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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

CLARA HINSON on behalf of herself and all
others similarly situated,

Plaintiff,

v.

NITERRA NORTH AMERICA, INC., a West
Virginia Corporation; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: 30-2023-01345470-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) MEAL PERIOD VIOLATIONS;
- (4) REST PERIOD VIOLATIONS;
- (5) FAILURE TO PAY ALL SICK TIME;
- (6) WAGE STATEMENT VIOLATIONS;
- (7) WAITING TIME PENALTIES;
- (8) UNFAIR COMPETITION; and
- (9) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff Clara Hinson (“Plaintiff”) on behalf of herself and all other similarly situated non-
2 exempt employees, alleges, and complains of Defendant Niterra North America, Inc. and DOES 1 to
3 50 (hereinafter collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendants have been the world leader in technology, innovation, and quality in
6 designing spark plugs and oxygen sensors. Defendants maintain manufacturing, inventory, and
7 distribution facilities in Irvine and Santa Clara, California and in other parts of the U.S.

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

10 3. As set forth below, Plaintiff alleges that Defendants failed to pay for all hours worked
11 due to its unlawful time rounding policy and practice. Plaintiff further alleges that Defendants failed
12 to pay all overtime compensation and sick pay wages at the proper legal rates by failing to properly
13 calculate the “regular rate of pay.” Moreover, Plaintiff alleges that Defendants’ meal and rest period
14 policies and practices failed to allow and permit non-exempt employees to take all compliant and
15 timely meal and rest periods or pay premium wages at the “regular rate of pay” in lieu thereof.
16 Plaintiff further alleges that Defendants failed to provide non-exempt employees with accurate
17 written itemized wage statements in violation of Labor Code § 226(a) and failed to timely pay all
18 final wages upon separation of employment in violation of Labor Code §§ 201-203.

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

22 **JURISDICTION AND VENUE**

23 5. 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 §§ 201-
25 203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1197.1, 1199, 2698
26 *et seq.* and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to
27 seeking declaratory relief and restitution pursuant to California Business and Professions Code §
28 17200, *et seq.*

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

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 operate in California 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 as a non-exempt employee in the County of Orange.

10. Plaintiff is informed and believes and thereon alleges that Defendants are authorized to and doing business within the County of Orange and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1197.1, 1199, 2698 *et seq.*, and the California Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

11. 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.

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

1 alleged herein.

2 13. Plaintiff is informed, and believes, and thereon alleges, 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. Founded in 1936, Defendants have been the world leader in technology, innovation,
17 and world-class quality in designing spark plugs and oxygen sensors. Defendants maintain
18 manufacturing, inventory, and distribution facilities in Irvine and Santa Clara, California.

19 16. Plaintiff began working for Defendants through a staffing agency in August of 2018
20 until she was directly hired by Defendants on or about February 4, 2019, until her separation from
21 employment on or about July 19, 2023. At all relevant times, Plaintiff held the title of “Packaging
22 Associate” and worked out of Defendants’ Irvine location.

23 17. Plaintiff and other non-exempt hourly employees (including, but not limited to
24 warehouse associates, material handlers, laborers, designers and all other non-exempt hourly
25 positions) were responsible for all aspects of Defendants’ business across the State of California.
26 However, in these roles Plaintiff and other non-exempt employees were often not afforded all
27 protections and rights conferred under the California Labor Code and applicable Wage Orders.

1 18. First, at all relevant times, Defendants has had a consistent practice/policy of unfairly
2 and unlawfully rounding Plaintiff's and other non-exempt employees' time entries to the nearest
3 quarter hour. As a result, over a period of time, Plaintiff and other non-exempt employees are not
4 compensated for all the hours that they work or were subject to the control of Defendants in violation
5 of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

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

11 20. Here, Defendants' rounding policy/practice is not neutral on its face or in its
12 application as Plaintiff and other non-exempt employees are subject to discipline, including
13 termination for being tardy in reporting to work, or returning from a meal period. Moreover, because
14 Defendants can track the exact time worked by non-exempt employees to the exact minute, the policy
15 itself exists not for the convenience or benefit of the employees who are trying to accurately report
16 their time, but for Defendants' benefit. As a result, the policy is not neutral on its face or in its
17 application, and in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable
18 Wage Orders.

