

1 **BOKHOUR LAW GROUP, P.C.**
2 Mehrdad Bokhour, Esq., CA Bar No. 285256
3 *mehrdad@bokhourlaw.com*
4 1901 Avenue of the Stars, Suite 450
5 Los Angeles, California 90067
6 Tel: (310) 975-1493; Fax: (310) 675-0861

5 **FALAKASSA LAW, P.C.**
6 Joshua S. Falakassa, CA Bar No. 295045
7 *josh@falakassalaw.com*
8 1901 Avenue of the Stars, Suite 450
9 Los Angeles, California 90067
10 Tel: (818) 456-6168; Fax: (888) 505-0868

9 Attorneys for Plaintiff and the Putative Classes

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN JOAQUIN**

12 JESUS ANDRADE, on behalf of himself and all
13 others similarly situated,

14 Plaintiff,

15 v.

16 MMM CONSUMER BRANDS, INC., a
17 Delaware Corporation; and DOES 1-50,
18 inclusive.

18 Defendants.

CASE NO.:

STK-CV-UOE-2023- 9352

CLASS 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) FAILURE TO TIMELY PAY WAGES;
- (5) MEAL PERIOD VIOLATIONS;
- (6) REST PERIOD VIOLATIONS;
- (7) WAGE STATEMENT VIOLATIONS;
- (8) WAITING TIME PENALTIES;
- (9) UNFAIR COMPETITION

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

COPY

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1
2 Plaintiff Jesus Andrade (“Plaintiff”) on behalf of himself, and all other similarly situated non-
3 exempt employees, alleges, and complains of Defendant MMM Consumer Brands, Inc. *dba* Marley
4 Spoon (“Defendant”) and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

5 **INTRODUCTION**

6 1. Defendant MMM Consumer Brands *dba* Marley Spoon is a food distribution
7 company seeking to make it easy to cook a delicious meal at home by sending tasty recipes and
8 fresh ingredients directly to consumers.

9 2. Plaintiff brings this class action against Defendants for alleged violations of the
10 California Labor Code, applicable Wage Order(s), and Business and Professions Code.

11 3. As set forth below, Plaintiff alleges that Defendants deprived Plaintiff and other non-
12 exempt employees of all minimum, overtime wages and sick pay wages by failing to properly
13 calculate the “regular rate of pay.” Moreover, Plaintiff alleges that Defendants failed and continue
14 to fail to timely pay wages within seven (7) calendar days of the weekly pay period in violation of
15 Labor Code § 204. Plaintiff further alleges that Defendants’ meal and rest period policies and
16 practices failed to provide him and all other similarly situated employees with compliant meal and
17 rest periods or pay premium pay at the “regular rate of pay” in lieu thereof. Plaintiff further alleges
18 that Defendants failed to reimburse for necessary business expenses. Finally, Plaintiff alleges that
19 Defendants failed to provide non-exempt employees with accurate written itemized wage statements
20 and failed to timely pay all final wages upon separation of employment.

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

24 **JURISDICTION AND VENUE**

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

26 6. Plaintiff, on behalf of himself and all others similarly situated employees hereby
27 brings this class action for recovery of unpaid wages and penalties under California Labor Code §§
28 200-204, 210, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199, among

1 other, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to
2 seeking declaratory relief and restitution pursuant to Business and Professions Code § 17200, *et. seq.*

3 7. This Court has jurisdiction over Defendants’ violations of the California Labor Code
4 and applicable Wage Orders because the amount in controversy exceeds this Court’s jurisdictional
5 minimum.

6 8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
7 §§ 395(a) and 395.5. Defendants own, maintain offices, transact business, have an agent or agents
8 within Tracy, California and/or otherwise are found within the County of San Joaquin, and
9 Defendants are within the jurisdiction of this Court for purposes of service of process.

10 **PARTIES**

11 9. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is
12 a California resident residing in the State of California. Defendants employed Plaintiff and other
13 similarly situated employees as non-exempt employees in California in the County of San Joaquin.

14 10. Plaintiff is informed and believes and thereon alleges that Defendant is a California
15 corporation authorized and doing business in San Joaquin County, California; and is and/or was the
16 legal employer of Plaintiff and the Class Members during the applicable statutory periods.

17 11. Defendants’ policies and/or practices outlined herein have deprived Plaintiff and other
18 similarly situated non-exempt employees of the rights afforded to them by California Labor Code §§
19 200-204, 210, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199, among
20 others, and California Business and Professions Code § 17200 *et seq.*, and applicable Wage Order(s).

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

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

1 believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, or
2 corporate, were responsible in some manner for the acts and omissions alleged herein, and
3 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
4 alleged herein.

