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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DEVINA VAUGHN, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

DRS IMAGING SERVICES, LLC., a Delaware
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 30-2023-01326591-CU-OE-CXC

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

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

DEMAND FOR JURY TRIAL

1 Plaintiff Devina Vaughn (“Plaintiff”) on behalf of herself, and all other similarly situated non-
2 exempt employees, alleges and complains of Defendant DRS Imaging Services, LLC aka Daida
3 (“Defendant”), and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendants specialize in digital document conversion and management. After merging
6 with Imagetek, Doculynx, and Integra, the company incorporates a full suite of combined services
7 for its clients within the State of California and across the U.S.

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 of all wages as a result of its unlawful rounding policy/practice, and failure to pay
12 for all overtime and sick pay wages by failing to properly calculate the “regular rate of pay.”
13 Moreover, Plaintiff alleges that Defendants’ meal and rest period policies and practices failed to
14 provide him and all other similarly situated employees with compliant meal and rest periods or pay
15 premium pay at the “regular rate of pay” in lieu thereof. Finally, Plaintiff alleges that Defendants
16 failed to provide non-exempt employees with accurate written itemized wage statements and failed
17 to timely pay all final wages upon separation of employment.

18 4. Based on these alleged Labor Code violations, Plaintiff now brings this class and
19 PAGA representative action to recover unpaid wages, restitution, penalties, and other related relief
20 on behalf of herself and all others 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 herself and all others similarly situated employees hereby brings
24 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 200,
25 201-203, 204, 210, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199,
26 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 Orange and/or otherwise are found within the County of Orange, 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 Orange and nearby counties.

10. Plaintiff is informed and believes and thereon alleges that Defendant is a California corporation authorized and doing business in Orange 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, 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 Orange. Defendants, each of them, own and/or operate within Anaheim, 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

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

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

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

17 **COMMON FACTUAL ALLEGATIONS**

18 16. Defendants, *aka* Daida, specialize in digital document conversion and management.
19 After merging with Imagetek, Doculynx, and Integra, the company incorporates a full suite of
20 combined services for its clients.

21 17. Plaintiff was employed by Defendants as a non-exempt employee with the title of
22 “Senior Shift Lead.” Plaintiff began working with DRS Imaging from approximately November 17,
23 2021, until her separation from employment on or about March 23, 2023.

24 18. Plaintiff and other non-exempt employees (including, document preparation clerks,
25 document imaging specialist, document control, and all other non-exempt positions) were responsible
26 for all aspects of Defendants’ business in the State of California.

27 19. At all relevant times, Plaintiff and other non-exempt employees regularly worked
28 various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek.

1 Plaintiff alleges that other non-exempt employees were also subjected to the same policies,
2 procedures, and practices, working conditions, and corresponding wage and hour violations to which
3 she was subjected during his employment.

4 20. First, at all relevant times, Defendants have utilized a consistent practice of unevenly
5 rounding Plaintiff's and other non-exempt employees' time entries, resulting in a failure to pay all
6 hours worked. The Court in *See's Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907,
7 held that rounding time policies can be lawful, "if the rounding policy is fair and neutral on its face
8 and 'it is used in such a manner that it will not result, over a period of time, in failure to compensate
9 the employees properly for all the time they have actually worked. (29 C.F.R. § 785.48; see DLSE
10 Manual, supra, §§ 47.1, 47.2)."

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

17 22. In addition, at all relevant times, Defendants automatically deducted 30-minutes from
18 Plaintiff and other non-exempt employees' time entries for meal periods. Defendants' policy/practice
19 automatically deducted 30 minutes for meal periods, regardless of whether a 30-minute meal period
20 was actually taken. Indeed, non-exempt employees' meal periods were often cut short, and lasted
21 fewer than 30 minutes.

22 23. As a result of this company-wide practice, Plaintiff and other non-exempt employees
23 are not compensated for all the hours that they actually work and all of the overtime hours they
24 actually work, in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage
25 Orders. Moreover, as a result of the unlawful timekeeping policy, Plaintiff and other non-exempt
26 employees were also not properly paid at the correct overtime rate for hours worked in excess of eight
27 hours per shift in violation of Labor Code § 510.

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

8 25. Labor Code § 510 requires an employer to compensate an employee who works more
9 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
10 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
11 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
12 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
13 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
14 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
15 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
16 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

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

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

1 28. 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"].) see *Walling*
9 *v. Youngerman-Reynolds Hardwood Co.* (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very
10 nature must reflect all payments which the parties have agreed shall be received regularly during the
11 workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is an
12 actual fact. Once the parties have decided upon the amount of wages and the mode of payment the
13 determination of the regular rate becomes a matter of mathematical computation, the result of which
14 is unaffected by any designation of a contrary 'regular rate' in the contracts."); see also 29 CFR §§
15 778.110 ("production bonus") and 778.111 ("piece-rate").)

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

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

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

1 sick time for non-exempt employees must be “calculated in the same manner as the regular rate of
2 pay for the workweek in which the employee uses paid sick time, whether or not the employee
3 actually works overtime in that workweek.”