19 21. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
20 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of
21 wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed,
22 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
23 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
24 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
25 underpaid regardless of whether the initial violation is intentionally committed. Additionally, Labor
26 Code § 510 requires an employer to compensate an employee who works more than eight (8) hours
27 in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the
28 seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of pay.

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

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

15 24. Under the California Labor Code (as well as the FLSA), courts have consistently held
16 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
17 determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v.*
18 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
19 bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F.
20 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under
21 California and federal law on the grounds, that Defendant improperly calculated overtime by
22 excluding annual bonuses paid to employees from the "regular rate of compensation"]; see *Walling*
23 *v. Youngerman-Reynolds Hardwood Co.* (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very
24 nature must reflect all payments which the parties have agreed shall be received regularly during the
25 workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is an
26 actual fact. Once the parties have decided upon the amount of wages and the mode of payment the
27 determination of the regular rate becomes a matter of mathematical computation, the result of which
28 is unaffected by any designation of a contrary 'regular rate' in the contracts."); see also 29 CFR §§

1 778.110 (“production bonus”) and 778.111 (“piece-rate”).)

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

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

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

21 28. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must
22 be “calculated in the same manner as the regular rate of pay for the workweek in which the employee
23 uses paid sick time, whether or not the employee actually works overtime in that workweek.”

24 29. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated
25 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
26 hours worked in the full pay periods of the prior 90 days of employment.”

27 30. Finally, Labor Code §246(i) requires employers to “provide an employee with written
28 notice that sets forth the amount of paid sick leave available, or paid time off leave an employer

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

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

8 32. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were
9 denied compliant and timely 30-minute off-duty meal periods as mandated by California law. As a
10 result of Defendants' uniform meal period policies/practices, operational requirements, and work
11 demands, non-exempt employees were often unable to take timely and uninterrupted 30-minute first
12 meal periods before the end of the fifth hour of work. Further, when other non-exempt employees
13 worked in excess of 10 hours in a shift, they were not allowed and permitted to take a mandated
14 second meal period before the end of the tenth hour of work in violation of the Labor Code and
15 applicable Wage Orders.

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

19 34. Accordingly, due to Defendants' uniform meal period policies/practices, non-exempt
20 employees were also regularly denied legally compliant meal periods in violation of Labor Code §§
21 226.7, 510, 516, and applicable Wage Orders.

22 35. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were also
23 not provided with all uninterrupted 10-minute rest periods for every four hours worked, or major
24 fraction thereof due to Defendants' uniform rest period policies/practices and work demands. As a
25 result, other non-exempt employees were and are often unable to take a net 10-minute duty free rest
26 periods for every major fraction of four hours worked. This includes a second rest period for shifts in
27 excess of 7.0 hours, and a third rest period for shifts in excess of 10 hours in a workday.

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

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

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

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

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

27 41. Thus, Plaintiff is a non-exempt employee and Defendants have violated Labor Code
28 §226(a) with respect to Plaintiff and other non-exempt employees. Consequently, because Defendants

1 failed to comply with Labor Code § 226(a), Plaintiff and other non-exempt employees would be
2 entitled to recover penalties under Labor Code § 226(e).

3 42. As a result of Defendants' failure to pay all minimum and overtime, sick pay wages,
4 and meal and rest period premiums at the "regular rate of pay", Defendants also failed and continue
5 to fail to pay Plaintiff and other non-exempt employees all wages owed at their time of separation
6 from employment in violation of Labor Code §§ 201-203. Thus, non-exempt employees would be
7 entitled to recover waiting time penalties under Labor Code §§ 201-203.

