minimum.

2 7. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
3 §§ 395(a) and 395.5, as Defendants operate a warehouse/office in Modesto, California. Defendants
4 own, maintain offices, transact business, have an agent or agents within the County of Stanislaus
5 and/or otherwise are found within the County of Stanislaus, and Defendants are within the jurisdiction
6 of this Court for purposes of service of process.

7 **PARTIES**

8 8. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is
9 a California resident residing in the State of California. Defendants employed Plaintiff and other non-
10 exempt employees as non-exempt employees in Modesto, California, in the County of Stanislaus.

11 9. Plaintiff is informed and believes and thereon alleges that Defendant is a California
12 corporation authorized and doing business in Stanislaus County, California, and is and/or was the
13 legal employer of Plaintiff and the Class Members during the applicable statutory periods.

14 10. Defendants' policies and/or practices outlined herein have deprived Plaintiff and other
15 similarly situated non-exempt employees of the rights afforded to them by California Labor Code §§
16 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 1194, 1197.1, 1199, and
17 California Business and Professions Code § 17200 *et seq.*, and applicable Wage Order(s).

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

22 12. Plaintiff does not know the true names or capacities, whether individual, partner, or
23 corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
24 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
25 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
26 believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, or
27 corporate, were responsible in some manner for the acts and omissions alleged herein, and
28 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices

1 alleged herein.

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

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

15 **COMMON FACTUAL ALLEGATIONS**

16 15. Since 1973, Defendants have been a leader in manufacturing packaging solutions for
17 our customers across corrugated, folding cartons, SFL, protective packaging, and POP. With a large
18 manufacturing facility located at 4530 Leckron Road, Modesto, California, Defendants employs
19 hundreds of employees.

20 16. Plaintiff was employed as a non-exempt employee with the title of “Quality Auditor”
21 from April 19, 2021, until his separation from employment on or about January 19, 2023. Plaintiff
22 and other non-exempt employees were employed as manufacturing associates, machine operators,
23 technicians, sales, designers, and all other non-exempt positions for Pacific Southwest in the State of
24 California.

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

1 violations to which Plaintiff was subjected during her employment.

2 18. First, at all relevant times, Plaintiff and other non-exempt employees were not
3 properly paid at the correct overtime rate for all hours worked in excess of eight (8) hours per workday
4 and/or forty (40) hours per workweek. Although Plaintiff and other non-exempt employees regularly
5 worked overtime hours, they were not compensated at one and one-half times their “regular rate of
6 pay” because Defendants failed to include all forms of compensation, including, but not limited to,
7 shift differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration when
8 calculating the “regular rate of pay” used for payment of overtime wages.

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

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

21 21. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt employees
22 are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204, 210, 510,
23 1197.1.

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

1 per every 30 hours worked, beginning at the commencement of employment.” Labor Code §
2 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the same
3 manner as the regular rate of pay for the workweek in which the employee uses paid sick time,
4 whether or not the employee actually works overtime in that workweek.”

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

12 24. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiff and
13 other non-exempt employees the legally required paid sick days at the legal rate, including all forms
14 of compensation, pursuant to Labor Code §§ 246(a),(b). As such, Defendants paid sick time below
15 his base rate of pay, rather than the “regular rate of pay” as required by Labor Code §§ 246(l)(1-2).
16 Based on the foregoing Labor Code violations, Plaintiff seeks all civil and statutory penalties
17 available and applicable under Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, 1199.

18 25. Moreover, at all relevant times, Plaintiff and other non-exempt employees were denied
19 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
20 Defendants’ uniform meal period policies/practices and work demands/operational requirements,
21 Plaintiff and other non-exempt employees were often unable to take timely and uninterrupted 30-
22 minute first meal periods before the end of the fifth hour of work. Further, when Plaintiff and other
23 non-exempt employees worked more than 10 hours in a shift, they were not always allowed and
24 permitted to take a mandated second meal period before the end of the tenth hour of work in violation
25 of the Labor Code and applicable Wage Orders.

26 26. Additionally, for each missed or non-compliant meal period, Defendants failed to
27 maintain a mechanism by which non-exempt employees were paid meal period premiums at the
28 “regular rate of pay” pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor

1 Code § 226.7. Accordingly, due to Defendants’ uniform meal period practices, Plaintiff and other
2 non-exempt employees were also regularly denied legally compliant meal periods in violation of
3 Labor Code 226.7, 510, 516, and applicable IWC Wage Orders.