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

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

18 **COMMON FACTUAL ALLEGATIONS**

19 16. Defendants are a food distribution company seeking to deliver pre-portioned
20 ingredients for Martha Stewart's most delicious recipes directly to the consumer.

21 17. Plaintiff was employed by Defendants as a non-exempt employee with the title of
22 "Production Associate." Plaintiff began working for Defendants from February 2022 until his
23 separation from employment in July 2023. Plaintiff and other non-exempt employees (including,
24 but not limited to laborers, shipping and receiving clerks, supervisors, forklift driver, warehouse
25 associates, and all other non-exempt positions) were responsible for all aspects of Defendants'
26 business in the State of California.

27 18. 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

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

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

12 20. Under the California Labor Code (as well as the FLSA), courts have consistently held
13 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
14 determining an employee’s “regular rate of pay” for purposes of calculating overtime. (See *Haber v.*
15 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
16 bonuses must be included in calculating the “regular rate”]; *Wang v. Chinese Daily News, Inc.* 435 F.
17 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under
18 California and federal law on the grounds, that Defendant improperly calculated overtime by
19 excluding annual bonuses paid to employees from the “regular rate of compensation”].) see *Walling*
20 *v. Youngerman-Reynolds Hardwood Co.* (1945) 65 S.Ct. 1242, 1245. (“The regular rate by its very
21 nature must reflect all payments which the parties have agreed shall be received regularly during the
22 workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is an
23 actual fact. Once the parties have decided upon the amount of wages and the mode of payment the
24 determination of the regular rate becomes a matter of mathematical computation, the result of which
25 is unaffected by any designation of a contrary ‘regular rate’ in the contracts.”); see also 29 CFR §§
26 778.110 (“production bonus”) and 778.111 (“piece-rate”).)

27 21. By their policy of requiring Plaintiff and the other non-exempt employees to work in
28 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating

1 them at the lawful rate of one-half (1 1/2) their “regular rate of pay,” Defendants willfully violated
2 the provisions of Labor Code § 510 and the applicable Wage Orders.

3 22. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt employees
4 are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204, 210, 510,
5 1197.1.

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

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

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

26 26. At all relevant times, Defendants paid Plaintiff and other non-exempt employees on a
27 weekly basis but failed and continues to fail to pay not more than seven (7) calendar days following
28 the close of the payroll period in violation of Labor Code § 204(d).

1 27. Here, Plaintiff and other non-exempt employees were and are routinely paid on a
2 weekly payroll, but Defendants failed to pay all wages within seven (7) calendar days of the close of
3 the payroll period.

4 28. For instance, for the pay period 6/30/23 to 7/6/23, MMM Consumer Brands paid Mr.
5 Andrade on 7/19/23, thirteen (13) calendar days after the close of the payroll period. This late
6 payment of wages by MMM Consumer Brands is consistent throughout the relevant liability period.

7 29. Labor Code § 204 “pertains to the timing of wage payments” and serves a very
8 important public policy objective. “It has long been recognized that wages are not ordinary debts, . .
9 . and that, because of the economic position of the average worker and, in particular, his dependence
10 on wages for the necessities of life for himself and his family, it is essential to the public welfare that
11 he receive his pay when it is due.” (See also *In re Trombley* (1948) 31 Cal. 2d.801, 810-11 (citing *In*
12 *re Moffett* (1937) 19 Cal.App.2d 7, 19).

13 30. The penalties for violating Labor Code § 204 are set forth in Labor Code section
14 210(a) as follows: [E]very person who fails to pay the wages of each employee as provided in Sections
15 . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred
16 dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful
17 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
18 percent of the amount unlawfully withheld.

19 31. Due to Defendants’ uniform late payment of wages to Plaintiff and the other non-
20 exempt employees, Defendants violated the provisions of Labor Code § 204 and the applicable Wage
21 Orders. Accordingly, Plaintiff and other non-exempt employees are entitled to recover civil penalties
22 in the amount of \$100 for the first violation and \$200 for each subsequent violation, plus 25% of the
23 amount unlawfully withheld pursuant to Labor Code § 210(a).

24 32. In addition, from at least one year ago and continuing until the present, Plaintiff and
25 other non-exempt employees were required to don Personal Protective Equipment (“PPE”) all before
26 clocking in and starting their shifts.

27 33. Likewise, Plaintiff and other non-exempt employees were required to remove PPE
28 after clocking out at the end of their shifts. These mandated procedures occurred before employees

1 clocked in and after clocking out and resulted in time aggrieved employees did not receive
2 compensation while subject to the control of the Company. Despite being subject to the Company's
3 control while donning and doffing PPE, the Company did not provide any compensation for the time
4 it took to complete these processes.