8 **CLASS ACTION ALLEGATIONS**

9 43. Plaintiff brings this action on behalf of herself and the following Classes pursuant to §
10 382 of the Code of Civil Procedure:

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

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

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

18 All non-exempt hourly employees who work or worked for Defendants in
19 California, and who left their employment during the three years
20 immediately preceding the filing of the Complaint through the date of trial.
21 ("Waiting Time Penalty Subclass")
(collectively "the Classes")

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

27 45. **Common Questions of Law and Fact Predominate/Well Defined Community of**
28 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated

1 non-exempt employees, which predominate over questions affecting only individual members
2 including, without limitation to:

3 1. Whether Defendants rounding policy/practice failed to pay all Class Members for all
4 hours worked;

5 2. Whether Defendants failed to pay overtime and sick pay wages at the “regular rate of
6 pay” to the members of the Class;

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

9 4. Whether Defendants allowed and permitted Plaintiff and the Class to take legally
10 compliant meal periods or pay premium wages at the “regular rate of pay” in lieu thereof;

11 5. Whether Defendants allowed and permitted Plaintiff and the Class to take legally
12 compliant rest periods or pay premium wages at the “regular rate of pay” in lieu thereof;

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

15 7. Whether Defendants accurately paid all sick pay wages owed using the “regular rate of
16 pay” to Plaintiff and members of the Class; and

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

19 46. **Predominance of Common Questions:** Common questions of law and fact
20 predominate over questions that affect only individual members of the Classes. The common
21 questions of law set forth above are numerous and substantial and stem from Defendants’ policies
22 and/or practices applicable to each individual class member, such as without limitation, Defendants’
23 failure to pay for all hours worked, and failure to adequately calculate the “regular rate of pay” for
24 purposes of overtime pay and sick pay, Defendants’ failure to provide all compliant meal and rest
25 periods or premiums at the “regular rate of pay” in lieu thereof, Defendants’ failure to provide
26 accurate itemized wage statements, and Defendants’ failure to pay for all wages due upon separation
27 of employment. As such, the common questions predominate over individual questions concerning
28 each individual class member’s showing as to his or her eligibility for recovery or as to the amount

1 of his or her damages.

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

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

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

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

1 the individual class members, even if possible, would create a substantial risk of inconsistent or
2 varying verdicts or adjudications with respect to the individual class members against Defendants
3 herein; and which would establish potentially incompatible standards of conduct for Defendants;
4 and/or legal determinations with respect to individual class members which would, as a practical
5 matter, be dispositive of the interest of the other class members not parties to adjudications or which
6 would substantially impair or impede the ability of the class members to protect their interests.
7 Further, the claims of the individual members of the class are not sufficiently large to warrant
8 vigorous individual prosecution considering all of the concomitant costs and expenses attending
9 thereto. As such, the Classes identified in Paragraph 43 are maintainable as Classes under § 382 of
10 the Code of Civil Procedure.

11 **FIRST CAUSE OF ACTION**
12 **MINIMUM WAGE VIOLATIONS**
13 **(AGAINST ALL DEFENDANTS)**

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

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

21 53. At all relevant times herein, Defendants failed to conform their pay practices to the
22 requirements of the law. This unlawful conduct includes but is not limited to, Defendants' uniform
23 and unlawful rounding policy/practice, which resulted in these individuals not being paid for all hours
24 they were actually suffered or permitted worked. Accordingly, Plaintiffs and members of the Classes
25 were not compensated for all hours worked including, but not limited to, all hours they were subject
26 to the control of Defendants and/or suffered or permitted to work under the Labor Code and applicable
27 Wage Orders.

28 54. Labor Code § 1198 makes unlawful the employment of an employee under conditions

1 that the Industrial Welfare Commission prohibits. Labor Code §§ 1194(a) and 1194.2(a) provide that
2 an employer who has failed to pay its employees the legal minimum wage is liable to pay those
3 employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal
4 to the wages due and interest thereon.

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

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

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY ALL OVERTIME WAGES**

17 **(AGAINST ALL DEFENDANTS)**

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

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

23 59. At all times relevant herein, Defendants were required to properly pay Plaintiff and
24 members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code
25 § 1194 and the applicable Wage Orders.