4 27. Moreover, at all relevant times, Plaintiff and other non-exempt employees were not
5 provided with all 10-minute rest periods for every four hours worked, or major fraction thereof due
6 to Defendants’ uniform rest period policies/practices and work demands and operational
7 requirements. As a result, Plaintiff and other non-exempt employees were and are often unable to
8 take a net 10-minute duty free rest periods for every major fraction of four hours worked. This
9 includes a second rest period for shifts in excess of six hours, and a third rest period for shifts in
10 excess of 10 hours in a workday.

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

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

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

25 31. As a result of Defendants’ failure to pay Plaintiff and other non-exempt employees for
26 all overtime and sick pay wages and Defendants’ failure to pay for meal and rest period premiums at
27 the “regular rate of pay”, Defendants issued wage statements which failed to accurately identify the
28 gross wages earned, the total hours worked, the net wages earned, and the correct corresponding

1 number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

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

7 33. Thus, for the violations of Labor Code § 226 described above, Plaintiff and other non-
8 exempt employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of
9 Labor Code § 226(a).

10 34. As a further result of Defendants’ failure to pay all overtime, sick pay wages, and meal
11 and rest period premiums at the “regular rate of pay,” Defendants also failed and continues to fail to
12 pay the non-exempt employees all wages, as well as accrued and unused paid time off, owed at their
13 time of separation from employment in violation of Labor Code §§ 201-203.

14 **CLASS ACTION ALLEGATIONS**

15 35. Plaintiff brings this action on behalf of herself and the following Classes pursuant to
16 § 382 of the Code of Civil Procedure:

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

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

22 All non-exempt employees who work or worked for Defendants in
23 California during one year immediately preceding the filing of the
24 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
 years immediately preceding the filing of the Complaint through the
 date of trial. (“Waiting Time Penalty Subclass”)

27 (collectively “the Classes”)
28

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

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

10 1. Whether Defendants failed to pay all overtime and sick pay at the appropriate "regular
11 rate of pay" to members of the Classes;

12 2. Whether Defendants provided legally compliant meal and rest periods or proper
13 compensation at the "regular rate of pay" in lieu thereof to members of the Class;

14 3. Whether Defendants furnished legally compliant wage statements to members of the
15 Classes pursuant to Labor Code § 226(a) to members of the Waiting Time Penalty Class;

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

18 38. **Predominance of Common Questions:** Common questions of law and fact
19 predominate over questions that affect only individual members of the Classes. The common
20 questions of law set forth above are numerous and substantial and stem from Defendants' policies
21 and/or practices applicable to each individual class member, such as Defendants' policy/practice of
22 failing to pay overtime and sick pay at the appropriate premium rate, Defendants' uniform policy of
23 failing to provide compliant meal and rest periods or adequate compensation in lieu thereof, and
24 Defendants' resulting failure to provide accurate itemized wage statements, Defendants' failure to
25 pay for all wages due upon separation of employment. As such, the common questions predominate
26 over individual questions concerning each individual class member's showing as to his or her
27 eligibility for recovery or as to the amount of his or her damages.

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

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

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

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

1 inconsistent or varying verdicts or adjudications with respect to the individual class members against
2 Defendants herein; and which would establish potentially incompatible standards of conduct for
3 Defendants; and/or legal determinations with respect to individual class members which would, as a
4 practical matter, be dispositive of the interest of the other class members not parties to adjudications
5 or which would substantially impair or impede the ability of the class members to protect their
6 interests. Further, the claims of the individual members of the class are not sufficiently large to
7 warrant vigorous individual prosecution considering all of the concomitant costs and expenses
8 attending thereto. As such, the Classes identified in Paragraph 35 are maintainable as Classes under
9 § 382 of the Code of Civil Procedure.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY ALL OVERTIME WAGES**

12 **(AGAINST ALL DEFENDANTS)**

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

14 44. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and
15 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
16 worked and provide a private right of action for the failure to pay all overtime compensation for
17 overtime work performed.

18 45. At all times relevant herein, Defendants were required to properly pay Plaintiff and
19 members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code
20 § 1194 and the applicable Wage Orders.

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

27 47. Defendants failed to conform their pay practices to the requirements of the law. This
28 unlawful conduct includes but is not limited to (1) Defendants’ uniform and unlawful policy/practice

1 of failing to pay overtime at the minimum statutory rate for much of the statutory period, resulting in
2 a failure to pay all hours worked, which resulted in the Classes not being paid all overtime wages
3 owed.