5 34. As a result, Plaintiff and other non-exempt employees were not fully compensated for
6 all minimum and overtime wages as required by the California Labor Code and applicable Wage
7 Orders. The Company has no valid defense to this claim given the California Supreme Court's recent
8 unanimous decision in *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038, which held that employees "must
9 be paid" during security checks since "it is clear that [employees] are subject to [the employer's]
10 control while awaiting, and during, [the] exit searches."

11 35. As a result, Plaintiff and other non-exempt employees were not properly paid for all
12 hours worked, including overtime hours, in violation of Labor Code § 204, 210, 510, 1194, 1197.1,
13 1199, and applicable Wage Orders. Additionally, Plaintiff and other non-exempt employees were not
14 properly paid at the correct overtime rate for hours worked in excess of eight hours per shift. Mr.
15 Andrade and other aggrieved employees would be entitled to recover penalties under Labor Code §§
16 210, 1199 and 2698 *et seq.*

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

23 37. Pursuant to Section 3 of the applicable Wage Orders, employees shall not be employed
24 more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee
25 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over
26 40 hours in the workweek. By their policy of requiring Mr. Andrade and the other non-exempt
27 employees to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek
28

1 without compensating them at the rate of one-half (1 1/2) their regular rate of pay, the Company
2 willfully violated the provisions of Labor Code §§ 510 and applicable Wage Orders.

3 38. The Company thus failed to compensate Plaintiff and other non-exempt employees
4 for all overtime wages at the proper rates, due to time spent undergoing the Company's donning and
5 doffing PPE prior to clocking in and after clocking out for their shifts. Accordingly, Plaintiff and
6 other non-exempt employees are entitled to recover liquidated damages for violations of Labor Code
7 § 1197.1.

8 39. Next, at all relevant times, Plaintiff and other non-exempt employees were denied
9 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
10 Defendants' uniform meal period policies/practices operational requirements, and work demands,
11 Plaintiff and other non-exempt employees were often unable to take timely and uninterrupted 30-
12 minute first meal periods before the end of the fifth hour of work. Further, when Plaintiff and other
13 non-exempt employees worked more than 10.0 hours in a shift, they were not always allowed and
14 permitted to take a mandated second meal period before the end of the tenth hour of work in violation
15 of the Labor Code and applicable Wage Orders.

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

22 41. Moreover, at all relevant times, Plaintiff and other non-exempt employees were not
23 provided with all 10-minute rest periods for every four hours worked, or major fraction thereof due
24 to Defendants' uniform rest period policies/practices, operational requirements and work demands.
25 As a result, Plaintiff and other non-exempt employees were and are often unable to take a net 10-
26 minute duty free rest periods for every major fraction of four hours worked. This includes a second
27 rest period for shifts in excess of six hours, and a third rest period for shifts in excess of 10.0 hours
28 in a workday. To the extent non-exempt were permitted allowed and permitted to take rest periods,

1 the rest periods were often cut short or interrupted for work reasons. Making matters worse,
2 Defendants implemented a uniform policy that prevented Plaintiff and other non-exempt employees
3 from leaving the premises during rest periods.

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

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

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

18 45. As a result of Defendants’ failure to pay Plaintiff and other non-exempt employees for
19 all overtime wages, sick pay wages at the appropriate legal rate, and Defendants’ failure to pay for
20 meal and rest period premiums at the “regular rate of pay,” Defendants issued wage statements which
21 failed to accurately identify the gross wages earned, the total hours worked, the net wages earned,
22 and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code
23 § 226(a)(1, 2, 5, and 9).

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

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

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

CLASS ACTION ALLEGATIONS

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

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

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

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

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

(collectively “the Classes”)

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

1 51. **Common Questions of Law and Fact Predominate/Well Defined Community of**

2 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
3 employees, which predominate over questions affecting only individual members including, without
4 limitation to:

5 1. Whether Defendants failed to pay overtime pay at the appropriate legal rate to
6 members of the Classes;

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

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

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

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

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

25 53. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
26 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
27 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
28 Plaintiff, like the members of the Classes, was deprived of all overtime wages and sick pay wages,

1 was deprived of meal and rest period premium wages at the “regular rate of pay,” was subject to
2 Defendants’ uniform policies/practices, was not provided accurate itemized wage statements, and
3 was not paid all wages owed at the time of her separation of employment.