26 60. Section 3 of the applicable Wage Order requires an employer to pay an employee "one
27 and one-half (1 1/2) times the employee's regular rate of pay" for work in excess of 8 hours per
28 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an

1 employer to pay an employee double the employee's regular rate of pay for work in excess of twelve
2 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
3 the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate
4 Plaintiff or members of the Overtime Subclass at one and one-half times their "regular rate of pay"
5 for such hours.

6 61. Defendants failed to conform their pay practices to the requirements of the law. At all
7 relevant times herein, Defendants failed to conform their pay practices to the requirements of the law.
8 This unlawful conduct includes but is not limited to Defendant's time rounding policy/practice, and
9 Defendants' failure to properly pay for all hours worked, including all overtime hours at the proper
10 overtime rate, and Defendants' failure to include all forms of compensation, including, but not limited
11 to, non-discretionary bonuses and other incentive pay in calculating the "regular rate of pay," which
12 resulted in these individuals not being paid for all overtime hours worked.

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

18 **THIRD CAUSE OF ACTION**

19 **MEAL PERIOD VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

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

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

27 65. Despite Defendants' violations, Defendants have not paid an additional hour of pay at
28 the "regular rate of pay" to Plaintiff and members of the Class at their respective regular rates of pay

1 for each violation, in accordance with California Labor Code § 226.7.

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

5 **FOURTH CAUSE OF ACTION**

6 **REST PERIOD VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

18 71. The foregoing violations create an entitlement to recovery by Plaintiff and members
19 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
20 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
21 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO PAY ALL SICK TIME**

24 **(AGAINST ALL DEFENDANTS)**

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

26 73. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
27 1198, and 1199 which provide that "[a]n employee who, on or after July 1, 2015, works in California
28 for the same employer for 30 or more days within a year from the commencement of employment is

1 entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours worked, beginning
2 at the commencement of employment.”

3 74. At all times relevant herein, Defendants were required to properly pay Plaintiff and
4 members of the Class for all sick time pursuant to California Labor Code § 246 and the applicable
5 Wage Orders.

6 75. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must
7 be “calculated in the same manner as the regular rate of pay for the workweek in which the employee
8 uses paid sick time, whether or not the employee actually works overtime in that workweek.”
9 Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated by dividing
10 the employee’s total wages, not including overtime premium pay, by the employee’s total hours
11 worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i)
12 requires employers to “provide an employee with written notice that sets forth the amount of paid
13 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
14 the employee’s itemized wage statement described in Section 226 or in a separate writing provided
15 on the designated pay date with the employee’s payment of wages.”

16 76. Defendants failed in their obligation to provide Plaintiff and the Class the legally
17 required paid sick days at the legal rate pursuant to Labor Code §§ 246(a),(b). Plaintiff and the
18 members of the Class were not paid at the correct “regular rate of pay.”

19 77. The foregoing policies and practices are unlawful and create entitlement to recovery
20 by Plaintiff and the members of the Class in a civil action for the unpaid amount of wages, including
21 interest thereon, statutory penalties, attorney’s fees, and costs of suit according to Labor Code §§ 246
22 1192, 1194 *et seq.*, 1197, 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

23 **SIXTH CAUSE OF ACTION**

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

25 **(AGAINST ALL DEFENDANTS)**

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

27 79. Labor Code 226(a) states in pertinent part the following:
28

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

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

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

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

26 83. As a result of Defendants’ issuance of inaccurate itemized wage statements to Plaintiff
27 and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor
28 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.

1 **SEVENTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

13 88. Defendants willfully failed to pay the Waiting Time Subclass for all hours worked,
14 including all minimum and overtime wages, sick pay wages, vested vacation pay, and their meal and
15 rest period premiums at the “regular rate of pay”, prior to or upon termination or separation from
16 employment with Defendants as required by Labor Code §§ 201 and 202.

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

21 **EIGHTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(AGAINST ALL DEFENDANTS)**

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

25 91. Defendants have engaged and continue to engage in unfair and/or unlawful business
26 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
27 failing to pay for all hours worked including overtime wages, sick pay wages, by failing to provide
28 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 wage statements, and by failing to pay all earned wages at the time of separation from employment.