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

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY ALL SICK TIME**

11 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

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

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

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

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

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

1 60. The foregoing violations create an entitlement to recovery by Plaintiff and members
2 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
3 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
4 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

5 **FIFTH CAUSE OF ACTION**

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

7 **(AGAINST ALL DEFENDANTS)**

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

9 62. Labor Code 226(a) states in pertinent part the following:

10 “(a) An employer, semimonthly or at the time of each payment of wages, shall furnish
11 to his or her employee, either as a detachable part of the check, draft, or voucher
12 paying the employee’s wages, or separately if wages are paid by personal check or
13 cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
14 total hours worked by the employee, except as provided in subdivision (j), (3) the
15 number of piece-rate units earned and any applicable piece rate if the employee is
16 paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
17 written orders of the employee may be aggregated and shown as one item, (5) net
18 wages earned, (6) the inclusive dates of the period for which the employee is paid,
19 (7) the name of the employee and only the last four digits of his or her social security
20 number or an employee identification number other than a social security number,
21 (8) the name and address of the legal entity that is the employer and, if the employer
22 is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
23 and address of the legal entity that secured the services of the employer, and (9) all
24 applicable hourly rates in effect during the pay period and the corresponding number
25 of hours worked at each hourly rate by the employee.”

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

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

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

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

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

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

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

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

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

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

1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

1 **EIGHT CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **(AGAINST ALL DEFENDANTS)**

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

5 80. Defendants have committed several Labor Code violations against Plaintiff and other
6 similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code
7 § 2698 *et seq.*, acting on behalf of himself and other similarly aggrieved employees, brings this PAGA
8 representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly
9 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
10 (a) and (f) including, but not limited to (1) \$100 for each initial violation and (2) \$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 based on the following Labor Code violations:

13 a) Failing to pay Plaintiff and other similarly aggrieved employees all overtime and sick
14 pay wages at the appropriate premium rates in violation of Labor Code §§ 246, 510, 1194, 1197;

15 b) Failing to provide Plaintiff and other similarly Aggrieved Employees with all of their
16 statutorily mandated meal periods in violation of Labor Code §§ 204, 510, 1194 and 1198;

17 c) Failing to authorize and permit Plaintiff and other similarly Aggrieved employees
18 with all of their statutorily mandated rest periods in violation of Labor Code §§ 226.7 and 516;

19 d) Failing to furnish Plaintiff and other similarly situated employees with complete,
20 accurate, itemized wage statements in violations of Labor Code § 226(a) and applicable Wage Orders;
21 and

22 e) Failing to pay final wages in a timely manner in violation of Labor Code §§ 201-203
23 and applicable Wage Orders.

24 81. On or about April 6, 2023, Plaintiff notified Defendant Pacific Southwest Container,
25 LLC and the California Labor and Workforce Development Agency (“LWDA”) via email of
26 Defendants’ violations of the California Labor Code § 2698 *et seq.*, with respect to violations of the
27 California Labor Code identified in Paragraph 80 (a)-(e). Now that sixty-five days have passed since
28 Plaintiff notified Defendants of these violations, Plaintiff has exhausted his administrative

1 requirements for bringing a claim under the Private Attorneys General Act with respect to these
2 violations.

3 82. Plaintiff was compelled to retain the services of counsel to file this court action to
4 protect his interests and the interests of similarly aggrieved employees and to assess and collect the
5 civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys' fees and costs, which he
6 is entitled to receive under California Labor Code § 2698 *et seq.*

7 **PRAYER FOR RELIEF**

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

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

1 11. Upon the Eight Cause of Action, for civil penalties due to Plaintiff, other similarly
2 Aggrieved Employees, and the State of California according to proof pursuant to Labor Code § 2699
3 (a) and (f) including, but not limited to (1) \$100 for each initial violation and \$200 for each subsequent
4 violation per employee per pay period for those violations of the Labor Code for which no civil
5 penalty is specifically provided under the Labor Code, and for reasonable attorneys' fees and costs

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

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

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

11
12 Dated: October 14, 2024

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

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14
15 By: _____

16 Joshua Falakassa, Esq.
17 Mehrdad Bokhour, Esq.
18 Attorneys for Plaintiff and the Putative Classes
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 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.

On October 15, 2024, I served the following document(s) described as **FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Paloma P. Peracchio, Esq.
Paloma.peracchio@ogletree.com
Sona Patel, Esq.
Sona.patel@ogletree.com
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
400 South Hope Street, Suite 1200
Los Angeles, California 90071

Counsel for defendant Pacific Southwest Container, LLC

BY ELECTRONIC SERVICE: I transmitted the above-referenced document(s) via 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 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.

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

Executed on October 15, 2024, at Los Angeles, California.

/s/ Cynthia Garcia
Cynthia Garcia