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

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

20 56. Moreover, requiring each member of the Classes to pursue an individual remedy
21 would also discourage the assertion of lawful claims by employees who would be disinclined to file
22 an action against their former and/or current employer for real and justifiable fear of retaliation and
23 permanent damages to their careers at subsequent employment. Further, the prosecution of separate
24 actions by the individual class members, even if possible, would create a substantial risk of
25 inconsistent or varying verdicts or adjudications with respect to the individual class members against
26 Defendants herein; and which would establish potentially incompatible standards of conduct for
27 Defendants; and/or legal determinations with respect to individual class members which would, as a
28 practical matter, be dispositive of the interest of the other class members not parties to adjudications

1 or which would substantially impair or impede the ability of the class members to protect their
2 interests. Further, the claims of the individual members of the class are not sufficiently large to
3 warrant vigorous individual prosecution considering all of the concomitant costs and expenses
4 attending thereto. As such, the Classes identified in Paragraph 36 are maintainable as Classes under
5 § 382 of the Code of Civil Procedure.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY ALL MINIMUM WAGES**

8 **(AGAINST ALL DEFENDANTS)**

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

10 58. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
11 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts
12 set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
13 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
14 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to
15 the unpaid wages and interest accrued thereon.

16 59. At all relevant times herein, Defendants failed to conform their pay practices to the
17 requirements of the Labor Code and California law. This unlawful conduct includes but is not limited
18 to Defendants' uniform timekeeping policies/practices of failing to accurately capture and record all
19 hours worked and therefore resulting in these individuals not being paid for all hours actually worked.
20 Accordingly, Plaintiff and members of the Class were not compensated for all hours worked
21 including, but not limited to, all hours they were subject to the control of Defendants and/or suffered
22 or permitted to work under the California Labor Code and applicable Wage Orders.

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

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

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

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

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

67. 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 in calculating the "regular rate of pay", which resulted in the Classes not being paid all overtime wages owed.

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

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

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

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

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

72. 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.

73. 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.

FIRST CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES

(AGAINST ALL DEFENDANTS)

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

75. Labor Code section 204 expressly requires employers who pay employees on a weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a penalty of:

“(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

“(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” (Lab. Code, § 210, subd. (a).)

76. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210, subd. (a).)

77. As described above, Defendants failed to timely pay the Class Members within seven calendar days following the close of the weekly payroll in accordance with Labor Code section § 204 on a regular and consistent basis, and therefore, Plaintiff and members of the Class are entitled to penalties pursuant to Labor Code section 210(a).

FIFTH CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

79. 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

1 California Labor Code and applicable Wage Orders, for the reasons set forth in the Common
2 Allegations section of this Complaint. Despite Defendants' violations, Defendants have not paid an
3 additional hour of pay at the "regular rate of pay" to Plaintiff and members of the Class at their
4 respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

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

8 **SIXTH CAUSE OF ACTION**

9 **REST PERIOD VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

26
27 **SEVENTH CAUSE OF ACTION**

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

(AGAINST ALL DEFENDANTS)

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

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

“(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown 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 (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

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

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

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

90. As a result of Defendants’ issuance of inaccurate itemized wage statements to Plaintiff and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an

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

4 **EIGHT CAUSE OF ACTION**

5 **WAITING TIME PENALTIES**

6 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

1 **NINTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

1 **PRAYER FOR RELIEF**

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

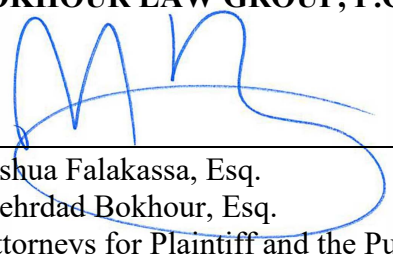
- 4 1. For an order certifying the proposed Classes;
- 5 2. For an order-appointing Plaintiff as representative of the Classes;
- 6 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 7 4. Upon the First and Second Causes of Action, for compensatory, consequential,
8 general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1197, and
9 1198;
- 10 5. Upon the Third Cause of Action, payment of all unpaid sick pay wages and penalties
11 according to proof pursuant to Labor Code § 246 *et seq.*, and for reasonable attorneys' fees and costs;
- 12 6. Upon the Fourth Cause of Action, for compensatory, consequential, general and
13 special damages according to proof pursuant to Labor Code §§ 204 and 210;
- 14 7. Upon the Fifth Cause of Action, for compensatory, consequential, general and
15 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 16 8. Upon the Sixth Cause of Action, for compensatory, consequential, general and
17 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 18 9. Upon the Seventh Cause of Action, penalties pursuant to Labor Code § 226(a), and
19 reasonable costs and attorneys' fees;
- 20 10. Upon the Eighth Cause of Action, for statutory waiting time penalties pursuant to
21 Labor Code §§ 201-203;
- 22 11. Upon the Ninth Cause of Action, for restitution to Plaintiff and members of the
23 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
24 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
- 25 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
26 § 218.6 and Civil Code §§ 3287 and 3289;
- 27 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
28 218.5, 226, and Code of Civil Procedure § 1021.5; and

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

Dated: August 30, 2023

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

By: 

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff and the Putative Classes