92. 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.

93. 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.

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

95. 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)

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

97. Defendants have committed several Labor Code violations against Plaintiff and other non-exempt employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of 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

1 violation per employee per pay period for those violations of the Labor Code for which no civil
2 penalty is specifically provided based on the following Labor Code violations:

3 a. Failing to pay for all hours work due to Defendants' unlawful rounding practice in
4 violation of Labor Code §§ 204, 210, 510, 1194, 1197, 1197.1, and 1198;

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

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

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

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

15 98. On or about August 29, 2023, Plaintiff notified Defendant Niterra North America, Inc.
16 via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its
17 website of Defendant's violations of the California Labor Code § 2698 *et seq.*, with respect to
18 violations of the California Labor Code identified in Paragraph 87(a)-(e). Now that sixty-five days
19 have passed from Plaintiff notifying Defendant and the LWDA of these violations, Plaintiff will have
20 exhausted his administrative requirements for bringing a claim under the Private Attorneys General
21 Act with respect to these violations.

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

26 **PRAYER FOR RELIEF**

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

- 1 1. For an order certifying the proposed Classes;
- 2 2. For an order-appointing Plaintiff as representative of the Classes;
- 3 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 4 4. Upon the First and Second Cause of Action, for compensatory, consequential,
5 general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194,
6 1197, 1197.1, and 1198 and reasonable attorneys' fees and costs;
- 7 5. Upon the Third Cause of Action, for compensatory, consequential, general and
8 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, 1197, and 1198
9 and reasonable attorneys' fees and costs;
- 10 6. Upon the Third Cause of Action, for compensatory, consequential, general and
11 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 12 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
13 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 14 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
15 special damages according to proof pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, and
16 1199;
- 17 9. Upon the Sixth Cause of Action, penalties pursuant to Labor Code § 226(a), and
18 reasonable costs and attorneys' fees;
- 19 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to
20 Labor Code §§ 201-203;
- 21 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
22 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
23 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
- 24 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
25 § 218.6 and Civil Code §§ 3287 and 3289;
- 26 13. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other non-
27 exempt aggrieved employees, and the State of California according to proof pursuant to Labor Code
28 § 2699 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each

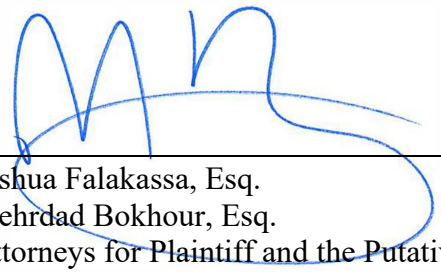
1 subsequent violation per employee per pay period for those violations of the Labor Code for which
2 no civil penalty is specifically provided under the Labor Code;

3 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
4 218.5, 226, 1194, Code of Civil Procedure § 1021.5; and

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

6
7 Dated: November 30, 2023

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

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9
10 By: 

11 Joshua Falakassa, Esq.
12 Mehrdad Bokhour, Esq.
13 Attorneys for Plaintiff and the Putative Classes
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1 **PROOF OF SERVICE**

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

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

5 On December 5 2023, I served the following document(s) described as **FIRST**
6 **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:

7
8 Rita M. Haeusler, Esq.
Rita.haeusler@hugheshubbard.com
9 Hannah A. Bogen, Esq.
Hannah.bogen@hugheshubbard.com
10 HUGHES HUBBARD & REED LLP
1999 Avenue of the Stars, Suite 9th Floor
11 Los Angeles, California 90067

12 **Counsel for for Defendant Niterra North America, Inc.**

13 **BY ELECTRONIC MAIL:** Based on a Court order or an agreement by the parties to
14 accept service by e-mail or electronic transmission, I caused such the document(s) described above
to be sent from my email address to the persons listed above. I did not receive, within a reasonable
15 time after the transmission, any electronic message or indication that the transmission was
unsuccessful.

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

17 Executed on December 5, 2023, in Los Angeles, California.

18
19 
20 Cynthia Garcia