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

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

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

23 35. Making matters worse, at all relevant times, Defendants automatically deducted 30-
24 minutes from Plaintiff and other non-exempt employees’ time entries for meal periods whether or not
25 the meal periods were taken were actually 30 minutes in length. Defendants’ policy/practice
26 automatically deducted 30 minutes for meal periods, regardless of whether a 30-minute meal period
27 was actually taken. Indeed, non-exempt employees’ meal periods were often cut short, and lasted
28 fewer than 30 minutes due to Defendants’ meal period policies/procedures and operational

1 requirements and work demands.

2 36. Additionally, for each missed or non-compliant meal period, Defendants failed to
3 maintain a mechanism by which non-exempt employees were paid meal period premiums at the
4 “regular rate of pay” pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor
5 Code § 226.7. Accordingly, due to Defendants’ uniform meal period practices, Plaintiff and other
6 non-exempt employees were also regularly denied legally compliant meal periods in violation of
7 Labor Code §§ 226.7, 510, 516, and applicable IWC Wage Orders.

8 37. Moreover, at all relevant times, Plaintiff and other non-exempt employees were not
9 provided with all 10-minute rest periods for every four hours worked, or major fraction thereof due
10 to Defendants’ uniform rest period policies/practices, operational requirements and work demands.
11 As a result, Plaintiff and other non-exempt employees were and are often unable to take a net 10-
12 minute duty free rest periods for every major fraction of four hours worked. This includes a second
13 rest period for shifts in excess of six hours, and a third rest period for shifts in excess of 10.0 hours
14 in a workday. To the extent non-exempt were permitted allowed and permitted to take rest periods,
15 the rest periods were often cut short or interrupted for work reasons.

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

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

27 40. Accordingly, due to Defendants’ uniform rest period policies/practices and work
28 demands, Plaintiff and other non-exempt employees were also regularly denied legally compliant rest

1 breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

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

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

13 43. Thus, for the violations of Labor Code § 226 described above, Plaintiff and other non-
14 exempt employees may also recover Labor Code § 226.3 penalties for Defendants' violations of
15 Labor Code § 226(a).

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

20 **CLASS ACTION ALLEGATIONS**

21 45. Plaintiff brings this action on behalf of herself and the following Classes pursuant to
22 § 382 of the Code of Civil Procedure:

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

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

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

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

8 (collectively "the Classes")

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

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

- 18 1. Whether Defendants failed to pay all minimum wages to members of the Classes;
- 19 2. Whether Defendants failed to pay overtime and sick pay at the appropriate legal rate
20 to members of the Classes;
- 21 3. Whether Defendants provided legally compliant meal and rest periods or proper
22 compensation at the "regular rate of pay" in lieu thereof to members of the Classes;
- 23 4. Whether Defendants furnished legally compliant wage statements to members of the
24 Classes pursuant to Labor Code § 226(a); and
- 25 5. Whether the timing and amount of payment of final wages to members of the Class
26 at the time of separation from employment were unlawful.

27 48. **Predominance of Common Questions:** Common questions of law and fact
28 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

1 and/or practices applicable to each individual class member, such as, Defendants' time rounding
2 policy/practice, Defendants' policy/practice of failing to pay overtime and sick pay at the appropriate
3 premium rate, Defendants' uniform policy of failing to provide compliant meal and rest periods or
4 adequate compensation in lieu thereof, and Defendants' resulting failure to provide accurate itemized
5 wage statements, and to pay for all wages due upon separation of employment. As such, the common
6 questions predominate over individual questions concerning each individual class member's showing
7 as to his or her eligibility for recovery or as to the amount of his or her damages.

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

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

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

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

3 52. Moreover, requiring each member of the Classes to pursue an individual remedy
4 would also discourage the assertion of lawful claims by employees who would be disinclined to file
5 an action against their former and/or current employer for real and justifiable fear of retaliation and
6 permanent damages to their careers at subsequent employment. Further, the prosecution of separate
7 actions by the individual class members, even if possible, would create a substantial risk of
8 inconsistent or varying verdicts or adjudications with respect to the individual class members against
9 Defendants herein; and which would establish potentially incompatible standards of conduct for
10 Defendants; and/or legal determinations with respect to individual class members which would, as a
11 practical matter, be dispositive of the interest of the other class members not parties to adjudications
12 or which would substantially impair or impede the ability of the class members to protect their
13 interests. Further, the claims of the individual members of the class are not sufficiently large to
14 warrant vigorous individual prosecution considering all of the concomitant costs and expenses
15 attending thereto. As such, the Classes identified in Paragraph 41 are maintainable as Classes under
16 § 382 of the Code of Civil Procedure.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY ALL MINIMUM WAGES**

19 **(AGAINST ALL DEFENDANTS)**

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

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

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

1 and unlawful practice of rounding time entries and automatically deducting 30 minutes for meal
2 periods, resulting in a failure to pay for all hours worked. Accordingly, Plaintiff and members of the
3 Classes were not compensated for all hours worked, including, but not limited to, all hours they were
4 subject to the control of Defendants and/or suffered or permitted to work under the California Labor
5 Code and applicable Wage Orders.

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

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

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

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY ALL OVERTIME WAGES**

23 **(AGAINST ALL Defendants)**

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

25 60. 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.

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

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

10 63. Defendants failed to conform their pay practices to the requirements of the law. This
11 unlawful conduct includes, but is not limited to, Defendants’ uniform and unlawful policy/practice
12 of rounding non-exempt employees’ time entries, automatically deducting 30 minutes for meal
13 periods, and of failing to include all forms of compensation in calculating the “regular rate of pay”,
14 which resulted in the Classes not being paid all overtime wages owed.

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

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY ALL SICK TIME**

22 **(AGAINST ALL Defendants)**

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

24 66. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
25 1198, and 1199 which provide that non-exempt employees are entitled to have their sick time paid at
26 the “regular rate of pay”, including all forms of compensation/remuneration.

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

68. 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 include all forms of compensation, including but not limited to shift differentials, non-discretionary bonuses, and other forms of remuneration into the calculation of the "regular rate of pay," which resulted in Plaintiff and the Classes not being paid all sick time wages owed.

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

FOURTH CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL Defendants)

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

71. 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.

72. 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.

FIFTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL Defendants)

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

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

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

11 76. The foregoing violations create an entitlement to recovery by Plaintiff and members
12 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
13 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
14 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

15 **SIXTH CAUSE OF ACTION**

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

17 **(AGAINST ALL Defendants)**

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

19 78. Labor Code 226(a) states in pertinent part the following:

20 “(a) An employer, semimonthly or at the time of each payment of wages, shall
21 furnish to his or her employee, either as a detachable part of the check, draft, or
22 voucher paying the employee's wages, or separately if wages are paid by personal
23 check or cash, an accurate itemized statement in writing showing (1) gross wages
24 earned, (2) total hours worked by the employee, except as provided in subdivision
25 (j), (3) the number of piece-rate units earned and any applicable piece rate if the
26 employee is paid on a piece-rate basis, (4) all deductions, provided that all
27 deductions made on written orders of the employee may be aggregated and shown
28 as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
employee is paid, (7) the name of the employee and only the last four digits of his
or her social security number or an employee identification number other than a
social security number, (8) the name and address of the legal entity that is the
employer and, if the employer is a farm labor contractor, as defined in subdivision

1 (b) of Section 1682, the name and address of the legal entity that secured the services
2 of the employer, and (9) all applicable hourly rates in effect during the pay period
3 and the corresponding number of hours worked at each hourly rate by the
employee.”

4 79. 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 80. 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 81. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing and
13 intentional.

14 82. 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 **WAITING TIME PENALTIES**

22 **(AGAINST ALL Defendants)**

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

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

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

86. 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.

87. Defendants willfully failed to pay Plaintiff and the members of the Waiting Time Penalty Subclass for all minimum wages, and overtime and sick pay 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.

88. 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).

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL Defendants)

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

90. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay all minimum wages, and overtime and sick pay wages at the appropriate legal rate, by failing to provide all legally required meal and rest periods or pay premium payments at the “regular rate of pay” in lieu thereof, by failing to provide accurate itemized wage statements, and by failing to pay all earned wages at the time of separation from employment.

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

92. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of

monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

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

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

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT PENALTIES

(AGAINST ALL DEFENDANTS)

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

96. 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 herself 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 provide Plaintiff and other non-exempt employees all minimum and overtime wages due to Defendants' unlawful rounding practice;

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

c. Failing to provide Plaintiff and other non-exempt employees with all of their statutorily mandated meal or rest periods or compensation at the "regular rate of pay" in lieu thereof

1 in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

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

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

6 97. On or about May 12, 2023, Plaintiff notified Defendant via certified mail, and the
7 California Labor and Workforce Development Agency (“LWDA”) via its website of Defendant’s
8 violations of the California Labor Code § 2698 *et seq.*, with respect to violations of the California
9 Labor Code identified in Paragraph 96(a)-(e). Now that sixty-five days have passed from Plaintiff
10 notifying Defendant and the LWDA of these violations, Plaintiff will have exhausted her
11 administrative requirements for bringing a claim under the Private Attorneys General Act with respect
12 to these violations.

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

17 **PRAYER FOR RELIEF**

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

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

1 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;

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

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

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

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

12 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other non-
13 exempt aggrieved employees, and the State of California according to proof pursuant to Labor Code
14 § 2699 (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 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
18 § 218.6 and Civil Code §§ 3287 and 3289;

19 14. 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 15. For such other relief that the Court may deem just and proper.

22 Dated: October 30, 2023

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

23
24
25 By: _____

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
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 November 2, 2023, 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:

Alis M. Moon, Esq.
Alis.Moon@jacksonlewis.com
Anna E. Caludac, Esq.
Anna.Caludac@jacksonlewis.com
JACKSON LEWIS, P.C.
200 Spectrum Center Drive, Suite 500
Irvine, California 92618

Counsel for defendant DRS Imaging Services, 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 November 2, 2023, at Los Angeles, California.



Carlos Garcia